Speech by

# JOHN ENGLISH

## MEMBER FOR REDLANDS

Hansard 8 November 2001

### PROSTITUTION AMENDMENT BILL

**Mr COPELAND** (Cunningham—NPA) (11.29 p.m.): I rise to speak against the Prostitution Amendment Bill 2001. Once again, we see before us proof of the intent of the Labor government to see brothels around the state and the lengths it will go to in order to override the democratic rights of local councils to determine what they and their residents see as acceptable in their own communities. This government has demonstrated that it will simply continue to amend the prostitution legislation until it meets its target for a certain number of brothels around the state.

There are a number of significant aspects of this amendment bill that I want to address. The first is the dramatic attacks on the rights of local government. The Labor government has shown that it has no regard for the rights of local councils with the original Prostitution Bill 1999. It has made it impossible for local authorities with a population greater than 25,000 to have a say in development applications for brothels within industrial areas within their cities. The Leader of the Opposition previously introduced a private member's bill to give those local authorities with a population of greater than 25,000 the same rights as those with a population of less than 25,000. Unfortunately, the Labor government was not prepared to support that private member's bill. The government did not support that bill even though both the LGAQ and the Urban Local Government Association of Queensland had passed resolutions requesting exactly the amendments put forward in that private member's bill. The ULGA represents the very councils that are affected by the population limit contained in the prostitution legislation.

The current position of the LGAQ warrants mentioning. As the minister said previously, the LGAQ was consulted during the drafting of the 1999 legislation but, despite the resolution of the councils as members of the LGAQ, the decision that organisation put forward was quite different from the decision put forward by some employees of the LGAQ. Likewise, LGAQ employees have come out in support of this change whereas the stance of member councils of the LGAQ is quite different. The only stance that is representative of the entire LGAQ is one agreed on by resolution of that body. Last week the Minister for Local Government was quite happy to use a resolution from the LGAQ during debate on freedom of information when it suited her requirements, but unfortunately she ignored the LGAQ's resolution on the matter of prostitution as it relates to the population limits.

The Minister for Police has consistently stated that there are only one or two local councils that have had a problem with the prostitution legislation and are vocal in their opposition. He has also accused councillors of grandstanding and taking the high moral ground in their stance against legalised brothels. This is quite untrue, as demonstrated by the unanimous support by the ULGA for a change in the population limits. It is also demonstrated by the widening concern around Queensland as more brothel applications are lodged and people become aware of the effects of this legislation on the communities in which they live.

It is clear that as an application for a legal brothel is lodged in every new community, the residents of that community become aware that neither they nor their council have any rights in the application process. Concern is spreading throughout cities like Toowoomba, Mackay, the Gold Coast, Caloundra, Pine Rivers, Redlands, Logan, Ipswich, Bundaberg and many others around the state. The level of concern is also indicated by the fact that, as at the end of June,102 small towns have exercised their right to ban brothels, and that figure has risen since. Unfortunately, that is not a right that the larger councils enjoy. The Cooloola Shire Council, for example, has applied to have all the townships in

that shire, including places like Tin Can Bay and Gympie, to be brothel free. It is not on the list of the 102 towns as at the end of June, but it has expressed a very clear intention to be a brothel-free shire. That makes the member for Gympie's stance supporting this bill very interesting.

Far from being obstructionist, as the Minister for Police has consistently alleged, the councils currently have no option but to approve applications for brothels made within their cities that meet the legislative framework. In his second reading speech, the minister says more by his omissions than what is included. The minister stated—

Under the act, local governments must refuse planning approvals for brothels that are within 200 metres of residential areas, people's homes or places like schools, hospitals, kindergartens or other places frequented by children.

What the minister did not say is that under the act local governments must grant planning approvals for brothels that are not within 200 metres of residential areas, people's homes or places like schools, hospitals, kindergartens or other places frequented by children. Councils must approve brothel applications in those circumstances. The councils have absolutely no discretion to refuse a brothel application in those circumstances. This contrasts quite dramatically from the minister's assertion that planning approvals for brothels are determined by local governments. While councils do make the planning approvals, they have absolutely no ability to refuse an application if it meets the legislative criteria.

Another statement that the minister continually makes, and it is repeated in his second reading speech, relates to code assessable applications. While always alluding to public notification being required in areas where brothels may be permitted, he knows that the clear intention of the legislation, which is further strengthened by the new definition of 'industrial', is to place brothels in industrial areas where they are code accessible, not impact assessable, and where there is no requirement for public notification and no mechanism for the consideration of formal submissions. Disregarding that, the amendment bill we are debating further erodes the power of local government. It exempts brothel developers from the Planning and Environment Court, creating a special Independent Assessor to adjudicate brothel related town planning appeals. No other developer is given this special treatment—no other developer. In his second reading speech the Minister for Police stated—

Presently, all appeals against planning decisions about brothels by local governments go to the Planning and Environment Court. In view of the increasing demands being placed on the Planning and Environment Court, its resources are better directed towards dealing with more complex development issues.

