

PROSTITUTION BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The purpose of this Bill is to regulate and control prostitution and related activities in Queensland.

The underlying principles of this Bill are to:

- ensure quality of life for local communities;
- safeguard against corruption and organised crime;
- address social factors which contribute to involvement in the sex industry;
- ensure a healthy society; and
- promote safety.

Reasons for the Bill

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 advertising.

For this reason, the prostitution legislation reform proposal seeks to legalise brothels within strict planning and licensing parameters. The proposed legal brothels will be limited in size and will not be permitted in residential areas, or close to other amenities such as places of worship, hospitals, schools, kindergartens and other places frequented by children.

The quality of life for affected local residents, and the amenity of local communities, will be improved by removing this activity from the suburban streets. Street prostitution will be discouraged by expanding the range of legal alternatives for sex workers and their clients, while increasing penalties and enforcement in respect of street soliciting which remains illegal.

Strong government leadership is characterised by constant vigilance against corruption and organised crime. A fundamental principle of the proposed legislative regime is the Government's strong commitment to ensuring corruption will not be tolerated through establishment of a legal industry and introduction of appropriate checks and balances.

The Government is well aware of the difficulties associated with the control of prostitution. The proposed legislative framework has been developed with a view to controlling and minimising the harm, or potential harm, associated with prostitution, rather than assuming that it can be eliminated.

To this end, the Criminal Justice Commission (CJC) will be charged with the responsibility of monitoring and reporting on how effectively the framework is achieving its objectives, including safeguarding against corruption and organised crime. The CJC will be required to conduct a full review of the legislation after 3 years of operation.

A Prostitution Licensing Authority will be established to implement and administer a stringent licensing and monitoring regime for prostitution in Queensland. The Authority is a key component of the Government's anti-corruption strategy.

A Prostitution Advisory Council will be established to focus on the underlying social problems which make some people more vulnerable to involvement in prostitution, such as homelessness or drug abuse. This Council will be a completely separate entity to the Prostitution Licensing Authority and will provide information and support to sex workers, encouraging and assisting them to explore alternative employment options.

Health risks associated with the sex industry are extremely high, particularly in relation to sexually transmitted infections including HIV. Through adoption of safe sex practices, risks can be minimised and a properly regulated industry provides the best vehicle for the implementation and monitoring of appropriate practices and standards. The proposed framework will ensure that the health status of sex workers is regularly monitored and that health risks to workers, their clients and the community are minimised.

While the personal safety risks associated with prostitution are difficult to quantify, it is clearly an industry in which people are at risk of physical violence. Sex workers have the same fundamental rights to personal safety as the rest of the community, and any legislative regime should contain

safeguards to ensure that their safety is not compromised.

A properly regulated industry, with sex workers operating in licensed brothels, should minimise the risk of personal harm to sex workers and offer them a level of protection against the range of safety risks associated with the industry, including physical assault.

Street workers are at greatest risk. Under this legislation they will be encouraged to move into the legal industry where their safety will be better protected. Local communities will also feel safer without the presence of street workers, their associates and clients in suburban areas.

The Prostitution Advisory Council will provide advice to individual sex workers on security measures to improve their personal safety. This support, in conjunction with the introduction of legal brothels, offers greater opportunities for sex workers to increase their level of personal safety.

OUTLINE OF PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the title of the Act.

Clause 2 sets out the commencement of the Act.

Clause 3 provides the purpose of the Act as being to regulate prostitution in Queensland, and for other purposes.

PART 2—DEFINITIONS AND BASIC CONCEPTS

Division 1—Dictionary

Clause 4 provides that the Act binds all persons, including the State.

Clause 5 provides that the dictionary is located in Schedule 4 of the Act.

Division 2—Basic concepts

Clause 6 provides a person is an 'associate' of an individual where the person is a member of the individual's family, or has entered into a business arrangement or relationship or lease with the individual for the provision of prostitution, or is the owner or lessor, either alone or jointly, of premises used or proposed to be used for the provision of prostitution under a licence. A person is an 'associate' of a body corporate if the person is an executive director of the body corporate.

Clause 7 provides a person has an 'interest in a brothel' where the person:

- is a brothel licensee (or a family member);
- is an approved manager (or a family member) of a licensed brothel;
- is the owner (or a family member) (if the owner is a body corporate—the director or secretary of a body corporate), either alone or jointly, of premises used by a licensee for the provision of prostitution;
- is the lessor (or family member) (if the lessor is a body corporate—the director or secretary of a body corporate) of the premises used by the licensee for the provision of prostitution;
- has entered into a business arrangement or relationship with another person (if it is with a body corporate—the director or secretary of a body corporate) for the provision of prostitution at a licensed brothel;
- directly receives income from the provision of prostitution at a licensed brothel (and in the case of a body corporate—the director or secretary of a body corporate);
- is able to exercise a significant influence over the operations of, or in relation to the provision of prostitution at, a licensed brothel (and in the case of a body corporate—the executive officer of a body corporate).

A financial institution which is a mortgagee of premises used by a licensee for the provision of prostitution does not have an 'interest in a brothel' only because the financial institution is a mortgagee of the premises. Financial institution is defined in the *Acts Interpretation Act 1954*.

PART 3—LICENSING SYSTEM

Division 1—Brothel licences

Subdivision 1—Application for licence

Clause 8 provides who is ineligible for a licence. The person cannot be a corporation, a minor, an insolvent under administration, hold a licence or permit under the *Liquor Act 1992*, have been convicted of a disqualifying offence (as set out in the Schedule), have had a brothel licence or other authority or approval cancelled in this State or elsewhere in the last 3 years, or be subject to a Prostitution Licensing Authority order declaring the person ineligible.

Clause 9 provides a person is only entitled to apply for, or eligible to be granted, one brothel licence at a time.

Clause 10 requires applications for a brothel licence 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, the applicant's associates (as defined in clause 6), and anything else prescribed under a regulat

Clause 11 deals with a change in information with respect to a brothel application. The applicant who has become aware of change must give written notice to the Prostitution Licensing Authority of the change.

Clause 12 authorises an applicant to withdraw an application before it has been decided. In such circumstances, or where the application has been rejected, the application fee may be partly or wholly refunded, and all of the licence fee will be refunded.

Clause 13 provides an applicant must consent to having his or her identifying particulars taken by the Prostitution Licensing Authority (the Authority) or a member of the police service. The Authority must refuse to consider an application if the applicant refuses to provide his or her identifying particulars. The Authority must refer any identifying particulars taken to the Commissioner of the Police Service (Commissioner) and must not keep a copy of those particulars. Identifying particulars will assist in determining whether the applicant may get a licence and will allow checks to identify a person to whom a licence has been granted.

Clause 14 requires the Authority to give application particulars to the Commissioner. The Commissioner upon receiving application particulars, must make appropriate inquiries in relation to the application and report the results of those inquiries to the Authority with or without a recommendation. In addition, the Commissioner may require an applicant to attend a place nominated by the Commissioner for the purpose of providing identifying particulars. The Commissioner's report may include references to offences that would normally be excluded through the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 15 requires the Authority to consider all licence applications by eligible persons. It may conduct inquiries and seek advice and information with respect to the licence and may require the applicant to provide further information within a certain time. Failure to provide the information results in an automatic withdrawal of the application. The Authority may also consider whether any other licences or adult entertainment permits have been granted in the locality and the extent to which the character of the locality may be affected if the application were granted. The Authority is not required to conduct a hearing to decide whether to grant a licence or refuse to grant a licence.

