

## Queensland



### Regulatory Impact Statement for SL 2000 No. 176

#### *Prostitution Act 1999*

## PROSTITUTION REGULATION 2000

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### SUMMARY

The proposed Regulation is to give full effect to the *Prostitution Act 1999* provisions which require further details on how the obligations imposed by the Act may be achieved. Without the proposed Regulation the operation of the *Prostitution Act 1999* which fully commences on 1 July 2000 would not be achieved.

The overarching policy objectives and the reasons for those objectives with respect to the proposed Regulation are within the principles outlined in the framework that guided the regulation of prostitution culminating in the development of the *Prostitution Act 1999*.

#### **Advertising**

The *Prostitution Act 1999* sets out advertising requirements for licensed brothels, however, the proposed Regulation also requires that all advertising be approved by the Prostitution Licensing Authority (PLA).<sup>1</sup> The approval will give the Government some control over the standard of advertising and will ensure that there is an overall consistency in advertising standards and will ensure the nuisance element in relation to advertising prostitution is kept

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<sup>1</sup> Amongst other things, the PLA has responsibility for deciding licence applications, approved manager applications, to monitor the provision of prostitution through licensed brothels, to conduct disciplinary inquiries with respect to licensees and managers and to receive complaints about prostitution.

under control. The provisions on advertising in the proposed Regulation are part of the Government's commitment in principle, to ensure quality of life for local communities.

### **Code for IDAS**

The prostitution legislation reform proposal sought to legalise brothels within strict planning and licensing parameters. The *Prostitution Act 1999* restricts the size of brothels and their locality. Development applications are approved through local councils and to assist them in this role and to ensure the continued existing quality of life in local communities the proposed Regulation provides a code for IDAS (Integrated Development Assessment System).

The provision of a code for IDAS removes uncertainty for Local Councils in determining brothel development applications and provides confidence to the Government that development applications are being determined with some consistency State-wide. The community benefits through having development applications meet set standards of quality.

### **Anti-corruption**

Strong government leadership is characterised by constant vigilance against corruption and organised crime. A fundamental principle underlying the *Prostitution Act 1999* was the Government's strong commitment to ensuring corruption would not be tolerated through illegal prostitution by establishing a legalised industry and the introduction of appropriate checks and balances.

One of the anti-corruption measures in the Act is the requisite recording of details by the PLA in relation to licensed brothel inspections by police officers. The proposed Regulation prescribes the actual details that must be recorded.

Community members have the knowledge that inspections are being conducted in a controlled manner and that appropriate records are being kept. Should community members become concerned with the operation of a particular brothel they may contact the PLA. The Authority will have a ready resource to ascertain the policing of that particular brothel and the need to take remedial action if necessary.

Another measure is the keeping and producing of financial records to the PLA upon requirement. The proposed Regulation prescribes the kind of financial records to be kept and produced.

### **Health checks**

Another principle that guided development of the legislative framework for prostitution was ensuring a healthy society. There are perceived health risks associated with the sex industry, particularly in relation to sexually transmitted infections.

One of the strategies of the *Prostitution Act 1999*, is to ensure that the health status of prostitutes is regularly monitored and that health risks to prostitutes, their clients and the community are minimised and that there be an onus upon brothel licensees or approved managers to ensure such examinations or tests are undertaken. Community members have the comfort of knowing that brothel licensees and prostitutes working for licensed brothels are conducting themselves in a responsible manner in maintaining the community health from their perspective. The Regulation contributes to this strategy by prescribing the interval times for medical examinations or tests to ascertain whether a prostitute is infected.

### **Promoting safety**

Promoting safety also was an underlying principle of prostitution legislation reform. While the personal safety risks associated with prostitution are difficult to quantify, it is clearly an occupation in which people are at risk of physical violence. Prostitutes 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 prostitutes working in licensed brothels, should minimise the risk of personal harm to prostitutes and offer them a level of protection against the range of safety risks associated with prostitution including physical assault.

The proposed Regulation contributes to this policy objective by prescribing the requirements that brothel licensees install safety devices. For example, a licensee of a brothel must ensure each room in the brothel used to provide prostitution services has a concealed alarm button, or equivalent communication device, that is in working order. Also, it

prohibits a brothel licensee from taking punitive action against a prostitute for refusing services where the prostitute believes a situation may become violent or unsafe.

### **Fee structure**

The fee structure as it applies to brothel licences and approved managers is to be determined. A range of fees are provided in the RIS for consideration. The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC.

### **Prostitution Advisory Council**

The proposed regulation prescribes the agencies the Prostitution Advisory Council (PAC)<sup>2</sup> must liaise with, to ensure that it will carry out functions in a cooperative and consultative manner and that available knowledge is shared and resources used in an effective and efficient manner. This should have a positive impact on the PAC's service delivery which should benefit the Government and community.

## **PROPOSED LEGISLATION**

### **1. Title**

Prostitution Regulation 2000

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<sup>2</sup> Amongst other things, the PAC has functions to advise the ministerial committee on prostitution issues, to monitor the operation of the Act, to promote and coordinate programs related to prostitution (e.g. sexual health care) and disseminate information (e.g. dangers inherent in prostitution).

## 2. Authorising Legislation

Section 140 and other sections of the *Prostitution Act 1999* provide the regulation making power.

## 3. Author

Queensland Police Service (QPS)

## 4. Background

In 1989, the Fitzgerald Inquiry revealed the existence of vice and the apparent inaction of Queensland Police in enforcing prostitution laws throughout the preceding years. As a result, Fitzgerald recommended that a comprehensive review of the law be undertaken by the Criminal Justice Commission (CJC) and that the review consider the merits of decriminalising prostitution.

