



House of Representatives

Supplementary Order Paper

Wednesday, 26 March 2003

Prostitution Reform Bill

Proposed amendments

Hon Phil Goff, in Committee, to propose the following amendments:

Clause 2

To omit the words "3 months" (line 6 on page 2), and substitute the words "6 months".

Clause 4

To insert in *subclause (1)*, after the definition of **sex worker** (after line 26 on page 5), the following definition:

small owner-operated brothel means a brothel—

- (a) at which not more than 4 sex workers work; and
- (b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel

To omit from *subclause (1)* the definition of **territorial authority** (lines 27 to 29 on page 5), and substitute the following definition:

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

To omit *subclause (2)* (line 30 on page 5 to line 2 on page 6).

New clause 4AA

To insert, after *clause 4* (after line 7 on page 6), the following clause:

4AA Definition of operator

- (1) In this Act, **operator**, in relation to a business of prostitution, means a person who, whether alone or with others, owns, operates, controls, or manages the business; and includes (without limitation) any person who—
 - (a) is the director of a company that is an operator; or
 - (b) determines—

- (i) when or where an individual sex worker will work; or
 - (ii) the conditions in which sex workers in the business work; or
 - (iii) the amount of money, or proportion of an amount of money, that a sex worker receives as payment for prostitution; or
 - (c) is a person who employs, supervises, or directs any person who does any of the things referred to in **paragraph (b)**.
- (2) Despite anything in **subsection (1)**, a sex worker who works at a small owner-operated brothel is not an operator of that business of prostitution and, for the purposes of this Act, a small owner-operated brothel does not have an operator.

Clause 6(1)

To omit the words “Every person who operates a business of prostitution (other than a business for which that person is the only sex worker) must” (lines 18 to 20 on page 7), and substitute the words “Every operator of a business of prostitution must”.

Heading above clause 6C and clauses 6C and 6D

To omit *clauses 6C and 6D*, and the heading above those clauses (lines 4 to 27 on page 9), and substitute the following heading and clauses:

Territorial authority may make bylaws

6C Bylaws controlling signage advertising commercial sexual services

- (1) A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
- (2) Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that—
 - (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
 - (b) is incompatible with the existing character or use of that area.
- (3) Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.
- (4) Parts 8 and 9 of the Local Government Act 2002 (which are about, among other things, the enforcement of bylaws and penalties for their breach) apply to a bylaw made under this section as if the bylaw had been made under section 145 of that Act.

- 6D Bylaws prohibiting establishment of brothels in specified areas**
- (1) A territorial authority may make bylaws prohibiting, from a specified date, the establishment of brothels in specified areas within its district.
 - (2) A territorial authority may make a bylaw under this section only if it is satisfied that, if brothels were established in the areas specified in the bylaw, they would—
 - (a) cause a nuisance or serious offence to ordinary members of the public using the area; or
 - (b) be incompatible with the existing character or use of area.
 - (3) A territorial authority may not make bylaws under this section—
 - (a) that have the effect of prohibiting the establishment of brothels in all areas of its district; or
 - (b) that specify areas that were not included in the first public notice of the proposed bylaw that was given under the Local Government Act 2002; or
 - (c) that specify a date that is earlier than the date on which that public notice was given, which date may not be earlier than the date on which this section commences.
 - (4) Every bylaw made under this section expires on the date that is 2 years after the date of commencement of this section.
- 6E Procedure for making bylaws**
- (1) A bylaw made under **section 6C** or **section 6D** must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.
 - (2) Despite **subsection (1)**, a bylaw may be made under **section 6C** or **section 6D** even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

Heading above clause 9J

To omit this heading (lines 31 and 32 on page 16), and substitute the following heading:

Powers of entry

Clause 9J

To omit from the heading to this clause the words “**places to enforce prohibitions on use in prostitution of persons under 18 years**” (lines 33 to 35 on page 16).

To omit *paragraph (a) of subclause (1)* (lines 5 to 7 on page 17), and substitute the following paragraph:

- “(a) there is good cause to suspect that an offence under either of the following provisions is being, has been, or is likely to be committed in the place:

- “(i) **section 9C** (which concerns using persons under 18 years in prostitution):
- “(ii) **section 9MA** (which concerns being an operator while not holding a certificate); and”

Clause 9K(1)(b)

To omit this paragraph (lines 21 and 22 on page 17), and substitute the following paragraph:

- “(b) which of the offences listed in **section 9J(1)(a)** the warrant has been issued in respect of; and”

Clause 9L(1)(d)

To omit the expression “**section 9C**” (line 6 on page 18), and substitute the words “either section listed in **section 9J(1)(a)**”.