Clause 16 requires the Authority must refuse a licence if the applicant is not a suitable person or has been convicted of running a brothel in Queensland or elsewhere or 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

Clause 17 requires the Authority to consider all relevant matters when determining the suitability of an applicant for a brothel licence. It lists some of the matters that must be considered—

- 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;
- 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);
- whether the applicant has, or is or will be able to obtain, financial resources that are adequate to ensure the financial viability of the brothel;
- whether the applicant will have in place arrangements to adequate safety arrangements;
- whether the business structure for the operation of the brothel 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;
- whether the applicant is an associate of a person who holds a licence or a permit under the *Liquor Act 1992*;
- anything else prescribed under a regulation.

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 operate a licensed brothel because the applicant has worked as a prostitute.

Clause 18 requires the Authority to either grant or refuse the brothel licence. The licence may be granted with or without conditions or restrictions. However, the applicant may ask the Authority to postpone the giving of the licence until the happening of an event (for example, the issuing of a development permit or the construction of the premises). A refusal to grant the licence must be accompanied by reasons for the decision. However, this provision is subject to clause 138.

Clause 19 provides that a licence authorises the licensee to operate a brothel only at the premises stated in the licence subject to planning requirements and not at more than 1 premises. Any act of prostitution may only take place at the premises stated in the licence. Thus, persons cannot be introduced to prostitutes at the licensed premises and then go elsewhere to participate in prostitution. The licence term is 1 year unless it is sooner surrendered, suspended or cancelled. The licence is personal, not transferable to any other person, does not vest by operation of law in any other person and is subject to any conditions or restrictions on the licence or prescribed under a regulation.

Clause 20 requires a licensee who becomes aware of a change in the information given in relation to an application for the licence, within 10 days, to give particulars of the change to the Authority by signed notice. For example, this would apply to a change of ownership of premises.

Clause 21 provides the Authority may at any time vary or revoke a condition or restriction to which a licence is subject (other than a condition or restriction prescribed under a regulation) or impose a new condition or restriction. The Authority may do so on its own initiative, or on the application of the licensee, or on the application of a police officer. If a condition or restriction prescribed under a regulation is amended, the Authority must as soon as reasonably practicable give the licensee written notice of the amendment.

Clause 22 provides for endorsement of a licence where an existing condition or restriction is varied or revoked or a new condition or restriction is imposed. The Authority may require the licensee to produce the licence for endorsement and failure to comply with the requirement is an offence.

Clause 23 requires a licensee to apply in the approved form with the prescribed renewal fee for the renewal of the licence at least 1 month before the licence ends. Clauses 10 to 12 and 14 to 18 apply to the application for renewal as if it were an application for a licence. The Authority must make a decision for the renewal within 1 month.

Subdivision 2—Licence cancellation and disciplinary action

Clause 24 defines a licensee for subdivision 2 to include a person who has surrendered a licence and to whom clause 31(3) applies.

Clause 25 provides a licence is automatically cancelled if the licensee: is convicted of a disqualifying offence; is convicted of an offence in chapter 22A of the Criminal Code (other than section 229M); is convicted for an offence of giving false or misleading information under this Act; becomes an insolvent under administration.

Clause 26 provides the Authority may conduct an inquiry (disciplinary inquiry) to decide whether there are grounds for taking disciplinary action against a licensee. An action may be instigated by the Authority on its own initiative, or on the application of the commissioner or an authorised officer of a relevant local government.

Clause 27 sets out the grounds for taking disciplinary action against a licensee. The Authority can take action where the licensee has been charged with, or convicted of, an offence in Queensland or elsewhere; or a person who has an interest in the licensee's brothel has been charged with, or convicted of, an offence against this Act or a corresponding law, or has been charged with or convicted of an offence in Queensland or elsewhere for which the penalty may be a term of imprisonment; or the provision of prostitution under the licence contravenes a condition or restriction to which the licence or the certificate of the approved manager is subject. The Authority may also take disciplinary action if it considers that the licensed brothel is or has been managed in such a way that it is desirable that action should be taken against the licensee.

Clause 28 provides that where an application for a disciplinary inquiry is made, the inquiry must not start within 30 days of when the application is made unless the person who made the application or the licensee applies to the Authority for the inquiry to be started within that time and the Authority

is satisfied that it is reasonable in the circumstances.

Clause 29 sets out the disciplinary powers of the Authority. In addition to any other powers of the Authority, it may: reprimand the licensee; add a condition or restriction to the licence; require the licensee to enter into an undertaking to perform, or not to perform, particular tasks to be specified in the undertaking; require the licensee to comply with a requirement specified by the Authority within or for a specified time; order the licensee to pay a fine up to \$10,125 (135 penalty units); suspend the licence; cancel the licence; or order that the licensee be ineligible to apply for a licence or be an approved manager either permanently or temporarily.

With respect to orders that the licensee pay a fine, the Authority may order that the amount be paid by a specified date and if not paid, it may set a final payment date and suspend the licence until payment. If the amount remains unpaid, the Authority may cancel the licence. The Authority may at any time extend any period of time it sets for the payment of the amount. If the licensee does not pay the amount within the time allowed, the registrar may recover the amount as a debt from the licensee. This clause is subject to clause 30.

Clause 30 provides that, where the licensee has been charged with an offence, the only action the Authority may take is to suspend the licence. If the charge is withdrawn or the licensee is not convicted of the offence, the suspension must be withdrawn. The only action the Authority may take if a person who has an interest in a licensee's brothel has been charged with an offence is to impose a condition or restriction on the licence, require the licensee to enter into an undertaking to do or not to do certain things, or require the licensee to comply with a requirement specified by the Authority. If a licensee has surrendered a licence, the only action the Authority may take against the licensee is to make an order that the licensee be ineligible to apply for a licence either permanently or temporarily.

Subdivision 3—Other provisions about licences

Clause 31 provides how a licensee may surrender his or her licence. Surrender of the licence takes effect on the day notice is given to the Authority unless a later day is stated in the notice. If the Authority has decided to conduct a disciplinary inquiry, the Authority may exercise its powers despite the surrender of the licence, but may only make an order to

prevent the licensee from applying for a new licence (see clause 30).

Clause 32 provides it is an offence for a licensee to fail to return a surrendered, cancelled or suspended licence to the Authority within 7 days.

Clause 33 provides that if a licensee dies or becomes incapable of discharging his or her duties as licensee because of physical or mental incapacity an approved manager may apply to the Authority for approval to act as a licensee. The acting licensee will have the responsibilities of a licensee under this Act. The Authority may authorise the manager to act as licensee for a specified period up to 6 months and may extend that period. The Authority may impose a pro rata fee if the extension goes beyond the 12 month period for which the annual fee has already been paid. The Authority must endorse the license to show that the approved manager is acting as a licensee.

Division 2—Approved managers

Subdivision 1—Application for certificate

Clause 34 provides a person is ineligible to apply for a certificate if the person is a corporation; is a minor; is an insolvent under administration; holds a licence or permit under the *Liquor Act 1992*; is convicted of a disqualifying offence; has had a licence or other authority under this Act or a corresponding law to provide prostitution at a brothel cancelled in the last 3 years; has had a certificate or other authority under this Act or a corresponding law to manage a brothel cancelled in the last 3 years; or is subject to an order of the Authority declaring the person to be ineligible to apply for a certificate.

Clause 35 provides an application for a certificate may be made by an eligible person to the Authority in the approved form. The application must be accompanied by the application fee and the certificate fee prescribed under a regulation. It must state the applicant's name, address, occupation and date of birth; the address of any licensed brothel of which the applicant is to be the approved manager; the names, addresses and occupations of all associates of the applicant and, if known to the applicant, their dates of birth; and anything else prescribed under a regulation.

