

PROSTITUTION AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to:

- improve the processes for determining applications for development approvals for brothels;
- improve the processes for determining applications for brothel licences; and
- amend the Act to clarify existing provisions and address operational issues.

Reasons for the objectives and how they will be achieved

The *Prostitution Act 1999* (the Act) substantively commenced in July 2000. The purpose of the Act was to achieve strict regulation of the prostitution industry in the interests of promoting health and safety in the industry, and limiting the adverse effects of the industry on society. To achieve this the Act restricts legal prostitution to small licensed brothels and individual sex workers.

The regulatory framework for brothels is comprised of two components – one dealing with the licensing of brothel operators by the Prostitution Licensing Authority and the other with the development assessment of sites for use as brothels, which is administered by local governments.

The Bill improves the processes for determining applications for development approvals for brothels by local governments by:

- defining the term “industrial area”, which is the basis upon which a local government determines whether a development application for a brothel is code assessable or impact assessable;
- specifying how the exclusionary distances from residential areas and other places are to be measured; and

- creating a streamlined review process for decisions about code assessable applications.

The Bill improves the processes for determining applications for brothel licences by:

- providing that the Prostitution Licensing Authority is not obliged to consider an application until development approval is granted;
- changing the mandatory prohibition on applicants with a conviction for running a brothel obtaining a brothel licence, to a matter which the Prostitution Licensing Authority must consider in assessing the suitability of applicants; and
- updating the list of disqualifying offences and extending it by providing that attempts to commit any of the listed offences are also disqualifying offences.

The Bill also addresses difficulties confronted by police when seeking a declaration that premises are a prohibited brothel that have emerged since the commencement of the Act.

Administrative cost to Government for implementation

There will be no additional administrative cost to Government as a result of the amendments in the Bill. The costs of registrar support and fees for the independent assessor will be absorbed within existing budget.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

Consultation has taken place with the Local Government Association of Queensland, the Prostitution Licensing Authority, the Prostitution Advisory Council and relevant government departments including the Department of Local Government and Planning. There is support for the Bill.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Act.

Clause 2 states that the Act commences on a day to be fixed by proclamation.

Clause 3 states that the Act, other than s.24, amends the *Prostitution Act 1999*. The proposed s.24 makes minor consequential amendments to the *Integrated Planning Act 1997*.

Clause 4 amends s.15 of the Act to enable the Prostitution Licensing Authority to defer considering an application for a licence until such time as the assessment manager gives development approval for a material change of use of the premises to which the application relates for a brothel.

Clause 5 amends the circumstances in which the Prostitution Licensing Authority must refuse to grant a licence in s.16 of the Act by omitting reference to circumstances where the applicant has been convicted of an offence, the facts of which constitute the running of a brothel.

Clause 6 provides that the relevant matters that must be considered by the Prostitution Licensing Authority when deciding whether an applicant is a suitable person to operate a licensed brothel in s.17 of the Act include whether the applicant has been convicted of an offence, the circumstances of which constitute the running of a brothel.

Clause 7 amends the circumstances in which the Prostitution Licensing Authority must refuse to grant a certificate in s.41 of the Act by omitting reference to circumstances where the applicant has been convicted of an offence, the circumstances of which constitute the running of a brothel.

Clause 8 provides that the relevant matters that must be considered by the Prostitution Licensing Authority when deciding whether an applicant is a suitable person to be an approved manager of a licensed brothel in s.42 of the Act include whether the applicant has been convicted of an offence, the circumstances of which constitute the running of a brothel.

Clause 9 replaces s.62 of the Act. It creates Division 1—Preliminary and defines certain terms for the purposes of Part 4 of the Act.

Clause 10 amends s.63 of the Act by omitting the word “licensed” from the words “licensed brothel”. The purpose of the amendment is merely to reflect the dichotomy of the two components comprising the regulatory framework for brothels, namely the assessment of applications for development approvals by local government and the licensing of brothel

operators by the Prostitution Licensing Authority. Consequential amendments have also been made to the *Integrated Planning Act 1997* where the term licensed brothel is used (see Clause 24). The amendment is consistent with current planning terminology.

