



Speech by

Hon. TOM BARTON

MEMBER FOR WATERFORD

Hansard 10 November 1999

PROSTITUTION BILL

Hon. T. A. BARTON (Waterford—ALP) (Minister for Police and Corrective Services) (12.03 p.m.):
I move—

"That the Bill be now read a second time."

This Bill is the culmination of over a year's work by this Government and two and half years of work by the former coalition Government. Labor came to Government in June 1999 with a commitment to continue the review of Queensland's prostitution laws commenced by the former coalition Government. Permission was sought from the former Premier to access material considered by the Borbidge Cabinet relating to the work undertaken by the coalition prior to its loss of Government. In what was considered to be a bipartisan gesture, Cabinet documents released to the Beattie Government included the public attitude survey carried out in 1997 and the working paper prepared by the coalition.

We were able to build on the work of the former Government by releasing a discussion paper in November 1998, followed by one of the most extensive public consultation processes in the history of this State. The results of the public attitude survey conducted by the previous Government, together with the results of Labor's public consultation, allowed me to frame a model for the reform of prostitution that took into account Queensland's history of prostitution and corruption, the conservative nature of Queenslanders and the experiences of other States. That model was approved by the Labor Cabinet in June, allowing the preparation of the Bill that is before the Parliament today.

Along with extensive consultation with members of the public—in November/December 1998 and again in June/July 1999—relevant stakeholders have been individually consulted. Organisations such as SQWISI—Self Health for Queensland Workers in the Sex Industry—the Local Government Association of Queensland and Queensland churches, have had meetings with Government and thus helped shape the Bill I am now asking Parliament to consider.

It is important to note that these reform proposals do not constitute a social experiment. I am not asking Queenslanders to take a risk on a bunch of untried and untested propositions. We have carefully studied the models of other States and taken into account their experiences—the positives and the negatives. Where there have been problems with other models, we have sought to avoid them.

Whilst the Beattie Labor Government has not reinvented the wheel, the model that I am putting before the Parliament today will have some features which will be unique to Queensland which take into account Queensland's history and the views of all Queenslanders. These laws, if passed, will be the toughest in Australia. We cannot ever forget the part prostitution has played in corruption and organised crime in this State during some dark years in Queensland's history. We must remain ever vigilant against corruption and organised crime, and the passage of this Bill will assist us in that task.

The framework for regulation of prostitution has been developed in the Prostitution Bill 1999 with the guidance of five principles—

- ensuring quality of life for local communities;
- safeguarding against corruption and organised crime;

addressing social factors which contribute to involvement in the sex industry;
ensuring a healthy society; and
promoting safety.

The framework attempts to balance the interests of strict regulation with the need to address the social factors that arise from prostitution. To achieve this, legal prostitution will be restricted to small licensed brothels and individual sex workers. Prostitution services provided in any other manner will be illegal, including street soliciting, escort agencies, massage parlours and unlicensed brothels. Licensed brothels are the Government's preferred option as they—

provide a safer work environment for workers and clients;
workers can receive peer support from other workers;
workers can be relieved of the responsibility of running a business;
brothels provide an access point for health and other service providers; and
it is easier to monitor and control safe sex practices in a brothel environment.

Advocates of the sex industry claim the Government has not gone far enough with these proposals. However, the most frequent concern expressed during the Government's period of public consultation related to the personal safety of single sex workers. The Government has acted on that concern by providing single sex workers with an option for employment which many will consider provides greater personal safety.

The operation of brothels should not be an intrusion into the day-to-day lives of members of the community who do not want to be exposed to the nuisance of brothel activity or advertising. For this reason, brothels will be permitted subject to strict licensing and local planning requirements. This will ensure undesirable persons are not permitted to operate within the legal industry and due consideration is paid to public amenity issues.

Under the Beattie Labor Government's tough plan, brothels will not be allowed within specified distances of people's homes or places like schools, hospitals, kindergartens or other places frequented by children. Licensing requirements will be administered through the establishment of a Prostitution Licensing Authority. Planning requirements will be administered by local authorities in accordance with the provisions of the Integrated Planning Act and this legislation.

