

## **PROSTITUTION CONTROL BILL 2003**

### *Consideration in Detail*

Resumed from an earlier stage of the sitting.

#### **Part 1: Preliminary -**

Debate was interrupted after the part had been partly considered.

Mrs M.H. ROBERTS: Before private members' business I was responding to the comments of the members for Kingsley and Kalgoorlie. I pointed out that it was simply not fair to say that there is very little difference between this and the Queensland or Victorian legislation. There are significant differences. I pointed out that the Queensland legislation does not incorporate escort agencies or similar agencies, which basically encourages people to work outside the system. The provision of planning approvals under the Queensland legislation is not as easy as it will be under our legislation. Basically, the licensing authority will provide the checks and balances for our system. This legislation acknowledges that a huge number of brothels are already in place in Western Australia. I am advised that the number of brothels in this State mushroomed when containment was abandoned under the former Government. Therefore, there is no validity in that argument. I also highlighted that 201 towns or areas in Queensland were granted permission to refuse brothel development applications. People said that they would refuse all applications within their areas. However, we all know that a blanket refusal does not make brothels go away as they instead operate illegally. We have not adopted that same head-in-the-sand approach. The report of the Queensland Prostitution Licensing Authority states that it would like that State's planning regulations to be amended.

Mrs C.L. EDWARDES: I thank the minister for putting on the record the correct number of licensed brothels in Queensland. It is 13; not 10.

Mrs M.H. Roberts: There are 13 licences for 10 brothels.

Mrs C.L. EDWARDES: The legislation will allow the number of brothels to grow. The community wants control; it wants restraint. It does not want the sex industry to grow. The legislation does not entail any form of restraint on the growth of the sex industry in Western Australia. The minister pointed out that there has been growth since the end of the containment period when prostitution legislation was introduced in 2000. We do not support the cessation of the containment policy by the Police Service. If a policy decision like that is to be made, it is incumbent to work out what is needed. We need to consider the legislation now in place. There is employment legislation - if that is a critical issue - and the Health Act, which is a critical issue not just for the health of sex workers but for public health. There is also the Police Act. Organised crime legislation has been enacted and the Corruption and Crime Commission legislation has been introduced into Parliament. If there is a need for an increased level of support for police to enable them to take serious action in obtaining evidence, to enter brothels that have links with organised crime and trafficking in women, and in which young people are abused and there is a high incidence of drug use, that level of support needs to be put in place. If further strengthening of laws is required for police officers to take action and crack down on organised crime, we should do that. If the Department of Health asks for the legislation to be strengthened, we should do that. The health provisions in this legislation are far less stringent than those under the containment policy. For example, under the containment policy, there was a requirement for weekly medical checks.

Mrs M.H. Roberts: Keep in mind that less than one-quarter of brothels operated under the containment policy.

Mrs C.L. EDWARDES: Okay. Why is this legislation not a prostitution restraining Bill? Why is the word "control" not used to restrain brothels? The Government says the legislation will deal with illegal brothels. The legislation should be able to clamp down on brothels. The police and the Department of Health should be sent in and brothels that do not currently comply should be closed down. That will provide a much better start.

Mrs M.H. Roberts: Who makes the rules about which are closed?

Mrs C.L. EDWARDES: That is a good point. What is there in this legislation? A prostitution control board and a process that will legalise prostitution and make it an investment for people who enter the industry. There is no indication in the legislation whatsoever that the Government will restrain the growth of the sex industry. It is providing for growth in areas that may not currently have brothels. Brothels are not currently in every light industrial area in the metropolitan area or beyond. The minister talked about 212 brothels in Queensland that were refused planning approval.

Mr M.J. BIRNEY: The member for Kingsley was on a roll and I would like to hear her finish her comments.

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The ACTING SPEAKER (Mr A.D. McRae): Will the member for the Kalgoorlie ensure that his telephone is turned off? It is disorderly.

Mr M.J. Birney: Absolutely.

Mrs C.L. EDWARDES: I thank the member for Kalgoorlie. The 212 brothel applications in Queensland were refused because the local councils were given the opportunity to knock back the applications. The minister is saying that because she will allow for automatic acceptance of applications within planning areas, as we are talking about equivalents, we will have at least 212 applications gaining approval in Western Australia.

Mrs M.H. Roberts: We have a much smaller population than Queensland's.

Mrs C.L. EDWARDES: I do not think so. What is the population of Queensland compared with Western Australia's.

Mrs M.H. Roberts: I think Queensland's population is at least 50 per cent greater than ours.

Mrs C.L. EDWARDES: I do not think so, although I am no expert.

Mrs M.H. Roberts: The Leader of the Opposition is nodding. He agrees with me.

Mrs C.L. EDWARDES: The minister and I are not experts in prostitution.

Mrs M.H. Roberts: Thank goodness for that!

Mrs C.L. EDWARDES: So be it. Opposition members have talked to many people and read a lot of material. The minister has not taken an interest in this matter since becoming the Minister for Police, even though she has had a long-held interest in this area. The Labor Government has held onto something that is outdated. Members opposite need to move on and accept that they are dealing with a different industry and community from that of the 1970s and 1980s with a greater level of violence against women and children. Statistics on the eastern seaboard and around the world indicate a growth in the level of violence and denigration against women and children. An increased number of young children will become involved in this industry once licensing is in place. The minister has strong laws within the legislation. However, when licensing has been applied elsewhere with equally strong laws, it has not worked. Scotland is trying something new with zero tolerance. Rather than having tolerance areas where prostitution occurs, people are working on zero tolerance from the community's point of view. The Government in Scotland wants to bring in tolerated areas, but that community is saying, "No. We want zero tolerance." The mayor and the people of local communities have been out on the streets talking to young people, particularly those aged under 18 years, encouraging them to get off the street, and particularly away from the clutches of those who wish to benefit from the prostitution of others.

The Liberal Party does not want to invade people's choices and rights to make decisions about their lives, but this Bill deals with a vulnerable group of people. Members should not forget that the legislation deals with young men as well. The industry involves a group of vulnerable women who are taken advantage of. They are sold the glamorous line that they can go out wearing great clothes and people will tell them how lovely and beautiful they are, but they must then cop everything delivered to them. I do not understand why the minister, as a woman, would support and encourage what is highly demeaning and denigrating.

Mrs M.H. Roberts: You know I do not accept or support it. I am accepting of reality and accepting of other people's choices.

Mrs C.L. EDWARDES: This legislation is hypocritical. It is based on an assumption that licensed brothels are unavoidable. That is not the correct path to follow. Do we have a sex industry? Yes. Do we want to have a growth in illegal and legal brothels? No, we do not. How do we stop that from happening? The minister has said that there is something out there that we do not like, and it is a hard decision to make, but what shall we do about it? They should be licensed. This Bill will not put a cap on the growth of prostitution; it provides for no limitation or restraint whatsoever. Although the Bill is called the Prostitution Control Bill, nothing could be further from the truth. It will amount to no control.

Mrs M.H. ROBERTS: I do not accept the member for Kingsley's propositions. She seems to think that somehow prostitution can remain illegal while police somehow control and contain it. Despite the member's best efforts to show that police could somehow contain it, I do not think that would be possible. Prostitution has existed for a long time and it will continue to exist. I do not see that this legislation will cause an increase in prostitution. Even if prostitution is contained but not licensed, and, under strict rules, is kept out of residential areas, the demand for prostitution will not go away. If the scenario returned to 10 brothels and a couple of streets, the industry would probably be forced further underground. If existing brothels were closed down, the likely result would be enormous expansion in home prostitution.

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I have spent a lot of time examining what has occurred as a result of legislation in other States. All kinds of possibilities have arisen. When a determination has been made to ban escort agencies or to apply unrealistic containment rules, it has led directly to an increase in illegal activity. In Victoria, people have run virtual mobile brothels from a mobile phone number. The brothels move from location to location. The fact that they cannot get a licence from local government does not mean that they no longer operate in that local area. They operate from one house for two or three weeks and from another house for the following few weeks. They move every two or three weeks. Prostitution is a very lucrative trade. If a system is not in place that is practicable and workable and we do not accept that brothels will continue to exist, a huge number of illegal brothels will emerge. They will be almost impossible for the police to contain. Efforts to close illegal brothels will be an enormous waste of police resources when they should be focusing on other crimes. If a proper and responsible licensing regime were in place under a control board, rather than the police determining who is suitable to hold a licence, it would free up a lot of police time. That has been the experience in Victoria and other places. Senior people in the Police Service have advised me -

Mrs C.L. Edwardes: In a formal capacity. If you spoke to them informally it would be a different story.

Mrs M.H. ROBERTS: No. I think they have been very frank and honest with me, as have police officers in New South Wales. If the Government were to put its head in the sand and take a strong line against brothels rather than legalise them, either a huge number of illegal brothels would be established or they would be displaced further and further into the suburbs. This legislation will prohibit brothels from operating in residential areas.

Mr M.J. BIRNEY: The wording used in this legislation is typical of wording used by the tricky, modern-day Labor Party. Prior to the dinner break I said that the title of the Bill - the Prostitution Control Bill - was not an appropriate title insomuch as the Bill will not control the spread of prostitution. I suggested that a better name might be the Prostitution Out of Control Bill.

Clause 6 outlines the Bill's objectives. The objective in paragraph (a) is to safeguard public health, paragraph (b) is to ensure that children and incapable persons are not involved in prostitution, paragraph (c) is to protect the social and physical environment of the community, paragraph (d) is to deter organised crime, paragraph (e) is to regulate and control people involved in the management of prostitution, paragraph (f) is to promote the safety of prostitutes, paragraph (g) is to ensure the entitlements and protections afforded to prostitutes, paragraph (h) is to regulate and control the ownership of prostitution businesses, and paragraph (i) is to control the advertising of prostitution. Nowhere in the list of objectives can I find the objective to legalise the keeping of premises for prostitution, because that is what this Bill is all about. The Government can come up with all the fairy floss words it likes, but the reality is that with the passage of this Bill, it will be legal not only to keep premises for the purpose of prostitution, but also to live off the earnings of a prostitute. Why are those two objectives not included after paragraph (i)? Why do we not include objective (j), to legalise the keeping of premises for the purpose of prostitution, and objective (k), to legalise living off the earnings of a prostitute? Those are the two key factors of this Bill. All the other objectives listed in the clause are simply ancillary. I do not know why the Labor Party will not include those objectives in the Bill. If members read the Bill clause by clause, it will become glaringly obvious that those are the objectives of the Bill; that is, to legalise living off the earnings of another person engaged in prostitution and to legalise the keeping of premises for the purpose of prostitution. I suspect that the Labor Party does not want words in the Bill that are that stark and obvious to people who might read this Bill because it might suddenly dawn on them what the Bill is all about.

I draw the minister's attention to clause 6(a), which provides that one of the main objectives of the Bill is to safeguard public health and wellbeing against the effects of prostitution. That is the first objective listed. However, there is no provision in the Bill for mandatory health checks for people engaged in prostitution. I know this has been the subject of some contention, but I would like the minister to put on the record now the reason the Bill does not require prostitutes to undergo mandatory health checks. During the Opposition's briefing, one of the minister's advisers said that one of the reasons the Government would not provide for mandatory health checks was that it was a civil rights issue for the prostitutes and that it would be overstepping the mark in relation to the civil rights of prostitutes. What about the clients of those prostitutes? Would they not expect this legislation to protect their health and safety by requiring mandatory health checks for prostitutes, particularly in light of the fact that objective (a) in the Bill is to safeguard public health and wellbeing against the effects of prostitution? Why is there no requirement for mandatory health checks in the Bill?

Mrs M.H. ROBERTS: It is because it would give people a false impression, and a person would probably need to have a health check after every sex act.

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Mr M.J. BIRNEY: I note that a clause in the Bill provides that people cannot advertise the fact that they have a clean bill of health by giving others the impression that they do not have a sexually transmitted disease and the like, so why would they not be required to have mandatory health checks? The minister is talking about giving somebody the wrong impression, and to some extent I agree with her, but why would that requirement not be included in the Bill? I accept that a prostitute cannot have a health check after every client, but surely it would be preferable for a prostitute to undergo a mandatory health check at least once a week. I am trying to understand the minister's reasoning for not including that requirement.

Mrs M.H. ROBERTS: The member has raised the concern that he does not believe we are meeting objective (a) to safeguard public health and so forth. That clause contains some checks and balances and a significant penalty of \$12 000. I also draw the member's attention to clause 179 dealing with presumption of knowledge of sexually transmissible infection. A health check that a person has is probably as good as the day on which she has it, because some sexually transmissible diseases require an incubation period before they can be picked up in a test. The rationale for doing it in this way could be that we do not want to drive girls underground, we do not want them put into a regime that is unrealistic and we do not want to intimidate them. The advice from health professionals for dealing with matters like this is to encourage people to engage in those healthy sex practices. Those two clauses indicate that people undertake certain responsibilities and, if they do not, appropriate penalties are in place.