Clause 11 inserts new sections affecting the manner in which an application for a development approval for a brothel must be determined as follows:

- s.63A describes the relationship between the Act and the *Integrated Planning Act 1997* in relation to the assessment by local government of applications for a development approval for a brothel. In essence, while the provisions of the *Integrated Planning Act 1997* are to apply to such applications, the Act prevails to the extent of any inconsistency with the *Integrated Planning Act 1997*. Further, s.63A defines the term “industrial area” for the purposes of the application of the *Integrated Planning Act 1997* to a development application. It is intended that the definition of the term “industrial area” in s.63A also applies to the term as it is used in the *Integrated Planning Regulations 1998*, consistent with section 7 of the *Acts Interpretation Act 1954* which provides that in an Act, a reference to a law includes a reference to a statutory instrument made or in force under the law. The definition makes it clear through the use of examples that industrial areas are not limited to heavy industry;
- creates Division 2—Particular provisions about development applications; and
- s.63B requires the assessment manager of a development application to give the Prostitution Licensing Authority a copy of the application, and a copy of the written notice provided to the applicant stating whether the development application is code assessable or impact assessable within 10 business days after receiving the application.

Clause 12 amends s.64 of the Act to clarify the provisions preventing brothels being located near certain residential areas, residential buildings, places of worship, hospitals, schools, kindergartens, or any other facilities or places regularly frequented by children for recreational or cultural purposes, as follows:

- when determining whether land the subject of the application is in, or within, 200m of any of the above areas, buildings, facilities

or places the distance is to be calculated from the closest point of any boundary of the area or the land upon which there is a building, facility or place;

- the distance of 200m is to be measured according to the shortest route a person may reasonably and lawfully take, by vehicle or on foot, between the land the subject of the application and the other land;
- in addition to the above, if land the subject of the application is within 100m measured in a straight line of the closest point of any boundary of the land upon which there are any of the above buildings, facilities or places, the application must also be refused; and
- a caretakers residence on land in an industrial area is not a residential building.

Clause 13 enables decisions about code assessable development applications to be reviewed by an independent assessor, rather than the Planning and Environment Court. Appeals against applications for development approval for a brothel that are impact assessable are to remain within the jurisdiction of the Planning and Environment Court.

Sets out new divisions of Part 4 of the Act. The proposed new sections of these divisions are set out below.

Division 3—Objects of appeals divisions

Section 64A states that review of decisions is to be conducted in a manner that is easily accessible, fair, speedy and just.

Division 4—Independent assessor

Section 64B addresses the appointment of an independent assessor.

Section 64C enables an acting independent assessor to be appointed by the Minister in certain circumstances. The power to appoint includes the incidental powers listed in s.25 of the *Acts Interpretation Act 1954*.

Section 64D provides for remuneration of the independent assessor.

Section 64E states that the independent assessor is not subject to control or direction by anyone.

Section 64F establishes the independent assessor's jurisdiction. The decisions that may be appealed to the independent assessor are listed in s.64K.

Section 64G prevents the independent assessor hearing and deciding an appeal where there is a conflict of interest.

Section 64H provides the independent assessor, persons representing a party before the independent assessor or a person making oral submissions, the same protection as would apply in the Supreme Court.

Section 64I establishes a registrar for appeals to the independent assessor.

Section 64J enables delegation of certain functions by the independent assessor to the independent assessor's registrar.

Division 5—Appeals

Section 64K describes the matters that may be appealed by an applicant to the independent assessor. Section 64K also excludes the jurisdiction of the Planning and Environment Court in relation to any such appeal, except for an application for a declaration to the Planning and Environment Court about the meaning, effect or enforcement of a condition of a development approval.

Division 6—Starting an appeal

Section 64L describes how an appeal is to be started.

Section 64M empowers the assessor's registrar to give notice of the appeal to the assessment manager and to the Prostitution Licensing Authority.

Section 64N suspends a code assessable development approval until an appeal is started or concluded.

Section 64O requires the assessment manager to give the assessor's registrar any material requested by the assessor's registrar.

Division 7—Procedure

Section 64P provides that in deciding an appeal, the independent assessor need not proceed in a formal way, is not bound by the rules of evidence, must comply with natural justice, may inform him or herself as considered appropriate, may seek the views of any person and may give necessary directions about the conduct of the appeal.

Section 64Q enables the independent assessor to allow a longer time for the taking of a step in the appeal other than the time for starting an appeal.

Section 64R provides that each party must bear its own costs for the appeal.