Clause 36 applies to an approved manager and replicates in principle clause 11 which applies to a licensee with respect to updating information in an application.

Clause 37 applies to an approved manager and replicates in principle clause 12 which applies to a licensee with respect to withdrawal of an application.

Clause 38 applies to an approved manager and replicates in principle clause 13 which applies to a licensee with respect to the applicant consenting to his or her identifying particulars being taken.

Clause 39 applies to an approved manager and replicates in principle clause 14 which applies to a licensee with respect to referring the application to the Commissioner.

Clause 40 applies to an approved manager and replicates in principle clause 15 which applies to a licensee with respect to consideration of the application. However, consideration of other licences or adult entertainment permits that may have been issued in the area is not required.

Clause 41 provides the Authority must refuse to grant a certificate if the applicant is not a suitable person; or has been convicted of running a brothel in Queensland or elsewhere; or has an interest in another licensed brothel (other than as an approved manager).

Clause 42 lists the matters the Authority must consider in deciding whether an applicant is a suitable person to be an approved manager. Relevant matters include the applicant's reputation, having regard to character, honesty and integrity; whether the applicant has been convicted of an offence against this Act; or an indictable offence; or is an associate of a person who or a body corporate which has been convicted of a disqualifying offence or indictable offence; or has been charged 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); and anything else prescribed under a regulation. Offences in Queensland or elsewhere are to be considered. The Authority must not decide that an applicant is not suitable to be an approved manager only because the applicant has worked as a prostitute.

Clause 43 provides for the grant or refusal of a certificate and replicates in principle clause 18 which applies to brothel licence applications.

Clause 44 provides that an approved manager is authorised to manage the licensed brothels stated in the certificate for 1 year unless it is sooner surrendered, suspended or cancelled. A certificate is personal and is not transferable to any other person, does not vest by operation of law in any other person and is subject to any conditions or restrictions in the certificate or prescribed by a regulation.

Clause 45 applies to an approved manager and replicates in principle clause 20 which applies to a licensee with respect to the requirement to notify changes in information given.

Clause 46 provides that an approved manager may at any time apply to the Authority to vary a certificate by altering or adding to the premises stated in the certificate. The application must be in the approved form and be accompanied by the prescribed fee.

Clause 47 refers to amendment of certificate conditions or restrictions and replicates in principle clause 21 which refers to amendment of licence conditions or restrictions.

Clause 48 refers to endorsement of a certificate and replicates in principle clause 22 which refers to endorsement of a licence.

Clause 49 refers to renewal of a certificate and replicates in principle clause 23 which refers to renewal of a licence.

Subdivision 2—Certificate cancellation and disciplinary action

Clause 50 sets out the definition of an approved manager for subdivision 2 and states that an approved manager includes a person who has surrendered a certificate and in relation to whom the Authority has decided to conduct a disciplinary inquiry.

Clause 51 refers to automatic cancellation of a certificate and replicates in principle clause 25 which refers to automatic cancellation of a licence.

Clause 52 refers to investigating the need for disciplinary action against an approved manager and replicates in principle clause 26 which refers to investigating disciplinary action against licensees.

Clause 53 sets out some grounds for disciplinary action against an approved manager and replicates in principle clause 27 which refers to grounds for disciplinary action against a licensee. However, clause 53 is

narrower than clause 27 in that the charges or convictions of persons who have an interest in the licensee's brothel is not a ground for action against a manager.

Clause 54 refers to starting disciplinary action against an approved manager and replicates in principle clause 28 which refers to starting disciplinary action against a licensee.

Clause 55 refers to disciplinary powers of the Authority against an approved manager and replicates in principle clause 29 which refers to disciplinary powers of the Authority for a licensee.

Clause 56 refers to disciplinary powers limited for certain approved managers and replicates in principle clause 30 which refers to disciplinary powers limited for certain licensees.

Subdivision 3—Other provisions about certificates

Clause 57 refers to surrender of certificate and replicates in principle clause 31 surrender of a licence.

Clause 58 requires the return of surrendered, cancelled or suspended certificate and replicates in principle clause 32 which deals with surrendered, cancelled or suspended licences.

Division 3—Police powers of entry

Clause 59 allows a police officer of the rank of inspector or above, or a police officer authorised by an inspector or above, to enter and inspect a brothel at any time when the brothel is open for business. If entry is made by a police officer who is not an inspector or above, the police officer must be specifically authorised in writing for the particular entry and the authorisation must be produced upon entry if the licensee or manager so requests.

Clause 60 provides that the police officer who enters premises may inspect the premises and may, with the written authorisation of the Authority, inspect anything required to be kept under this Act and make copies of, or seize, things. The officer, if authorised by the Authority, may

also require the licensee or manager to produce stated documents or things for inspection and give help to the police. Anything seized must be dealt with in accordance with the provisions of the *Police Powers and Responsibilities Act 1997*. This power is designed to assist the Authority to examine financial records and, if necessary, audit financial reports of the business.

It should be noted that other authorities may have entry and inspection powers under other Acts, for example certain persons may have a right of entry and inspection under the *Local Government Act 1993*.

Clause 61 requires a police officer who enters a brothel or the officer who authorised the entry to give details of the entry to the Authority.

PART 4—DEVELOPMENT APPROVALS FOR BROTHELS

Clause 62 sets out the definitions for the part. 'Assessment manager' has the same meaning as in the *Integrated Planning Act 1997* and 'development application' means an application for a development approval under the *Integrated Planning Act 1997* and 'local government area' is defined in the *Local Government Act 1994*.

Clause 63 provides that this part applies to a development application for a material change of use of premises a licensed brothel.

Clause 64 provides that the assessment manager must refuse the application if—

- the land is in a residential area or within 200 metres of a residential area;
- the land is within 200 metres of a private residence, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities (distances are to be measured according to the shortest route that reasonably may be used in travelling);

- for land in a town with a population of less than 25 000, the local council has determined that applications within the area be refused and the Minister has agreed that the applications should be refused; or
- more than 5 rooms in the proposed brothel are to be used for providing prostitution.

The 200 metres distances are to be measured according to the shortest route that reasonably may be used in travelling.

PART 5—PROHIBITED BROTHELS

Clause 65 provides that a police officer, the Authority or an authorised officer of the relevant local government may apply to a Magistrates Court for an order declaring that particular premises are a prohibited brothel.

Clause 66 provides that the court may declare premises to be a prohibited brothel if it is satisfied, on the balance of probabilities, that a person is operating a brothel without a licence, or that premises are being used a brothel in contravention of the *Integrated Planning Act 1997*. The court may make the declaration only if it is satisfied that notice of the application was served on the owner or occupier of the premises at least 72 hours before the hearing.

The court hearing the matter may inform itself in any way it considers appropriate and is not bound by the rules or practice as to evidence. This provision will allow a prosecutor or defence counsel to tender affidavits of witnesses which, in view of the 72 hour notification period, may be crucial to having the place declared a prohibited brothel or alternatively, not having it so declared. For example, an interstate or overseas owner could arrange his or her legal representative to present an affidavit to the court which may save the owner the expense of travelling to court, or may support an adjournment of the matter until the owner can personally get to court. The court may declare a place a prohibited brothel for an unlimited or for a specified period.

Clause 67 provides that as soon as possible after the declaration is made a notice of the declaration must be published for 2 consecutive days in a newspaper sold and generally circulating in the locality in which the premises are situated (for example, in Brisbane - The Courier Mail; in Townsville - The Townsville Bulletin; in Mount Isa - The Mount Isa Star). In a proceeding under this part, the production of papers purporting to be a copy of a newspaper containing the published notice is evidence that the notice was published in the newspaper on the date appearing on the newspaper.

