

Prostitution Amendment Bill 2006

Explanatory Notes

General Outline

Objective of the Legislation

The objectives of the legislation are to amend the *Prostitution Act 1999* (the Act) to:

- clarify that brothel licensees may operate under a corporate structure;
- ensure that an offence committed under section 77A includes ‘an offer’;
- allow the maximum number of sex workers permitted on a brothel premises at any one time to be increased;
- allow a Queensland Police Service (QPS) Prostitution Enforcement Task Force (PETF) officer to seek the advice of a health professional about the decision making capacity or intellectual impairment of sex workers;
- allow licensed brothels to display a licence number;
- extend the jurisdiction of the Independent Assessor to include appeals against an assessment manager’s decisions;
- streamline probity requirements by allowing the associates of brothel applicants to disclose information directly to the Prostitution Licensing Authority (the Authority);
- clarify that sex workers do not have an interest in a brothel because they receive remuneration for sexual services they provide;
- enable brothel licenses to be granted for a three year period;
- allow an annual payment of a licence fee and confirmation of all relevant details about licensees;
- extend the time permitted to process licence applications to a period of three months;

- clarify that an application for a brothel manager's certificate is not contingent upon sponsorship of a brothel licensee;
- enable a manager certificate to be granted for a three-year period;
- extend the regulation making power to enable a regulation to monitor the time taken to process advertising requests;
- extend the regulation making power to allow regulations about complaints handling processes for client-service issues;
- amend the Act to make it clear that the Authority is entitled to provide information to sex workers,
- allow the CMC to conduct a review of prostitution in Queensland in three years to again review the effectiveness of the Act;
- amend the membership of the Authority to include a 'health practitioner' of five years standing and a 'representative of local government';
- establish the position of Executive Director of the Authority (replacing the current position of Register) and clearly outline the functions and responsibilities of the position;
- allow the disclosure of information to the Minister; and
- make minor amendments to the Act to correct drafting errors and references.

Means of Achieving Policy Objectives

The Bill achieves the objectives by amending the *Prostitution Act 1999*.

Alternative Means of Achieving Policy Objectives

There are no alternative means of achieving the policy objectives other than by legislative reform.

Estimated Cost for Government Implementation

The Authority is currently reviewing its resource requirements resulting from the proposed legislative amendments and non-legislative amendments, with a view of bringing a submission as part of the 2006 – 2007 budget process.

Consultation conducted in Development of the Bill

The following government departments and non-government entities were consulted during the preparation of the Bill:

- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General;
- The Adult Guardian;
- Disability Services Queensland;
- Queensland Treasury;
- Queensland Health;
- Prostitution Licensing Authority;
- Department of Local Government, Planning, Sport and Recreation;
and
- The Local Government Association of Queensland was consulted before the preparation of the submission.

Notes on Provisions**Part 1 Preliminary****Short Title**

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides that the provisions commence on proclamation.

Part 2 Amendment of Prostitution Act 1999

Act Amended

Clause 3 specifies that part 2 amends the *Prostitution Act 1999*.

Amendment of s 7 (Meaning of *interesting a brothel*)

Section 7 of the Act details a person who has an interest in a brothel. Clause 4 inserts a new subsection (3) into the provision to clarify for subsection (1) (i), (j) and (k) that a prostitute does not have an *interest in a brothel* merely because the prostitute is entitled by way of remuneration to a proportion of the payments made for the provision of prostitution by the prostitute at the brothel.

Amendment of s 17 (Suitability of applicant)

Section 17 requires the Authority to consider all relevant matters, detailed in the provision, when determining the suitability of an applicant for a brothel licence.

Clause 5 (1) amends section 17 by renumbering subsection (3) as subsection (4).

Clause 5 (2) inserts a new subsection (3) to allow the applicant to arrange for the Authority, for the purposes of (h), (i), (j) of (k) of the provision, to gather information directly from an associate.

Amendment of s 19 (The Licence)

Clause 6 (1) amends section 19(4) to allow a brothel licence to be granted for a term of 3 years unless it is sooner surrendered suspended or cancelled.