Section 64S describes a process for the determination of an appeal. The procedures in s.64S are subject to the general provisions in s.64P and the extension of time provisions in s.64Q. The process described in s.64S involves the following steps:

- the independent assessor makes a preliminary assessment of the decision being appealed against within 10 business days after receiving material from the assessment manager;
- a copy of the preliminary assessment is provided to the appellant and the respondent;
- the applicant and the respondent have 10 business days to make written submissions about the assessment; and
- the independent assessor decides the appeal within 5 business days after the end of the period for making written submissions.

The independent assessor may extend the time for deciding the appeal where appropriate, for example, to allow parties to make oral submissions or where the appeal is complex.

Section 64T requires the independent assessor to decide the appeal on the law and policies applying when the application was made, and the materials provided to the assessment manager. However, to ensure that relevant new material can be considered, s.64T provides that the independent assessor may also consider new material submitted by the parties to the appeal if the independent assessor is satisfied that the new material will help decide the appeal.

Section 64U describes the orders that the independent assessor may make in deciding an appeal, and requires the independent assessor to give all parties to the appeal notice of the independent assessor's decision and

the reasons for the decision. This section also makes clear that there is no appeal against a decision of the independent assessor under the Act or the *Integrated Planning Act*. Section 64U is not intended to exclude an judicial review of a decision of the independent assessor pursuant to *the Judicial Review Act 1991*.

Division 8—General

Section 64V enables parties to inspect and copy documents in the independent assessor's possession for the purposes of an appeal.

Clause 14 amends s.65 of the Act. Section 65 currently enables a police officer and other persons to apply to a Magistrates Court for an order declaring that particular premises are a prohibited brothel. The amendment to s.65:

- will enable a police officer to apply for a temporary declaration before a proceeding for a s.66 declaration is started or ends; and
- states that an application for a temporary declaration by a police officer may be made to a magistrate, and if so is a prescribed authority for the *Police Powers and Responsibilities Act 2000*, sections 451 to 453 (which enable police officers to apply for a prescribed authority (such as a warrant) by phone, fax, radio or other similar facility in urgent circumstances or other special circumstances including the police officer's remote location).

Clause 15 amends s.66 to enable the court to declare premises to be a prohibited brothel if it is satisfied that on the day stated in the application (rather than on the day of the hearing) a person was operating a brothel without a licence at the premises, or the premises were being used for a brothel in contravention of the *Integrated Planning Act 1997*.

Clause 16 inserts a new s.66A into the Act that describes the circumstances in which a court or magistrate may make a temporary declaration, the application for which is provided for in s.65. Section 66A also limits the period of a temporary declaration to until such time as a s.66 declaration is made, or the application for the declaration is withdrawn or dismissed.

Clause 17 amends s.67 to describe the publication requirements for a temporary declaration.

Clause 18 extends the evidentiary provisions in s.132 of the Act to the independent assessor.

Clause 19 extends the disclosure of information provisions in s.133 of the Act to the independent assessor, and the assessor's registrar.

Clause 20 extends the protection from liability provisions in s.134 of the Act to the independent assessor.

Clause 21 inserts a new s.138A that enables the Prostitution Licensing Authority to delegate powers of the Authority under the Act to the registrar, other than power to grant, renew or cancel a licence. S.138A implements a recommendation of the Queensland Audit Office to insert a power of delegation by the Prostitution Licensing Authority into the Act.

Clause 22 amends Schedule 1 to the Act. A person is ineligible to apply for a brothel licence if the person has been convicted of a disqualifying offence. The term "disqualifying offence" is defined in Schedule 4 (Dictionary) to the Act, and includes an offence against a provision of the Criminal Code mentioned in Schedule 1. Clause 22 amends Schedule 1 to include the offences of attempt to murder and attempt to commit rape. Schedule 1 is also amended to reflect amendments to the Criminal Code arising from the *Criminal Law Amendment Act 2000*, namely the omission from the Code of the offence of abduction (s.351), and the renumbering of the offence of rape (from s.347 to s.349). Further amendments to the definition of "disqualifying offence" are contained in clause 23.

Clause 23 defines certain words for the purposes of the Act including disqualifying offence, which is amended to include attempts to commit, as well as conspiring, counselling or procuring to commit a disqualifying offence.

Clause 24 makes consequential amendments to the *Integrated Planning Act 1997* to ensure consistency with the Act in the use of the term "brothel" rather than "licensed brothel".

SCHEDULE

Minor amendments.