The applicant must also serve a notice of the making of the declaration on the occupier of the premises and, if the occupier is not the owner of the premises on the owner. If the premises are mortgaged, the mortgagee must also be given notice. In addition, the applicant must post a copy of the declaration at the entrance to the premises to warn people entering the premises.

Clause 68 provides that it is an offence if a person interfere with a copy of a declaration posted up at a prohibited brothel.

Clause 69 provides that it is an offence if a person is found in or entering or leaving a prohibited brothel. There is a defence if a person (other than the owner or occupier) was in or entering or leaving the premises for a lawful purpose. For example, a person whose occupation requires entry e.g. electricity meter reader, would have a defence. Before the owner could enter the premises again, he or she, would require a court order. This provision is in addition to any offences that may be available under the Criminal Code.

Clause 70 provides that once premises are declared a prohibited brothel and notice is served on the owner or occupier, it is an offence while the declaration is in force for the owner or occupier if the prohibited brothel is used as a brothel.

Clause 71 states that the owner, occupier, or a registered mortgagee of the premises, a police officer, the Authority, or an authorised officer of the relevant local government may apply to the court for an order rescinding the declaration. The court may rescind the declaration on any terms it considers appropriate, including the giving of security to ensure that the premises are not again used as an unlicensed brothel.

The court may rescind a declaration only if it is satisfied that, at least 72 hours before the hearing, notice of the application was served on a police officer of the rank of inspector or above in the police district in which the declared premises are situated, the Authority, and the relevant local government.

Clause 72 provides that the notice with respect to clause 66(2) is sufficiently served on the owner or occupier of premises if it is posted in a prepaid letter addressed to ‘the owner’ or ‘the occupier’ without name or further description and bearing an address or description of the premises that should ensure the delivery of the letter at the premises. For clause 67(1)(b), a notice is sufficiently served on an occupier, owner or mortgagee if it is given to his or her agent authorised to accept delivery of documents on the person’s behalf. This clause does not limit section 39 of the *Acts Interpretation Act 1954* which concerns the service of documents.

PART 6—OFFENCES

Division 1—General offences relating to prostitution

Clause 73 provides for the offence of publicly soliciting for prostitution which is to be omitted from the *Vagrants, Gaming and Other Offences Act 1931*. The offence has been expanded so that soliciting now includes offering to provide prostitution or accepting an offer to provide prostitution. Penalties for this offence have been increased to reflect the communities abhorrence for this activity. It is expected that the courts will view these offences more seriously because of the increased availability of legal work options for prostitutes.

Clause 74 states that a person does not commit an offence of publicly soliciting for prostitution if it happens in a licensed brothel and it cannot be viewed by a person outside the brothel.

Clause 75 provides when a police officer may publicly solicit for prostitution without committing an offence. This will allow police to pose as a prostitute or client without committing an offence of publicly soliciting for prostitution if he or she does so under written instructions given for a

particular operation by a police officer of the rank of inspector or above. This provision, in addition to the broader definition of soliciting in clause 73, was inserted in response to the difficulties experienced in policing street soliciting. It is intended that this power will be used by police to combat soliciting in areas where it is most prevalent. It would be considered inappropriate if police were to enter hotels where soliciting was not occurring and offer patrons prostitution.

Clause 76 provides for nuisances connected with prostitution which will be omitted from the *Vagrants, Gaming and Other Offences Act 1931*. Penalties for this offence have been increased.

Clause 77 creates an offence for a person who directly or indirectly, to make another person continue to provide prostitution: causes or threatens wilful injury to the person or any one else; threatens wilful damage to property of the person or any one else; intimidates or harasses the person or any one else; makes a false representation or uses any false pretence or other fraudulent means. This is an indictable offence.

Division 2—Offences relating to the operation of the business of a licensed brothel

Clause 78 creates an offences for a person who is a licensee or an approved manager of a brothel who: provides prostitution under the licence at a place other than the licensed brothel; has more than 10 staff at the brothel at any 1 time; at any 1 time has more prostitutes at the brothel than the total number of rooms that have been permitted to be used for providing prostitution under the development permit for the brothel; provides prostitution at the brothel in contravention of any condition or restriction of a licence or certificate; or provides prostitution at the brothel while the licensee's licence is suspended.

'Brothel' means the brothel specified in the licence and 'staff' means the licensee, the approved manager, a person employed at the brothel, and a prostitute.

Clause 79 creates an offence for a licensee who operates a brothel other than in a building. 'Building' means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

Clause 80 creates an offence for the licensee and the approved manager (if any) whose duty it is to personally supervise a brothel who fails to personally supervise the brothel when it is open for business. In such circumstances, a licensee or approved manager who is not at the brothel at a particular time is not personally supervising the brothel at the relevant time.

Clause 81 creates an offence where the licensee operates a brothel in partnership with, or otherwise in association with, a person who is not also licensed to operate the brothel. A person operates a brothel in association with another person if the person directly receives income from the brothel.

Clause 82 creates an offence where a person has, at any 1 time, an interest in more than 1 licensed brothel. An approved manager does not commit an offence against this section just because he or she is authorised to manage more than 1 brothel.

Clause 83 creates an offence if a person possesses liquor at a licensed brothel. If liquor is found at the brothel, the licensee and any approved manager whose duty it was to supervise the brothel each commit an offence. This section applies despite anything to the contrary in the *Liquor Act 1992* or in any licence or permit granted or having effect under that Act.

Clause 84 provides that if a police officer enters a brothel and exercises the powers under clause 60 to require production of a thing or to request help from the licensee or manager, it is an offence for a person to fail to comply with the request.

Clause 85 provides that if a police officer has reason to believe that a person in a licensed brothel may be a minor, the police officer may require the person to give particulars of his or her age. If the police officer considers on reasonable grounds that any particulars given by the person may be false, the police officer may require the person to give satisfactory evidence of the correctness of the particulars. Where the requirement is made, the police officer must warn the person that it is an offence to fail, without reasonable excuse, to comply with the requirement; or to give information or evidence.

Clause 86 creates an offence after a warning is given, if the licensee or approved manager, without reasonable excuse, fails to comply with a requirement from a police officer or the Authority to give his or her name or address, or gives a name that is false in a material particular, or gives false particulars of the licensee's or manager's name or the address of the licensee's or manager's ordinary place of residence or business.

Clause 87 provides it is an offence if the licensee fails to keep the brothel licence displayed in a conspicuous place inside the brothel front entrance.

It is an offence if the licensee displays at the brothel a document falsely purporting to be a licence.

Clause 88 creates an offence if a licensee or approved manager, without reasonable excuse, fail to produce his or her licence or certificate of approval to a police officer or the Authority if the police officer or Authority asks him or her to do so.

Division 3—Offences relating to prostitutes working in licensed brothels

Clause 89 creates an offence if a person who is a licensee or an approved manager of a brothel permits a prostitute to work, whether under a contract of service or a contract for service, in a brothel during any period in which the person knows that the prostitute is infective with a sexually transmissible disease.

The licensee or manager is taken to have known that the prostitute was infective, unless he or she can show that at the time the offence is alleged to have been committed, he or she believed on reasonable grounds that the prostitute had been attending regular medical examinations or tests and that he or she believed on reasonable grounds that the prostitute was not infective with a sexually transmissible disease.

It is also an offence if a licensee or approved manager fails to take reasonable steps to prevent medical certificates or other evidence of a medical examination being used to induce a person to believe a prostitute is not infective with a sexually transmissible disease. A brothel licensee may be considered to have taken reasonable steps if, for example, he or she has outlined expected behaviour in a process of inducting new staff or in a Code of Practice developed for the brothel and provided to staff. If a prostitute attempted to use a medical certificate in a manner prohibited by this section, the brothel licensee would be expected to take immediate action and remind all other employees that such behaviour is unacceptable.