The Planning and Environment Court is where all appeals on planning issues are dealt with and is the proper place for appeals regarding brothel developments to be heard. Far from being a simple development issue, as implied by the minister, brothel developments are incredibly difficult, particularly for the communities involved. If it is the minister's view that the Planning and Environment Court does not have the resources to deal with the appeals process related to brothel developments, then the court's resources should be increased to meet the demand, particularly when the demand on the court's time is extended as a direct result of legislation enacted by this government.

It is not the answer to bypass the court process by installing an individual to take over. I ask the minister: how many appeals have gone to the Planning and Environmental Court to date? Instead of appeals going before a judge in court, they will now go to the Independent Assessor who, as stated in clause 13 of the bill, is a person whose only qualifications are that they must be a lawyer of at least five years standing and someone who the minister is satisfied has sufficient expertise or experience in town planning and is otherwise suitable for the job. In other words, this is someone appointed solely by the minister who he knows will do his bidding. Not only is it bad enough that the court is being replaced by someone who can unilaterally overturn an elected council's decision, it is someone whose independence will have to be questioned given it is an appointment made unilaterally by the very minister who wants brothels in place.

One of the other aspects of this amendment bill is the change in distance requirements for brothels to be located from homes, schools, et cetera. The minister has stated that, in the present act, which specifies 200 metres as the minimum distance, it is not specified how that distance is to be measured. With these amendments, we discover that it will in fact no longer be a requirement for a brothel to be 200 metres from homes or places that children frequent. It is now 100 metres in a straight line, which is quite different from the 200 metres as previously stated. This is simply a further watering down of the original intent of the legislation, as is the further clarification of what an industrial area is. Under this amendment bill 'industrial area' is extended to not only mean industrial but also commercial, light, service, general and waterfront industry. This widens significantly the areas where a brothel must now be approved by a council. It is an area which the member for Caloundra raised concerns about previously.

The minister stated on that occasion that if there are children frequenting those areas there is no way a brothel can be approved. Why, then, is it said that the Toowoomba City Council is being obstructionist by rejecting an application which is within 200 metres of an ice-cream factory which is regularly frequented by children? Can the minister also confirm whether the position he stated

previously regarding children attending any of those areas is not acceptable? Or is the point of view put forward by the member for Glass House—that is, that a carpet warehouse that children may frequent on a Saturday is not a good enough excuse for a brothel application to be rejected—the right one?

Not only does this legislation relax the definition of industrial areas, in which councils must approve brothels; it also states in clause 11, which inserts new section 63A(2), that—

If this part—

that is, the definition of 'industrial'—

is inconsistent with the Integrated Planning Act, this part prevails to the extent of the inconsistency.

Not only do we then have legislation overriding the local council; we also have legislation overriding the Integrated Planning Act—a double whammy for local communities.

Perhaps the greatest turnaround in these amendments comes with the changes to who may obtain a brothel licence or a manager's certificate. In all of the previous debates in this parliament regarding prostitution, one of the very cornerstones of the government's stance has been the fact that only people of the highest character would be eligible to operate a brothel. The government claimed that no-one with a criminal record would get near one. For example, in the second reading speech on the Prostitution Bill 1999 then Minister Barton clearly stated that the authority must refuse a licence if the applicant has been convicted of running a brothel in Queensland or elsewhere. The then member for Archerfield, now the member for Algester, said during the subsequent debate on the bill—

The minister has reaffirmed this vigilance with very strict provisions in the Bill to prevent undesirable characters from gaining a licence to run a brothel.

To reassure community members, I want to make it very clear that anyone who has committed a serious criminal offence as detailed in the Bill will not be able to run a brothel ...

That assurance to the community now rings very hollow. Those sentiments have been thrown out, as this bill amends the legislation to allow applicants with a conviction for running a brothel to be now given a licence to operate a brothel or to receive a manager's certificate. The minister's second reading speech states—

And the Prostitution Licensing Authority must still take into account all aspects of the applicant's criminal history, character and associates when determining whether an applicant is a suitable person to hold a licence.

The catch is, however, that it is still able to grant the licence to a criminal. That is quite contrary to the government's stated intent for the original legislation. The Prostitution Licensing Authority now has the power to determine who it thinks is a good criminal and who is a bad criminal and who it will give a brothel licence to. The minister said that since 1 July 2000 there have been 63 illegal brothels closed down and 375 charges for prostitution related offences commenced against 202 people. If this amendment bill is passed, there will be 202 more people able to apply for a brothel licence.

Contrary to some reports, some councils have expressed concern with these amendments, both to the government and to the LGAQ. I am sure that more councils will do that when the complete ramifications of these changes are realised. Two of the councils to express concern are the Toowoomba City Council and the Bundaberg City Council. The resolution of Toowoomba City Council states—

That council expresses its opposition to the Hon. Tony McGrady, Minister for Police and Corrective Services over proposed amendments to the Prostitution Act 1999 which provides for an independent assessor to determine code assessable application appeals, in lieu of the Planning and Environment court.