Clause 6 (2) amends section 19(5)(d) to provide that a brothel licence is subject to the following conditions or restrictions:

- (i) the licensee must pay, by the day prescribed under a regulation, the annual licence fee and the annual licence return fee prescribed under the regulation;
- (ii) the licensee must, by the day prescribed under a regulation, give the Authority an annual return, in the approved form, about the information given for the application for the licence;

(iii) any other conditions or restrictions set out in the licence or prescribed in the regulation.

Also, the provision ensures that section 14 (Application to be referred to the commissioner), with necessary changes, applies to an annual return as if the annual return were an application for a licence and the licensee were an applicant for a licence.

Amendment of s 23 (Renewal of licence)

Clause 7 amends section 23 of the Act to extend the time required to process a licence application from one month to a period of three months.

Amendment of s 25 (Automatic cancellation of licence)

Clause 8 amends section 25 of the Act to remove an incorrect reference to section 229M of the Criminal Code.

Amendment of s 29 (Disciplinary powers of Authority)

Clause 9 provides a consequential amendment to section 29 of the Act to reflect the creation of the position of Executive Director in place of the Registrar.

Amendment of s 35 (Application for certificate)

Section 35 of the Act allows an eligible person to apply to the Authority for a managers certificate. Subsection (2)(c) details information that must be stated in the application.

Clause 10 amends the provision to remove the requirement for an application to be contingent upon sponsorship of a brothel licensee.

Amendment of s 44 (The certificate)

Clause 11 (1) amends section 44(3) to allow a managers certificate to be granted for a term of 3 years unless it is sooner surrendered suspended or cancelled.

Clause 11 (2) amends section 44(4)(d) to provide that a manager's certificate is subject to the following conditions or restrictions:

(iv) the holder of a certificate must pay, by the day prescribed under a regulation, the annual certificate fee and the annual return fee prescribed under the regulation;

- (v) the holder of the certificate must, by the day prescribed under aregulation, give the Authority an annual return, in the approved form, about the information given for the application for the certificate;
- (vi) any other conditions or restrictions set out in the certificate orprescribed in the regulation.

Also, the provision ensures that section 39 (Application to be referred to the commissioner), with necessary changes, applies to an annual return as if the annual return were an application for a licence and the licensee were an applicant for a licence

Amendment of s 62 (Definitions for pt 4)

Clause 12 amends section 62, definition of ‘*code assessable development application*’ for the purposes of Part 4 of the Act.

Replacement of s 63 (Application of pt 4)

Clause 13 amends section 63 of the Act to reflect the application of part 4 to include a development application for a material change of use of premises for a brothel, if the application is required to be the subject of code assessment and a minor change to approved brothel premises or a request to change or cancel conditions of a development approval for approved brothel premises.

Amendment of s 64K (Appeals by application)

Clause 14 (2) inserts a new subsection (1)(aa) to allow an applicant for a code assessable development application to appeal to the independent assessor against the assessment manager’s decision that the development application is required to be subject to code assessment under the *Integrated Planning Act 1997*.

Clause 14 (3) 14 renumbers the subsection to reflect the change.

Amendment of s 77A (Prostitute providing sexual intercourse or oral sex without a prophylactic)

Clause 15 amends section 77A of the Act to clarify that the offence of providing sexual intercourse or oral sex without a prophylactic, in the course of prostitution, includes an offer to provide sexual intercourse or oral sex without a prophylactic.

Amendment of s 78 (Brothel offences)

Section 78 of the Act creates an offence for a person who is a licensee or an approved manager of a brothel who fails to comply with requirements detailed in the provision.

Clause 16 amends subsection (1)(b) by increasing the number of staff permitted at the brothel to no more than 13 staff at any one time. Also, the provision is amended and refers to schedule 3 allowing the number of sex workers allowed at any one time to be on a brothel premises to be increased to eight for a five-room brothel and proportionately fewer for smaller brothels.

Amendment of s 81 (Licensee not to operate brothel in partnership or in association with unlicensed person)

Clause 17 amends section 81 of the Act to clarify that a brothel licensee does not commit an offence against section 81 because the licensee is operating a licensed brothel in partnership with, or otherwise in association with, a corporation that receives income from the licensed brothel if the licensee is the sole director of the corporation or each director of the corporation is a licensee.

Amendment of s 87 (Display of licence)

Clause 18 amends section 87 of the Act to allow licensees to display a licence number, address of the premises and expiry date of the licence inside the front entrance to the licensee's brothel rather than the personal details contained in the licence.