Clause 90 creates an offence if a person works as a prostitute at a brothel during any period in which the person knows that he or she is infective with a sexually transmissible disease.

The person is taken to have known that he or she was infective unless the person proves that he or she had been attending regular medical examinations or tests and the person believed on reasonable grounds that he or she was not infective with a sexually transmissible disease.

It is an offence if a prostitute, for the purpose of prostitution, uses a medical certificate or proof of a medical examination to induce a person to believe that the prostitute is not infective with a sexually transmissible disease.

Clause 91 creates an offence if a prostitute provides prostitution involving sexual intercourse or oral sex without a prophylactic.

It is an offence for a person to obtain prostitution involving sexual intercourse or oral sex without a prophylactic.

It is also an offence for a licensee or an approved manager of a licensed brothel to fail to take reasonable steps to ensure that a person does not provide or obtain prostitution involving sexual intercourse or oral sex at a brothel unless a prophylactic is used. For example, reasonable steps may include the supply of prophylactics and the placing of warning signs in the brothel.

It is an offence if a brothel licensee or an approved manager discourages the use of prophylactics at a brothel.

It is an offence if a person obtaining prostitution involving sexual intercourse or oral sex misuses, damages or interferes with the efficacy of a prophylactic used by the person.

It is an offence if a person obtaining prostitution involving sexual intercourse or oral sex uses or continues to use, a prophylactic that he or she knows, or could reasonably be expected to know, is damaged.

Oral sex has the same meaning as in section 229E(5) of the Criminal Code. Prophylactic means a condom or other device that is adequate to prevent the transmission of a sexually transmissible disease. Sexual intercourse has the same meaning as in section 229D of the Criminal Code (see clause 173).

Division 4—Advertising offences

Clause 92 sets out the definitions for the division. 'Advertisement' includes a notice, sign and circular and matter that is not in writing, but which conveys a message because of the form or context in which it appears. To 'publish' an advertisement or statement means to publish in any way, and includes publish in a newspaper or periodical or by a notice, sign or circular, and broadcast by radio or television or in a film or video recording.

Clause 93 creates an offence if a person publishes or causes to be published an advertisement for prostitution that describes the services offered.

Clause 94 creates an offence if a person publishes or causes to be published a statement intended or likely to induce a person to seek employment as a prostitute.

Clause 95 creates an offence if a person providing prostitution holds out, or publishes or causes to be published an advertisement that states directly or indirectly, that the person's business provides or is connected with massage services. The business of a person means the business of a licensed brothel or of an individual prostitute. The intention is to stop prostitution providers from advertising as 'massage parlours' and to stop legitimate massage businesses receiving inquiries for prostitution.

Clause 96 provides that if it is proved to a court that an advertisement or statement has been published in relation to a licensed brothel, the advertisement or statement is evidence that the brothel's licensee caused the advertisement or statement to be published.

Division 5—Other offences

Clause 97 creates an offence of knowingly stating anything to the Authority in connection with this Act that is false or misleading in a material particular.

Clause 98 creates an offence of knowingly providing a document containing false or misleading information in connection with this Act to the Authority. It will not be an offence if the person, when giving the document

tells the Authority to the best of his or her ability, how it is false or misleading and if he or she has, or can reasonably obtain, the correct information and give the correct information.

Clause 99 states that if a body corporate commits an offence against this Act, an executive officer of the body corporate, being a person who is concerned with or takes part in the management of the body corporate, also commits the offence. The maximum penalty is that which would apply to an individual. Evidence that a body corporate has committed an offence is evidence that each executive officer has committed the offence. However, an executive officer has a defence if he or she can show that the offence was committed without the officer's knowledge and he or she used due diligence to prevent the commission of the offence.

PART 7—ADMINISTRATION

Division 1—Prostitution Licensing Authority

Clause 100 establishes the Prostitution Licensing Authority.

Clause 101 sets out the functions of the Authority. These are to decide licence and approved manager applications; monitor the provision of prostitution through licensed brothels; conduct disciplinary inquiries in relation to, and discipline, licensees and approved managers; receive complaints about prostitution; liaise with the police service with a view to assisting the service in carrying out its functions in relation to prostitution; and to collect fees under this Act. Other functions are to inform relevant government departments and agencies about possible offences that are detected while carrying out its functions and to inform the Prostitution Advisory Council (see the following Division) about issues and trends relevant to its functions.

Clause 102 sets out the membership of the Authority as:

- the chairperson who is to be an independent respected member of the community nominated by the Premier;

- the commissioner, or a police officer of the rank of superintendent or above nominated by the commissioner;
- the crime commissioner, an assistant crime commissioner or general counsel nominated by the crime commissioner;
- a doctor who has at least 5 years' experience in community health;
- a lawyer who has been admitted for at least 5 years and has knowledge of or experience in administrative law, company law or criminal law;
- a senior representative of the Local Government Association of Queensland.

Members of the Authority are to be appointed by the Governor in Council on the advice of the Minister with responsibility for the administration of this legislation. Members of the Authority are to be appointed under this Act and not under the *Public Service Act 1996*.

Clause 103 provides a member of the Authority holds office for the term, not longer than 5 years, and on the conditions stated in the member's instrument of appointment.

Clause 104 provides members of the Authority are to be paid the fees and allowances decided by the Governor in Council.

Clause 105 provides a person is not qualified to be or continue as a member of the Authority if the person is an insolvent under administration, is convicted of an offence against this Act or a corresponding law or an indictable offence, or becomes incapable of discharging the duties of a member because of physical or mental incapacity or has an interest in a brothel.

Clause 106 provides that the office of a member of the Authority becomes vacant if the member dies, resigns office by signed notice given to the Minister, is absent without the Authority's permission from 3 consecutive meetings of the Authority of which proper notice has been given, or is no longer qualified to be a member. In this section meeting means, if the member does not attend—a meeting with a quorum present, if the member attends—a meeting with or without a quorum present.

Clause 107 provides that meetings of the Authority are to be held at the times and places the chairperson decides. The quorum at a meeting of the Authority is four members. Subject to this Act, the Authority may conduct its business, including its meetings, in the way it considers appropriate.

Clause 108 sets out the circumstances in which a member of the Authority must disclose any direct or indirect interest in a matter to be considered by the Authority. If the member has a material personal interest the member must not vote on the matter, or be present while the matter is being considered, or take part in any decision in relation to the matter. There is provision for the Authority, in the absence of the interested member, to resolve that the interest is such that it should not disqualify the member from considering or voting on the matter. Further, if a quorum cannot be formed because a member cannot vote on the matter, the Minister may give a written direction that the subsection does not apply.

Clause 109 provides that the Authority must, as soon as practicable after the end of each year, but within 4 months after the end of the year, prepare and give a report on its operations during the year to the Minister responsible for the administration of this legislation.

Clause 110 establishes the office of registrar of the Authority and any other staff necessary to enable the Authority to exercise its functions, to be employed under the *Public Service Act 1996*. The registrar and staff are subject to the Authority's direction.

Clause 111 provides the registrar must keep a register and enter particulars concerning licences and certificates, addresses of licensed brothel premises and premises where approved managers may manage and police entries into licensed brothels. Provision is also made for inspecting and copying the register. Also, the clause sets out when and how corrections are to be made in the register.

Division 2—Prostitution Advisory Council

Clause 112 establishes the ministerial committee for the Advisory Council as the Ministers administering this legislation, the *Family Services Act 1987*, *Health Act 1932*, and *Liquor Act 1992*.