Mr M.J. BIRNEY: That is basically a non-answer. The minister drew my attention to clause 123, which provides for the use of prophylactics. I have news for the minister. Prophylactics sometimes do not work and sometimes prostitutes do not use them. We can give that one a miss altogether. Clause 179 relates to the presumption of knowledge of sexually transmissible infection. I accept that if a person acted as a prostitute and had a sexually transmissible infection, that would be an offence under the Act. I still fail to understand why the Government will not require prostitutes to undergo health checks once a week. I accept the minister's assertion that there cannot be a health check after every client, but surely requiring a person to have a health check every week is better than not requiring a health check at all. Under the minister's legislation a prostitute could work for an entire year and still have no health check. Why would the minister not require a prostitute to have a health check? The minister referred to this rubbish about the civil rights of the poor prostitutes and that it will drive them underground. How will it drive them underground? A prostitute can work all week and at the end of the week she should have her health checked; if there is something wrong with her she may not want to work; if there is nothing wrong with her, she will keep working. Why will it drive her underground?

Mrs M.H. ROBERTS: I will draw a number of issues to the member's attention. If health checks are mandated, it will take away the Medicare rebate, which would certainly be a disincentive for the girls. We are trying to provide every incentive possible.

Mr M.J. Birney: It is about money, not public health.

Mrs M.H. ROBERTS: No; it is about public health and it is about putting something in place that will encourage people to participate in a process that health professionals tell me will increase the number of health checks. The member has dismissed clause 179 pretty lightly. Subclause (1) states -

If a person acted as a prostitute while the person had a sexually transmissible infection, the person is to be conclusively presumed, for the purposes of section 99, to have known at the time the person acted that the person had the sexually transmissible infection unless it is proved that at that time the person -

- (a) had been undergoing medical examinations in accordance with subsection (3); and
- (b) believed on reasonable grounds that the person did not have a sexually transmissible infection.

The member referred to mandatory weekly health checks. The Department of Health and other health professionals recommend that the girls have checks every six weeks. The member for Kalgoorlie has dismissed clause 179 pretty lightly, but it contains a couple of points. Clause 179(1) reads -

If a person acted as a prostitute while the person had a sexually transmissible infection, the person is to be conclusively presumed, for the purposes of section 99, to have known at the time the person acted that the person had the sexually transmissible infection unless it is proved that at that time the person -

- (a) had been undergoing medical examinations in accordance with subsection (3); and
- (b) believed on reasonable grounds that the person did not have a sexually transmissible infection.

The member has put forward the idea of mandatory weekly health checks. The best medical advice available on how often girls should have checks is every six weeks. Health professionals recommend that it be voluntary, not mandatory. This clause is important because it gives the girls a defence against a charge under the proposed section if they can demonstrate that they have been having the regular medical checks. Subclause (2) reads -

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If a person who had a brothel operator's licence, a prostitution agent's licence, or a prostitution manager's licence for a business (the **"licensed person"**) allowed a person (the **"prostitute"**) to act as a prostitute for the business and while acting as a prostitute the prostitute had a sexually transmissible infection, the licensed person is conclusively presumed, for the purposes of section 124, to have known at the time the prostitute acted as a prostitute that the prostitute had the sexually transmissible infection unless it is proved that, at that time, the licensed person believed on reasonable grounds that the prostitute -

- (a) had been undergoing medical examinations in accordance with subsection (3); and
- (b) did not have a sexually transmissible infection.

That places a pretty strong obligation on licensed persons to ensure that their workers have the health checks so that the licensed persons can demonstrate that their employees have been undergoing medical examinations. Essentially, the Government wants to be able to keep pace with changing health practices so that it can put in place the best regime. A number of very credible people have put forward the argument that there are fewer sexually transmissible diseases among prostitutes than in the general community. That seems a little hard to believe, but there is probably a much greater awareness among prostitutes. As a result of the obligations that the Government has put in place with this legislation, there is certainly every incentive for girls to have those regular health checks, because if they do not, the consequences are pretty dire. On top of that, we have put in place pretty tough penalties to ensure that licensed persons managing the premises demonstrate that the medical examinations have taken place if they want to avoid prosecution.

Mrs C.L. EDWARDES: The minister has raised a couple of points. If it were merely a question of mandatory health checks based on public health principles, a Medicare rebate could be the subject of negotiations. I have looked at the statistics showing the low incidence of sexually transmissible diseases among prostitutes. That applies until they have private sex, because the greatest threat is when they are in the community. When they leave the brothel and have private sex they rarely use protection. The critical issue for the wider community is those girls who move in and out of the industry very quickly. Some sexually transmissible diseases are not identifiable for up to three months. Therefore, even if girls have the six-week medical check, when they have private sex without protection, there will be a real potential for the spread of sexually transmissible diseases. This may be the reason that the incidence is higher in the wider community.

I refer the minister to clause 3 and the definition of a sole operator agency business and a sole operator brothel business. What is a sole operator agency business? Does the word "elsewhere" mean that the business is confined to a residential zone, and what are the prescriptions for it? When dealing with mobile home business operators, how will this definition or any of the other definitions catch the so-called mobile sole operator?

Mrs M.H. ROBERTS: Clause 66 provides further clarification, and it certainly links in with the definitions. Clause 66(2) states that subsection (1) does not apply to the provision of premises for use as a brothel in accordance with a brothel operator's licence, the provision of premises being the principal place of residence, and so forth. That provides the answer to the question.

Mrs C.L. EDWARDES: A sole operator agency business means a business that is performed elsewhere than at that person's principal place of residence or a brothel. What restrictions will be placed on the location of such premises? How will sole operators who operate mainly by means of mobile phones be dealt with?

Mrs M.H. Roberts: Essentially we are dealing with a sole operator escort business, so the sex act may take place at the person's home, a hotel or elsewhere.

Mrs C.L. EDWARDES: So a sole operator can operate at her principal place of residence but a sole operator agency business that is an escort agency can operate in a hotel or whatever.

Mrs M.H. Roberts: This is what is happening at the moment.

Mrs C.L. EDWARDES: I know. However, I have had contact from sole operators who do not work from home but rent a flat in Scarborough, for example. They do that deliberately, because they have kids and they do not want their kids to know. It appears that under this definition those people will be required to work from home.

Mrs M.H. Roberts: That is taken directly from the old containment policy, which your party supports.

Mrs C.L. EDWARDES: We are happy to have a beefed-up containment policy and regulation. Not everything is perfect.

Mrs M.H. Roberts: Essentially we were looking at them having secondary premises when we were looking at registering them all. However, we had just about universal disagreement with the proposition in the Green Bill that they all be registered, because they did not want to register secondary premises. The other rationale that

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comes into my mind is that when a woman operates out of her own home she is far more likely to do it discreetly. I do not think you or I or anyone else would want a person to be able to set up a secondary premises next door to our home or unit. I gather it is also the position of local government that it does not want them to be able to have secondary premises.

Mrs C.L. EDWARDES: The issue is health and safety. Perhaps we will explore that further when we get to those clauses.

Mrs M.H. Roberts: People who are engaging in sole operator escort businesses can make an arrangement to go wherever they want. It may change every day.

Mrs C.L. EDWARDES: So mobile operators are not constrained in any way?

Mrs M.H. Roberts: It is virtually impossible to constrain them.

Mrs C.L. EDWARDES: Clause 6(a) states that one of the main objectives of the Bill is to safeguard public health and wellbeing against the effects of prostitution. What effects are we talking about? Are we talking about adverse effects? This is one of the clauses of the Bill in which there is a dichotomy between what the minister is trying to do and what the Bill actually states. In paragraph (d) another of the main objectives of the Bill is to deter organised and other crime in connection with prostitution. "Deter" is a very soft word. This reflects in some way our view of what is happening in the community with police and organised crime in the brothel and sex industry. Why is a stronger word not used? In paragraph (e) another of the main objectives of the Bill is to regulate and control people involved in the management of, and people working in, businesses involving the provision of prostitution. Although the Bill has removed the licensing of individuals, are we talking here about the regulation and control of individual sex workers or just about public health and like matters involving individual sex workers?

Mrs M.H. ROBERTS: I remind the member for Kingsley that this legislation incorporates the Prostitution Act 2000, so it is not dealing just with brothels. When we talk in paragraph (a) about safeguarding public health and wellbeing against the effects of prostitution, we are also talking about safeguarding people against the effects of kerb crawlers, street prostitution and the like. On the issue of deterring organised crime, I would love to state in the Bill that the legislation will prevent organised crime, but the Government knows its limitations. I suppose that it is a tad defeatist to say it will not deter organised crime. However, it is very difficult to say that organised crime will be prevented or absolutely outlawed. Under this legislation, the Prostitution Control Board will have the power to not approve brothel licences for people who have serious drug records or associations with outlaw motorcycle gangs and the like. The member also referred to clause 6(e), which states -

to regulate and control people involved in the management of, and people working in, businesses -

A provision is needed in the legislation to enable people to be banned, such as those with HIV. It contains the provisions of the Prostitution Act 2000, which clearly banned children and others who needed to be banned.

Mr M.J. BIRNEY: I will pick up on the very good point made by the member for Kingsley on sole operator brothel businesses. This is one of the great anomalies of this legislation. There are two types of sole operators. The first type of sole operator is basically an escort. She is mobile and visits her clients, perhaps at a client's house or a hotel room provided by the client. The legislation excludes a prostitute from providing a hotel room. The other type of sole operator is one who provides her own premises for the purpose of prostitution. One of the problems that will result from the passage of this legislation is that prostitutes will have to work from home, perhaps the same homes in which they raise children. The member for Kingsley alluded to the fact that in the past some single mothers -

Mrs M.H. Roberts: You said that with the passing of this legislation women would be able to work only from their homes. That is the law now.

Mr M.J. BIRNEY: It is not the law now.

Mrs M.H. Roberts: I have received advice from the police officers with me this evening. The law as it currently stands means that a person's home is not regarded as premises for the purpose of prostitution, as the primary purpose of the home is as a residence. Prostitution has been allowed in people's homes because of that. This legislation would not allow that to happen; it is happening now.

Mr M.J. BIRNEY: What may happen now is that a single mother, who sadly turns to prostitution to support herself and her children, may rent a unit or hotel room from which to conduct her business. Under this legislation, that practice will be outlawed forever more. Prostitutes will then be required to work from home.

Mrs M.H. Roberts: There is case law on this.

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Mr M.J. BIRNEY: The minister will be able to refer to that in a moment. I will paint a picture for her. For example, after this legislation is passed, a single mother working as a prostitute will be required to work from home. She may decide to operate between the hours of 9.00 am and 3.00 pm, when her children are at school. When her children return home from school she will put up the closed sign and her job will be all over for the day. However, it will not work like that. Human nature being what it is, I can guarantee that some drunk will show up at her home at midnight and start banging on the door because he was there the day before at two o'clock in the afternoon. At midnight, her children would be on the premises. This legislation is all about protecting children and their rights with respect to prostitution, yet this clause will require those working as prostitutes, including those who are single mothers, to work from home. Those single mothers will be bringing up their children in an environment in which prostitution occurs. Be that on the minister's head.

Mrs M.H. ROBERTS: I draw the attention of the member to the case of Storey v Wick, which clarifies the law on this matter. The member has made the allegation that under the Government's proposal a prostitute would work from her home between 9.00 am and 3.00 pm. Under this legislation, she could work in a legal brothel during that time.

Mr M.J. BIRNEY: However, if she happens to be a sole operator and does not want to work in a brothel environment, or if she happens to be a single mother trying to provide for herself and her children - sadly that happens - under this legislation she will be required -

Mrs M.H. Roberts: She can work in a brothel, she can meet a client in a hotel or she can work from home.

Mr M.J. BIRNEY: Yes, but under this legislation she cannot provide the hotel room; it must be provided by the client. She will have to work from the very same house in which she raises her children. Is this what the minister wants to happen? Why is this Government legislating to provide for a single mother to conduct a prostitution business in the same house in which her children are raised? This minister is an absolute disgrace. If she cannot see the anomaly in that, there is something clearly wrong with her.

*Question to be Put*

Mr J.C. KOBELKE: I move -

That the question be now put.