The new legislation will impose a number of restrictions on the establishment of brothels including—

a maximum of five working rooms for prostitutes;
between 2 and 10 workers at any time (including sex workers, staff such as receptionists and cleaners, and other employees including contractors);
no street signage identifying premises as a brothel;
no liquor on brothel premises;
not to be in any place other than a building; and
stringent financial and character checks on persons entering the industry.

Licensing system

A Prostitution Licensing Authority—the authority—will be established to administer the licensing system. There will be six members and a majority will form a quorum. Appointment of a well-respected community member as chairperson will ensure that the sometimes-competing interests of health and law enforcement are balanced, and that an appropriate level of consideration is given to the impact of licensed brothels on local communities.

The authority will rely heavily on police information when determining the suitability of applicants. Although it would be possible for the authority to simply seek information from the Queensland Police Service, representation on the authority will provide continuity and assist authority members to evaluate police reports.

The history of association between organised crime and the illegal prostitution industry in Queensland justifies the inclusion of a representative from the Queensland Crime Commission. The commission's skills and expertise in investigating organised crime will be of benefit to the authority in considering applications for licences.

Concern for the health of sex workers, and the community at large, has been a prime factor in the move toward licensed brothels. On that basis, the authority will benefit greatly from the knowledge and experience of a representative from the health or medical field. Queensland Health advise that an experienced sexual health physician would provide maximum benefit in assisting the authority to discharge its functions.

The Senior Legal Practitioner will support the authority in conducting investigations, hearings and making determinations of licensing applications. The appointee will be knowledgeable or experienced in criminal law, company law or administrative law. This will be a minimal requirement to ensure the proper functioning of the authority.

The role of local authorities in administering development applications is significant. While to a large extent the planning approval system is distinct from the licensing system, inclusion of a representative from the Local Government Association of Queensland will ensure there is a nexus between local government and the authority. It will also ensure that local issues are given proper consideration in decisions relating to the brothel licences. In this way, local government and the State Government will be working hand in hand to provide the best outcomes for Queensland communities.

Amongst other things, the authority will—

- decide licensee and approved manager applications;
- monitor the provision of prostitution through brothels;
- be responsible for disciplinary matters 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.

Prostitution Advisory Council

A Prostitution Advisory Council will be established, reporting to a ministerial committee of the Ministers for—

- Police and Corrective Services;
- Tourism, Sport and Racing;
- Health; and
- Families, Youth and Community Care.

This council will be a completely separate entity to the Prostitution Licensing Authority. The functions of the council will be—

- to advise the ministerial committee on issues related to the regulation of prostitution in Queensland;
- to monitor the operation of this legislation;
- to liaise with the authority, the police and other agencies with a view to enhancing interdepartmental coordination;
- to refer relevant matters for investigation to an agency of Government or any other entity for investigation;
- to coordinate the development of codes of practice, if appropriate; and
- to promote and coordinate programs—
 - that promote sexual health care;
 - that help sex workers leave prostitution;
 - that divert minors and other vulnerable persons from prostitution; and
 - that educate sex workers, magistrates, police, community workers and the community about issues relating to prostitution—through the dissemination of information outlining the dangers inherent in prostitution, and focusing on security measures to improve the personal safety of prostitutes.

The members of the council shall include—

- a person who represents sex workers in Queensland;
- a person with experience as a sexual health care doctor or social worker with experience working with prostitutes;
- a person with knowledge of the issues for marginalised or disadvantaged young people;
- a person who is representative of religious or community interests.

In recommending people for appointment as council members, the Minister must have regard to the desirability of ensuring that a gender balance is achieved in appointing the membership of the council.

Development approval applications

The Beattie Labor Government has listened to the concerns of the community during an extensive public consultation phase. The framework proposal released by the Government in June 1999 included a requirement that a brothel may be established no closer to a person's home than 100 metres. Following a second round of public consultation in July this year, the specified distance has been doubled to 200 metres. In addition, brothels will not be established—

- in residential areas; or

- within 200m of a place of worship, hospital, school, kindergarten or other place frequented by children.

Local government will have the power to prohibit brothels in towns with a population of 25,000 or less. In areas where brothels may be permitted, planning approval applications will be considered in accordance with—

- the provisions of the Integrated Planning Act,

- the new legislation, and

- a code issued pursuant to the new legislation.