Clause 113 establishes the Prostitution Advisory Council. The Council reports to the ministerial committee.

Clause 114 describes the functions of Council as:

- to advise the ministerial committee on issues related to the regulation of prostitution in Queensland;
- subject to the directions of the ministerial committee, to monitor generally the operation of this Act;
- subject to the directions of the ministerial committee, to liaise with the Authority, the police service and other agencies prescribed under a regulation with a view to helping them in carrying out their functions in relation to prostitution;
- to refer matters it considers appropriate for investigation to an agency of government or any other entity for investigation;
- subject to the directions of the ministerial committee, to promote and co-ordinate programs that promote sexual health care, help prostitutes to leave prostitution, divert minors and other vulnerable persons from prostitution, especially opportunistic prostitution;
- to raise awareness in prostitutes, judicial officers, police, community workers and the community about issues relating to prostitution;
- subject to the directions of the ministerial committee, to promote the dissemination of information about the dangers inherent in prostitution, and security measures to improve the personal safety of prostitutes;
- to co-ordinate the development of codes of practice, if appropriate.

Clause 115 provides that the Council members are appointed by the Governor in Council on the recommendation of the ministerial committee. Members must include a person to represent persons involved in prostitution in Queensland, a doctor experienced in sexual health care or a social worker with prostitutes, a person knowledgeable in relevant issues for marginalised or disadvantaged young people, and a representative of religious or community interests. In recommending persons for appointment, the ministerial committee must have regard to the desirability of ensuring the Council consists of both women and men. Members of the Council are to be appointed under this legislation and not under the *Public Service Act 1996*.

Clause 116 provides that Council members hold office for a term up to 5 years, and on the conditions stated in the member's instrument of appointment.

Clause 117 disqualifies a person for appointment as a Council member if the person is an insolvent under administration, is convicted of an offence against this Act or a corresponding law elsewhere. A person is not qualified to continue as a member if the person becomes an insolvent under administration or is convicted of an offence against this Act or a corresponding law or an indictable offence, or becomes incapable of discharging the duties of a member because of physical or mental incapacity.

Clause 118 states that the office of a Council member becomes vacant, if the member dies, resigns in writing, is absent without the Council's permission from 3 consecutive meetings or is no longer qualified to be a member.

Clause 119 provides for remuneration of members as decided by the Governor in Council.

Clause 120 states the meeting protocol of the Council with respect to times and places and the quorum. However, subject to this Act, the Council may conduct its business, including its meetings, in the way it considers appropriate.

Clause 121 provides that the Council may ask the Authority for information about issues and trends relevant to prostitution.

Clause 122 states when the Council must provide an annual report.

Division 3—Prostitution Licensing Authority Fund

Clause 123 establishes the Prostitution Licensing Authority Fund.

Clause 124 states that the fund consists of fees paid under this legislation, fines imposed under the disciplinary powers and any other amounts received by the Authority under this Act. Amounts received by the Authority must be paid into the fund.

Clause 125 provides that subject to clause 126, the Authority may pay out of the fund, refunds of fees, costs and expenses incurred in the administration of this Act, and contributions to philanthropic causes. It is

expected that any philanthropic causes must be in some way connected to prostitution within the terms of this legislation. For example, if the Catholic church or Salvation Army have set up schemes to assist youth involved in prostitution, then a donation to either of these organisations would be within the scope of this clause.

Clause 126 provides that the Minister may give the Authority written directions about the purposes for which the Authority may pay amounts out of the fund in exercising its functions under this Act, and the extent to which the Authority may pay an amount for any particular purpose.

PART 8—GENERAL

Division 1—Proceedings for offences

Clause 127 provides that an offence against clauses 77, 78(1), 79(1), 81(1) or 82 is an indictable offence and that any other offence against this Act is a summary offence.

Clause 128 sets out circumstances and proceedings for an indictable offence against this Act. The maximum penalty an indictable offence dealt with summarily that may be imposed is 200 penalty units or 3 years imprisonment.

Clause 129 sets out court proceedings must be before a magistrate and if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 130 sets out that a proceeding or an offence against this Act by way of summary proceeding under the *Justices Act 1886* must be started within 1 year after the offence is committed; or 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Clause 131 provides that for an offence against clause 97 or 98, it is enough to show that the information or document was 'false or misleading' without specifying which.

Clause 132 sets out the evidentiary provisions and provides for some appointments, persons powers and signatures to be presumed, unless a party, by reasonable notice requires proof. It provides for a statement by the prosecutor or the informant as evidence of an address, telephone number or post office box number and a person's age at the time of an offence. A certificate purporting to be signed by the registrar is evidence that a document is a licence or a certificate; or that a person was or was not a licensee or an approved manager; or that a licence was or was not issued for a specified term, or was or was not in force on a specified day or during a specified period; or that a document is a copy of a record kept under this Act.

Division 2—Other matters

Clause 133 creates an offence if an official discloses information obtained by him or her in the administration of this legislation. This clause also, provides a number of exceptions when the disclosure will not be an offence.

Clause 134 provides an official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. Instead, civil liability attaches to the State. A definition of official is included.

Clause 135 allows a health service provider to refuse to give any document or information, or answer any question, in relation to an investigation of, or prosecution for, an offence against this Act on the ground that it would disclose information gained in providing a health service.

Clause 136 requires the commissioner to destroy any identifying particulars when an application is refused.

Clause 137 provides the *Freedom of Information Act 1992* does not apply to a document given to or produced by the Authority.

Clause 138 provides that the *Judicial Review Act 1991*, part 4 (Reasons for decision) does not apply to a decision of the Authority if the Supreme Court makes an order to that effect. The Authority may apply to the court for an order when the disclosure of reasons may endanger the life or well being of someone; reveal the identity of an informant; prejudice the investigation or prosecution of persons for an offence against this Act; or prejudice the proper administration of this Act; the application must be heard in private and without notice to the person seeking reasons for the decision. The Authority must give the person seeking reasons for the decision a copy of the court's order.

Clause 139 provides that the commissioner may approve forms.

Clause 140 is the regulation making power. It provides for regulations to be made about a range of matters under the Act including fees, advertising, a code for IDAS for development applications mentioned in part 4, a code of practice for licensed brothels, the documents including financial statements to be given to the Authority and when they are to be given; and the auditing of financial statements.

Clause 141 states that the Criminal Justice Commission must, as soon as practicable, 3 years after the commencement of this section, review the effectiveness of this Act and give a confidential report to the Minister responsible for administering this legislation and no one else. This section is subject to the *Criminal Justice Act 1989*, section 118X (Confidentiality obligations not to apply to the disclosure of information to the parliamentary commissioner).

PART 9—AMENDMENT OF LIQUOR ACT 1992

Clause 142 provides this part amends the *Liquor Act 1992*.

Clause 143 amends the title to read 'An Act to regulate the sale and supply of liquor and the provision of adult entertainment'.

Clause 144 amends the objects of the Act to include regulation of the provision of adult entertainment.

Clause 145 amends section 4 of the *Liquor Act 1992* and inserts definitions for adult entertainment, approved area, assistant commissioner, associate, code, commissioner, controller, family, interest in a brothel, licensed brothel, and prostitution.

Clause 146 inserts a new section 4C into the *Liquor Act 1992* which defines the meaning of an associate.

Clause 147 amends section 97 of the *Liquor Act 1992* with respect to available permits and inserts an adult entertainment permit.