Question put and a division taken with the following result -

**Extract from *Hansard***  
[ASSEMBLY - Wednesday, 25 June 2003]  
p9262b-9292a

Mrs Michelle Roberts; Mr Matt Birney; Acting Speaker; Mrs Cheryl Edwardes; Mr John Kobelke; Mr Rob Johnson; Deputy Speaker

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Ayes (25)

Mr J.J.M. Bowler	Mrs D.J. Guise	Mr M. McGowan	Mrs M.H. Roberts
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mr P.B. Watson
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr M.P. Whitely
Mr A.J. Dean	Mr R.C. Kucera	Mrs C.A. Martin	Ms M.M. Quirk ( <i>Teller</i> )
Mr J.B. D'Orazio	Mr F.M. Logan	Mr M.P. Murray	
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr A.P. O'Gorman	
Dr G.I. Gallop	Mr J.A. McGinty	Mr J.R. Quigley	

Noes (16)

Mr R.A. Ainsworth	Mr J.H.D. Day	Ms K. Hodson-Thomas	Mr T.K. Waldron
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr P.D. Omodei	Dr J.M. Woollard
Mr M.J. Birney	Mr B.J. Grylls	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )

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Pairs

Mr S.R. Hill	Mr M.F. Board
Mr P.W. Andrews	Mr B.K. Masters
Mr D.A. Templeman	Mr A.D. Marshall

Independent Pairs

Dr E. Constable  
Mr P.G. Pandal

Question thus passed.

*Debate Resumed*

Part put and a division taken with the following result -

Ayes (25)

Mr J.J.M. Bowler	Mrs D.J. Guise	Mr M. McGowan	Mrs M.H. Roberts
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mr P.B. Watson
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr M.P. Whitely
Mr A.J. Dean	Mr R.C. Kucera	Mrs C.A. Martin	Ms M.M. Quirk ( <i>Teller</i> )
Mr J.B. D'Orazio	Mr F.M. Logan	Mr M.P. Murray	
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr A.P. O'Gorman	
Dr G.I. Gallop	Mr J.A. McGinty	Mr J.R. Quigley	

Noes (16)

Mr R.A. Ainsworth	Mr J.H.D. Day	Ms K. Hodson-Thomas	Mr T.K. Waldron
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr P.D. Omodei	Dr J.M. Woollard
Mr M.J. Birney	Mr B.J. Grylls	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )

Pairs

Mr S.R. Hill	Mr M.F. Board
Mr P.W. Andrews	Mr B.K. Masters
Mr D.A. Templeman	Mr A.D. Marshall

Independents

Dr E. Constable  
Mr P.G. Pandal

**Part thus passed.**

Mrs Michelle Roberts; Mr Matt Birney; Acting Speaker; Mrs Cheryl Edwardes; Mr John Kobelke; Mr Rob Johnson; Deputy Speaker

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**Part 2: Prostitution Control Board -**

Mrs C.L. EDWARDES: Part 2 deals with the establishment of the Prostitution Control Board, its functions and the rest of the provisions dealing with the board. I refer the minister to the membership of the board and also to the committees that can be established. Which other persons to be appointed will be included? What sort of people will they be? What skills and experience will they have? Will they be individual sex workers, sole operators or persons who have no vested interest in the industry? Could it be a member from the community who might have an interest in the effects of prostitution? Clause 14 provides that a member of the board or of a committee is entitled to such remuneration and allowances, if any. Does that mean members may be paid or not paid, as determined by the minister?

Mrs M.H. ROBERTS: Clause 10 details the qualifications and manner of appointment. Paragraph (a) states that one is to be appointed from local government, paragraph (b) states that one must be a medical practitioner and paragraph (c) states that the remaining person must have knowledge and experience as detailed in subparagraph (i). Yes, they will be paid.

Mrs C.L. EDWARDES: Clause 21 deals with committees, which I also asked the minister to address. Subclause (2) details the appointment of the members of the committee, such as a person who has a brothel operator's licence, a person who has a prostitution agent's licence and so on.

Mrs M.H. Roberts: It will be up to the board to appoint those committee members.

Mrs C.L. EDWARDES: Will they not be appointed by the minister?

Mrs M.H. Roberts: No. Clause 21(1) says, "The Board may from time to time". The decision therefore to appoint those members is for the board, not the minister.

Mrs C.L. EDWARDES: Will the minister have no involvement whatsoever in appointing a community person to the Prostitution Control Board?

Mrs M.H. Roberts: No; I have that ability under clause 10(c).

Mrs C.L. EDWARDES: How does that clause allow the minister to appoint a community person who has no vested interest?

Mrs M.H. ROBERTS: I could appoint the archbishop under clause 10(c) if I wanted to. It is a fairly flexible clause.

Mrs C.L. EDWARDES: That may be because the archbishop runs a very successful organisation called Linda's House of Hope or because he helps to fund such an organisation. However, I am talking about a broader community person who has no vested interest.

Mrs M.H. Roberts: That person would need only to have some knowledge. Under this provision the person is required to have some knowledge.

Mrs C.L. EDWARDES: No. Clause 10(c) states -

the remaining person . . . is to have knowledge of, or experience in, matters affecting people working in, or involved in the management of, businesses involving the provision of prostitution;

That person must have some level of involvement or knowledge. It could be an academic who has researched the industry, it could be somebody from Phoenix - the staff there are probably looking for jobs at the moment - or it could be someone who has been a medical practitioner, a nurse or somebody who has had some connection with the industry. There is no provision to appoint someone from the wider community who has no interest.

Mrs M.H. Roberts: I could appoint that person, for example, as chairman.

Mrs C.L. EDWARDES: Where is that provision?

Mrs M.H. Roberts: Under clause 9(a), I could appoint a chairman as you have described.

Mrs C.L. EDWARDES: I thank the minister for that. I return to the provision for remuneration, which states that a member of the board or of a committee is entitled to remuneration and allowances. Is it intended to pay those members?

Mrs M.H. Roberts: Yes.

Mrs C.L. EDWARDES: Therefore, the words "if any" refer to allowances, not remuneration. The authority in Queensland stopped paying the members of its committee when it ran out of money.

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Mrs M.H. Roberts: It is intended that the remuneration will be tied to the general rates of payment for government board members and they will continue to be paid. I cannot foresee circumstances in which they would not receive remuneration.

Mrs C.L. EDWARDES: Division 2 deals with the functions of the board. I asked the minister in a question without notice about the cost of running the board compared with the cost to Queensland of running its Prostitution Licensing Authority. Queensland's contribution to that authority is \$1.8 million over two years and the licence fees collected totalled just \$210 000. The minister's answer to my question without notice was that this State's board would be different from Queensland's authority. The minister is therefore aiming to issue a greater number of licences. That is a two-edged sword in that there will be an increased number of legalised brothels in Western Australia to fund the Prostitution Control Board. However, does the Government have an estimate of what the costs will be for the board for the first year?

Mrs M.H. ROBERTS: Our aim is to make this cost neutral, so that the industry pays for the board. I appreciate the member's point that that is not the case in Queensland. Given the legislation that Queensland put in place, it was never likely to be the case because of the small number of brothels that are licensed. One of the issues that I raised with the Queensland licensing authority was the amount charged for its fees, which is reasonably significant. I asked the authority whether it believed that was a factor in whether people chose to be licensed. Given that so many premises are operating outside the legislation and outside the legal situation in Queensland, I asked whether the authority thought that the amount of money was a factor, because the licensing fees are significant. The answer was no; none of the brothels that were part of the system had any objection to the fees, and the authority did not believe that the amount of money was a factor.

The authority said that the biggest factors were planning matters. As I have already highlighted, a huge number of local government areas chose to ban brothels. That does not mean that they do not have brothels; it just means that they have only illegal ones. Even within the Brisbane central business district, a policy was set that there could not be a brothel within 200 metres of any residential premises. As members are aware, in the Brisbane CBD there are a number of residential apartment blocks. Essentially, that means that, under the city of Brisbane's policy, there cannot be a legal brothel anywhere in the CBD. That makes it problematic. There are brothels in the Brisbane CBD. The only difficulty is that they are not licensed because they do not comply with the city of Brisbane town planning law.

In this State, we see no reason that the town planning laws would get in the way. The general belief of the people with whom I have spoken in the other States is that the fees are not a particularly big issue. Therefore, I believe that if we can encourage a sufficient number of brothels into the licensing system, the board will be self-sufficient in terms of funding.

Mrs C.L. Edwardes: What are the set-up costs?

Mrs M.H. ROBERTS: They are just the basic set-up costs of a small office.

Mrs C.L. EDWARDES: Clause 15(d) is a change from what was in the Green Bill. Under the Green Bill, strategies had to be developed to deter persons from becoming prostitutes. This provision states -

to develop strategies to provide persons with alternatives to becoming prostitutes . . .

Why has that change been made? Again, it seems to be inconsistent with the Act. How does the Government propose to go about that?

Mrs M.H. Roberts: We expect the board to take up that task. One of the things we wanted to achieve was for prostitutes to be able to approach the board. We felt that if the Bill contained the word "deter" rather than "to develop strategies" and so forth, it would not assist the communication between the prostitutes and the board.

Mrs C.L. EDWARDES: The Government must give some direction in the form of policy guidelines to the control board. What does the Government believe it will be able to do? Will it consider, outside the Prostitution Control Board but maybe through it, the funding of operations - not Linda's House of Hope, but other operations of a similar nature to help them become established?

Mrs M.H. Roberts: That is certainly a possibility. I do not intend to give that as a directive to the board. However, I would certainly encourage it to consider options like that.

Mrs C.L. EDWARDES: I refer the minister to clause 16, education and information, which states -

It is a function of the Board to provide education concerning prostitution-related issues for prostitutes and other persons . . .

How does the Government see the board doing this? What education processes will be involved? Again, it seems a little inconsistent. A highly harmful industry, in which the focus should be on the protection of women and children, can have a number of other elements associated with it, such as illegal activity, public nuisance and

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the like. What sort of education process does the minister believe the Prostitution Control Board can take to the general community?

Mrs M.H. ROBERTS: The board has some form of duty of care to the prostitutes. We want to recognise that people are engaged in prostitution. It is proper for the board to have a role in advising of the risks of continuing to be part of that industry. Essentially, the board needs to have a global duty of care to people in the industry and provide them with information in whichever way it considers is most appropriate.

Mrs C.L. EDWARDES: I refer to the community generally, not just to prostitutes.

Mrs M.H. ROBERTS: The board would be able to provide the community with statistics and information on the risks and concerns.

Mrs C.L. EDWARDES: I refer the minister to clause 16(3)(e), under prostitution-related issues. There is a difference between this Bill and the Green Bill. The Green Bill provided for persons to be warned, whereas now the paragraph refers to matters about which persons intending to become prostitutes should be aware. There has been a change from warning to being aware.

Mrs M.H. ROBERTS: That again follows the theme of keeping the board approachable to prostitutes and encouraging communication between prostitutes and the board.

Mr M.J. BIRNEY: I draw the attention of the minister to clause 8(3), which reads -

Proceedings may be taken by or against the Board in its corporate name.

What liability would individual directors have in the event of a successful action being taken against the board?

Mrs M.H. ROBERTS: Clause 199(1) of the Bill reads -

An action in tort does not lie against a person for anything that he or she has, in good faith, done as -

- (a) a police officer or a person assisting a police officer;
- (b) a medical practitioner;
- (c) a member of the Board or of a committee; or
- (d) a member of staff,

in the performance or purported performance of a function under this Act.

Mr M.J. Birney: Does that mean it is not intended that any action can be taken personally against a board member?

Mrs M.H. ROBERTS: No, it is not.

Mr M.J. BIRNEY: I note the Commissioner of Health and the Commissioner of Police are listed as full-time board members, and somewhere in the Bill there is provision for the handballing of that role by these two people to other individuals. I suggest that that is more than likely to happen.

Mrs M.H. Roberts: What are you suggesting?

Mr M.J. BIRNEY: Two of the board members will be the Commissioner of Health and the Commissioner of Police. I am sure I read further on in the Bill a provision by which the Commissioner of Health and the Commissioner of Police can appoint someone else from their organisations. I suggest that that is probably what will happen. I would be very surprised if the Commissioner of Health and the Commissioner of Police attended more than a few meetings, if any at all. I cannot help but wonder whether that might have been better written, allowing for those two people to appoint somebody to the board.

Mrs M.H. Roberts: That is just a drafting practice of parliamentary counsel. It was recommended to us.

Mr M.J. BIRNEY: If the Commissioner of Health and the Commissioner of Police had the authority to nominate a person to the board, that person would feel like a permanent fixture on the board and would perhaps be a little more conscientious in carrying out the duties of a board member. If it is just somebody that the Commissioner of Police taps on the shoulder on Thursday - and then he taps someone else the following Thursday - there will be very little continuity.

Mrs M.H. ROBERTS: I refer the member to division 2, deputies and representatives, of schedule 1 on page 124. Clause 3, representatives of ex officio members, states in part -

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- (1) The Commissioner of Health and the Commissioner of Police may each nominate a senior member of his or her staff to represent him or her -
  - (a) either generally at meetings of the Board; or
  - (b) at a particular meeting.