New Part 2A inserted

To insert, after *clause 9M* (after line 3 on page 19), the following new Part:

Part 2A Operator certificates

9MA Operators of businesses of prostitution to hold certificates

- (1) Every operator of a business of prostitution (other than a company) must hold a certificate issued under **section 9MB**.
- (2) Every person who, while required by **subsection (1)** to hold a certificate, does not hold a certificate commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (3) If a person who is charged under **subsection (2)** claims that he or she is not an operator because he or she is a sex worker at a small owner-operated brothel and is not an operator of any other business of prostitution, it is for the person charged to prove that assertion, on the balance of probabilities.

9MB Certificates

- (1) An applicant for a certificate must apply to a District Court in the prescribed form and pay the prescribed fee.
- (2) The Registrar of the District Court must issue a certificate to an applicant—
 - (a) if the applicant is not disqualified under **section 9MC** from holding a certificate; or
 - (b) if the applicant, although disqualified under **section 9MC** from holding a certificate, has been granted a waiver of disqualification under **section 9MD**, and—
 - (i) the applicant has not, since the waiver was granted, been convicted of a disqualifying offence; and
 - (ii) the waiver has not been cancelled.

- (3) If a certificate is refused, the Registrar must notify the applicant in writing, with reasons, and give information about how to apply for a waiver of disqualification under **section 9MD**.
- (4) Every certificate must be in the prescribed form and must contain a photograph of the holder.

9MC Disqualification from holding certificate

- (1) A person is disqualified from holding a certificate if he or she has been convicted at any time of any of the disqualifying offences set out in **subsection (2)**.
- (2) The disqualifying offences are as follows:
 - (a) an offence under this Act (other than an offence under **section 9MF(3)**, **section 9MG(5)**, **section 9MH(3)**, or **section 9ML(2)**):
 - (b) an offence, or attempt to commit an offence, under any of the following sections or Parts of the Crimes Act 1961 that is punishable by 3 or more years' imprisonment:
 - (i) section 98A (participation in criminal gang):
 - (ii) sections 124 to 144C (includes sexual crimes):
 - (iii) Part VIII (includes murder, manslaughter, assault, and abduction):
 - (iv) sections 234 to 244 (robbery, extortion, and burglary):
 - (v) section 257A (money laundering):
 - (vi) Part XI (threatening, conspiring, and attempting to commit offences):
 - (c) an offence under the Arms Act 1983 that is punishable by imprisonment:
 - (d) an offence under section 6 of the Misuse of Drugs Act 1975, and an offence under any other provision of that Act that involved a class A or a class B controlled drug, as those terms are defined in section 2(1) of that Act.

9MD Waiver of disqualification

- (1) A person who is disqualified from holding a certificate may apply to a District Court for an order waiving the disqualification on either of the following grounds:
 - (a) the nature of the offending that gave rise to the relevant conviction:
 - (b) the length of the time since the offending that gave rise to the relevant conviction occurred.
- (2) An application for an order waiving a disqualification must be in the prescribed form and be accompanied by the prescribed fee.
- (3) A District Court Judge may make an order waiving a disqualification if, after making whatever inquiries he or she considers necessary (including (if appropriate, and without limitation)

inviting written submissions and responses to submissions from any person) the Judge is satisfied that, in the particular circumstances applying to the applicant, the order should be made.

- (4) A District Court Judge may cancel an order waiving a disqualification if he or she is satisfied that the order should be cancelled, following—
- (a) an application by a member of the police to cancel the order; and
 - (b) the giving of notice to the person who is subject to the order of that application; and
 - (b) the making of whatever inquiries the Judge considers necessary (including (if appropriate, and without limitation) inviting written submissions and responses to submissions from any person).

9ME Expiry and renewal of certificate

- (1) A certificate expires 1 year after the date on which it is issued.
- (2) A certificate holder may apply, at any time within 2 months before the expiry of his or her certificate, for renewal of the certificate, in which case **section 9MB** applies as if the application for renewal were an application for a certificate.
- (3) If an application for renewal is made, but not determined, before a certificate expires, the original certificate does not expire until the application for renewal is determined.

9MF Cancellation of certificate

- (1) The Registrar of a District Court must cancel a certificate on notification that the certificate holder—
 - (a) is disqualified from holding a certificate as a result of a conviction for any offence referred to in **section 9MC(2)**; or
 - (b) has had his or her waiver of disqualification cancelled.
- (2) The cancellation of the certificate takes effect 5 days after notification of the cancellation is sent to the certificate holder.
- (3) A person whose certificate is cancelled commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, if he or she fails to return the certificate to a District Court within 1 month of the cancellation of the certificate.