Clause 148 inserts a new Division 13A—'Adult entertainment permit', into the *Liquor Act 1992*

Division 13A—Adult entertainment permit

The new section 103E provides for an adult entertainment code (the code) to prescribe the live entertainment that may be performed for an audience, by a person performing an act of an explicit sexual nature (adult entertainment) on licensed premises or premises to which a general purpose permit or restricted club permit relates under an adult entertainment permit. Adult entertainment does not include the performance of sexual intercourse, masturbation, or oral sex. The section sets out the process for making and approving the code and its availability for inspection.

The new section 103F states that a person is eligible for an adult entertainment permit only if the person is a licensee or the holder of a general purpose permit or restricted club permit. This does not limit another requirement about who may apply for, or the grant of, an adult entertainment permit under part 5.

The new section 103G provides an adult entertainment permit authorises the permittee to provide adult entertainment only in an approved area during specified hours. Adult entertainment may only be provided in 1 approved area of the premises at any time.

The new section 103H requires an approved area to be fully enclosed in a way that prevents a person outside the area from seeing inside the area; not to contain a booth, compartment, lounge for the private use of persons attending the entertainment, or cubicle, other than a toilet cubicle; to meet other requirements prescribed under a regulation.

The new section 103I provides that an adult entertainment permit is issued for the term stated in it, not longer than 1 year, unless it is sooner surrendered, cancelled or suspended and is not renewable and is not transferable.

The new section 103J provides that an adult entertainment permit issued for licensed premises or for premises to which a general purpose permit or restricted club permit relates ends when the relevant liquor licence or permit ends.

Clause 149 provides for an amendment of section 104 of the *Liquor Act 1992* which provides that the time for consumption or removal of liquor will end when the adult entertainment permit ends.

Clause 150 amends section 106 of the *Liquor Act 1992* and allows an adult to apply for a licence or permit for or on behalf of an unincorporated association. It prohibits a person who holds a brothel licence, or who has an interest in a licensed brothel, from applying for or holding a liquor licence or liquor permit.

Clause 151 provides that a reference to a permit in section 107 of the *Liquor Act 1992* (Restrictions on grant of licence or permit) does not include an adult entertainment permit.

Clause 152 inserts new sections 107A to 107C in the *Liquor Act 1992*. Section 107A provides when the chief executive may grant an adult entertainment permit. It requires the chief executive to be satisfied that the applicant is a suitable person to provide adult entertainment at the premises, and that the character of the locality will not be substantially affected because of the existence of other licensed brothels or adult entertainment venues. The chief executive must also be satisfied that the approved area conforms with the requirements in the Act and that an appropriate management plan is in place.

Section 107B lists some of the matters the chief executive must consider when assessing the applicant's suitability. These provisions are similar to the brothel licensee provisions. If the applicant has nominated a nominee for the applicant's licence or general purpose permit or restricted club permit, the chief executive must also consider the suitability of the nominee.

Section 107C requires the chief executive to refer the application with relevant particulars to the commissioner for consideration and recommendation. The Commissioner's report may include references to

offences that would normally be excluded through the operation of the *Criminal Law (Rehabilitation of Offenders) Act 198*

Clause 153 amends section 108 of the *Liquor Act 1992* (More than licence may be held) to include an adult entertainment permit.

Clause 154 amends section 109 (Nominees) and requires nominees to be responsible for ensuring that adult entertainment is conducted according to the Act.

Clause 155 inserts a new section 109AA (Controllers). A licensee or permittee may nominate a controller to supervise the adult entertainment. The chief executive must assess the suitability of the controller (in much the same way as the applicant for an adult entertainment permit is assessed) and the nomination has no effect until it is authorised by signed notice from the chief executive.

Clause 156 is a technical amendment to section 110, substituting the new definition of assistant commissioner.

Clause 157 amends section 117 of the *Liquor Act 1992* to require the chief executive to advise the local government and the assistant commissioner for the police service in the locality of an application for an adult entertainment permit and allow them an opportunity to comment on the application.

Clause 158 is a technical amendment to section 121, substituting the new definition of assistant commissioner.

Clause 159 is a technical amendment to section 121A, substituting the new definition of assistant commissioner.

Clause 160 amends section 134 of the *Liquor Act 1992* (Cancellation, suspension or variation of permits) to allow the provision to also apply to adult entertainment permits. The section also provides circumstances in which changes to control or ownership of the premises will result in cancellation of the adult entertainment permit

Clause 161 amends section 135 of the *Liquor Act 1992* (Summary cancellation, suspension or variation) to include the action that must be taken with respect to adult entertainment permits when a licence or permit for liquor is cancelled, suspended or varied.

Clause 162 inserts a new heading in the *Liquor Act 1992*, Division 1—Provisions binding licensees, permittees, employees and agents.

Clause 163 inserts a new section 143A in the *Liquor Act 1992*. It creates an offence for a permittee who holds an adult entertainment permit who fails at all times when adult entertainment is being provided in the approved area for entertainment to display a sign stating that adult entertainment is being provided in the area, that minors must not enter the area and anything else prescribed under a regulation.

It also creates an offence for a permittee to fail to ensure that the sign is conspicuously displayed at every entrance to the area or that the characters on the sign are legible and are not less than 50 mm high.

Clause 164 inserts new sections 149A and 149B in the *Liquor Act 1992*. Section 149A creates an offence if a licensee or permittee provides adult entertainment without a permit.

Section 149B creates an offence if a licensee, permittee, nominee or a controller fails to ensure that adult entertainment is supervised and provided in accordance with the *Liquor Act 1992* and the conditions of the permit.

Clause 165 inserts a new section 155A into the *Liquor Act 1992*. It creates an offence if the licensee, permittee, nominee or controller fails to ensure that a minor is not in the approved area when adult entertainment is being provided.

Clause 166 inserts a new section 168A into the *Liquor Act 1992*. It creates an offence if a person publishes an advertisement for adult entertainment that describes the sexually explicit nature of the acts performed in the entertainment.

If it is proved to a court that an advertisement has been published in relation to adult entertainment, the advertisement is evidence that a licensee or permittee caused the advertisement to be published. 'Advertisement' and 'publish an advertisement' are defined for the section.

Clause 167 inserts a specific penalty for a contravention of a condition of an adult entertainment permit.

Clause 168 inserts a new section 233A in the *Liquor Act 1992*, which is an evidentiary provision allowing a certificate signed by the chief executive or commissioner, stating that an act of adult entertainment is or is not in accordance with the prescribed code to be admissible as evidence of anything stated in the certificate.

PART 10—AMENDMENTS OF THE CRIMINAL CODE

Clause 169 states that this part amends the Criminal Code.

Clause 170 amends section 1 of the Code (Construction of terms) to omit the definition of sexual act and to include definitions of adult entertainment, adult entertainment permit, approved manager, brothel licence, licensed brothel and licensee.

Clause 171 amends section 218 to include the definition of sexual act that has always applied to this section.

Clause 172 amends section 227 by excluding from the indecent act offence, a person who does an indecent act under the authority of an adult entertainment permit.

Clause 173 omits sections 229D and 229E and inserts new sections. Section 229D defines sexual intercourse for chapter 22A to include either or both of the following activities—

- the penetration, to any extent, of the vagina, vulva or anus of a person by any part of the body of another person;
- the penetration, to any extent, of the vagina, vulva or anus of a person, carried out by another person using an object.

In this section, penetration does not include penetration carried out for a proper medical, hygienic or law enforcement purpose.

Section 229E defines prostitution. A person engages in prostitution if the person engages, or offers to engage, in the provision to another person, under an arrangement of a commercial character, of sexual intercourse, masturbation, oral sex (meaning bringing the mouth into contact with the genitals or anus of another person), any activity, other than sexual intercourse, masturbation, or oral sex, that involves the use of 1 person by another for his or her sexual satisfaction involving physical contact. It applies equally to males and females. It is immaterial whether the arrangement is initiated with the person engaging in the provision of the activity or a third person or the pecuniary or other reward under the arrangement is to be received by the person engaging in the provision of the activity or a third person. A person does not engage in prostitution under the fourth limb of the definition if person is providing adult entertainment in

accordance with the permit.