The option to nominate someone on virtually a semipermanent basis is available under paragraph (a). Subclause (3) states -

A nominee, while representing the Commissioner of Health or the Commissioner of Police, is to be taken to be a member of the Board.

I assure the member that whoever is delegated that obligation and role by the Commissioner of Police will take it very seriously.

Mrs C.L. EDWARDES: I continue to refer to the education the board will provide to prostitutes, other persons and the community. I earlier mentioned an important program in Glasgow, Scotland that is having some success in getting women and children off the streets. It works in two ways, with people working on the streets and others running pilot classes in secondary schools. Children as young as 14 years are taught about prostitution in an endeavour to change attitudes and prevent those youngsters from falling into a way of life. It is estimated that about 300 children sell themselves for sex on the streets of Scotland and that 1 400 adult women in Glasgow have been forced into prostitution to fund a chronic drug habit. The proponents of the program use the example of a 19-year-old woman who as a child was sexually abused by a stepfather and an elderly neighbour. She ended up working as a prostitute and turned to drugs as a way of coping. The program is importantly and aptly titled "action against abuse". Personal and social education classes discuss vulnerability, victimisation, drug habits and the level of violence against women and children in the prostitution industry. I believe it is a very important response that we could take note.

A night shift team works with the Glasgow police. The local council, police and health department work on the streets to support vulnerable young men and women who are involved in prostitution. They start from the premise that those involved in prostitution have not made an informed career choice. This Government is legalising prostitution and saying that it recognises people's choices. However, it is not admitting - although there are some differences of opinion over the drafting of the legislation, which is a result of the dichotomy that is faced - that the industry is about abuse and sexual exploitation by adults and that the career choice is not often an informed one or one that prostitutes would make if alternatives were available. The Glasgow package provides examples of some of the strategies and education programs that can be directed to not only prostitutes but also students. It is a very clear opportunity for us to learn from their experiences.

Mrs M.H. ROBERTS: I am sure that, if and when we get this legislation in place, members of the control board will read the remarks of the member for Kingsley with some interest. They may look at some of the examples she has referred to and, perhaps, other ones. The member spoke about removing street workers from the streets, and referred to Glasgow. I will refer to Perth. According to police statistics, prior to the Prostitution Act 2000 it was estimated that there were 300 to 400 street workers. The estimate now is that there are currently 30 to 40. We have had considerable success, particularly if the police statistics are to be believed. I have no reason to dispute them. No-one currently has responsibility for deterring women from becoming involved in prostitution or in educating them about the risks. The passage of this legislation will put in place a board that will be charged with that responsibility.

Mrs C.L. EDWARDES: We do not need the legislation to put someone in charge of deterring prostitution. The local council, police and health department in Glasgow worked on it together. They did not need legislation. They needed only the commitment and a willingness to get out and do something.

Mrs M.H. Roberts: This legislation provides the mechanism and the funding.

Mrs C.L. EDWARDES: We do not need to do that. The Government can provide the funding. The Government simply wanted to implement the policy of the 1980s. It started from the wrong premise. It could have started by throwing out the drafts.

Mrs M.H. Roberts: We started with your late 1990s policy.

Mrs C.L. EDWARDES: We were never going to bring it in.

Mrs M.H. Roberts: I believe only two ministers were opposed to it.

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Mrs C.L. EDWARDES: I do not think so. It would never have got through Cabinet. As such, it was never going to be introduced into Parliament. The Government needs to start from a different premise. We do not need legislation to deter people from getting involved in the industry and suffering the harmful effects. I implore the minister to not wait. If the upper House will not pass this legislation, the Government should get on with doing the job. It should get on with helping people now. There is Linda's House of Hope, and there are strategies that the Government can put in place today that do not require legislation.

Part put and a division taken with the following result -

Ayes (23)

Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mr J.R. Quigley
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr A.D. McRae	Mrs M.H. Roberts
Mr A.J. Dean	Mr R.C. Kucera	Mr N.R. Marlborough	Mr P.B. Watson
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Mr M.P. Murray	Ms M.M. Quirk ( <i>Teller</i> )
Dr G.I. Gallop	Mr M. McGowan	Mr A.P. O'Gorman	

Noes (16)

Mr R.A. Ainsworth	Mr J.H.D. Day	Ms K. Hodson-Thomas	Mr T.K. Waldron
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr P.D. Omodei	Dr J.M. Woollard
Mr M.J. Birney	Mr B.J. Grylls	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )

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Pairs

Mr S.R. Hill	Mr M.F. Board
Mr P.W. Andrews	Mr B.K. Masters
Mr D.A. Templeman	Mr A.D. Marshall
Ms J.A. Radisich	Mr M.G. House

Independent Pairs

Dr E. Constable  
Mr P.G. Pendal

**Part thus passed.**

**Part 3: When licence is required -**

Mrs C.L. EDWARDES: Part 3 is very short and comprises two clauses. A licence is required to carry on a business of a brothel or a prostitution agency. A licence is also needed to act as a prostitution manager. No definition of prostitution manager is provided under clause 3, although clause 31 reads in part -

- (2) A person acts as a prostitution manager if the person has the immediate direction and control of a brothel business or prostitution agency business.
- (3) Subsection (1) applies whether or not the person has a brothel operator's licence or prostitution agent's licence for the business.

Can the minister give a scenario in which a prostitution manager's licence would be needed when that person also has a brothel operator's licence or a prostitution agent's licence? Why would that person also need a manager's licence?

Mrs M.H. ROBERTS: Essentially, a manager's licence will be needed because some responsible person must be on the premises at all times. That is the logic behind a manager's licence being separate from the brothel operator's or prostitution agent's licence. Someone with a manager's licence is required in addition to the person with the prostitution agent's licence because someone who is responsible under the legislation must be on the premises at all times.

Mrs C.L. EDWARDES: I understand that point. Clause 31(1) states that a person who acts as a prostitution manager without a manager's licence commits a crime. Therefore, one would not need a manager's licence as well as a brothel operator's licence or a prostitution agent's licence. The person need not have both licences.

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Mrs M.H. Roberts: No. A couple of people might hold an operator's licence.

Mrs C.L. EDWARDES: A brothel could have numerous licences and several prostitution manager's licences. Therefore, a prostitution manager is present on a roster basis for the operation of the business 24/7, and two or three managers could be licensed for one brothel.

Mrs M.H. Roberts: The member is right.

Part put and a division taken with the following result -

Ayes (24)

Mr J.J.M. Bowler	Dr G.I. Gallop	Mr M. McGowan	Mr A.P. O'Gorman
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mr J.R. Quigley
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr A.D. McRae	Mrs M.H. Roberts
Mr A.J. Dean	Mr R.C. Kucera	Mr N.R. Marlborough	Mr P.B. Watson
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Mr M.P. Murray	Ms M.M. Quirk ( <i>Teller</i> )

Noes (16)

Mr R.A. Ainsworth	Mr J.H.D. Day	Ms K. Hodson-Thomas	Mr T.K. Waldron
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Pairs

Mr S.R. Hill	Mr M.F. Board
Mr P.W. Andrews	Mr B.K. Masters
Mr D.A. Templeman	Mr A.D. Marshall
Ms J.A. Radisich	Mr M.G. House

Independent Pairs

Dr E. Constable  
Mr P.G. Pental

**Part thus passed.**

**Part 4: Licensing provisions -**

Mrs C.L. EDWARDES: Clause 34, applying for a licence, reads -

- (1) An application for a licence is to be -
  - (a) made in writing, in a form approved by the Board; and
  - (b) lodged in a manner approved by the Board.
- (2) A person making an application is to state -
  - (a) an address that is to be the person's contact address for the purposes of this Act, at which the person may be contacted by anyone performing a function under this Act; and
  - (b) the address of premises at which records are to be held under section 112.

What address will not be acceptable? What is the experience elsewhere?

Mrs M.H. Roberts: A post office box would not be acceptable.

Mrs C.L. EDWARDES: Obviously, in both instances it must be an address that holds a building so that someone can knock on the door.

Mrs M.H. Roberts: Yes.

Mrs C.L. EDWARDES: Can it be a personal address?

Mrs M.H. Roberts: Yes.

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Mrs C.L. EDWARDES: It could be the place of the brothel, the prostitution agent or the manager.

Mrs M.H. Roberts: Clearly the preference is that if it is for a brothel, it will be the address of where the brothel is located.

Mrs C.L. EDWARDES: Has experience elsewhere shown some real problems with that?

Mrs M.H. Roberts: No.

Mrs C.L. EDWARDES: What happens with those applications and the names and addresses? Obviously we will get to the checks and the rest of it.

Mrs M.H. Roberts: They are kept on a secure database.

Mrs C.L. EDWARDES: Nothing in this legislation says that that information will be secure and will not be available publicly or who will have access to it.

Mrs M.H. Roberts: There is quite a strong confidentiality provision in clause 203. I have spoken to people in the Australian Capital Territory and Queensland, and they keep separate and secure databases. For example, the database is maintained separately from the police computer.

Mrs C.L. EDWARDES: I thank the minister. There was obviously a concern about the accessibility or otherwise of that information.

Mrs M.H. Roberts: I also make the point that it is a much stronger confidentiality provision than that in the Criminal Code. We have made it very strong.

Mrs C.L. EDWARDES: In what way?

Mrs M.H. Roberts: In the penalties.

Mrs C.L. EDWARDES: Clause 37 is very important. It deals with the restrictions on who can have licences. In the first instance, obviously the applicant must be an adult. The board also must be satisfied that there is sufficient evidence of the applicant's identity, which must be checked, and that there are no pending charges involving acts of violence or a victim who was a child or an incapable person. Several other restrictions are listed in the clause, including that the person must not be declared a drug trafficker and has not been found guilty of a schedule 2 offence or similar offences under the law of the Commonwealth or other States or Territories. The board also must be satisfied that no licence granted to an applicant under the Bill has been revoked within a period of five years. That means that the applicant cannot be granted a licence within five years of the licence being revoked. Paragraph (x) provides that an applicant who is otherwise of good character and is a fit and proper person can be granted a licence. What if the person has been refused a licence elsewhere but has no conviction?

Mrs M.H. ROBERTS: The board can take that into account. We have deliberately left this provision fairly open. We have deliberately not restricted the definition of a fit and proper person. Obviously we have put in place some restrictions that will absolutely outlaw someone from being granted a licence. However, we have also included in the Bill the catch-all of a fit and proper person so that the board can take all kinds of backgrounds into account. Essentially, the board will maintain a pretty strong discretion in this area.

Mrs C.L. EDWARDES: It has happened. A person was refused a licence in Victoria but immediately went to New South Wales and set up a brothel.

Mrs M.H. Roberts: There are pretty much no restrictions in New South Wales. It is basically pushed on to the local government. People have been able to run brothels in New South Wales for decades. Local governments approve the brothels on planning grounds, so operating a brothel in New South Wales is relatively easy. It is not that easy in Victoria or Queensland and it will not be as easy in Western Australia.

Mrs C.L. EDWARDES: The clause refers to people who are of good character, are fit and proper persons, have no convictions and have not had a licence revoked or refused. Has the minister discussed the exchange or sharing of information with people in the States and Territories that have such a system in place so that we do not have a system whereby someone who has been refused a licence in Victoria can come to Western Australia and receive such a licence?

Mrs M.H. ROBERTS: I draw the member's attention to clause 44, entitled "Regulations may prescribe conditions and restrictions". The member has suggested that we may need to take into consideration whether someone had been denied a licence in another State. We could make a regulation in that regard if we wanted, or we could use those more general provisions relating to a fit and proper person. Clause 202, headed "Exchange of information", would allow for some exchange of information. I would expect there to be less transference of

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brothel businesses from the east coast to the west coast than there would be up and down the east coast. It is much easier to get a brothel up and running under the laws in New South Wales. One of the experiences reported to us by Queensland is that there are more brothels on the New South Wales side of the border.

Mrs C.L. EDWARDES: I accept what the minister says about regulations, but that would be a critical element if we were talking about someone being found guilty of an offence elsewhere in Australia. Provisions relating to a person who has been refused a licence elsewhere or has had his or her licence revoked - not necessarily pursuant to an offence provision - should be incorporated in clause 37. What about similar offences elsewhere in the world? Borders no longer exist - people come in and out of the State - and there are particular problems with Asian countries. I was the censorship minister for some eight years, and there was real growth in the level of pornographic material coming across our shores from the Asian countries. We are also aware of the Asian trafficking of women and the like.

Mrs M.H. Roberts: As the member has pointed out, people convicted of certain categories of offences are absolutely banned from participating.

