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House **ASSEMBLY**

Date **21 October 1994**

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PROSTITUTION CONTROL BILL  
Second reading

Mrs WADE (Attorney-General) -- I move:

That this bill be now read a second time.

This bill is intended to replace the Prostitution Regulation Act 1986. The Prostitution Regulation Act has never been fully proclaimed. When the Labor government attempted to rush the legislation through Parliament in 1986, the coalition parties put forward amendments that were passed by both houses.

The Labor government ignored the wishes of the elected representatives of the Victorian people. It refused to proclaim much of the act.

We have been left with piecemeal regulation of the prostitution industry in Victoria.

The police are not satisfied that their enforcement powers in respect of brothels are adequate. They are concerned about the effects of organised crime. Planning authorities are unhappy that they must consider the criminal histories of applicants for brothel planning permits, as it is the function of planning authorities to consider land use, not the character of land users. Since 1986 escort agencies have multiplied, so that most prostitutes in Victoria now work through escort agencies.

In December 1992 I set up a working party to examine the effectiveness of the Prostitution Regulation Act. There was at that time a great deal of community concern over the location of brothels.

In March 1993 this government responded to community concern by placing a moratorium on the granting of planning permits for brothels. The moratorium has remained in place through the review of the Prostitution Regulation Act and will be lifted when this legislation is proclaimed.

The working party recommended changes to the existing act. Those recommendations form the basis of this bill, although not all the recommendations of the working party are reflected in the bill.

The fact that the government is introducing legislation to control prostitution does not imply government support for prostitution. On the contrary, this government is opposed to prostitution in all its forms.

At the same time we cannot fool ourselves that an attempt to completely suppress prostitution through criminal sanctions will ever succeed.

Most Victorians recognise that prostitution will continue, whatever the law, as long as there is a demand for commercial sexual services.

The solution is a strict system of regulation. With a tough set of controls, we can raise a barrier against organised crime. We can protect our communities against the uncontrolled spread of brothels. We can afford some level of protection for those who have resorted to prostitution. Most importantly, we can guard our children from the effects of prostitution.

## OFFENCES

This government will never tolerate child prostitution. The bill retains harsh criminal sanctions against those who involve themselves with child prostitution.

It introduces new offences applying to those Victorians who organise tours for paedophiles to travel overseas in order to exploit child prostitutes in other countries.

When the commonwealth government introduced its legislation applying to child sex tours I maintained that it was inappropriate for the commonwealth to introduce offences relating to persons who organise child sex tours from within Australia. This is a criminal law matter falling squarely within the jurisdiction of the states as provided for under Australia's constitution. The new offences in this bill assert Victoria's right to legislate in respect of criminal conduct occurring within its borders. The new offences will operate to reinforce the commonwealth legislation, which expressly saves any similar state legislation.

The bill will amend the Travel Agents Act so that licensed travel agents who are convicted of organising child sex tours will have their licences removed.

It should be noted that this bill consistently includes, at every stage of the regulatory process, references to the need to protect children from the effects of prostitution.

There are other new offences applying to those who involve themselves in prostitution. It will be an offence to be found in an illegal brothel without a reasonable excuse. This will help to redress the imbalance in the law that has seen prostitutes punished while their clients are not. Without the clients prostitution would not survive. Criminal sanctions will apply to clients who foster the illegal trade.

It will also be an offence to serve liquor or allow liquor to be consumed in any brothel. The planning permits presently applying to most brothels prohibit the consumption of alcohol on the premises. The offence will ensure that this practice is uniform throughout Victoria.

The bill makes an amendment to the present offence of living on the earnings of prostitution. The present offence is committed by anyone who, without any licence or planning permit required by the act, lives on the earnings of prostitution. This bill provides a defence for those defendants who can prove that they were not managing or controlling the prostitution from which they benefited. This will mean that children or spouses of prostitutes cannot be convicted for living on the earnings of illegal prostitution, unless they are involved in the running of the business.

The offence as amended in this bill will concentrate on those who operate illegal prostitution rackets rather than the families of prostitutes. In the previous government's original bill there was no offence of living on the earnings of prostitution at all. However, this government will not accept that a person who benefits from operating illegal prostitution should not be punished for receiving those benefits.

It will continue to be an offence to solicit for prostitution in a public place. The government recognises that the majority of Victorians do not want soliciting on their streets.

However, the government also recognises that a great many of the problems associated with street prostitution are caused by the clients

of prostitutes, and by sightseers, rather than by the prostitutes themselves.

Penalties for clients attempting to gain the services of street prostitutes are higher in this bill than for prostitutes who solicit. The clients and sightseers cause noise and traffic disruption, and some passers-by seem to enjoy harassing and intimidating the prostitutes on the street. It will be an offence to act in an offensive manner with the intention of intimidating a prostitute in a public place.