Amendment of s 93 (Advertising prostitution)

Clause 19 (1) amends section 93 of the Act to allow a maximum penalty of 70 penalty units to apply to an offence of advertising prostitution.

Clause 19 (2) and (3) amends the definition of 'approved form' to create a head of power to allow, for a form of advertisement, including matters that may or may not be included in an advertisement, a form that complies with the guidelines or a regulation.

Replacement of pt 7 hdg

Clause 20 inserts a new heading, "Prostitution Licensing Authority" for part 7.

Omission of pt 7, div 1, hdg (Prostitution Licensing Authority)

Clause 21 omits part 7, division 1 hdg.

Amendment of s 101 (Functions of Authority)

Clause 22 amends section 101 of the Act and inserts a new subsection (l) to allow the authority to provide information of relevance, such as legislative or other requirements, to raise awareness in prostitutes, judicial officers, police, community workers and the community about issues relating to prostitution.

Subsection (j) (iv) is amended to provide consistency with subsection (l).

Amendment of s 102 (Membership)

Clause 23 amends section 102 (d) and (f) of the Act to allow membership of a health practitioner who has at least 5 years experience in his or her profession and a person who represents local government. The term 'health practitioner' is defined for the provision.

Insertion of new ss 108A – 108D**108A Authority is statutory body under the Financial Administration and Audit Act 1977**

Clause 24 inserts sections 108A – 108D.

Clause 24 inserts section 108A to provide that the Authority is a statutory body under the *Financial Administration and Audit Act 1977*. This means that the provisions within that Act relating to statutory bodies will apply to the Authority.

108B Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982

Section 108B provides that the Authority is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. Part 2B of that Act sets out the way in which the Authority's powers under this Act will be affected by the *Statutory Bodies Financial Arrangements Act 1982*.

108C Budget

Section 108C makes provisions about the Authority's budget process. For each financial year, the Authority must develop, adopt and give to the Minister a budget by the day the Minister directs. A budget has no effect until approved by the Minister. During a financial year, the Authority may develop, adopt and submit to the Minister amendments to its budget. Such amendments have no effect until approved by the Minister.

108D Performance of Authority

Section 108D provides for the Minister's responsibility in respect of the authority's operations. Subclause (1) of the provision provides that the Minister has responsibility to ensure that the authority operates to best practice standards. To assist the Minister discharging this responsibility, subclause (2) provides that the authority must report to the Minister on the efficiency, effectiveness, economy and timeliness of the authority and its systems and processes, including operational processes. Such reports are to be at a time and in a way determined by the Minister. This subclause will enable the Minister to request that the authority reports to the Minister on matters relating to the operations of the authority, and under subclause (3) the authority must comply with such a request. Subclause (4) provides that the authority must include copies of all Ministerial requests under this section in its annual report published under the *Financial Administration and Audit Act 1977*.

Omission of ss 109 and 110

Clause 25 omits sections 109 (Annual report) and 110 (Registrar). The obligation for the Authority to report to the Minister under section 109 is provided in section 108D (2) of the Amendment Bill.

Insertion of new pt 7A, pt 7B hdg and pt 7B, div1 hdg

Clause 26 inserts a new Part 7A – Office of the Prostitution Licensing Authority.

Division 1 Establishment

Clause 26 inserts sections 109 - 110L.

109 Establishment of the office

Section 109 provides for the establishment of the Office of the Prostitution Licensing Authority, consisting of the executive director and the staff of the office.

110 Function and powers

Section 110 provides that the office's function is to help the Authority in the performance of the Authority's functions, and that it has powers to do anything necessary and convenient to be done in performing this function.

Subsection (2) of the provision provides that without limiting subsection (1), the office's responsibilities include: helping in the development of reports, budgets and policy issues by the Authority; coordinating the management of the Authority's functions and providing strategic advice and information to the authority, including in relation to the authority's functions; establishing and maintaining effective liaison between the Authority, the office, the commissioner, the Minister and other entities; developing and maintaining strategic alliances and partnerships that enhance the Authority's capacity to deliver sustainable services across the State; and developing and implementing policies, procedures, performance standards, operational plans and systems to enhance services provide by the office and ensure effective outcomes for the authority.