Planning restrictions will ensure that local governments control the approval process for the establishment of brothels in industrial and commercial areas. Applications relating to industrial areas will require no public advertising; however, they will be assessed against the criteria contained in the planning code. In other areas where brothels may be permitted, public notification will be required, alerting potential objectors to the proposal. Anyone who lodges an objection within the specified time frame has a right of appeal under the Integrated Planning Act against a decision to approve a brothel.

As far as possible, the intention of the legislation is for the licensing and planning systems to remain separate. The rationale for this separation is that the licensing provisions attach to persons, while planning approval attaches to land. When a person seeks to establish a brothel on the premises, the authority will examine the nature of the association between the licensee and the owner of the premises, or any other person with an interest in the land. If the authority determines that the owner of the premises, or any other person with an interest in the land, is not suitable to be an associate of the licensee, the licence will not be granted to the applicant to operate the brothel on those premises. The Beattie Labor Government makes no apologies for these tough measures, and a determination to keep organised crime out of the prostitution industry in Queensland.

Sexually Explicit Adult Entertainment

Sexually explicit adult entertainment at licensed premises in Queensland has grown as a form of entertainment, raising community, social and legal concerns. Without any regulation of table top dancing and other similar activities, it is likely that the number of venues offering this form of entertainment will continue to increase. In the past, this entertainment has been inappropriately dealt with in the same manner as prostitution offences. The intention of the new legislation is to distinguish legitimate adult entertainment from prostitution, allowing both to be regulated separately. To that end, adult entertainment will not be prosecuted—

- where it occurs on premises for which a liquor licence or permit exists and a permit for the adult entertainment has been issued;

- where the adult entertainment does not breach the conditions and restrictions of—

 - the permit;

 - this legislation;

 - the Liquor Act 1992, or liquor regulations of 1992;

- where the behaviour does not involve an act such as sexual intercourse, or other serious sexual act; and

- the person performing the adult entertainment is not under 18 years of age.

Where acts like stripping, lap dancing and tabletop dancing exceed these parameters, persons involved will be liable to prosecution under the criminal law for indecent behaviour—or in more serious cases, prostitution.

In addition, the Liquor Licensing Division, Department of Tourism, Sport and Racing, may require the licensee of the premises where unlawful adult entertainment occurs to show cause as to why their liquor licence and/or their permit for adult entertainment should not be cancelled. The Police Service and the Liquor Licensing Division will share responsibility for policing adult entertainment.

Police powers of entry

The Government is mindful of the attraction of criminal elements to the prostitution industry, as well as the scope for police corruption. The Government intends Queensland's prostitution industry to be the cleanest in the country.

In framing this Bill, we have sought to balance the rights of people operating legally within a legal industry with the need to limit the opportunity for illegal activity. To this end, the Bill includes provision for police to inspect and enter a licensed brothel at any time. It is our intention to restrict by rank and circumstance, however, entry by police to brothels. Only police above the rank of inspector, or those with written permission from a police officer with the rank of inspector or above, will be able to enter and inspect licensed brothels. As an additional protection measure, the Prostitution Licensing Authority will keep a register of periodic police entry to licensed brothels—and all police will be required to report in writing each inspection to the Prostitution Licensing Authority.

Prohibited brothels

A Magistrates Court may declare premises to be a prohibited brothel if it is satisfied on the balance of probabilities, on the application of a member of the Police Service, an authorised officer of the relevant local council, or a member of the Prostitution Licensing Authority—

that a person is carrying on business as a prostitution provider without a brothel licence and is making premises available for the purpose of prostitution; or

that premises being used for the purposes of the operation of a brothel are in contravention of the Integrated Planning Act.

At the hearing, the Magistrates Court may take into consideration any evidence that it considers credible or trustworthy in the circumstances. A declaration may be made for an unlimited period or for a period specified by the Magistrates Court and will remain in force until it is rescinded or expires.

Notice of the declaration of a prohibited brothel is to be placed in a prominent area on the premises and published in the local newspaper. In addition, a copy of the notice is to be served on the owner and occupier of the premises. It will be an offence for a person to be found in, entering or leaving a prohibited brothel. However, it will be a defence to the charge for the accused to prove that he or she was in, entering or leaving the premises for some lawful purpose.

