



Speech by

Hon. T. McGRADY

MEMBER FOR MOUNT ISA

Hansard 16 October 2001

PROSTITUTION AMENDMENT BILL

Hon. T. McGRADY (Mount Isa—ALP) (Minister for Police and Corrective Services and Minister Assisting the Premier on the Carpentaria Minerals Province) (6.47 p.m.): I move—

That the bill be now read a second time.

In 1999 the Beattie Labor government put in place a framework for the regulation of prostitution in Queensland through the enactment of the Prostitution Act 1999. The act was the culmination of many years of government work. The framework balanced the interests of strict regulation with the need to address the social factors that arise from prostitution, namely, the health and safety issues surrounding the industry. To achieve this, the act restricts legal prostitution to small licensed brothels and individual sex workers. Prostitution services provided in any other manner, including street soliciting, escort agencies, massage parlours and unlicensed brothels are prohibited.

The restrictions on licensing brothels are tough. This government makes no apology for that. 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.

The government is also mindful of the attraction of criminal elements to the prostitution industry. Since the act commenced in 2000, significant progress has been made in achieving the act's objective of regulating prostitution in Queensland. The government has struck hard at the illegal prostitution industry that falls foul of the act. The Prostitution Enforcement Task Force of the Queensland Police Service has informed me that since 1 July 2000, 63 illegal brothels were closed down and 375 charges for prostitution-related offences commenced against 202 people. And recently, the first licensed brothel in Queensland commenced operation. The objective of this bill is to continue the progress that has been made to date by improving the planning approval processes for brothels and clarifying some of the concepts and procedures that underpin the achievement of the act's objective.

Before a licensed brothel can commence operations, a brothel operator must obtain planning approval from local government and a brothel licence from the Prostitution Licensing Authority. Planning approvals for brothels are determined by local governments. Applications relating to industrial areas are assessed against the criteria contained in the planning code. These applications are known as code assessable applications. In other areas where brothels may be permitted, public notification is required, alerting potential objectors to the proposal. These applications are referred to as impact assessable. The determination of whether an application for planning approval is impact assessable or code assessable depends primarily upon whether the proposed brothel site is in an industrial area.

The lack of a definition of 'industrial area' has led to interpretations of the term that are not consistent with the objective of the act. To overcome this situation, the bill proposes to define this important term. The proposed definition of 'industrial area' refers to both its designation in a local government plan or the predominant use of land in the area. The definition also makes this clear by use of examples that an industrial area is not limited to an area where there is heavy industry but also includes other types such as light and commercial industries. 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. However, the act does not currently specify how the distance of 200 metres should be measured.

This bill overcomes this problem through a commonsense approach that requires the distance of 200 metres to be measured according to the shortest lawful route that a person may take by vehicle or foot. The bill also includes an additional distance requirement that a potential brothel site must not be closer than 100 metres to any of the above places measured in a straight line. This actually strengthens the legislation to protect communities.

A final improvement to the arrangements in the act for planning approvals is the establishment of an independent assessor. 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. To this end, a new position to be known as the Independent Assessor has been created to determine all appeals relating to decisions on the simpler code assessable development applications for brothels, that is, applications for the development of a site in an industrial area.

The Planning and Environment Court will retain its jurisdiction over appeals about applications that are impact assessable, such as application for development of a site in a residential area. Any person who has lodged an objection to an impact assessable application retains their existing right of appeal to the Planning and Environment Court.

The Independent Assessor will be a lawyer of at least five years standing with relevant expertise in planning and development matters. Similar to a judge, the Independent Assessor will not be subject to the direction of any person in the performance of his or her functions. In order to ensure the efficient and effective adjudication of these appeals, the Independent Assessor will be subject to decision-making time frames and have the ability, where appropriate, to decide matters solely on the basis of written submissions instead of a full hearing.

In addition to improving the provisions relating to planning approvals, the bill also addresses some procedural and administrative issues that have emerged in the first 18 months of the act's operation. The act does not presently make explicit the order in which planning approvals and brothel licence applications should be considered. As a consequence, the authority and the Queensland Police Service have been required to commit resources to inquiries into a person's suitability to hold a brothel licence prior to the parallel application for a planning approval being determined.

In situations where planning approval was refused, the inquiries conducted proved unnecessary. To remedy this situation, the bill will amend the act to provide that the Prostitution Licensing Authority is not obliged to consider an application until development approval is granted.

Section 65 and section 66 of the act enable the Magistrate's Court to make orders declaring premises prohibited brothels. An unintended consequence of the current wording of these sections is that a court may only declare premises prohibited brothels if the court is satisfied a person is operating a brothel without a licence on the premises on the date of the hearing, not the date of the making of the application. The effect of this interpretation is that an applicant must present evidence to the court on the day of the hearing that proves that the brothel is operational on that same day. This is problematic, because the evidence of an illegal brothel operating from premises is obtained through investigative and enforcement action conducted prior to the application for the declaration being made, such as a raid on the premises.

The bill also amends these sections to enable a magistrate to make a temporary declaration that premises are a prohibited brothel to ensure that illegal brothels do not operate out of premises in the period between the application for a declaration being made and the hearing of the application. The act currently prohibits applicants with a previous conviction for running a brothel from obtaining a brothel licence or a manager's certificate. This provision has meant many applicants with prior experience of running a brothel have been excluded from the regulated industry.

The bill proposes to address this issue by changing the mandatory prohibition on applicants with a conviction for running a brothel obtaining a brothel licence or a manager's certificate to a matter that the Prostitution Licensing Authority must consider when assessing the suitability of applicants. This amendment will in no way reduce the stringent character and background checks that are made on potential brothel operators prior to a licence being granted.

The government remains vigilant against corruption and organised crime. The act still requires the Commissioner of Police to make any inquiries considered appropriate into the applicant. 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.

Consistent with this, the government is increasing the list of offences that disqualify applicants from being eligible to operate a brothel to include all persons who have attempted to commit any of the listed offences and also any person who has conspired, counselled or procured the listed offences to be committed. I commend the bill to the House.