110A Status

Section 110A clarifies that the office is not a statutory body for the *Financial Administration and Audit Act 1977* or *Statutory Bodies Financial Arrangements Act 1982* and the office is a public service office under the *Public Service Act 1996*.

Division 2 Executive Director

110B Appointment of executive director

Section 110B makes provisions relating to the appointment of the executive director of the office. The executive director is to be appointed by the Governor in Council, for a term stated in the instrument of appointment. The executive director is eligible for reappointment. The stated term must be no longer than 5 years. Subclause (5) of the provision provides that the *Public Service Act 1996* does not apply to the appointment of the executive

director. This ensures that, in relation to the performance of the functions of the office, the line of accountability for the executive director is to the Authority through its Chair.

110C Terms of appointment

Section 110C provides for the terms of appointment of the executive director. The executive director is to be paid the remuneration and allowances decided by the Governor in Council. The Governor in Council may decide the terms of the executive director's appointment, except for those terms provided for in the Act.

110D Function of executive director

Section 110D provides for the function and responsibilities of the executive director. The executive director has the function of controlling the office, and is responsible for its efficient and effective administration and operation.

Subsection (2) of the provision clarifies that the office may be attached to the department so as to ensure that the office has the administrative support services it requires to carry out its functions effectively and efficiently. This will enable the office to be attached to the department if this is necessary or convenient for, for example, the purpose of information technology support.

110E Relationship with Authority

Section 110E clarifies the relationship between the Authority and the executive director. The provision provides that in performing a function or exercising the executive director's powers in relation to a power delegated by the Authority, the executive director must act independently, impartially, fairly and in the public interest. However, the executive director is subject to direction by the Authority.

110F Delegation by executive director

Section 110F enables the executive director to delegate his or her powers under the Act to an appropriately qualified member of the office's staff.

110G Resignation

Section 110G provides that the executive director may resign from the position by giving signed notice to the Minister,

110H Ending of appointment

Section 110H provides that the Governor in Council may end the appointment of the executive director for any reason or without stating the reason.

110I Preservation of rights

Section 110I preserves the rights of a public service officer appointed to the position of executive director. Subsection (2) of the provision provides that if a public service officer is appointed as executive director, the officer retains and is entitled to retain all rights that have accrued to him or her because of employment as a public service officer, or that could accrue in the future because of that employment. The appointment and service as an executive director is to be treated as if it were a continuation of service as a public service officer.

For example, the executive director will retain accrued leave entitlements, such as long service leave and recreation leave. When the executive director's appointment ends, subsection (3) of the provision provides that a person who was a public service officer before becoming an executive director would be entitled to be employed as a public service officer at the classification level not less than the current classification level of a position equivalent to the position the person held before being appointed as executive director. Furthermore, the person's service as executive director is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

This provision ensures that a public service officer is in no way disadvantaged by taking up appointment as the executive director. It will also assist in ensuring that public service officers are not discouraged to apply, by not disadvantaging their position, should they become successful in winning the contract, which by virtue of section 110B is for up to 5 years only.

110J Superannuation for executive director who was previously a public service officer

Section 110J makes provision to ensure that a public service officer who is appointed as executive director continues to be eligible to be a member of the State Public Sector Superannuation Scheme. If a public service officer is appointed as the executive director, and immediately before the appointment, the officer was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*, he or she continues to be eligible to be, and to be, a member of the scheme. This clause supplements section 110I by protecting the rights of public service officers in relation to their superannuation scheme and hence ensures that considerations about superannuation will not narrow the field of applicants for the position of director.

110K Acting executive director

Section 110K provides that the Minister may appoint an acting executive director in certain circumstances. If the office of the executive director is vacant, or if the executive director is absent from duty or cannot, for another reason, perform the functions of the office, the Minister may appoint a person to act as executive director.

Division 3 – Staff of the office

110L Office staff

Section 110L provides that the staff of the office are to be employed under the *Public Service Act 1996*.

Part 7B Administration

Division 1 Register

Amendment of s 111 (Licence and certificate register)

Clause 27 amends section 111 of the Act by inserting the term executive director in place of the registrar.

Amendment of s 132 (Evidentiary provision)

Clause 28 amends section 132 of the Act by inserting the term executive director in place of the registrar.