A more serious offence will apply if any premises prohibited as a brothel are used as a brothel at any time after service of the relevant notice or the making of the declaration. The owner or occupier, as the case requires, will be liable to prosecution for this offence regardless of who is involved in recommencing operation as a brothel. To encourage owners and occupiers to ensure the premises do not reopen for business as a brothel, it will be a defence to show that all reasonable steps to prevent the premises being used as a brothel were taken. In effect, the declaration of premises as a prohibited brothel will mean the owner of the premises will be unable to use the premises for any other purpose until such time as the declaration is rescinded.

No person can legally enter premises that have been declared a prohibited brothel—providing a disincentive to irresponsible landlords. Experience interstate has shown that landlords are too often prepared to turn a blind eye to a brothel operating in otherwise hard-to-rent premises.

The Magistrates Court may rescind a declaration and may do so on any terms, conditions, limitations or restrictions that it thinks fit. This may include a requirement that the owner or occupier offer a security to ensure that the premises are not again used as an unlicensed brothel.

Street soliciting

Street soliciting is not a victimless offence, as is often claimed. For the people of Cairns, and New Farm and Fortitude Valley in Brisbane, street soliciting has an extremely negative impact on their community amenity. Too often residents are woken through the night by the stopping of vehicles, and a range of antisocial behaviour.

Most complaints received by police and members of Parliament regarding prostitution relate to street soliciting. A public attitude survey conducted in 1997 showed that over 90% of the public are opposed to street soliciting. Once again, the Beattie Labor Government has listened to the views of the Queensland public, and will do all that is possible to stamp out street prostitution.

Street soliciting is to remain illegal under the new policy framework. From a criminal justice perspective, a three-pronged approach will be applied to effectively manage street soliciting, including—

the use of move-on powers;

reducing demand and supply by increasing penalties for clients and workers; and

increasing the effectiveness of police enforcement activities.

In addition, welfare considerations will be accommodated—

through the application of the Child Protection Act 1999 in respect of minors involved in street soliciting;

through the establishment of a Prostitution Advisory Council to focus on the underlying social problems surrounding the sex industry; and

through the facilitation of access to appropriate services and programs for sex workers wishing to leave the industry.

Move-on powers under the Police Powers and Responsibilities Act will be the general response applied to persons engaging in street soliciting. This will allow police to deal with the nuisance associated with street soliciting—often the subject of community complaint—without undue use of police resources, and no requirement to take any enforcement action.

In some areas where street soliciting is a significant problem, such as Fortitude Valley, the Gold Coast and Cairns, the use of move-on powers and increased penalties may not be a sufficient deterrent. In such instances, it is essential that the police have a capacity to effectively respond to community concerns and take enforcement action in respect of persons who blatantly and repeatedly breach the law.

Targeted operations utilising covert operatives offer the greatest potential to effectively enforce the law in respect of street soliciting. However, covert investigations into street soliciting are difficult to conduct under the present law as officers cannot make an "offer" without committing an offence. In practice, this means covert officers must engage street workers or clients in general conversation without actually requesting or offering sexual services. This type of behaviour is quickly recognised by sex workers and many clients and is associated with police operations. Once a police operation is suspected, prostitutes and their clients ensure they do not commit offences.

To overcome this problem, provision will be made in the new legislation for a member of the Police Service to solicit for prostitution if the act is done under written instructions given in relation to a particular investigation by a commissioned officer. The acceptance of an offer made by a police officer—with the necessary approval—will constitute soliciting.

Applicants for licenses

To be eligible for a licence a person—

- cannot be a corporation, a minor, or an insolvent under administration;

- cannot hold a licence or permit under the Liquor Act 1992;

- cannot have been convicted of a disqualifying offence;

- cannot have had a brothel licence or other authority or approval cancelled in this State, or elsewhere, in the last three years; or

- be subject to a Prostitution Licensing Authority order declaring the person ineligible.

However, the Bill allows a corporation can provide prostitution through a brothel if all its directors are individually licensed, and they each undergo stringent probity and character checks. Disqualifying offences include offences under the Criminal Code and the Federal Migration Act 1985. Specific offences under the code include: official corruption; unlawful homicide; rape; abduction; kidnapping; demanding property, benefit or performance of services with threats; and specified offences relating to a child or intellectually impaired person.