Mrs C.L. EDWARDES: Yes, but only people convicted by the Commonwealth or a State or Territory.

Mrs M.H. Roberts: That is right. I am advised that if we were to have an absolute ban for persons convicted of offences anywhere throughout the world, we would be obligated to check every country's records, which I am advised is impractical. However, if in any circumstances such information came to the attention of the board, it could judge whether that person was a fit and proper person. Pursuant to clause 202, exchange of information, the Police Service can provide information to the board, and the Police Service can use the CrimTrac network or other information at police disposal to make checks and provide that information to the board.

Mrs C.L. EDWARDES: Will that information be readily available to the Prostitution Control Board?

Mrs M.H. Roberts: There is absolutely no reason for its not being readily available to the board.

Mrs C.L. EDWARDES: Would it have access to CrimTrac?

Mrs M.H. Roberts: They would not have direct access to CrimTrac. The Western Australia Police Service has access through CrimTrac, and it could provide that information to the board pursuant to the exchange of information clause.

Mrs C.L. EDWARDES: If a teacher with a record can be employed in a small town in a teaching position, as we heard today from the Minister for Education and Training, I have no faith in this clause restricting whether he or she can have a licence. What else will the board do to make sure that processes and procedures are in place?

Mrs M.H. Roberts: It is the same for anything. I refer to child-care workers, teachers and a range of other people, especially those working with infants. There are lots of people a person would not want working with children. No practical check is made on offences any of those persons might have throughout the world. Only now is a proper national check being done on some of those people.

Mrs C.L. EDWARDES: I can understand there will be differences between the classifications of offences, but a lot of work has been done on the national and international scene to ensure that there are some comparisons. A lot of work has been done under the prisoner transfer program to ensure that like offences can be compared. Clause 37 is very weak because it does not address the matter as broadly as it could. It leaves a lot of responsibility with the Prostitution Control Board, which is to determine who is a person of good character and a fit and proper person. Parliament is not giving its view on that.

Mrs M.H. Roberts: Keep in mind that one of the members of the board will be the Commissioner of Police or a very senior representative, so the board would certainly be privy to advice from that person.

Mr R.F. JOHNSON: My concern is about a potential scenario involving an organised crime figure in Perth with a criminal record. If I were such a person, I would not front up to the Prostitution Control Board and ask for a licence to run a brothel, because I would be rejected. What would be likely to happen? I would find a front man who did not have a criminal record. I would send him along to the board to get the licence. The board could not reject him because he would qualify under all the provisions of clause 37. The nature of the prostitution and brothel business is such that it is predominantly a cash business. As an organised crime figure, I would set up somebody to get the licence, open the brothel and meet all the qualifications. Ostensibly the brothel would be run by him, but in fact it would be run by me as an organised crime figure. I would have the dummy getting the licence, running the brothel and taking the cash. I would go along and milk quite a proportion of the cash. I am pretty sure that happens in many brothels. I am absolutely certain that prostitutes do not declare to the Australian Taxation Office all the money they receive for their services. People would be living in cloud-cuckoo-land if they believed that prostitutes declared every single dollar that they earned. Clause 37 contains

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flaws. For instance, it does not contain a provision that a person who obtains a licence and meets regularly with an organised crime figure or a known criminal, should not retain the licence. The person would still be able ostensibly to run the brothel, but in truth he would be the front man for organised crime which would be taking the bulk of the cash coming into the brothel. Does the minister accept that there is a flaw in clause 37 and that that could happen?

Mrs M.H. Roberts: No.

Mr R.F. JOHNSON: Who will police it? The Prostitution Control Board will not. There might be the representative of the Minister for Police and a representative of the Minister for Health, whoever the ministers of the day might be, and other individuals, who have no investigative powers whatsoever. The only people who can investigate whether organised crime is involved are the police. Who will monitor a brothel? Who will know whether organised crime figures are frequent visitors to the brothel? Those people could say they were going to the brothel simply to use the services of a prostitute, whereas in truth they would be going to look over the books, open up the cash register and take out any cash that they want. Who will monitor that sort of behaviour?

Ms M.M. Quirk interjected.

Mrs C.L. Edwardes: They are not running an illegal activity.

Ms M.M. Quirk: They could be involved in money laundering.

Mr R.F. JOHNSON: I am not merely talking about money laundering; I am talking about organised crime figures who are running brothels, not in name but in truth and in essence because they have a front man.

Ms M.M. Quirk: You are not concerned about money laundering.

Mr R.F. JOHNSON: The member for Girrawheen is going way off the track. If an organised crime figure wanted to open a delicatessen or a Video Ezy store he could do that. He would not make millions of dollars out of that. However, if he opened a brothel by using a front man who does not have a criminal record he could make millions of dollars a year. There is a big difference between selling videos and selling and degrading women's bodies. If the member for Girrawheen and the minister cannot see that, then I despair of them; they are both women.

Ms M.M. Quirk: I have led a sheltered life!

Mr R.F. JOHNSON: The member for Girrawheen must have done. I thought I had led a sheltered life too, but I have suddenly thought about these things. Why has the minister not thought about these things? There should be safeguards. What safeguards are there in this clause?

Mrs M.H. ROBERTS: I am very pleased to be able to respond to the member for Hillarys, because it will help me to correct some of the assertions that he has made. Clause 37(1)(x) states that the board must be satisfied that the applicant is otherwise of good character and is a fit and proper person to have the licence. As I have already pointed out, the Commissioner of Police will be a member of the board and no doubt is in a perfect position to ensure that intelligence is provided on people. If there were any concerns about the nature of the person or about the person using a front man, then that police intelligence could be made available to the board and it could act on the basis of that intelligence. Part 1, which is headed "Preliminary", provides a definition of "authorised person". It states that "authorised person" means a police officer, an investigator, or a person who has been issued with a certificate under section 138 and whose capacity as an authorised person under that section has not been terminated. The member asked who can make these inquiries. That is a very good question. The very reason that we have made police officers authorised persons under this legislation is so that they can take a supervision role. Clause 42 on page 27, which is headed "Other material to support application for licence or renewal", provides that the board may request an applicant for a renewal of a licence to provide, in support of the application, any further evidence or information specified, or of a kind specified, by the board. Under that provision the board can call on that further information. If the board is not satisfied by that further information or is aware of police intelligence, it can make a decision that the person is not a fit and proper person to hold a licence. It may be because of the person's connection with an organised crime figure. We also have all the powers that exist under the Criminal Investigation (Exceptional Powers) Act 2002 to deal with organised crime. I also draw the member's attention to clause 134, headed "Injunctions", which gives the board the option of applying for an injunction. Subclause (3) states that in subsection (2) "involvement in a contravention" means aiding, abetting, counselling or procuring the contravention. If organised crime were involved, we would be looking at a contravention in terms of procuring or procurement.

Mr R.F. JOHNSON: The minister's response has given me no comfort. The only slight comfort is in the last comment that the minister made. Organised criminals are going about their business every day in Northbridge and elsewhere in Perth. The minister knows that and I know that. Unfortunately the police have not been able to nail them down. That is why they are enjoying the good life. What I have said and what the minister has not

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addressed is that if I were an organised criminal - and there are quite a few in Perth - I would get someone who was not known to the police to be the front man for me.

Mrs M.H. ROBERTS: Given that there can be police intelligence and that police officers and others can be appointed to investigations, were you to do that there could be police intelligence of your connection with that person, or the police could conduct an investigation and find out that information and act upon it. The police would also have access to the full provisions of clause 134 to take out an injunction. As I have pointed out, clause 134(3)(a) refers to -

aiding, abetting, counselling, or procuring the contravention;

Mr R.F. JOHNSON: I do not know which town the minister is living in. This is no reflection on the police, but the Police Service is undermanned. The police cannot fight crime adequately because the Government will not fulfil its election promise to put police officers on the beat to do the work of police officers. This Bill will certainly be of great interest to organised criminals, because prostitution is a very lucrative business. If the minister thinks that an organised criminal worth his salt will not be able to circumvent what the minister has said in the House tonight, I am sorry, but she should perhaps step down as Minister for Police and Emergency Services. She might do that soon anyway, or she might take on a different portfolio.

Mrs M.H. Roberts: You can live in hope.

Mr R.F. JOHNSON: No. I think the minister might take on another portfolio. That would create a conflict of interest if she were appointed both Minister for Health and Minister for Police and Emergency Services. She would have both nominations on the board if that were the case. That would be quite interesting. This is a serious issue. I am not really being flippant.

Mrs C.L. Edwardes: Plus she would have more than half of the budget.

Mr R.F. JOHNSON: Absolutely. The minister and I know that organised crime figures are walking and driving around Perth.

Ms M.M. Quirk: They are not bothering with prostitution, member for Hillarys; they are interested only in the stock market.

Mr R.F. JOHNSON: No, no, no! What world does the member for Girrawheen live in? The member seems to know more about Video Ezy stores and delicatessens than this Bill, yet she is a lawyer. Surely she can put her legal hat on.

Mr P.B. Watson interjected.

Mr R.F. JOHNSON: Postman Pat from Albany would not have a clue what is going on here. We are talking about something that is very serious: organised crime.

*Points of Order*

Mrs M.H. ROBERTS: The standards of this House are deteriorating. The Speaker has drawn members' attention to the need to refer to members by their electorates, not by terms such as the one used by the member for Hillarys, who, as the leader of opposition business in this House, should know better.

The DEPUTY SPEAKER: If the member for Hillarys addressed a member inappropriately, I ask him to refer to members properly.

Mrs M.H. Roberts: He called the member for Albany Postman Pat.

Mr R.F. JOHNSON: I believe I called him Postman Pat, the member for Albany. I have called him that many times. He does not take offence at that. Good Lord!

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr R.F. JOHNSON: My friend the Minister for Planning and Infrastructure calls me a moron and a mung bean.

Mrs M.H. Roberts: A member such as you should set the standard, not bring it down.

Mr R.F. JOHNSON: I try to. I do not say things in a nasty way, but in a jovial way. I know that the member for Albany takes things in good heart. He knows when something is said in humour and not in a malicious way.

The DEPUTY SPEAKER: Order, members! I am sure all members are aware of the Speaker's ruling. I ask them to adhere to it.

*Debate Resumed*

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Mr R.F. JOHNSON: If the member for Albany's sensibility has been hurt in any way, I apologise profusely. He is such a nice fellow and I would not want him to feel hurt in any way.

This is a serious issue. The minister has not convinced me that there are provisions in this Bill that will adequately deal with someone who does not have a criminal record gaining a licence. If I were an organised criminal I would not pick somebody with whom I had been having conversations in a cafe in Northbridge for the past few months, but somebody right out of the blue. I would get someone from the eastern States, who had no real connection with organised criminals, to come to Western Australia and apply for a licence. There is a flaw in this clause about who can be approved for a licence. The minister has not adequately covered the need to prevent organised criminals from becoming involved.

Mrs M.H. ROBERTS: I do not accept what the member for Hillarys put forward. I gave him an earnest answer and referred him to quite a number of provisions in this legislation that deal with any potential involvement by organised crime. Further to that, I also drew his attention to the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002, which deals with organised crime using significant powers that complement this legislation.

The member for Hillarys and his party are playing into the hands of organised crime by not supporting this Bill. At least this Bill contains a number of significant provisions that will help the Police Service in its fight against organised crime. The member and his party will be opposing this legislation and, in doing so, leaving nothing in place. Surely the provisions of this legislation are better than nothing. In addition, members opposite have suggested that they would like to have a containment policy in place rather than this legislation. Containment leads to the biggest potential for the involvement of organised crime. I do not need to talk about that at length. I am sure every reasonable member of the House is aware of how organised crime flourishes in an environment where there is either a containment policy or where brothels are banned and it is pretended that they do not exist. There are no checks and balances in any of those environments. At least under this legislation a strict regime is proposed for how brothels must be run and some protection is provided for people working in the industry. In the absence of this legislation there is very little other than the powers of the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002 and the Prostitution Act 2000.

Mrs C.L. EDWARDES: What else do the police need other than the exceptional powers legislation?

Mrs M.H. Roberts: This legislation; that is what they have asked for.

Mrs C.L. EDWARDES: No. If we are talking about organised crime and we split it up into its particular components, then the exceptional powers legislation can be used. Together with the increased powers under the prostitution legislation, that legislation allows us to deal with organised crime. The minister fails to understand that we are talking about containment. We do not want the sex industry to grow. If the minister were seriously concerned about what is happening in the sex industry, she would put a limit on its growth. When she said that in Queensland 201 planning applications had been knocked back, all of a sudden an issue arose for Western Australia. We should be talking about containing and restraining the growth of the sex industry. The minister can do that by using a simple form of regulation; that is, to increase police powers, if they need further powers to that contained in the exceptional powers legislation. I would be bemused if extra powers were needed to deal with organised crime other than those found under the exceptional powers legislation. If that were the case, then we have got the organised crime legislation wrong and it should be beefed up. Let us beef it up while the Corruption and Crime Commission Bill, from which the organised crime provisions have been removed, is in the Legislative Council. If that is what is needed for the police to deal with the problem, let us deal with that. If the Health Act needs stronger provisions, then let us deal with that. We do not need to create a legal system whereby prostitution becomes normalised. This legislation is normalising prostitution. It is not another form of work.