In 1991, the CJC produced 'Regulating Morality-A Review of Prostitution Laws in Queensland'. The report was the result of a research process which involved extensive consultation, surveys of community attitudes and sex workers, and reviews of laws in other jurisdictions. The CJC recommended:

- a regulatory framework to govern prostitution involving two to ten people;
- that single workers, working from their own home continue to be allowed to do so (as was the law at the time);
- that criminal offences continue to apply to prostitution activities involving:
  - children under the age of 18;
  - disadvantaged groups such as those with an intellectual disability and those who do not speak English;
  - the procurement of people to become prostitutes by coercion, intimidation and fraud; and
  - street prostitution.

The majority of the Parliamentary Criminal Justice Committee (PCJC) did not support the recommended regulatory scheme proposed for operations by two to ten people. The vote was close (4:3) and was not split along party lines. Reasons advanced by the PCJC for rejecting the regulatory model included:

- failure to be convinced that it would assist in the control of sexually transmissible diseases, including human immunodeficiency virus (HIV); and
- concern that the Victorian experience had not been successful, particularly in reducing the number of illegal brothels.

In 1992, the Government enacted the *Prostitution Laws Amendment Act 1992*. The Act introduced a legislative model that departed from many of the CJC recommendations and adopted a strict enforcement approach to organised prostitution.

When introducing the legislation, the Government recognised that prostitution would not be eliminated from our society, nor would it be appropriate to do so at the expense of other problems in our society. It was argued that organised prostitution was often associated with other criminal activity such as drug use and distribution, money laundering, violence and extortion, tax evasion and the exploitation of children.

There was some criticism of the legislation at the time of introduction. To address this, the Government made a commitment to review the legislation in due course. A review was commenced by the former Coalition Government toward the end of its term. A discussion paper was presented to Cabinet but was never released.

Following the change in Government, the Minister for Police and Corrective Services established a Working Party and a Ministerial Task Force. Through these forums a Discussion Paper was developed and disseminated throughout the State in November 1998. State-wide public forums were held in conjunction with the release of the Discussion Paper resulting in over 400 submissions being received.

Based on the results of public consultation, and significant research into approaches in other jurisdictions, a Prostitution Legislation Reform Proposal was developed. The proposal outlined five principles that guided development of the framework for regulation of prostitution:

- ensuring quality of life for local communities;

- safeguarding against corruption and organised crime;
- addressing social factors which contribute to involvement in the sex industry;
- ensuring a healthy society; and
- promoting safety.

The framework attempts to balance the interests of strict legislation with the need to address the social factors that arise from prostitution. Subsequently, the Prostitution Legislation Reform Proposal was released for public comment in July 1999. From this background of extensive research and consultation the *Prostitution Act 1999* was developed and passed by Parliament in December 1999. At the time of development certain matters were considered to be more appropriately placed in the regulations rather than the Act. The proposed Regulation is a new regulation where the provisions are aimed to complement the *Prostitution Act 1999* in its operation.

#### **4.1 Consultation**

In the development of the *Prostitution Act 1999* there was State-wide consultation including public forums, the release of a Discussion Paper and the release of Prostitution Legislation Reform Proposal. In addition, there was personal consultation with relevant community organisations. The Regulatory Impact Statement will allow further public consultation.

The information contained in the proposed Regulation is built upon the consultation that was undertaken during the development of the *Prostitution Act 1999*. A draft Regulation is currently being circulated for comment amongst relevant Government Departments.

The following departments and agencies were consulted and were generally supportive during the development of the of *Prostitution Act 1999*:

- Department of the Premier and Cabinet (Policy Co-ordination Division);
- Department of Justice and Attorney-General;
- Department of Communication and Information, Local Government and Planning and Sport;

- Department of Families, Youth and Community Care;
- Department of Employment Training and Industrial Relations;
- Queensland Health;
- Liquor Licensing Division;
- Criminal Justice Commission;
- Queensland Crime Commission;
- Local Government Association of Queensland; and
- SQWISI.

## **5. Policy Objectives**

The proposed Regulation is to give full effect to the *Prostitution Act 1999* provisions which require further details on how the obligations imposed by the Act may be achieved. Without the proposed Regulation the operation of the *Prostitution Act 1999* which fully commences on 1 July 2000 would not be achieved.

The overarching policy objectives and the reasons for those objectives with respect to the proposed Regulation are within the principles outlined in the framework that guided the regulation of prostitution culminating in the development of the *Prostitution Act 1999* (see section 4, above).

## **6. Legislative Intent**

The proposed Regulation is appropriate as it is an extension of the legislative approach that was approved by the Parliament when it passed the *Prostitution Act 1999*. At the time of drafting the Act, Queensland Office of Parliamentary Counsel determined that certain matters were more appropriately placed in the regulation and accordingly, their advice was followed. The proposed Regulation is reasonable in that it provides the basic provisions to make the *Prostitution Act 1999* operable.

The *Prostitution Act 1999* sets out advertising requirements for licensed brothels, however, the proposed Regulation also requires that all advertising be approved by the PLA. This will ensure that there is an overall consistency in advertising standards and will ensure the nuisance element in relation to advertising prostitution is kept under control.



The prostitution legislation reform proposal sought to legalise brothels within strict planning and licensing parameters. The *Prostitution Act 1999* restricts the size of brothels and their locality. Development applications are approved through local councils and to assist them in this role and to ensure the continued existing quality of life in local communities the proposed Regulation provides a code for IDAS (Integrated Development Assessment System).