A person is only entitled to apply for, or be eligible to be granted, one brothel licence at a time. Applications for a brothel licence are to be made to the Prostitution Licensing Authority. Applications must be by an eligible person in the approved form and accompanied by the application and licence fee. The application must include details of the applicant, the brothel address, the owner of the brothel premises, anyone who may be involved in operating the brothel, and the applicant's associates. The authority must refuse a licence if the applicant—

- is not a suitable person;

- has been convicted of running a brothel in Queensland or elsewhere;

- has an interest in another licensed brothel; or

- holds a licence or permit under the Liquor Act 1992.

The authority must also refuse a licence if it would result in the area becoming a "red light" district. When determining the suitability of an applicant, the authority, amongst other things, must consider—

- the applicant's reputation, having regard to character, honesty and integrity;

- whether the applicant has been convicted of an offence against this Act or a corresponding law elsewhere;

- whether the applicant has been convicted of an indictable offence; and

- whether the applicant has been charged in Queensland or elsewhere with any offence of a sexual nature that involves violence, intimidation, threats or children—including the circumstances surrounding the laying of the charge and whether the charge has been proceeded with or discontinued.

For example, if an applicant had been charged with several offences over the years for unrelated incidents, or where the charges may have been unsuccessful as the result of a technicality, or unable to be proved beyond reasonable doubt, the authority may want to consider the facts surrounding those incidents and refuse an application. Alternatively, the charges may have been the result of malicious complaints and the authority may choose to grant a licence.

In processing an application, the licensing authority should consider—

whether an applicant has, or is able to obtain, financial resources that are adequate to ensure the financial viability of the business;

whether the applicant will have in place arrangements to adequately provide safety arrangements;

whether the proposed business structure is sufficiently transparent to enable all associates of the applicant to be readily identified;

whether the applicant is an associate of a person who, or a body corporate which, has been convicted of an indictable offence; and

whether the applicant is an associate of a person who holds a licence or a permit under the Liquor Act 1992.

The list is not exhaustive and the authority can consider other matters if they are relevant. The authority must not decide that an applicant for a licence is not a suitable person to carry on the business of providing prostitution at a licensed brothel only because the applicant has worked as a prostitute.

As I have said, we have consulted widely and extensively on prostitution. This Bill reflects the results of that public consultation.

The Local Government Association of Queensland has made some very useful contributions to the legislation and has made a range of supportive comments about the Bill. However, it is clear that not everyone is happy with this legislation. Those within the sex industry would like us to go further with prostitution reform, but it is also patently clear that the conservative nature of the Queensland people means that the general public would not accept anything more than what the Beattie Government is proposing in this Bill.

The feedback from our public consultation and the Public Attitude Survey made it obvious that Queensland people could not tolerate a major change in the prostitution laws. Some church groups have taken a philosophical position against prostitution but have said that, if the Government intends to make changes, health and safety concerns have to be uppermost in the Government's consideration. This was a very balanced approach and I thank these church representatives for their informed views.

In contrast, there were other church groups who wanted prostitution to be outlawed and a return to draconian approaches taken in other jurisdictions. These approaches have proven to be dismal failures and have only exacerbated the problems associated with prostitution. Even in some Middle East countries where prostitution offences carry death penalties, prostitution has not been eradicated.

Some critics have said that the model contained in this Bill would be too restrictive and costly and would prevent normal people from owning a licence. The cost of licences will not be prohibitive and, under the regulations we are considering, application fees will be set at \$1,000. Licence fees will be \$5,000 and \$1,000 per room so that for the largest brothel the total cost to a successful applicant will be \$11,000. There will also be an annual fee of \$5,000 for each licence holder. In anyone's calculation, these costs are not excessive and would not preclude many people who choose to go through with the expense of establishing a brothel.

The Opposition has attempted to tap into this limited criticism of the Bill by saying that it would repeal any laws which legalise brothels. This is the coward's view of the issue. The coalition had two and a half years to come up with a prostitution model but was too scared to follow the lead of the member for Crows Nest and former National Party President, Sir Robert Sparkes. It has yet to come up with a model for prostitution reform, and the Borbidge Government will go down in history as the ostrich Government. Every time it faced a tough decision, it stuck its head in the sand.

The Beattie Government does not shy away from the tough decisions or take the easy and most palatable option. We have listened to the public on prostitution reform and this Bill accurately reflects the views of the vast majority of Queensland people. I commend the Bill to the House.