Penalties for prostitutes, as well as clients, will be higher if the conduct occurs near a church, hospital, school or a public place regularly frequented by children and in which children are present at the time of the soliciting.

## LICENSING

The bill establishes a Prostitution Control Board which will regulate the prostitution industry in Victoria.

The seven member board will include persons with expertise in laws relevant to the regulation of prostitution, a police representative, and persons with knowledge of prostitution, health, and community issues. The board will be responsible for the rigorous licensing procedure for prostitution services, and also for disciplining licensees.

Operators of brothels and escort agencies will be required to obtain a licence. The unproclaimed licensing provisions in the existing act apply only to brothels. However, escort agencies now comprise most of the prostitution industry in Victoria, and they must be included in the licensing regime.

It has been proposed that one or two prostitutes should be able to operate from their own homes, even if they are in a residential area.

However, careful consideration of the issue has identified concerns relating to the nuisance caused by such operations, especially late at night, and concerns with the potential effect on children.

Instead of allowing brothels in residential areas, the bill extends limited tolerance to small brothels by exempting one or two person operations from the licensing requirements as long as the brothel is located within the restricted areas required by the planning controls in part 4 of the bill. These areas fall outside residential zones, and away

from schools, kindergartens and other places frequented by children. Such brothels must be owned and operated by the one or two prostitutes working in the brothel. No outside involvement in the operation will be permitted.

Applicants for licences to operate brothels and escort agencies will be required to show that they are suitable people to carry out such an activity.

They will have to show that they have no criminal history or associations, that they are financially sound, and that their business structure is sufficiently transparent to allow identification of all those people with an interest in the operation. Applicants will be permitted to operate one prostitution business only. The public must be notified of all applications.

The board will have the power to impose conditions on licences, including special conditions on escort agency licences relating to the safety of employees. Escort agency work is known to be inherently dangerous, as the workers must enter the home or hotel room of persons who are often unknown to them. The board will be able to impose conditions requiring escort agency operators to provide communication systems to be made available to persons working in the agency.

The bill provides for approved managers to supervise the business in the licensee's absence. Managers must reach standards of suitability similar to that required of licensees. A licensed business must be personally supervised by a licensee or an approved manager at all times.

The bill provides for licensees and approved managers to have their licences or approvals suspended or cancelled if they are guilty of misconduct in the operation of the business. Any conviction for drug-related offences or any indictable offence will mean cancellation of a licence or approval.

Police will have the right of automatic entry to any licensed operation. They will have the power to obtain search warrants to search premises suspected of offering unlicensed prostitution.

There will be a new enforcement power, giving police the right to enter such premises without a warrant outside business hours, if they suspect that the delay in getting a warrant will result in the loss of

evidence. Any exercise of this power of entry without warrant must be notified to the Magistrates Court and the board. Evidence obtained in this fashion will be inadmissible without proper grounds for exercising the search power.

This will be an unusual police power. It constitutes an exception to the usual rule that warrants must be obtained for searches of private premises. However, illegal brothels and associated organised crime constitute a major concern for Victoria Police. The extreme difficulties associated with enforcing the law against these operations justify the special provisions contained in this bill.

Police will have the power to demand proof of age of any person on premises where prostitution is available, to identify whether children are present.

The existing regulations applying restrictions on the size and content of advertisements for licensed brothels will be extended to apply to escort agencies.

## PLANNING CONTROLS

The planning controls on the location of brothels contained in the existing Act are inadequate. In this bill, the government is recognising community demands for strictly defined limitations on the location of brothels.

At present, planning authorities are required only to take into account the proximity of dwellings, churches, hospitals or other community facilities to proposed brothels. There are no fixed restrictions on the proximity of brothels to these kinds of premises. This bill removes the uncertainty in the law that has caused great concern to many in the community.

The planning controls in the bill will ensure that brothels are not established within 100 metres of dwellings or within 200 metres of places of worship, hospitals, schools and other places frequented by children for recreational and cultural activities. Clearly defined, but slightly less restrictive controls will apply within the central City of Melbourne, as land use in the city is more intense, with less obvious impact by brothels. However, no such business in the city will be established in proximity to dwellings, places of worship, child-care centres and places frequented by children for recreational and cultural activities.

Provisions in the existing act allow councils to prohibit brothels as a use in their localities. The normal power for the planning minister to approve, disapprove or vary blanket bans on a land use in a municipality is restricted. The provisions have not been proclaimed.

The government recognises that the provisions allowing total prohibition of brothels in individual municipalities could result in prohibitions throughout Victoria, thus rendering the legislation ineffective. The amendments were moved by the coalition parties in 1986 because the Labor government was rushing through ill-considered legislation. When concerned Victorians looked at that legislation, they could not see clear restrictions that guaranteed brothels would not be located close to their homes, hospitals, churches, and facilities used by children. With such uncertainty in the legislation, there was community demand for councils to have the power to ban brothels entirely.