9MG Operator to produce certificate on request

- (1) A member of the police may, on producing evidence that he or she is a member of the police, require any person who the member believes on reasonable grounds is an operator to produce that person's certificate for inspection, and the person must produce his or her certificate to the member, or to

another member of the police at a local police station, within 24 hours of the request.

- (2) Any person to whom a request is made under **subsection (1)** commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, if he or she fails without reasonable excuse to produce his or her certificate as required by that subsection.

9MH Court records

- (1) Court records concerning the identity of applicants for certificates, applicants for waiver of disqualification, and certificate holders may be searched, inspected, or copied only by—
 - (a) the applicant or holder concerned; and
 - (b) the police, but only for the purpose of investigating an offence.
- (2) Nothing in this section limits the power of the Registrar of a District Court to prepare and supply statistical information about applicants for certificates, applicants for waiver of disqualification, and certificate holders, as long as the information is supplied in a form that does not identify individual applicants or certificate holders.
- (3) A person who, in contravention of this section, obtains or uses information that is sourced from, or purports to be sourced from, the court records referred to in this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

Clause 9N(1)(b)(iv)

To omit from this subparagraph the words “to limit or control the location and conduct of prostitution or to license sex workers or persons who operate businesses of prostitution” (lines 30 to 33 on page 19), and substitute the words “and, in particular, whether the system of certification is effective or could be improved, and whether any other agency or agencies could or should administer it”.

Clause 9S

To insert, after *paragraph (a)* (after line 6 on page 22), the following paragraph:

- (ab) prescribing the application form, certificate, and fees required under **Part 2A** for operator certificates:

Explanatory note

This Supplementary Order Paper (SOP) amends the Prostitution Reform Bill in the following main ways:

- it requires every operator of a business of prostitution to hold a certificate, which is evidence that the person has never been convicted of a

disqualifying offence or, if he or she has ever been so convicted, has had the resulting disqualification waived by a District Court Judge:

- it allows territorial authorities to make temporary bylaws identifying areas in which no new brothels may be established. This is an interim measure to allow territorial authorities time to amend their district plans if they wish:
- it amends the commencement date so that the Act comes into force 6 months after assent. This is to allow territorial authorities and others time to prepare bylaws and administration systems.

The purpose of requiring operators to hold certificates is to ensure that people with serious criminal convictions do not exercise control over sex workers in brothels, escort agencies, and other businesses of prostitution. An operator is defined so as to capture all the people who in practice control the business or exercise control over the sex workers at the business. However, if a brothel is a **small owner-operated brothel** (no more than 4 sex workers, each of whom retains control over his or her individual earnings from prostitution), then none of the sex workers at the brothel is an operator, and none of them need hold a certificate. Access to information about certificate holders and certificate applications is tightly restricted.

A person may hold a certificate if he or she has not been convicted of a disqualifying offence. The disqualifying offences are serious sexual or violent offences and the more serious offences involving arms, drugs, money laundering, and gangs. A District Court Judge may waive a disqualification, on application, in any particular case, in which case the person may be licensed despite a disqualifying conviction.

Territorial authorities are given the power to make bylaws specifying areas in which brothels may not be established. The test for the bylaw is whether brothels in the areas specified would cause a nuisance or serious offence to ordinary members of the public using the areas, or would be incompatible with the existing character or use of the areas. Bylaws may not be made that would have the effect of prohibiting brothels in all areas of the territorial authority's district, and may not apply earlier than the date on which public notice of the proposed bylaw was first given under the Local Government Act 2002. Bylaws made under this section expire 2 years after the date on which the section commences. This is because the power is intended as an interim measure to cover the period while territorial authorities, if they wish, amend their district plans to address the location of brothels specifically.

The original *clause 6C* (about bylaws controlling signage) has been replaced in order to align the tests and procedures that apply to it with the tests and procedures applying to the new bylaw-making power about prohibiting the establishment of new brothels.

Bylaws made under this Act must be made using the procedures set out in the Local Government Act 2002. These include consultation and notice requirements. Under section 155(3) of the Local Government Act 2002, territorial authorities may not make bylaws that are inconsistent with the New Zealand Bill of Rights Act 1990. Because it is possible that bylaws controlling signage

for businesses of prostitution and the establishment of brothels may be considered to be inconsistent with the New Zealand Bill of Rights Act 1990, section 155(3) of the Local Government Act 2002 is expressly overridden (see *clause 9NAA(3)*).

The SOP also makes other minor amendments to achieve consistency between the Bill as reported back and the main policies outlined above, and to update references to local government legislation.
