

Prostitution and Other Acts Amendment Bill 2009

Explanatory Notes for Amendments during consideration in detail

General Outline

Short Title

The short title of the Bill is the Prostitution and Other Acts Amendment Bill 2009.

Objective of the Legislation

The objective of the legislation is to move an amendment during consideration in detail to the Prostitution and Other Acts Amendment Bill 2009 to create an offence for a person to obtain prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult.

Reasons for the Bill

Prostitution is legal in Queensland in two ways – licensed brothels can provide legal in-calls (from rooms within the licensed brothel) and sole operators can provide legal in-calls from their own home and outcalls in a place other than the prostitute's own home. The licensed brothel industry is highly regulated by the *Prostitution Act 1999*. Chapter 22A (Prostitution) of Queensland's Criminal Code provides for a number of offences in relation to prostitution.

Queensland prohibits the exploitation of minors in the prostitution industry. A licensee or approved manager of a licensed brothel, or his or her agent, does not commit the offences of procuring prostitution (section 229G of the Code), participating in provision of prostitution (section 229H); and the various 'premises' offences (section 229I, 229K and 229L). However, the exemption does not apply where a child is employed to work as a prostitute. Further, the Criminal Code applies increased penalties for the

offences relating to illegal prostitution where a minor is involved (s 229G, 229H, 229I, 229K).

There are no provisions criminalising the behaviour of a client who uses the services of a sixteen or seventeen year old sole-operator prostitute, unless anal intercourse is engaged in, in which case the offence of sodomy applies. Further, a person who uses the services of a child under 16 years of age commits the offence of unlawful carnal knowledge or indecent treatment of a child, depending on the sexual activity engaged in.

All other Australian States and Territories and New Zealand criminalise the behaviour of a person who uses the services of a minor prostitute regardless of whether the minor is an employee or sole operator.

Young people who are exchanging sex with adults for financial reward and who are at risk of harm can already be the subject of a child protection report. While a young person aged 16 or 17 may legally be able to have consensual sex, the exchange of sex for money or some other form of financial or material consideration raises real concerns of exploitation, including potential power imbalances between the young person and their older client. Further, while an adult may well be considered as capable of making the decision to enter into a commercial sexual arrangement, a young person aged 16 or 17 is still emotionally vulnerable and should, as a matter of policy, be protected from the risk of potential harm.

The amendment to the heading in section 229G is technical in nature and reflects the content of the section.

Achievement of the Objective

The legislation will amend the Criminal Code to create an offence for a person (a *client*) who obtains prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult. A maximum penalty of imprisonment for 7 years will apply. If the person who provides the prostitution is under 16 years, the offender is liable to a maximum penalty of 14 years imprisonment.

Alternative Means of Achieving Policy Objectives

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

Estimated Cost for Government Implementation

Any increase will be addressed through existing budgets or, if necessary, future budget processes.

Consistency with Fundamental Legislative Principles

Penalties of appropriate levels

New section 229FA creates an offence which applies to persons who obtain prostitution from a child. The aggravated penalty of 14 years is consistent with current penalties applying for the Criminal Code offences of indecent treatment and unlawful carnal knowledge of a child over 12 years of age.

The lower maximum penalty of seven years for offences involving children 16 years and over reflects the fact that consensual sexual intercourse (excluding anal intercourse) with a child of this age that does not involve a commercial transaction is legal. This penalty is also within the penalty range for similar offences in other Australian jurisdictions.

Consultation conducted in Development of the Bill

The following Government departments were consulted during the preparation of the Bill:

- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General; and
- Prostitution Licensing Authority.

Notes on Provisions

Part 1 Preliminary

Amendment of the Prostitution and Other Acts Amendment Bill 2009

Act amended

The Prostitution and Other Acts Amendment Bill 2009 is to be amended during consideration in detail and moved by the Honourable the Minister for Police, Corrective Services and Emergency Services.

Clause 1 of the amendment inserts after clause 15 of the Bill (the new section 229F) the further new section 229FA.

Clause 2 omits in clause 229F from line 23 the word 'business' and inserts the word 'business. This amendment is technical in nature and follows the standard drafting style.

Clause 2 also inserts new section **229FA (Obtaining prostitution from person who is not an adult)**.

Clause 2(1) provides that a person (a *client*) who obtains prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult, commits a crime for which the offender is liable to a maximum penalty of imprisonment for 7 years.

Clause 2(2) provides that if the person who provides the prostitution is under 16 years, the offender is liable to a maximum penalty of 14 years imprisonment.

Clause 3 inserts new clause 15A that amends the title of section **229G (Procuring prostitution)** by rewording the heading to read **(Procuring engagement in prostitution)**. This amendment is technical in nature and reflects the content of the section.