Strong government leadership is characterised by constant vigilance against corruption and organised crime. A fundamental principle underlying the *Prostitution Act 1999* was the Government's strong commitment to ensuring corruption would not be tolerated through illegal prostitution by establishing a legalised industry and the introduction of appropriate checks and balances. One of the anti-corruption measures in the Act is the requisite recording of details by the PLA in relation to licensed brothel inspections by police officers. The proposed Regulation prescribes the actual details that must be recorded. Another measure is the keeping and producing of financial records to the PLA upon requirement. The proposed Regulation prescribes the kind of financial records to be kept and produced.

Another principle that guided development of the legislative framework for prostitution was ensuring a healthy society. There are perceived health risks associated with the sex industry, particularly in relation to sexually transmitted infections. One of the strategies of the *Prostitution Act 1999*, is to ensure that the health status of prostitutes is regularly monitored and that health risks to prostitutes, their clients and the community are minimised. The Regulation contributes to this strategy by prescribing the interval times for medical examinations or tests to ascertain whether a prostitute is infective.

Promoting safety was also an underlying principle of prostitution legislation reform. While the personal safety risks associated with prostitution are difficult to quantify, it is clearly an occupation in which people are at risk of physical violence. Prostitutes 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 prostitutes working in licensed brothels, should minimise the risk of personal harm to prostitutes and offer them a level of protection against the range of safety risks associated with prostitution including physical assault. The proposed Regulation contributes to this policy objective by prescribing the

requirements that brothel licensees install safety devices. For example, a licensee of a brothel must ensure each room in the brothel used to provide prostitution services has a concealed alarm button, or equivalent communication device, that is in working order. Also, it prohibits a brothel licensee from taking punitive action against a prostitute for refusing services where the prostitute believes a situation may become violent or unsafe.

The requirements for photographs to accompany licence applications and certificates of management applications, the application of fees and when to pay fees, and the need to make an application to withdraw a licence in writing on the whole are administrative in nature.

## **7. Consistency with the Authorising Law**

The proposed Regulation is consistent with the *Prostitution Act 1999*, each provision being within the scope of the authorising law.

## **8. Consistency with other Legislation**

The *Prostitution Act 1999* amends other legislation, including the Criminal Code and the *Vagrants, Gaming and Other Offences Act 1931*. The proposed Regulation is consistent with those Acts as amended by the *Prostitution Act 1999*. There are no known inconsistencies between this legislation and other legislation.

## **9. Fundamental Legislative Principles**

The proposed Regulation does not breach any fundamental legislative principles. Before the Regulation is commenced certification as such will be sought from the Office of the Parliamentary Counsel.

## **10. National Competition Policy**

There has been consultation undertaken with the Economic Performance Division of Treasury in relation to national competition policy. No matters of significance have been raised.

## 11. Risk Assessment

The majority of provisions in the proposed Regulation are matters of an administrative nature that are necessary to ensure the effective operation of the *Prostitution Act 1999*. However, there are several inherent risks that may be worthy of mention.

The fee structure as it applies to brothel licences and approved managers is to be determined. A range of fees are provided in the RIS for consideration. The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC.

There is an inherent risk that if advertising is not controlled that it may impact upon the quality of life for local communities. The consultation process for the regulation of prostitution supported highly regulated advertising controls. Most of the controls may be found in the *Prostitution Act 1999*, however there was an undertaking given by the Premier during passage of the Bill that the PLA would approve advertising and the proposed Regulation fulfils this undertaking.

In the past in Queensland, there has been links between organised crime, corruption and prostitution. There is an inherent risk that organised crime and corruption may again become associated with prostitution. Because of the history of prostitution and corruption certain anti-corruption measures are built into the *Prostitution Act 1999*. One measure is to require the recording of all entries by police into licensed brothels for inspection purposes. The proposed Regulation prescribes the details of entry that must be recorded by the PLA. Another measure in the *Prostitution Act 1999* is the requirement that brothel licensees must keep and provide financial records when required to do so by the PLA. The proposed Regulation prescribes the type of financial records that must be kept and provided as required.

There is an inherent risk, or perceived inherent risk, that prostitution may adversely affect a healthy society. For example, through the spread of sexually transmitted infections. This risk has been partly addressed in the *Prostitution Act 1999*, by requiring prostitutes to undergo medical

examinations and requiring brothel licensees not allow prostitutes to work unless they have undergone medical examinations. The proposed Regulation prescribes the required frequency of such medical examinations.

The PAC has a wide scope of functions to perform and many of those functions will impinge upon government departments and agencies. To ensure a consultative, coordinated and cooperative approach in carrying out its functions the PAC is required to liaise with certain government departments and agencies that are prescribed in the proposed Regulation.

Prostitutes 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 prostitutes working in licensed brothels, should minimise the risk of personal harm to prostitutes and offer them a level of protection against the range of safety risks associated with prostitution including physical assault.

The *Prostitution Act 1999* provides restrictions in relation to the approval of development applications for licensed brothels. To assist Local Councils in determining development applications a code for IDAS has been included in the proposed Regulation. This sets out some of the matters that a Local Council should consider before making a determination. Setting out conditions in a code for IDAS ensures brothel developments meet certain standards and addresses risks that may impact upon the quality of life for local communities.

Many of the identified risks are subject to enforcement measures:

- Advertising that is not approved by the PLA attracts a penalty of 40 penalty units.
- A police officer that does not provide to the PLA with details of an entry to a licensed brothel may be subject to sanctions.
- Failure by brothel licensees to keep and provide financial records when required by the PLA attracts a penalty of 40 penalty units.
- Section 89 of the *Prostitution Act 1999* creates an offence for a brothel licensee or approved manager of a licensed brothel to permit a prostitute infective<sup>3</sup> with a sexually transmitted disease to

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<sup>3</sup> Sections 89 and 90 refer to persons with a sexually transmitted disease during the infective stages of the disease. Hence the expression, 'infective with a sexually transmitted disease' and not, 'infected with a sexually transmitted disease'.

work in a licensed brothel. It is a defence to show that the prostitute had been undergoing medical examinations at intervals as prescribed under the proposed Regulation.