Mrs M.H. Roberts: My argument is that prostitution is currently not illegal and, under the Opposition's proposal, it would be pushed into the suburbs and into homes.

Mrs C.L. EDWARDES: It is already there. It is in the minister's suburb and my suburb -

Mrs M.H. Roberts: If we contain and restrain the industry further than it already is, that is what will happen. It is a service industry and it is a matter of demand. For example, having more brothels will not decrease demand; that is a nonsense argument.

Mr P.B. Watson interjected.

The DEPUTY SPEAKER: I call the member for Albany to order.

Mrs C.L. EDWARDES: All the statistics show that once prostitution is legalised and normalised, it creates a legal entity that encourages people to make use of the industry, particularly young people and footy clubs. It will

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become okay. However, it is not okay. I want a strong education process to be established for men and women. Maybe we should address a serious issue in the community - the increased level of demand for prostitution.

I refer to clause 37 and the points the member for Hillarys has raised about the investors behind the person making an application for a licence. Clause 42 provides that the board could request other information in support of the application. Will the board consider, as has happened on the eastern seaboard, requesting financial documents and/or records? Can annual reporting be made a condition of the licence? Section 43 deals with conditions and restrictions on the granting of a licence. Further updating and reporting requirements could be placed on the conditions for holding a licence. If a control board is to be established, it should ensure that the applicants are genuine, fit and proper persons to be running brothels.

Mr M.J. BIRNEY: I draw the minister's attention to clause 52, which provides that the board cannot grant a brothel operator's licence unless satisfied that each landholder has consented in writing to the proposed business premises being used as a brothel. That seems to be an extraordinary provision to put into legislation. In the commercial marketplace, landlords provide premises and business people conduct their businesses from those premises. It is extraordinary to make provision for the owner of a building to approve the type of business that is conducted from it. I do not know whether there is a precedent for that. I want to know what the minister's thinking is behind this clause. If prostitution is to be made legal and the keeping of premises for the purposes of prostitution is to become legal, what right does a landlord have to refuse on moral grounds to allow the establishment of a brothel on his premises? It is another of the extraordinary anomalies that pop up all through this legislation. I do not understand why the minister has done that. Commercial strips and commercial properties are everywhere. A landlord would tell a prospective tenant that his property was 100 square metres, for example, and was available to be used as a business. If prostitution is to become legal, how could the landlord stop the tenant from setting up a brothel? I do not understand the minister's thinking.

Mrs M.H. ROBERTS: Under this legislation, the landlord would have the right to refuse to allow the property to be used as a brothel. For moral reasons, some people who own and let properties might not want them to be used as a brothel. The member for Kingsley would have the same view as I do. If we owned a property, we would not want that property to be used for prostitution and nor would we want a tenant of ours to use it for the purposes of prostitution without our consent. Often, a person or a group of people owns a number of shops in a strip shopping centre, for example. One of their tenants might consider setting up a brothel in one of those shops. However, that could have the potential to devalue every other business. This is a sensible provision that the Government has purposely included. It is not an anomaly.

Mr M.J. BIRNEY: The minister has said that the owner of a property can object on moral grounds to the use of that property for the purpose of prostitution. That is in contrast to the rest of the Bill. Is it correct, for instance, that local councils cannot object on moral grounds to somebody using premises for the purposes of prostitution?

Mrs M.H. Roberts: They cannot object on moral grounds.

Mr M.J. BIRNEY: But the owner of a property can object on moral grounds to somebody using the property under a commercial lease or agreement.

Mrs M.H. Roberts: Yes.

Mr M.J. BIRNEY: Can the minister not see the contrast? Presumably, the local council would be the defender of the local area and the local people.

Mrs M.H. Roberts: A landowner should certainly have a say on what happens on his or her land. You are suggesting that a person should not have any say on what happens on his or her land, which is nonsense.

Mr M.J. BIRNEY: I am saying that when someone enters into a commercial contract for the lease of premises, that person no longer has any rights to those premises.

Mrs M.H. Roberts: That is just not correct. Ask the member for Kingsley. She will tell you that it is not correct.

Mr M.J. BIRNEY: When someone enters into a commercial rental agreement, the property subject to that agreement is then handed over to the person who leases it. I simply point out again that there is this anomaly in the Bill. On one hand, local councils do not have the right to object on moral grounds to a brothel but, on the other hand, a landlord has a right to object on moral grounds to a brothel. That is just one of many holes in this legislation.

Mrs M.H. ROBERTS: I repeat that it is not a hole. It has been purposely put there for the protection of people who own property. I thought the philosophy of the Liberal Party was that it is the right of people to have a final say on what occurs on their property, provided that it is within the law. I want to protect the rights of people who do not want a brothel operating out of premises they own. I also want to protect the right of other businesses that might operate in the same shopping centre that might be owned by one person, by a family

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company or by a group of persons. The impact of a brothel operating in one premises in a shopping centre could substantially devalue the other premises and in someone else's opinion it could increase the value of the premises. That is a matter on which people must make an assessment and I believe the correct person to make that assessment is the landowner. People who have invested in land have put their money on the line and I believe they should have the final say about what occurs on their land. I am absolutely gobsmacked by the attitude of the member for Kalgoorlie on this matter. I do not believe it fits with the general philosophy of the Liberal Party. It certainly does not fit with the moral philosophy that a number of Liberal Party members have expressed during the second reading debate.

Mr M.J. BIRNEY: This is an extraordinary situation. The minister said earlier that the owners of property should have the moral right to decide what happens on their property.

Mrs M.H. Roberts: No, I said that they could decide that for moral reasons under this provision.

Mr M.J. BIRNEY: Is that even though the person has entered into a commercial rental contract? I understand the minister's point of view. I simply ask why she does not give that same right to councils.

Mrs M.H. ROBERTS: Councils that own land will have that right.

Mr M.J. BIRNEY: Surely councils are the representatives of the local government area; therefore, why will the minister not allow councils to disapprove of brothel activity in their area?

Mrs M.H. Roberts: Have a look at the provisions of the Town Planning and Development Act and you might find the answer.

Mr M.J. BIRNEY: This is the point. Councils can disallow a brothel, provided that it does not fit in with the Town Planning and Development Act. Presumably, if someone rents a commercial premises from a landlord and the business to be undertaken in those premises does not fit in with the local Town Planning and Development Act, that would be disallowed too. The minister has gone a step further and said that if a landowner does not want a brothel in the premises, although the landowner has entered into a commercial rental contract, there will be no brothel there, although it might fit in with the town planning scheme. However, the minister will not give that same right to councils. That is an anomaly in the Bill and I cannot understand why the minister would not give that right to councils. I think it is because most councils would say no.

Mrs C.L. EDWARDES: I asked the minister earlier about clauses 42 and 43 about a fit and proper person, the viability of a business and whether the minister envisages that the board would request financial information from that person.

Mrs M.H. Roberts: Yes, they could. For example, the authority in Queensland can request a business plan from an applicant, which is one way for the authority to study the money trail and any connection with organised crime. The authority in Queensland examines the business plan to see whether it adds up.

Mrs C.L. EDWARDES: As part of the conditions, that could be required on an annual basis.

Mrs M.H. Roberts: Yes, it could.

Mrs C.L. EDWARDES: Is the licence fee for three years, or is it an annual licence that must be renewed?

Mrs M.H. Roberts: We are looking at an annual licence that will be renewed.

Mrs C.L. EDWARDES: Does the minister have any idea of what that licence is likely to be?

Mrs M.H. Roberts: We are leaving the discretion regarding the licence with the board. I anticipate that it will be an annual licence. However, the legislation states that it cannot be for more than three years; therefore, a licence for more than three years cannot be given. I would have thought that the preference would be for an annual licence.

Mrs C.L. EDWARDES: Under division 2, which deals with the licensing of brothel operators, clause 54, examples of matters to be considered, states that the Board may consider a number of matters in making a licensing decision. A person can seek a licence. He or she must apply and, among other things, be a fit and proper person. For a brothel operator's licence, this further licensing provision deals with other matters to be considered. They include the location of the premises that are to be used as a brothel; the identity of any person who has an interest in the land - that comes back to the consent provision; the hours during which the business will operate; the number of persons who act, or are to act, as prostitutes at the brothel; the number of rooms; and the number of prostitution business licences that the same person has or is to have. Those matters are quite broad and cover the general operation of the premises. What other matters are being considered by the eastern States?

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Mrs M.H. ROBERTS: They are broad because, as I have said, we want to give the board the discretion to refuse licences when it thinks that is appropriate. Although we have provided an appeal mechanism in the legislation, we would not want the board's decisions to be overturned on appeal. If the basis on which the board can make decisions is overly prescriptive, the likelihood that the board's decisions will be overturned is greater. In a sense, we have maximised the flexibility of the board, and lessened the opportunity for people to appeal decisions of the board and have them overturned. I would prefer the board to err on the side of caution in eliminating from the industry people who it does not think are fit and proper persons.

Mrs C.L. EDWARDES: Does the minister have a set figure in her mind as to the number of licences one operator could have? I know that the minister said that a person could have a manager's licence, an operator's licence and a business licence. Clause 54(1)(f) refers to the number of prostitution business licences that the same person has.

Mrs M.H. Roberts: For a manager's licence, a person must demonstrate that he or she would be able to fulfil that role over a number of brothels. That would be an obligation on such a person.

Mrs C.L. EDWARDES: How many licences could a brothel owner have?

Mrs M.H. Roberts: The legislation does not restrict the number of licences a brothel owner could have. However, quite clearly, the brothels would all have to be operated in accordance with the Act.

Mrs C.L. EDWARDES: Is the number of licences limited on the eastern seaboard?

Mrs M.H. Roberts: I am not aware of the number being limited on the eastern seaboard. I do not see that as an issue, provided we are dealing with fit and proper people and they are running the brothels in accordance with the legislation and any regulations attached to it.

Mrs C.L. EDWARDES: I do not think the competition unit will get involved in it, though.

Mr M.J. BIRNEY: I wanted to make one point about clause 37, which deals with the restrictions on who can have licences. Subclause (1) states that the board cannot grant a licence to an applicant unless the applicant is an individual whose age is at least 18 years. I have a bit of trouble with this clause, because it allows an 18-year-old university student, or perhaps a couple of 18-year-old university students, to set up a brothel. That involves a couple of issues. Firstly, are a couple of 18-year-olds mature and sensible enough to conduct a brothel in a manner that would not have any flow-on effect to other crimes, such as drugs and violence? More importantly, one of the problems with allowing 18-year-olds to be the owners of brothels is that many 18-year-olds knock around with people younger than themselves, perhaps down to the ages of 15 or 16. Where that clear connection exists, between 18-year-olds and 15 or 16-year-olds, it follows that those younger people may utilise the services of that brothel owned and operated by their 18-year-old friends. The age gap is just too small, and this clause may well lend itself to people technically considered to be children involving themselves in prostitution. I know that all through this debate the minister has made reference to protecting the rights of children and ensuring that they are not adversely affected by the prostitution industry. I put it to the minister that clause 37 may well lend itself to people technically considered to be children engaging in prostitution, albeit as clients.

Mrs M.H. ROBERTS: I draw the attention of the member for Kalgoorlie to clause 37(1)(xi), which reads -

in the case of a brothel operator's licence or a prostitution agent's licence, there will be adequate management, supervision and control of the business that will be carried on; and

There is an obligation on the board to ensure that the applicant has demonstrated an ability to fulfil all of the requirements listed in the legislation. The board would certainly have to be assured that those applicants could meet the criteria of clause 37(1)(xi). As the member for Kingsley has indicated in her questions, there are many provisions that will allow the board to seek further information from the persons. I also note that the experience I have been advised of in other States is that it is certainly not cheap to set up a brothel, so the concept of a couple of 18-year-olds having the wherewithal to set up a brothel, and meet the requirements -

Mr M.J. Birney: All they would need is a bed and a pillow, and they could even do without the pillow.