Clause 174 amends section 229G by inserting new subsections to provide that a licensee or approved manager is not guilty of procuring prostitution only because he or she has employed a prostitute who is an adult and not an intellectually impaired person. It does not matter whether the prostitute is employed under a contract of service or a contract for service.

Clause 175 amends section 229H to provide that a person is not guilty of participating in prostitution if the prostitution occurs in a licensed brothel in accordance with the brothel licence for the brothel and does not involve a child or an intellectually impaired person. Also, a person who participates in adult entertainment in accordance with a permit is not guilty of this offence.

The amendment also allows an authorised security provider under the *Security Providers Act 1993* to provide services as a bodyguard for a single prostitute who is an adult and is not an intellectually impaired person without committing an offence of participating in prostitution.

Clause 176 amends section 229I so that it is not an offence to be found on the premises of a licensed brothel unless a child or intellectually impaired person is, to the person's knowledge or without reasonable excuse, also on the premises.

Clause 177 provides that it is not an offence for an interested person to allow premises to be used as a licensed brothel, unless a child or intellectually impaired person was, to the interested person's knowledge, on the premises at the time he or she allowed the premises to be so used.

PART 11—AMENDMENTS OF OTHER ACTS

Clause 178 provides schedule 3 amends the Acts and regulations mentioned in it.

SCHEDULE 1**DISQUALIFYING OFFENCE PROVISIONS UNDER
THE CRIMINAL CODE**

1. Section 87 (Official corruption)
2. Section 121 (Official corruption not judicial but relating to offences)
3. Section 300 (Unlawful homicide)
4. Section 347 (Rape)
5. Section 351 (Abduction)
6. Section 354 (Kidnapping)
7. Section 354A (Kidnapping for ransom)
8. Section 415 (Demanding property, benefit or performance of services with threats)
9. Any offence in Chapter 22 (Offences against morality). if the offence relates to a child or intellectually impaired person.
10. Any offence in Chapter 22A (Prostitution), if the offence relates to a child or intellectually impaired person.

SCHEDULE 2**DISQUALIFYING OFFENCE PROVISIONS UNDER
THE MIGRATION ACT 1985 (CWLTH)**

1. Section 233 (Persons concerned in bringing non-citizens into Australia in contravention of Act or harbouring illegal entrants)
2. Section 234 (False papers etc.)

3. Section 235 (Offences in relation to work)
4. Section 236 (Offences relating to visas)
5. Section 240 (Offence to arrange marriage to obtain permanent residence)
6. Section 241 (Offence to arrange pretended de facto relationship to obtain permanent residence)
7. Section 242 (Offence to arrange interdependency relationship to obtain permanent residence)
8. Section 243 (Offences relating to an application for permanent residence because of marriage or de facto relationship)
9. Section 244 (Offences relating to application for permanent residence because of interdependency)
10. Section 245 (Offences of making false or unsupported statements)
11. Section 280 (Restrictions on giving of immigration assistance)
12. Section 281 (Restriction on charging fees for immigration assistance)
13. Section 282 (Restriction on charging fees for immigration representatives)
14. Section 283 (False representation that a person is a registered agent)
15. Section 284 (Restriction on self-advertising of the giving of immigration assistance)
16. Section 285 (Restriction on other advertising of immigration assistance)

SCHEDULE 3**AMENDMENT OF OTHER ACTS AND
REGULATIONS****CRIMINAL LAW (REHABILITATION OF
OFFENDERS) ACT 1986**

1. This amendment in effect excludes the operation of the Act with respect to an applicant for a brothel licence or to be an approved manager under the *Prostitution Act 1999* and an applicant for an adult entertainment permit, or the proposed controller under the provisions of the *Liquor Act 1992*.

FREEDOM OF INFORMATION ACT 1992

1. This amendment inserts the *Prostitution Act 1999*, section 133 into Schedule 1.

INTEGRATED PLANNING ACT 1997

1. This amendment to schedule 8, part 1, inserts making a material change of the use of premises for a licensed brothel.
2. This amendment to schedule 8, part 4, inserts a meaning for a licensed brothel, see the *Prostitution Act 1999*.

INTEGRATED PLANNING REGULATION 1998

1. This amendment to schedule 1 states that making a material change of the use of premises for a brothel in an industrial area is code assessable. In other than in an industrial area it is impact assessable, unless a local planning instrument or amendment of a local planning instrument made after the commencement of this section requires code assessment.

JUDICIAL REVIEW ACT 1992

1. New section 5B is inserted into Schedule 2 to give effect to section 138 of the *Prostitution Act 1999*.

POLICE POWERS AND RESPONSIBILITIES ACT 1997

1. This inserts into section 83, an amendment that this division allowing 'move on' powers to also apply to a person if a police officer reasonably suspects the person is soliciting for prostitution in a prescribed place.
2. Schedule 3, definition of prescribed place is omitted and new provision is inserted for part 11 (Power to give directions in notified areas and other places) in relation to soliciting for prostitution, means any public place to which the public has access, whether on payment of a fee or otherwise, but does not include any area in a licensed brothel that cannot be viewed from outside the brothel. In addition, for the rest of part 11, means a shop, a child-care centre, a pre-school centre, a primary, secondary or special school, premises licensed under the *Liquor Act 1992*, a railway station and any railway land around it, an automatic teller machine, or a place declared under section 87 (Declaration of notified areas) to be a notified area.

VAGRANTS, GAMING AND OTHER OFFENCES ACT 1931

1. The definition of prostitution in section 2 is omitted, the new definition being in the Criminal Code.
2. Sections 18A to 18C are omitted. These sections are now included, with some amendments, in the prostitution legislation.

SCHEDULE 4

DEFINITIONS

Definitions are provided for adult entertainment permit, approved form, approved manager, approved manager's certificate, associate, authorised officer of a relevant local government, Authority, brothel, brothel licence, certificate, commissioner, conviction, corresponding law, Council, crime commissioner, criminal history, development permit, disciplinary inquiry, disqualifying offence, executive officer, family, fund, IDAS, identifying particulars, insolvent under administration, interest in a brothel, licence, licensed brothel, licensee, notice, operate, prostitution, registrar sexually transmissible disease and spouse.

Some of the key concepts defined are:

- A disqualifying offence, means an offence under the: *Crimes (Confiscation) Act 1989*, section 90 (Money laundering); *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs); against a provision of the Criminal Code mentioned in schedule 1; against a provision of the *Migration Act 1958* (Cwlth) mentioned in schedule 2; or that, if committed in Queensland, would be a disqualifying offence.

- Family of an individual, consists of the individual's spouse; each of the individual's children who is 18 years or more, including a stepchild, an adopted child and a person for whom the adult was foster-parent or guardian when the person was a child; each of the individual's parents, including a step-parent, foster-parent and guardian; each of the individual's siblings who is 18 years or more, including a step-sibling and foster-sibling.
- Identifying particulars means palm prints, fingerprints, handwriting, voiceprints, footprints, and includes photographs of a person's identifying features (for example, photographs of scars or tattoos, photographs of the person).
- Sexually transmissible disease means chancroid, donovanosis, genital chlamydia, genital herpes (when lesions are visible), genital warts (when lesions are visible), gonorrhoea, human immunodeficiency virus (HIV), lymphogranuloma venereum, syphilis, another disease or condition prescribed under a regulation.