- Section 90 of the *Prostitution Act 1999* creates an offence for a prostitute to work while infective with a sexually transmitted disease. It is a defence for the prostitute to show that he or she had been medically examined or tested at intervals as prescribed under the proposed Regulation to ascertain whether he or she was infective with a sexually transmitted disease; and believed on reasonable grounds that he or she was not infective with a sexually transmitted disease.
- Section 114 of the *Prostitution Act 1999* requires the PAC to liaise with the other agencies as prescribed under the proposed Regulation. The functions of the PAC are under the scrutiny of the ministerial committee as provided for by the Act.
- There is an enforcement measure, i.e. a penalty, against a brothel licensee in the proposed Regulation if a prostitute forced to work in a situation which the prostitute believes is potentially violent.
- There is an enforcement measure, i.e. a penalty, against a brothel licensee that fails to provide the security measures in a licensed brothel as prescribed in the proposed Regulation.

## ALTERNATIVES

### 12. Alternative: Do nothing—no intervention

Government decided upon a legislative course of action for the proposed Regulation when it passed the *Prostitution Act 1999*, effectively eliminating the possibility of leaving prostitution unregulated or under the control of the existing criminal law model. There are requirements in the *Prostitution Act 1999* to prescribe certain matters in regulations. Thus the alternative of doing nothing or taking no intervention is not an option in this instance.

It was within the development of the Act that a range of alternatives were considered. Where alternatives were considered appropriate they were

applied, for example, the Act provides for the use of Codes of Practice.

In the development of the Act, models that are used to control prostitution in other Australian jurisdictions were reported upon in the 'Review of Prostitution Laws in Queensland', Discussion Paper, November 1998, and were subsequently given due consideration. Those models included: the Victorian—Planning and Licensing Model; the Northern Territory—Limited Licensing Model; the Australian Capital Territory—Registration Model; the New South Wales—Planning Model; the Western Australian—Criminal Model; and the Tasmanian—Criminal Law Model. Due consideration was also given to the existing Queensland—Criminal Model.

### **13. Alternative: Proposed legislation**

Government chose the alternative of the proposed Regulation when it passed the *Prostitution Act 1999*. The Act requires that certain matters be included in regulations. Without the proposed Regulation the operation of the *Prostitution Act 1999* would be limited in its operation and ineffective in providing a licensing model for legalised prostitution.

## **STAKEHOLDERS**

### **14. Stakeholder: State Government**

There have been several State Government Departments, Agencies and Commissions involved in the prostitution law reform process. As indicated in section 4 (Background), after the Fitzgerald Inquiry the CJC and the PCJC had significant roles in prostitution law reform. In the development of the *Prostitution Act 1999* there was consultation across most Government Departments. The information contained in the proposed Regulation is built upon the consultation that was undertaken during the development of the Act.

Agencies prescribed in the Regulation to be liaised with by the PAC were identified during the across Government consultation on the Act.

The intervals for medical examinations or tests was determined in

consultation with the Department of Health during the development of the *Prostitution Act 1999*.

The requirement that a prostitute not be required to provide services in a potentially violent situation and that brothel licensees be required to provide a safe work place through the provision of security devices was generally consulted upon across Government Departments during the development of the Act, however, the inclusion of such provisions stemmed primarily from research into laws in other jurisdictions by the QPS, the independent consultant, Ms Susan Johnson, BA LLB MBA, Barrister of Law and prostitution representative bodies.

The code for IDAS was prepared by the Department of Communication and Information, Local Government and Planning and Sport.

### **15. Stakeholder: Local Government**

The circulation of the Discussion Paper, 'Review of Prostitution Laws in Queensland', resulted in a eighteen submissions by Local Councils. The primary concern of those submissions focused upon the approval of development applications for brothels. Further submissions were received from Local Councils to the same effect when the Government circulated the Prostitution Legislation Reform Proposal in July 1999. As a consequence of the consultation generated through the Discussion Paper, the Reform Proposal and ongoing consultation with the Local Government Association of Queensland a scheme for assessing development applications was included in the *Prostitution Act 1999*. The code for IDAS in the proposed Regulation is the final aspect in the development of that scheme. The code for IDAS stems back to consultation that was undertaken during the development of the Act.

### **16. Stakeholder: Community**

There has been significant community consultation through the prostitution law reform process. Consultation has included the release of a Discussion Paper, a Prostitution Legislation Reform Proposal, and State-wide community forums. The Discussion Paper attracted over 400 submissions including submissions from thirty one churches, eight Health Workers/Agencies, fifteen Sex Workers/Sex Industry Representatives, nineteen other organisations and several hundred from

individuals. Also, specific groups such as SQWISI (Self-Health for Queensland Workers in the Sex Industry) and SILRC (Sex Industry Law Reform Coalition) have been targeted for consultation throughout the prostitution law reform process. Delegations to Melbourne, Canberra and Sydney were also undertaken by the Police Minister, Ministerial Staff, Police Service members and independent consultants. These delegations met with key stakeholders including prostitutes and brothel licensees. The consultation with community members has had a significant impact on the proposed regulation with respect to the fees, advertising, intervals for medical examinations, security measures and the provision of prostitution in potentially violent situations.

