

House of Representatives

Supplementary Order Paper

Wednesday, 25 June 2003

Prostitution Reform Bill

Proposed amendments

Stephen Franks, in Committee, to move the following amendments:

Part 1

New heading and clause 3A:

To insert, after clause 3, the following heading and clause:

Protection of freedom of speech, of association, and of religious expression

3A Protection of freedom of speech, of association, and of religious expression

- (1) No person is prevented under this Act or by virtue of any specified enactment from, or is liable under any specified enactment for, any otherwise lawful—
- (a) exercise of rights of free expression—
 - (i) to support or oppose prostitution, or the normalisation of prostitution, or the reduction or removal of any stigma that attaches to prostitutes and their clients or to persons who profit from prostitution or otherwise:
 - (ii) to persuade any person that prostitution or any form of prostitution is morally or ethically desirable or undesirable:
 - (b) act designed to discourage or dissuade any person or class of person from engaging in prostitution, or from using the services of any prostitute:
 - (c) act designed to prevent a child from engaging in prostitution, or to ensure the prosecution of any person for procuring a child to any act of prostitution:
 - (d) exercise of rights or powers as a provider or potential provider of goods or services (including the tenancy or

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- other use of real property) to promote, or to avoid being connected with prostitution or with the promotion of prostitution, or the normalisation of prostitution;
- (e) public identification of any person who uses a prostitute or profits from prostitution, directly or indirectly, or support or criticism of the prostitution related activities of such a person.
- (2) For the purposes of this section, **specified enactment** means—
- (a) Broadcasting Act 1989:
- (b) Employment Relations Act 2000:
- (c) Films, Videos, and Publications Classification Act 1993:
- (d) Harassment Act 1997:
- (e) Human Rights Act 1993:
- (f) New Zealand Bill of Rights Act 1990:
- (g) Privacy Act 1993:
- (h) any international conventions, treaties, or other provisions having effect by reference under any of the enactments specified in paragraphs (a) to (g).
- (3) For the avoidance of doubt, nothing in this section authorizes anything which exceeds what is reasonably necessary or incidental to protect the purposes of freedom of expression, of association, and of religious expression and exercising those rights.

Part 2

Clause 6EA

To insert, after clause 6E, the following new clause:

6EA Bylaws regulating prostitution

- (1) A territorial authority must observe the requirements of this section in making bylaws for its district under sections 145 and 146 of the Local Government Act 2002—
- (a) to regulate the visibility, location, and scale of brothels;
or
- (b) to regulate the location, scale, and nature of any activity which forms part of or is incidental to conducting a business of prostitution, including street solicitation.
- (2) A territorial authority must not make bylaws which go further than is reasonably necessary for the purposes of protecting the public, including affected land occupiers, from nuisance, from risks to the health of persons not engaged in or with the business of prostitution, and from offensive behaviour, and in particular from increases in—
- (a) intrusive noise:
- (b) the likelihood of private property incursions:
- (c) the discarding of offensive refuse:
- (d) intrusive traffic at late hours:

- (e) harassing solicitation:
- (f) the risk from drunken, drug affected, criminal, or otherwise threatening persons.

Clause 9C

To omit subclause (3).

To add the following new subclause:

- (4) It is a defence to a charge under this section that the person charged believed on reasonable grounds that the person under 18 years of age was that age or older.

New clause 9MAA

To insert, after clause 9M, the following clause:

9MAA Keeping proof of age evidence

- (1) Every person who operates a business of prostitution must, on request by any member of the police, produce evidence of the age of any young person engaging in prostitution in the course of that business.
- (2) For the purposes of this section,—
 - (a) **evidence of age** means a birth certificate, passport, or other document, and other identity evidence which ought reasonably to satisfy the member of the police as to the age and identity of the subject.
 - (b) **young person** means any person under the age of 21 years.

Explanatory note

The Bill as reported back from the committee of the whole House is not a straightforward decriminalisation.

A mishmash of amendments have:

- (a) inserted an ineffective licensing system for managers of brothels but only if they have more than 4 prostitutes;
- (b) cast on local authorities responsibility for brothel location without guidance as to the relevant principles;
- (c) failed to provide any practical powers to enforce law against underage prostitution;
- (d) created a regulatory bias in favour of street prostitution.

The health and safety purposes claimed by clause 3 remain subordinated to another unstated objective, to normalise or destigmatise prostitution.

The claims of health and safety objectives, like dealing with coercion, emotional stress, alcohol and drug dependence, and child sex are not matched by any machinery provisions.

The goal of normalisation prevailed over proposed measures to protect the freedom to express opposition to prostitution for those who believe that it is wrong.

These amendments protect rights to express opinions, and to maintain social and economic sanctions, that are both fundamental freedoms, and necessary aspects of a free but healthy society's response to an activity many people will consider unhealthy for society. They make it clear, for example, that nobody can force a school careers adviser to promote the local brothel as a career choice.

The amendments give local authorities a statement of the concerns they should address in regulating prostitution. In particular they give principles for bylaws on street solicitation.

The amendments make the underage prostitution age limit of 18 more than cosmetic. The majority on the committee rejected giving the police practical power to ask for proof of age from an apparently under-age prostitute. Instead the responsibility is solely on the customer. But a calculating 17-year old prostitute is immune, even if she or he offers false identity. Newspapers that take the "child's" advertisement are liable and have no defence of reasonable belief.

To make the concern for children genuine these amendments make provision allowing police to require timely proof of age.