Mrs M.H. ROBERTS: I do not appreciate frivolous interjections such as that all a person needs is a bed and a pillow and other such nonsense. The fact of the matter is that an applicant needs to demonstrate a lot more than that under the provisions of this legislation. A range of liabilities is imposed on the persons involved. If I extend the argument of the member for Kalgoorlie, it is okay for 18-year-olds to be engaged in prostitution - that is currently legal; an 18-year-old can work from home, be the sole operator of a mobile escort business or work in a brothel - but they should not be able to run the brothel. I suggest that that is an opinion. I am not suggesting that it is desirable for young people to be involved in the industry, and it is highly unlikely that people of that age would set up a brothel. However, if they did, their age would certainly be a matter of concern for the

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Prostitution Control Board. Under those circumstances the board would have to be extra careful to ascertain that the applicants satisfied all the requirements for licensing. In particular, as I have drawn to the attention of the member, they must be able to ensure adequate management supervision and control of the business, and they would have to demonstrate to the board how they would do that. That would be very difficult. Even if such people were able to satisfy the board, the member suggests that their younger friends may have become involved. I think that if - it is a very big if - an 18-year-old happened to get a licence in that circumstance, the board and the police would keep a very close eye on the premises. They would watch for the potential use of underage prostitutes. I do not think the member can draw the conclusion that younger people are more likely than older people to break the law by using underage people in the brothel. The experience has been that underage people in the industry have been employed by much older people. There are very strong penalties for any offences in that regard.

Mr M.J. BIRNEY: I want to explore this topic a little further. The minister says that it is highly unlikely that 18-year-olds will set up a brothel. When she released the Green Bill -

Mrs M.H. Roberts: I am not saying they would not want to start a brothel; I am saying they would have to meet onerous health, planning and other requirements.

Mr M.J. BIRNEY: She said that she thought it would be highly unlikely that many 18-year-olds would want to start a brothel. When the Green Bill was released for public comment, I received a letter from a doctor of some description - his name eludes me - who is involved with university students. I think he works on one of the university campuses. Once again I might stand corrected, but I am pretty sure that in that letter he said something to the effect that 300 or 400 Western Australian university students are part-time prostitutes. For the minister to say that she does not think 18-year-olds will engage in prostitution -

Mrs M.H. Roberts: I did not say that.

Mr M.J. BIRNEY: She said it would be highly unlikely. I stand corrected.

Mrs M.H. Roberts: We were talking about licensing -

Mr M.J. BIRNEY: No; she said that it would be highly unlikely for 18-year-olds -

Mrs M.H. Roberts: I did not. You will not help the debate by arguing with me.

Mr M.J. BIRNEY: The minister said it would be highly unlikely that 18-year-olds would set up a brothel. Those were her exact words.

Mrs M.H. Roberts: I referred to them setting up a brothel, not acting as prostitutes.

Mr M.J. BIRNEY: A chap told me that 300 or 400 university students in Western Australia, sadly, are part-time prostitutes. Why would those people not set up their own brothels when the keeping of brothels is made legal? Three or four university students could get together and set up a brothel, and 15 to 17-year-old kids who have got themselves half-charged at the university bar could go to that brothel to see girls of only 18 years of age putting themselves through university, all with the blessing of the Australian Labor Party.

Mrs M.H. Roberts: There are huge penalties for that under this Bill. You are talking nonsense.

Mr M.J. BIRNEY: The reality is that 18-year-olds are not as mature as people who are 21, 22, 23 or 33 years old. These are university students and, with the passage of the minister's legislation, they will set up their own brothels and have a wow of a time. All manner of kids will come from the university. What a ridiculous piece of legislation.

Mrs C.L. Edwardes: I envisage a cooperative.

Mr M.J. BIRNEY: The mind boggles. Some people think 18-year-olds are still kids. In fact, many people refer to them as kids. The Government is promoting the involvement of kids in prostitution. That is what the Labor Party is about. Clause 37 is stupid and ridiculous. This is a stupid, ridiculous Bill that should have been shredded long ago. Why are we even here debating this rubbish at 9.30 pm when the Government knows it will not get it through the upper House? What is this all about?

Part put and a division taken with the following result -

**Extract from Hansard**  
[ASSEMBLY - Wednesday, 25 June 2003]  
p9262b-9292a

Mrs Michelle Roberts; Mr Matt Birney; Acting Speaker; Mrs Cheryl Edwardes; Mr John Kobelke; Mr Rob Johnson; Deputy Speaker

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Ayes (23)

Mr J.J.M. Bowler	Mrs D.J. Guise	Mr M. McGowan	Mr J.R. Quigley
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mrs M.H. Roberts
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr A.D. McRae	Mr P.B. Watson
Mr A.J. Dean	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Ms M.M. Quirk ( <i>Teller</i> )
Dr J.M. Edwards	Mr J.A. McGinty	Mr M.P. Murray	

Noes (16)

Mr R.A. Ainsworth	Mr J.H.D. Day	Ms K. Hodson-Thomas	Mr T.K. Waldron
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr P.D. Omodei	Dr J.M. Woollard
Mr M.J. Birney	Mr B.J. Grylls	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )

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Pairs

Mr S.R. Hill	Mr M.F. Board
Mr P.W. Andrews	Mr B.K. Masters
Mr D.A. Templeman	Mr A.D. Marshall
Mr E.S. Ripper	Mr M.G. House

Independent Pairs

Dr E. Constable  
Mr P.G. Pandal

**Part thus passed.**

**Part 5: Other obligations and offences -**

Mrs M.H. ROBERTS: I move -

Page 53, line 20 - To delete “subsection (1)” and substitute “subsection (1)(a)”.

Page 53, line 22 - To delete “or incapable person”.

These two amendments apply to clause 96. They are to rectify drafting errors. The original draft of the Bill contains a financial penalty for the involvement of an incapable person. That provision is clearly not appropriate. By definition an incapable person should not be subject to a penalty.

**Amendments put and passed.**

Mrs M.H. ROBERTS: I move -

Page 68, line 13 - To delete “a crime” and substitute “an offence”.

The amendment seeks to correct a drafting error.

**Amendment put and passed.**

Mr M.J. BIRNEY: I have a concern about clause 64(1), which reads -

A person who, in or in the view or within hearing of a public place, seeks another person to act as a prostitute commits an offence under this subsection.

The penalty for that offence is two years in jail. If a person asks someone, perhaps a prostitute, to engage in the act of prostitution in view of a public place, that person will get two years in the can, or any part thereof. I am sure the minister has driven down Hay Street in my electorate. I paint a picture for the minister. Hay Street consists of what is colloquially known as “starting stalls”, in the doorway of which prostitutes stand. The prospective client walks up and down the street and chooses accordingly, and then requests that that person engage in the act of prostitution. That is done in full view of the road. I assume that the road would be regarded as a public place. Therefore, it seems that everybody in my electorate who uses the services of the people on Hay Street will face two years jail by requesting a person to act as a prostitute in view of a public place. Will the minister clarify that point, and place on record that people in my electorate will not face two years jail for seeking the services of people in Hay Street?

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Clause 65 deals with the reverse situation in which a prostitute seeks a client in view of a public place. The penalty for the prostitute is one year's jail, but the penalty for the prospective client is two years jail. First, will people in my electorate face two years jail if they seek the services of a prostitute in Hay Street? Second, why does two years jail apply for a prospective client and only one year's jail for a prostitute?

Mrs M.H. ROBERTS: First, I draw the member's attention to the fact that this clause has been directly lifted from the Prostitution Act 2000; namely, section 5 from division 1 of part 2.

Mr M.J. Birney: Is that the Act we did not bring in?

Mrs M.H. ROBERTS: No.

Mrs C.L. Edwardes: It was the streetwalker legislation.

Mrs M.H. ROBERTS: I draw the member's attention to clause 208, headed regulations, on page 120 of the Bill. When the Prostitution Act 2000 was brought before this House by former Minister for Police Hon Kevin Prince, the then member for Kalgoorlie, Megan Anwyl, raised the concerns raised by the member opposite. As a result, a Labor opposition amendment was included in the Prostitution Act 2000. Clause 208(2) reads -

The regulations may -

- (a) specify any place described in the regulations as a place where section 64(1) or 65(1), or each of those provisions, does not apply;

The former member for Kalgoorlie and I took up the argument in opposition to have the clause included in the Prostitution Act 2000. We were very keen to not disrupt activities in the member's electorate; we were cognisant of what occurs there. Despite the fact the legislation went through in 2000, with the best part of a year before the change of Government, regulations were never drafted, proposed or put in place by the former Government to deal with that matter. If the member for Kalgoorlie realistically wants to cater for his constituents and requests now that an appropriate regulation be drafted, provided it is reasonable, I will ensure it is implemented. It is not a matter on which I am in conflict with the member. We included that clause to deal with the issues in Kalgoorlie.

Mr M.J. BIRNEY: I appreciate the minister's frank response and her agreement that a regulation can be drafted. It would be a fairly simple regulation to draft that does not need my input. Hay Street takes up one block; however, people's vision of half of the next block might still be a concern. The regulation should be implemented at the same time as the Act is proclaimed.

Mrs C.L. Edwardes: It would be in the street walker legislation that has already been passed.

Mr M.J. BIRNEY: Can it be implemented before the legislation is proclaimed?

Mrs M.H. Roberts: Yes.

Mr M.J. BIRNEY: That is vital. Two years jail is a draconian penalty.

Mrs M.H. Roberts: If the member likes, I will get someone from the legal division of the Police Service to get in touch with him and work out a regulation.

Mr M.J. BIRNEY: I appreciate that offer.

Mrs C.L. EDWARDES: Clause 64(3)(b) provides for imprisonment for seven years, which is the penalty in the Prostitution Act. In the Green Bill the length of the penalty was increased to 14 years. Will the minister explain why it is now seven years in this Bill.

Mrs M.H. ROBERTS: The Green Bill originated from the Bill drafted during the member's term of government, but it was a more comprehensive Bill. I gather that sections of the draft Bill were included in the Prostitution Act. My instruction to the Police Service and people drafting this legislation was to essentially amalgamate the Prostitution Act with the Green Bill. I was seeking to implement comprehensive prostitution legislation and to avoid having two separate pieces of legislation; namely, the Prostitution Act and the Prostitution Control Bill. However, some of the penalties mysteriously increased and I did not pick that up before the Green Bill was circulated.

Mrs C.L. EDWARDES: I believe my contribution to the second reading debate reflects that I misunderstood clause 64(2), which reads -

The offence under subsection (1) is a crime if the person whom the offender seeks to act as a prostitute, or any of them if there are more than one, is a child or incapable person.

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I thought it meant that if a child is seeking the services of a prostitute, the child will be the offender. On re-reading that subclause, I believe that is not necessarily the case.

Mrs M.H. Roberts: That is right. The member was in error in her contribution to the second reading debate and she is quite correct now.

Mrs C.L. EDWARDES: I turn to clause 65(3), which deals with the penalties for an offence. There is a difference between the Prostitution Act and this Bill. The Bill provides that if the person whom the offender seeks to act as a prostitute is a child, the offender is liable to imprisonment for three years if it is a crime and to imprisonment for one year if it is a simple offence. The Green Bill provided that the offender was liable to imprisonment for two years if it was a simple offence and to imprisonment for 14 years if it was a crime.

Mrs M.H. Roberts: It is another one of the great mysteries.

Mrs C.L. EDWARDES: It is now three years.

Mrs M.H. Roberts: My simple view is that the Prostitution Act 2000 was working quite well, and no-one had suggested to me that the penalties provided under the Act needed to be increased. Somehow, mysteriously, some of these penalties were increased in the drafting of the Green Bill. Unfortunately, we did not pick them up, but we have picked them up this time round.

Mrs C.L. EDWARDES: The drafters had obviously been listening to us during debate on the exceptional powers legislation. Clause 66, which deals with providing a place for prostitution, states -

- (1) A person who, except as stated in subsection (2), provides a place for the purpose of acts of prostitution being performed there commits a crime.

That subclause does not apply to the provision of premises for use as a brothel in accordance with the licence. The next subclause is the one I want to talk about. Two paragraphs of that subclause state -

- (b) the provision of premises being the principal place of residence of a self-employed sole prostitute; or
- (c) the provision by a client of a place, on a temporary basis, for the purpose of the client taking part in an act of prostitution -  
...  
(ii) with a self-employed sole prostitute.

Previously I spoke about a self-employed prostitute having to work from her principal place of business. Obviously if it is an escort agency, paragraph (c) applies. There is an issue with safety in the home. In my electorate a number of prostitutes work from home. When they create a public nuisance, they are very quickly moved on. Recently, a client had visited a residence in the afternoon and then turned up a night or two later, but he knocked on the neighbour's door instead of the prostitute's door. That can be quite upsetting to a family. That issue is of concern to neighbours. There is also an issue with the sole operator not necessarily wanting to work from home. Today a sole operator might run a unit in Scarborough, for a number of reasons.

Mrs M.H. Roberts: They are doing it illegally. If they continue to do it, they will be doing it illegally under this legislation, as they are under the existing legislation.