## **PRELIMINARY IMPACT ASSESSMENT**

### **17. Alternative: Do nothing—no intervention**

If an alternative of doing nothing or taking no further intervention was pursued, then the *Prostitution Act 1999* would, when it fully commences on 1 July 2000, be ineffective in its operation. In addition, the amendments to other legislation caused by the *Prostitution Act 1999* to allow licensed brothels, would create gaps in relation to the laws on prostitution and adult entertainment in this State. This would be totally unsuitable and the *Prostitution Act 1999* would have to be repealed.

The Government's Prostitution Legislation Reform Proposal founded upon ensuring quality of life for local communities, safeguarding against corruption and organised crime, addressing social factors which contribute to involvement in the sex industry, ensuring a healthy society and promoting safety, would fail.

Without a Code or IDAS, Local Councils would be required to determine brothel development applications without the additional legislative guidance. This would result in inconsistencies in the approval process from one Local Council jurisdiction to the next.

Community expectations of prostitution law reform would not be met.



This option is unrealistic as Parliament has already impliedly approved the preparation of the proposed Regulation when it passed the *Prostitution Act 1999*. If this option was pursued the *Prostitution Act 1999* would be ineffective in its operation and in regulating prostitution. It would have to be repealed to allow the existing laws, based upon a criminal model, to continue.

### **18. Alternative: Proposed legislation**

The fee structure as it applies to brothel licences and approved managers is to be determined. A range of fees are provided in the RIS for consideration. The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC.

The approval of advertising by the PLA will give the Government some control over the standard of advertising and is part of the Government commitment in principle, to ensure quality of life for local communities.

Recording entry details of police entering licensed brothels for inspections will provide the Government with an anti-corruption measure. Community members have the knowledge that inspections are being conducted in a controlled manner and that appropriate records are being kept. Should community members become concerned with the operation of a particular brothel they may contact the PLA. The PLA will have a ready resource to ascertain the policing of that particular brothel and the need to take remedial action if necessary.

Prescribing types of financial records to be kept and provided by brothel licensees when required by the PLA will provide the Government with an anti-corruption measure.

Prescribing the intervals that a prostitute must undergo medical examinations or tests and the onus upon brothel licensees or approved manager to ensure such examinations or tests are undertaken represents a commitment to the Government's legislation reform founding principles to ensure a healthy society. Community members have the comfort of

knowing that brothel licensees and prostitutes working for licensed brothels are conducting themselves in a responsible manner in maintaining the community health.

Prescribing the agencies the PAC must liaise with ensures that the PAC will carry out its functions in a cooperative and consultative manner and that available knowledge is shared and resources used in an effective and efficient manner. This should have a positive impact on the PAC's service delivery which should benefit the Government and community.

Providing an opportunity for prostitutes in licensed brothels to refuse the supply of prostitution services in licensed brothels in potentially violent situations and the imposition of certain security measures upon brothel licensees sends a message that the Government does not support violence in licensed brothels and that prostitutes have a right to a safe environment.

The provision of a code for IDAS removes uncertainty for Local Councils in determining brothel development applications and provides confidence to the Government that development applications are being determined with some consistency State-wide. The community benefits through having development applications meet set standards of quality.

This is the only realistic approach in this instance as the proposed Regulation was anticipated in the development and passing of the *Prostitution Act 1999*. Without the proposed Regulation, the Act would be restricted in its operation to such an extent that the Act would need to be repealed.

## **QUALITATIVE IMPACT ASSESSMENT**

*Alternative: proposed legislation*

*Stakeholder: State Government*

The impact of this alternative has been rated on the components of each category for this stakeholder and reasons have been given for assigning each rating.

**19. Category: fees****19.1 Component of Cost/Benefit: brothel licence fees**

This is rated as (L-) Low Negative Impact. Brothel licence fees have not been determined, however, for the purposes consultation through the RIS the proposed range of fees for consideration are:

- Brothel licence application \$500–\$2500;
- Brothel licence fee (and annual renewals) \$4500–\$15000, plus \$500–\$5000 for each service room in the brothel.

**19.2 Component of Cost/Benefit: approved manager fees**

This is rated as (L-) Low Negative Impact. Approved manager fees have not been determined, however, for the purposes consultation through the RIS the proposed range of fees for consideration are:

- Approved manager's certificate (annually) \$200–\$550;
- Certificate fee (annually) \$10–\$20.

**19.3 Component of Cost/Benefit: administration fees**

This is rated as (N) Neutral Impact. There are administration/processing fees for licence applications (\$50), approved manager applications (\$50) and copying entries in a register (\$20 plus \$0.50 per page).

**19.4 Impact of this alternative**

This is rated as (L-) Low Negative Impact. The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC. It is considered that administration fees are cost neutral. In each case, any revenue generated by fees will be paid into the PLA Fund and may be distributed in accordance with the legislation, for example, contributions to philanthropic causes. However,

there will be no revenue generated before 1 July 2000 and consequently the Government will fully fund the initial administration of the regulatory scheme.

## **20. Category: advertising**

### **20.1 Component of Cost/Benefit: administering the approvals**

This is rated as (L-) Low Negative Impact. The PLA must approve all advertising for licensed brothels.

### **20.2 Impact of this alternative**

This is rated as (L-) Low Negative Impact. The reason for assigning this rating is that the PLA will have the responsibility and associated administrative cost of approving advertising. However, by assigning this responsibility to the PLA the Government has the benefit of being assured that compliance with the requirements of the *Prostitution Act 1999* will be achieved and that advertising approvals are checked and approved to a consistent standard. In addition, the Government through the PLA will be in a position to gauge community expectations with respect to advertising and what is considered to be an appropriate standard.