Amendment of s 133 (Disclosure of information)

Clause 29 amends section 133 of the Act to allow an official to disclose information, obtained in the administration of the Act, to the Minister. The clause also amends the provision by inserting the term executive director in place of the registrar.

Amendment of s 134 (Protection from liability)

Clause 30 amends section 134 of the Act by inserting the term executive director in place of the registrar.

Insertion of new s 134A Protection of health professionals from liability

Clause 31 amends the Act to allow a doctor, nurse, psychologist and other health professional prescribed by regulation to disclose information if the health professional believes that a prostitute at a licensed brothel is an intellectually impaired person. The amendment will provide protection to health professional from any criminal or civil action or any duty of confidentiality owed by the health professional to the person that may arise from the information given.

Amendment of s 138A (Delegation)

Clause 32 amends section 138A of the Act by inserting the term executive director in place of the registrar.

Insertion of new s 139A

Clause 33 amends the Act to allow the Authority to issue guidelines about the approved form for advertisements for prostitution.

Amendment of s 140 (Regulation-making power)

Clause 34 amends section 140 of the Act to enable the making of a regulation with respect to the development of processes by the Authority to deal with complaints by licensees, including the principles with which the

processes must comply and advertising by individual prostitutes, including the approval of the advertising by the authority.

Amendment of s 141 (Review of Act)

Clause 35 amends section 141 to allow the CMC to conduct a further review of the effectiveness of the Act after a 3 year period.

Replacement of pt 9, hdg

Clause 36 amends the Act by inserting a new part 9 heading and division 1 for the *Prostitution Amendment Act 2001*.

Part 9 Transitional Provisions

Division 1 Transitional provision for Prostitution Amendment Bill 2006

Insertion of new pt 9, div 2

Clause 37 amends the Act by inserting a new division 2 for the Prostitution Amendment Act 2006 including provisions 143 – 146.

Division 2 Transitional provisions for Prostitution Amendment Act 2006

143 Transitional provision for registrar and executive director

The clause inserts a provision to ensure that a reference in an Act or a document to the registrar of the Authority may, if the context permits, be taken to be a reference to the executive director.

144 Transition provision for licences

The clause inserts a provision to ensure that a brothel licence granted before the commencement of the section 6 of the Amendment Act continues on the same conditions and for the same term that applied immediately before the commencement of the provision.

145 Transition provision for certificates

The clause inserts a provision to ensure that a manager's certificate granted before the commencement of the section 11 of the Amendment Act continues on the same conditions and for the same term that applied immediately before the commencement of the provision.

146 Transitional provision for brothel offences

The clause inserts a provision to ensure that the relevant provision for an offence, as in force before the commencement of section 16 of the Amendment Act, continues to apply in relation to the offence and proceedings for the offence may be continued or started against the person as if the section had not commenced.

147 Membership of the Authority

The clause inserts a provision to ensure that a person who immediately before the commencement of section 23 of the Amendment Act, was a member of the Authority appointed under section 102 (1)(d) or (f) continues to be a member of the Authority.

148 Proceedings

The clause inserts a provision to ensure where a proceeding that could have been started or continued by or against the registrar before the commencement of this section may be started or continued by or against the executive director.

Transitional provision for evidentiary certificates

The clause inserts a provision to ensure that a certificate issued under section 132(5) purporting to be signed by the registrar before the commencement of this section is, on commencement, taken to be signed by the executive director.

Insertion of new sch 3 Restrictions on numbers of prostitutes at licensed brothel

Clause 38 amends the Act by inserting schedule 3 to allow the number of sex workers allowed at any once time to be increased to 8 for a 5 room brothel and proportionately fewer for smaller brothels.

Amendment of sch 4 (Dictionary)

Clause 39 amends schedule 4 defining ‘executive director’, ‘minor change’, and ‘office’. The clause omits the definition of registrar”.

**Part 3 Consequential Amendment of
The Public Service Act 1996****Act amended in part 3**

Clause 40 specifies that part 3 amends the *Public Service Act 1996*.

Amendment of Schedule 1 (Public service offices and their heads)

Clause 41 amends schedule 1 of the *Public Service Act 1996* that the executive director is the head of the Office of the Prostitution Licensing Authority.