Far from making a moral outburst, the Toowoomba City Council quite sensibly and quite legitimately placed on record its concerns about the effect these changes will have on the autonomy and power of the local authority, especially in light of the removal of the Planning and Environment Court from the process, a process that is followed for all other development applications.

The second statement is from the Bundaberg City Council, the council for the home town of the Minister for Local Government, who was mayor of Bundaberg before she entered parliament. I am sure that if she were still in that position she would be strenuously putting the case that the current council is now putting. In fact, I am sure she would still agree if she were not bound by her party ties. The member for Callide has already quoted the concerns extensively, so I will not read the entire document again. There are, however, parts of it that deserve to be restated. Some members of the Bundaberg City Council expressed concerns regarding the ability for convicted criminals to obtain a licence. Concerns expressed in the Bundaberg City Council included—

In determining the suitability of the applicant—

that is, to obtain a licence to run a brothel—

... such convictions is now a relevant matter. It would seem that the relevance has now been reduced to whether they are a 'good' criminal or a 'bad' criminal.

A contribution went on to express concerns with the appointment of the Independent Assessor, about which it was said—

Call them what you like—an 'independent assessor' is a political manoeuvre to obtain a desired result by excluding public comment and appeal processes—to which the rest of the community is subject.

And further—

But, this legislation allows brothel applicants (with criminal convictions) privileges that we cannot provide to any other developer.

It also expresses its concern over the expansion of the definition of industrial land. The Bundaberg City Council has highlighted many of the concerns that councils, communities, residents and the opposition have with this amendment bill. But perhaps the most pertinent comment made is the final one. It states—

We would be doing our constituents a disservice if we don't object to these amendments.

Every member in this House would do very well to listen to those true and wise words.

**Mr BELL** (Surfers Paradise—Ind) (11.46 p.m.): Few members in this House could actually say that in their maiden speech they had referred to prostitution, but certainly I did. My comments were made in the context that I was hoping for some amendments to the prostitution law. But I was hoping that when those amendments came before this House they would be a tightening rather than a relaxation of the existing laws. When I was reading the minister's second reading speech, I was taken by the following words—

The government believes that 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, indeed, advertising.

Most certainly I would agree with that. I would put it in another way. I would say that no-one, but no-one, wants a brothel right next door. Even if we have to have them, they have to be well separated from other establishments. Even factory owners do not want them. I have had factory owners coming to me saying, 'Please do not allow it.'

I accept that that is what the law now says, and I am here speaking against the amendments in the bill before the House. I am rather disappointed, however, that the Beattie government would be seeking to bring forward these amendments under the guise of clarification when in actual fact the clarification has been established by two court cases involving the Gold Coast City Council.

I was instrumental in that council taking a matter to the Planning and Environment Court for clarification of the 200-metre rule. It was submitted at that time that, for a brothel application for a site that was 200 metres to a house measured down an easement which everyone used, that was not an applicable measurement because it was private property. In reality, the Planning and Environment Court in that case declared that, yes, access did not have to be legal access, that it was sufficient if it was an access that people commonly used.

Now we find that one of the provisions in this bill is to remove that clarification from the Leitch case and to say that distance has to be measured over a reasonable and a lawful access. In other words, if there is an easement—as in the Leitch case—which is private property, even though everyone uses it, it does not count. So the distance has to be measured around the corner of the block. Of course, on that particular site and many others like it, the 200-metre rule cannot be made to apply.

I ask: when one is considering the words of the minister in his second reading speech to which I referred before, is it reasonable to have to check whether the exact title of an easement or right of way has been dedicated to the Crown or whether it is an easement over private property with a registered easement? If it has been dedicated then the brothel cannot proceed if it is within the 200-metre rule. However, if it is technically private property—even though it is open for all and sundry to use—then it is caught by these amendments if this bill becomes law. It is ridiculous for the character of the walkway to be the determinant as to whether a brothel can or cannot proceed in a certain location. Certainly if there is a 200-metre rule in principle then that should apply even where something is commonly used rather than a dedicated street or walkway.

The other provision which I find quite horrifying is the so-called clarification of industrial areas. The Gold Coast City Council took a matter to the Planning and Environment Court and obtained a decision which said that an area which was zoned for light industry and where there was a predominance of showrooms was no longer an industrial area; it was predominantly a showroom area and it did not apply so far as the prostitution legislation is concerned. That was the law passed by this House.

When we look at the provisions of this bill before the House we find that the intent is to say that that decision of the Planning and Environment Court also will no longer apply. In other words, a showroom area which by chance happens to be in a light industry zone is gone; it has to allow a brothel there. Those are the very areas that brothel proprietors want to be in because showroom areas are generally much closer to commercial and residential areas. I can think of one in particular near Surfers Paradise where protected brothel owners must be salivating at the thought that they can now move in, whereas previously the decision of the Planning and Environment Court protected the area.

I do not intend to go on about the matter of assessors. It is plainly evident. As a former mayor, I do not like anything that removes the powers of councils. I do believe that it puts brothel applicants in a most unfair and advantageous decision where the Planning and Environment Court is usurped. But that is evident for all to see. I cannot add anything more to that.

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