Estimates in relation to the number of licensed brothels there may be in Queensland have not been undertaken. The overall costs/benefits with respect to advertising approvals can not be accurately quantified. The administrative costs of processing and approving advertising will vary from one approval to the next. The registrar of the PLA may be in a position to make a preliminary assessment of the approval in which case the cost may be nominal, however, cost will increase with the complexity of the approval.

## **21. Category: police particulars to be given to the PLA after licensed brothel entry**

### **21.1 Component of Cost/Benefit: entry details**

This is rated as (L-) Low Negative Impact. The PLA must record details of entries by police into licensed brothels. This will be a function for the staff of the PLA.

## **21.2 Impact of this alternative**

This is rated as (L-) Low Negative Impact. Completion of each entry will attract an administration cost in the use of human and physical resources, however, there is no direct provision which will allow this cost to be recouped. The recording of all entries by police into licensed brothels provides the State Government with a risk management strategy to facilitate an anti-corruption measure. When police enter licensed brothels it will be on the PLA record and open to public scrutiny. Information on inspections including their frequency will be made available to the PLA which will assist it in determining the necessity for inspections and the implementation of risk management systems for inspections.

The costs/benefits for this category of stakeholder can not be accurately quantified. It may be possible to place a nominal cost on the administration costs for each recording. This anti-corruption measure is likely to result in qualitative benefits to the broader community. Elements of efficiency and effectiveness in regulating the inspection process may be measurable after an operational period.

## **22. Summary of stakeholder: State Government**

- The overall impact rating for State Government is (L-) Low Negative Impact.
- Fee structures have not been determined, but should be determined with a view to cost recovery to Government and being not so high as to act as a disincentive to potential brothel licensees and approved managers. Any revenue generated will be paid into the PLA Fund and may be distributed accordingly.
- There will be no revenue generated before 1 July 2000 and the Government will initially fully fund the administration of the regulatory scheme.
- Advertising restrictions will not fully remove the visibility of prostitution advertising, but it allows the Government the benefit of controlling it in a discreet manner, however, this must be weighed against the administrative costs of processing and approving advertising.

- The benefits of recording entry particulars as a means of implementing anti-corruption measures and regulating the inspection process must be weighed against the cost of administration.
- As there have been no estimates undertaken of how many potential licensed brothels there may be in Queensland, the overall costs/benefits with respect to fees, advertising approvals and recording entry particulars can not be accurately quantified.

*Alternative: Proposed legislation*

*Stakeholder: Local Government*

The impact of this alternative has been rated on the components of this category for this stakeholder and reasons have been given for assigning each rating.

## **23. Category: guidelines in determining development applications**

### **23.1 Component of cost/benefit: code for IDAS**

This is rated as (N) Neutral. The *Prostitution Act 1999*, Part 4 provides for development approvals for brothels. In addition, section 140 of the Act provides that a regulation may be made about a code for IDAS for development applications mentioned in part 4. A code for IDAS is contained in the proposed Regulation and applies for the assessment of a development application under the *Integrated Planning Act 1997* for the making of a material change of use of premises for a licensed brothel in an industrial area.

### **23.2 Impact of this alternative**

This is rated as (N) Neutral Impact. The provision of a code for IDAS benefits Local Councils by assisting them in determining development applications and contributes to the underlying prostitution legislation reform principle of ensuring quality of life for local communities. There will be a nominal cost in having to assess the development applications within the terms of the code for IDAS. Local Councils may recover costs for

approving development applications and there is no reason why the cost of applying the code for IDAS could not be factored into the recovery cost. The Department of Communication and Information, Local Government and Planning and Sport have factored in training on the code for IDAS with other training that they will deliver to Local Councils.

The costs/benefits for this category of stakeholder can not be accurately quantified.

#### **24. Summary of Stakeholder: Local Government**

- The overall impact of this alternative on this stakeholder is (N) Neutral Impact.
- The code for IDAS gives Local Councils some clear direction in assessing brothel development applications in industrial areas.
- There may be a nominal administrative cost to Local Councils in applying the code for IDAS, however the cost may be recovered through the development application approval.
- The overall costs/benefits of this alternative on this stakeholder can not be accurately quantified.

#### ***Alternative: Proposed legislation***

#### ***Stakeholder: Community***

The impact of this alternative has been rated on the components of this category for this stakeholder and reasons have been given for assigning each rating.

#### **25. Category: Fees**

##### **25.1 Component of Cost/Benefit: brothel licence fees**

This is rated as (L-) Low Negative Impact. Brothel licence fees have not been determined, however, for the purposes consultation through the RIS the proposed range of fees for consideration are:

- Brothel licence application \$500–\$2500;

- Brothel licence fee (and annual renewals) \$4500–\$15000, plus \$500–\$5000 for each service room in the brothel.

### **25.2 Component of Cost/Benefit: approved manager fees**

This is rated as (L-) Low Negative Impact. Approved manager fees have not been determined, however, for the purposes consultation through the RIS the proposed range of fees for consideration are:

- Approved manager's certificate (annually) \$200–\$550;
- Certificate fee (annually) \$10–\$20.

### **25.3 Component of Cost/Benefit: administration fees**

This is rated as (L-) Low Negative Impact. Brothel licensees and approved managers will also be charged administration/processing fees for licence applications (\$50) and approved manager applications (\$50). Any community member seeking copies of entries in a register will also have to pay a fee (\$20 plus \$0.50 per page).

### **25.4 Impact of this alternative**

The is rated as (L-) Low Negative Impact. The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC.