The present bill sets out clear restrictions. This government is confident that, with the improved planning restrictions on the location of brothels, it is safe for normal planning practice to apply.

Current planning guidelines issued by the Minister for Planning provide that brothels should be prohibited in rural and farming zones, and prohibition has been permitted in small towns of approximately 20 to 25 000 persons or less. The establishment of a brothel will clearly have a far greater impact in areas of small population than it does in metropolitan areas. The government intends to maintain its policy in respect of rural and farming areas and smaller towns.

From the proclamation of the act onwards, a brothel will not be able to operate with more than six rooms used for prostitution. Any exception to that limit must be specified in guidelines issued by the Minister for Planning. Apart from existing brothels with more than six rooms, there may well be no such exceptions. A person may not have an interest in more than one planning permit for a brothel.

Many Victorians will be relieved to know that this bill clarifies, in unambiguous and fixed terms, the planning controls applying to brothels.

## PROSCRIBING OF BROTHELS

Provisions in the present act and in the Town and Country Planning (Miscellaneous Provisions) Act 1961 relating to the proscription of

illegal brothels will be consolidated in the new legislation. When premises used as a brothel are proscribed by the court, notice is given in newspapers and notices are affixed to the building. A person commits an offence by being on the premises if he or she does not have a reasonable excuse for being there. Police may arrest without warrant any such persons found on the premises.

The proscription provisions in the Town and Country Planning (Miscellaneous Provisions) Act have been used by local councils to close brothels operating without a planning permit. At present the application must be made to the Supreme Court. The bill will provide for such applications to be made to the Magistrates Court, so that the process will be faster, and illegal brothels closed down sooner. Applications may be made in respect of brothels without a licensed operator, and in respect of brothels without a planning permit.

#### HEALTH-RELATED PROVISIONS

The existing Health (Brothels) Regulations will be retained. The regulations require cleanliness in brothels, including the provision of materials used in safe sexual practices.

This bill will implement offences relating to prostitutes who work knowing they have a sexually transmitted disease, and prostitution service operators who allow such prostitutes to work. The dangers to public health are significant when prostitutes infected with sexually transmissible diseases continue to work. It will be a simple matter for precautions to be taken to avoid committing this offence. As long as prostitutes receive fortnightly medical checks which show that they are free of infection, they cannot be convicted.

The health regulations make it an offence for a prostitution service operator to use results of a prostitute's medical check to induce a client to believe that the prostitute is free from infection. That kind of conduct leads to practices conducive to the spread of sexually transmitted diseases.

It will not be possible to lead evidence of the presence of materials commonly used in safe sexual practices in prosecutions relating to unlicensed operation of prostitution services. This provision strikes a balance between the requirements of law enforcement agencies and the requirements of public health. No-one should be discouraged from taking measures that tend to prevent the spread of diseases such as AIDS. The Victoria Police have agreed to this provision. They do not



believe that it will hamper enforcement work. Yet it may significantly assist public health objectives.

#### ADVISORY COMMITTEE

The bill provides for the establishment of an advisory committee. The committee will comprise persons with knowledge of the prostitution industry, and with knowledge of religious or community interests. The committee will advise me on issues related to the regulation and control of prostitution in Victoria.

In this way there will always be community input into the regulation of prostitution, providing the government with the opportunity to respond to changes in the prostitution industry and related effects on the community.

#### COMMUNITY INITIATIVES

It is not sufficient simply to regulate prostitution. The conditions which lead to prostitution must also be addressed.

Part of the function of the Prostitution Control Board will be to assist organisations involved in helping prostitutes to leave prostitution, and to disseminate information about the dangers, including the dangers to health, inherent in prostitution, especially street prostitution. The advisory council will also have a role in reporting on the causes of prostitution.

The Department of Health and Community Services is currently operating programs which target those people who are most likely to enter prostitution. The department's Child, Adolescent and Family Welfare Branch is concerned with vulnerable children and young people, young offenders and people who are homeless. A range of preventive, supportive, and accommodation services are funded or directly provided by the branch.

The department's AIDS/STD Unit funds education and public health promotion work in the prostitution industry. This work is aimed at all participants in the industry, from street prostitutes to brothel managers. Other initiatives target habitual drug and alcohol abusers. These programs will continue to tackle the conditions that give rise to prostitution and the associated health dangers.

This bill is the result of careful consideration of the many and complicated issues arising from prostitution.

The bill strikes a middle course, neither making an impossible attempt to suppress prostitution, nor leaving prostitution to spread uncontrolled through the state. With the introduction of this bill, we have at last the opportunity to implement a sensible policy of regulation and control of prostitution in Victoria.

I commend the bill to the house