The approved manager's certificate may allow an approved manager to work from more than one licensed brothel. In view of the fact that licensed brothels must be personally supervised at all times either by a brothel licensee or an approved manager, it is expected that approved managers will be in high demand and consequently the cost of obtaining a certificate should be weighed against the opportunities it will provide.

It is considered that administration fees are cost neutral for the State Government and are only nominal amounts for brothel licensees, approved



managers and community members.

In each case, any revenue generated by fees will be paid into the PLA Fund and may be distributed in accordance with the legislation, for example, contributions to philanthropic causes.

## **26. Category: advertising**

### **26.1 Component of cost/benefit: PLA approval**

This is rated as (H+) High Positive Impact. The proposed Regulation requires that all advertising be approved by the PLA.

### **26.2 Impact of this alternative**

The impact rating is (H+) High Positive Impact. The community has repeatedly supported the decriminalising of prostitution, however, it has not supported the visibility of prostitution. This provision gives the PLA an opportunity to set an appropriate standard, approve advertising accordingly and support the principle of ensuring quality of life.

The costs/benefits for this category of stakeholder can not be accurately quantified. This component is about gauging community values and the common propriety. The brothel licensee has the inconvenience of having to forward all advertising to the PLA for approval and failure to comply may result in prosecution and a possible penalty of 40 penalty units (\$3000).

## **27. Category: police particulars to be given to the PLA after licensed brothel entry**

### **27.1 Component of Cost/Benefit: entry details**

This is rated as (M+) Medium Positive Impact. The proposed Regulation provides the details that must be given to the PLA when police enter a licensed brothel. Details include: the name of the licensee; if an approved manager was at the brothel at the time of entry—the name of the approved manager; the address of the brothel; when the entry took place; the purpose of the entry; if possession of a thing was taken during the entry—a description of the thing; the name of each police officer who entered the brothel; if a police officer authorised the entry—the name of police officer.

## **27.2 Impact of this alternative**

The impact rating for this alternative is (M+) Medium Positive Impact. The recording of all entries by police into licensed brothels is a risk management strategy to improve anti-corruption measures. When police enter licensed brothels, details on entries and frequency of inspections, will be on the PLA record and open to public scrutiny. This should have flow-on benefits for brothel licensees and community members.

The costs/benefits can not be accurately quantified. This anti-corruption measure is likely to result in qualitative benefits to the broader community. Regulating the inspection process is not quantifiable at this time, however, elements of efficiency and effectiveness in regulating the inspection process may be measurable after an operational period.

## **28. Category: brothel licensee records and documents to be given to the PLA**

### **28.1 Component of cost/benefit: records to be kept by licensees**

This component is rated (L+) Low Positive Impact. Some record keeping is imposed upon brothel licensees, for example, the times when the brothel was open, and the person responsible for personal supervision of the brothel at a particular time. The PLA may require a brothel licence or an approved manager upon notice to give a stated document to the PLA in a stated time. However, the document must be relevant to an investigation or inspection of the brothel. The document may be required immediately if there is a likelihood of destruction etc. or serious prejudice to the conduct of an investigation or inspection of the brothel.

### **28.2 Impact of this alternative**

The impact rating is (L+) Low Positive Impact. There are several offences under the Act associated with personal supervision of brothels, including the necessity to personally supervise the brothel at all times when it is open. The overall benefits of implementing record keeping on brothel licensees and requirements to produce stated documents will inconvenience brothel licensees and approved managers, however, it will assist persons inspecting licensed brothels or investigating matters with respect to licensed brothels and provide some comfort to community members that licensed

brothels are being run in an accountable manner.

The costs/benefits can not be accurately quantified. Failure to comply with a notice to produce a stated document may result in a possible prosecution of the licensee or approved manager and a maximum penalty of 40 penalty units (\$3000).

## **29. Category: photographs to accompany applications**

### **29.1 Component of cost/benefit: photographic licences and approved manager's certificates**

This is rated as (M+) Medium Positive Impact. The proposed Regulation requires that the applicant for a licence or approved manager's certificate be accompanied by a passport photo. The photo will form part of the brothel licence or manager's certificate.

### **29.2 Impact of this alternative**

The impact is rate (M+) Medium Positive Impact. The supply of a photo will impose a nominal cost on the applicant. The benefit being that the holder of the licence or certificate is identifiable as such upon production of the licence or certificate. A photographic licence or certificate prevents an unscrupulous operator from passing himself or herself off, as the licence or approved manager. The overall cost/benefits can not practically be quantified.

## **30. Category: offences relating to prostitutes working in brothels**

### **30.1 Component 1: medical examinations and tests**

This is rated (M+) Medium Positive Impact. Brothel licensees have the responsibility of checking that prostitutes working in licensed brothels are undertaking medical examinations/tests. The proposed Regulation requires that prostitutes working in licensed brothels undertake these examinations/tests at six weekly intervals.

### **30.2 Impact of this alternative**

The impact rating is (M+) Medium Positive Impact. The brothel licensee

will be put to some minor inconvenience, however, failure to check may result in a prosecution for an offence under the *Prostitution Act 1999* and a maximum penalty of 120 penalty units (\$7650). Observations in other jurisdictions revealed that brothels that promoted high standards with respect to health matters developed a good reputation with clients and consequently, gained client loyalty. Prostitutes are put to the inconvenience of having to undergo examinations/tests for sexually transmissible infections every six weeks. Failure to undertake medical examinations/tests may result in possible prosecution for an offence under the *Prostitution Act 1999* and a maximum penalty of 100 penalty units (\$7500). While there is a belief that the spread of sexually transmissible infections through brothels is prevalent, in reality the incidence is minor (probably due to safe sex practices). Despite this, the community demands stringent controls with respect to promoting a healthy community and imposing health standards such as medical examinations is one method of meeting community expectations. The overall cost/benefits can not practically be quantified.

### **31. Component: Security**

#### **31.1 Component 1: preventing violence**

This is rated (H+) High Positive Impact. The provisions in the proposed Regulation provide that prostitutes in licensed brothels do not have to provide prostitution services in potentially violent or unsafe situations and that a brothel licensee or an approved manager can not take retaliatory action against the prostitute. Other provisions in the proposed Regulation require the brothel licensee to ensure certain safety measures, such as alarms, lighting and signs are installed in the licensed brothel.

#### **31.1 Impact of this alternative**

The impact for this alternative is rated (H+) High Positive Impact. Promoting safety in the community is a fundamental principle underlying the regulation of prostitution. The provisions in the proposed Regulation send a clear message to brothel licensees and approved managers that retaliatory action is prohibited and may result in possible prosecution. Prostitutes have the comfort of knowing that as individuals they can assess a situation where they may be going to provide or are providing services and if they feel the situation is potentially violent or unsafe, the prostitute

may choose not to provide the service. In relation to the provision of security devices etc., brothel licensees will be imposed with the cost of providing these devices, however, prostitutes in licensed brothels have the same rights as any other person to a safe work place. Failure to provide security devices etc. may result in possible prosecution of brothel licensees.

The overall cost/benefits can not practically be quantified. There is no accurate way of quantifying the value of violence prevented by the provision of security measures or by a prostitutes removing their services in violent or unsafe circumstances. The maximum penalty a brothel licensee may face for a prosecution is 40 penalty units (\$3000). The cost of providing security devices will depend on the amount of service rooms in the brothel and the type of devices installed.

### **32. Summary of the overall impact of this alternative on the community of stakeholders**

- The overall impact rating for the community is (M+) Medium Positive Impact.
- Brothel licensee fees are to be determined. Ultimately, State Government would like to have full cost recovery for prostitution regulation, however, fees should not be so high as to act as a disincentive to potentially brothel licensees and approved managers from entering the regulatory scheme.
- Administration fees are considered to be cost neutral.
- Advertising must be approved by the PLA and the maximum penalty for failure to do so is \$3000. The PLA can control the public image of prostitution advertising and restrict its visibility to meet the standards of common propriety.
- The proposed Regulation provides the entry details that must be given by police and recorded by the PLA when police enter a brothel. This is a risk management strategy for anti-corruption and gauging the need for frequency of future inspections.
- Brothel licensees must maintain certain records and upon notice may be requested to produce stated documents to the PLA. The relevant provision incorporates accountability measures into the operation of the brothels.

- The proposed Regulation requires the applicant supply a passport photograph with applications for licences and approved manager's certificates. Photographs will be used on the licence or certificate. Photographic licences and certificates incorporate accountability measures.
- The community demands stringent controls with respect to promoting a healthy community and imposing health standards such as medical examinations is one method of meeting community expectations. The Brothel licensees must check that prostitutes are undertaking medical examinations/tests for sexually transmissible infections every six weeks. Prostitutes must undertake medical examinations/tests for sexually transmissible infections every six weeks.
- Promoting safety in the community is a fundamental principle underlying the regulation of prostitution. It is an offence for brothel licensees or approved managers to retaliate against prostitutes for refusing to supply services in potentially violent or unsafe situations. Brothel licensees must provide safety devices at brothels.

### **33. Qualitative impact assessment conclusion**

#### **State Government**

The overall impact rating for State Government is (L-) Low Negative Impact.

The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC.

Advertising restrictions will not fully remove the visibility of prostitution advertising, but it allows the State Government the benefit of controlling it in a discreet manner, however, there will be administrative costs to process and approving advertising.

Police entry to licensed brothels are recorded at the PLA. The proposed Regulation provides the details that must be given by police and recorded by the PLA. This is an anti-corruption measure. There is an associated nominal administration cost with the PLA recording details.

No estimates have been undertaken as to how many licensed brothels there may be in Queensland, the overall costs/benefits with respect to fees, advertising approvals and recording entry particulars can not be accurately quantified.

### **Local Government**

The overall impact of this alternative on this stakeholder is (N) Neutral Impact.

The code for IDAS gives Local Councils some clear direction in assessing brothel development applications in industrial areas. There may be a nominal administrative cost to Local Councils in applying the code for IDAS, however the cost may be recovered through the development application approval. The overall costs/benefits of this alternative on this stakeholder can not be accurately quantified.

### **Community**

The overall impact of this alternative on this stakeholder is (M+) Medium Positive Impact.

The collection of brothel licence fees and approved manager fees are the most obvious way the Government might be able to recoup outlays, however, in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers. Thus, it may not initially be proposed that fees be set at full cost recovery, however, it is expected that ultimately brothel licence fees and approved manager fees will source the funding for the PLA and the PAC.

Advertising must be approved by the PLA and the maximum penalty for failure to do so is \$3000. The PLA can control the public image of prostitution advertising and restrict its visibility to meet the standards of common propriety.

The proposed Regulation provides the entry details that must be given by police and recorded by the PLA when police enter a brothel. This is a risk

management strategy for anti-corruption and gauging the need for frequency of future inspections.

Brothel licensee must maintain certain records and upon notice may be requested to produce stated documents to the PLA. The relevant provision incorporates accountability measures into the operation of the brothels.

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Promoting safety in the community is a fundamental principle underlying the regulation of prostitution. It is an offence for brothel licensees or approved managers to retaliate against prostitutes for refusing to supply services in potentially violent or unsafe situations. Brothel licensees must provide safety devices at brothels.

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#### ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Police.