Mrs C.L. EDWARDES: They may well be, but the Government is taking this to a different level. This legislation will create legality and illegality.

Mrs M.H. Roberts: However, the people in Scarborough have neighbours, as do people living anywhere else, don't they?

Mrs C.L. EDWARDES: Absolutely. However, the issue for the sole operator is that she might have kids. One of the issues is the protection of women and particularly children.

Mr R.F. JOHNSON: I wanted to question the minister about something. However, as my colleague the member for Kingsley is in full flow, I would very much like to hear the rest of her comments.

Mr J.N. Hyde: How will your containment policy fix this? It will not.

Mrs C.L. EDWARDES: We are dealing with the legislation. We would not have this legislation. We would have a totally different set of rules.

Mr J.N. Hyde: Well, vote against it quickly so we can get on with it.

Mrs C.L. EDWARDES: This is the position of the member's minister and Government. They are keeping members back. The issue relates to neighbours, public nuisance and the protection of children. The sole

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operator does not necessarily want that occurring. She does not necessarily want her clients having access to or even knowing the location of her place of residence. The third issue concerns safety and health. Some of these people go through a set of steps before allowing somebody into their home, and rightly so. If a person puts a mobile phone number out, anybody could ring through, and I am sure they do. The issue is the safety in the home. I know they can have a driver, but they cannot employ anybody else. That will be a critical issue for some people, because they currently do not have that situation. They currently do not work from home but from a separate unit. All of the provisions the minister has put in place regarding public nuisance and planning can apply to the unit in Scarborough. If a sole operator is permitted to work from home, she could have the same neighbours that exist in Scarborough. There is no difference. The first difference is that it would create a safer environment for the sex worker, who is still going through the steps to determine who can come through the door, but she is not opening up her own home to anybody who wants to come in. The sex worker's children may go to the local school with the neighbours' children, and they should not be put at risk.

Mrs M.H. ROBERTS: First, this reflects the existing situation. The member for Kingsley referred to neighbours and potential public nuisance. Any issue to do with neighbours or public nuisance could just as easily happen at the person's usual place of residence or where she rents or leases other premises. I do not think that argument stacks up. Secondly, the member referred to the protection of children. There are options to protect children from an occupation. If the occupation is prostitution and a person's first aim is to protect her children, options are available, particularly under this legislation. Under our legislation the person would have the option of working in a legal brothel, with the conditions that apply and with the restrictions that are placed on who can own and manage a brothel.

The next issue the member raised was that these people would know the place of residence. Of course, that is what happens now, and, as the member has said, some checks and balances can be put in place about who can have that information. The other option to protect children in this environment is for the person to work in a legal brothel, a legal escort agency or a sole escort business with a mobile phone number where she meets people at hotels or the like. There are options if a person's first priority is the security of her children. Interestingly enough, when the Green Bill was introduced we received a lot of feedback from those sole operators, and they were strongly opposed to being licensed or having people know who they were or have information about them. Their strongest feeling was that they did not want to be licensed. In essence, we must make a choice. If they are licensed and operate out of other premises, there is no question that they would have to apply for local government approval, and in doing so their names, addresses and the businesses they are involved in would become known to a lot of people. As members opposite have stated, people generally do not want other people to know that they are engaged in the business of prostitution. On the subject of the concerns for the children that the member for Kingsley has spoken about, local councillors and officers of local government will be looking at applications potentially from the mothers of children with whom their children may go to school. Therefore, the impact of their mother's occupation may well be greater on those children.

There is no perfect answer. If there was a perfect answer or a simple solution, I would have opted for it. The difficulty is balancing the anonymity of the sole operator against her protection. When sole operators are asked where they want the balance, they say that they want the balance very strongly in favour of their anonymity. They cannot have their cake and eat it too. If they want to be completely anonymous, they cannot have separate premises for which a local government authority would have to give planning approval. I do not accept the argument that the use of leased premises would have a lesser impact on neighbours than if a prostitute were operating from her own home. My strong belief is that prostitutes operating from their own homes will do so far more discreetly than if they did not live there.

The member for Kingsley has raised a serious concern; that is, women operating from premises in which their children live. Under this legislation the Government provides them with the options of working in a legal brothel or a legal escort agency, or operating as a sole escort. If someone leased a unit in Scarborough, for example, for that purpose, under planning and local government legislation she would have to apply to the council for approval. She would therefore not be anonymous. I doubt in those circumstances that there would be any change to the existing situation and that people would operate illegally.

Mr M.J. BIRNEY: It is a tragedy that this clause is included in the Bill. As I have said previously, it could well be that a single mother whose kids are at school might turn to prostitution during the day. She might put a closed sign up at three o'clock in the afternoon when the kids return home. Unfortunately some drunken men on the way home from the pub might not recognise the fact that the place is closed. She might find drunken men knocking on the door at midnight or all hours of the morning when the children are tucked up in bed. This clause is diabolical. If the Government is intent on legalising the prostitution industry, why does it not allow a single mother to work somewhere other than the place in which she brings up her children? The minister's mob is morally corrupt. The Labor Party is morally corrupt, and the minister is morally corrupt if she is promoting -

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*Withdrawal of Remark*

Mrs M.H. ROBERTS: I will not put up with the member for Kalgoorlie casting those kinds of aspersions on my character. He has accused me of being morally corrupt.

Mr R.F. Johnson: He did not. He said you would be morally corrupt "if".

The ACTING SPEAKER (Mr A.P. O'Gorman): Order, member for Hillarys! The member for Kalgoorlie is getting very close, and I caution him to choose his words carefully. He has the call.

Mr M.J. BIRNEY: If I have hurt the minister's feelings, and it appears that I have, I am happy to withdraw the comment.

*Debate Resumed*

Mr M.J. BIRNEY: I make the point that to require single mothers to undertake prostitution from the very house in which they raise their children is morally corrupt, and there is no other way of looking at it. It is reminiscent of the modern day Labor Party. It is morally corrupt, and there is no doubt about that.

I draw the minister's attention to clause 78(4), which deals with advertisements in local newspapers. This clause is interesting. Subclause (4) states -

**"advertisement of prostitution"** includes an advertisement of the name of a person acting as a prostitute, the name of any person who carries on a business involving prostitution, or the name under which a business involving prostitution is carried on . . .

Effectively it appears that the minister has hit this nut with a sledgehammer in order to ensure that prostitution cannot be advertised. One of our city councillors in Kalgoorlie is a well-known prostitute with a particularly high profile.

Mrs M.H. Roberts: Are you arguing for a more descriptive menu to be able to be published? I am not sure what point you are making.

Mr M.J. BIRNEY: The advertising of prostitution is to be restricted to just a couple of mediums.

Mrs M.H. Roberts: No. Prostitutes can advertise on the Internet if they want to.

Mr M.J. BIRNEY: The advertising of prostitution is to be restricted. This subclause states that a person's name cannot be used in certain circumstances. Given that we have a city councillor who is a prostitute, I wonder how she - she used to be a he - would get around that issue.

Mrs M.H. Roberts: I cannot understand your question. I genuinely want to answer your question, but I need to be able to understand it.

Mr M.J. BIRNEY: Advertising is to be restricted dramatically under subclause (4).

Mrs M.H. Roberts: Do you mean that we will not be allowing advertising on television and radio?

Mr M.J. BIRNEY: Yes. A person who happens to be running a prostitution business will not be allowed to use her name. What about this city councillor in Kalgoorlie? If this clause is what I think it is, presumably she would not be able to use her own name if she were running for council.

Mrs M.H. Roberts: The clause is not what the member thinks it is. Nothing would stop a person who was standing for election to council from using her own name. Subclause (1) states -

A person is not to publish or cause to be published an advertisement of prostitution that is contrary to any regulation made for the purposes of this subsection.

It is only when the advertisement contravenes that subclause that there is a problem. Subclause (2) states -

A person is not to broadcast or cause to be broadcast an advertisement of prostitution other than through -

- (a) a newspaper;
- (b) a part of the computer network known as the internet -

The following qualification is put on that; namely -

but only if, before the broadcast the person notifies the Board of the person's intention to do so in accordance with the regulations for the purposes of this paragraph . . .

We are saying that a person can advertise on the Internet, but we want the board to have the ability to approve of that. Subclause (3) states -

Mrs Michelle Roberts; Mr Matt Birney; Acting Speaker; Mrs Cheryl Edwardes; Mr John Kobelke; Mr Rob Johnson; Deputy Speaker

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If an advertisement of prostitution is broadcast or otherwise published contrary to this section, the offence is committed by . . .

Nothing will prohibit a person from using her own name to stand for council or from using her own name in another business in which she may be involved.

Mr M.J. BIRNEY: I am not so sure. Subclause (4) states -

**“advertisement of prostitution”** includes an advertisement of the name of a person acting as a prostitute, the name of any person who carries on a business involving prostitution -

Mrs M.H. Roberts: Only if it is contrary to the regulations.

Mr M.J. BIRNEY: Yes -

or the name under which a business involving prostitution is carried on -

Here is the kicker -

even though there may be nothing besides the name to indicate that it is prostitution that is advertised;

The name of the city councillor in Kalgoorlie to whom I have referred is synonymous with prostitution. As I read this clause, she would not be able to advertise her name on radio. She is not only a city councillor, but also -

Mrs M.H. Roberts: The advice I have received is that this subclause would relate to a person who did not comply with the regulations. The person would have to offend the regulations by the explicit nature of the sexual services being described or whatever.

Mr M.J. BIRNEY: I am not sure how that could be.

Mrs M.H. Roberts: That is simply a definition.

Mr M.J. BIRNEY: Clause 78(2) states -

A person is not to broadcast or cause to be broadcast an advertisement of prostitution other than through -

The paragraphs that follow refer to newspapers, the Internet etc. This subclause presumably deals with radio and television. In that context it means that a person would not be allowed to broadcast on radio an advertisement dealing with prostitution. Subclause (4) explains what an advertisement of prostitution involves and concludes -

. . . even though there may be nothing besides the name to indicate that it is prostitution that is advertised;

Technically, this subclause would not hold up in court when dealing with the situation that I proposed in which the city councillor in Kalgoorlie, who is also the madam of a brothel, advertised her name on the radio. It specifically states -

Mrs M.H. Roberts: All I can tell you is that that is not the best legal advice that has been given to me. I have received advice on this issue from parliamentary counsel and the legal service of the Police Service. They do not agree with you.

Mr M.J. BIRNEY: I think the clause was designed to stop people like Mary-Anne Kenworthy from promoting themselves. Mary-Anne Kenworthy's name is synonymous with prostitution. The promotion of the name of someone like Mary-Anne Kenworthy may also promote the brothel with which that person is involved. In some respects, I understand that.

Mrs M.H. Roberts: The member has tried to hazard a guess at the origin of the clause and why it was included in the Bill. I think the member is incorrect in assuming that it is in the Bill to deal with Mary-Anne Kenworthy or the individuals he is thinking about. It is more likely that it was included to deal with somebody who came up with a fairly sexually descriptive name, whether as a pseudonym, by deed poll or whatever. Some people have names that are obviously associated with their profession. You can imagine what some of the names might be that these people might make up or call themselves. Some may be pseudonyms and some could be -

Mr M.J. BIRNEY: Can the minister tell us some?

Mrs M.H. Roberts: I am sure that you would be in a better position to guess than I would.

Mr M.J. BIRNEY: I think I may require a retraction.

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Mrs M.H. Roberts: My adviser has prompted me with Austin Powers, but I am not sure about that one.

Mr M.J. BIRNEY: I will raise one other brief issue. Clause 74 deals with someone seeking to induce a person to act as a prostitute and states -

- (1) A person is not to -
  - (a) assault or threaten to assault anyone;
  - (b) intimidate anyone;
  - (c) supply or offer to supply a prohibited drug to anyone;
  - (d) make a false representation or use any false pretence or other fraudulent means; or

This is the bit I am interested in -

- (e) do anything else, or refrain from doing anything, with the intention of inducing another person who is not a child or an incapable person to act, or continue to act, as a prostitute.

That clause basically says that a person cannot do anything to induce somebody -

Mrs M.H. Roberts: That clause has come out of the Prostitution Act 2000, which I understand your party supports.

Mr M.J. BIRNEY: The minister cannot hide behind that Act. I am talking about legislation that is about to pass through this House.

Mrs M.H. Roberts: That provision is already in place under the Prostitution Act 2000.

Mr M.J. BIRNEY: I accept that to be the case. However, my reading of this clause is that a person cannot do anything with the intention of inducing another person to act as a prostitute. Does that involve the handing over of money, for instance? That would induce a person to act as a prostitute.

Mrs C.L. EDWARDES: The member for Kalgoorlie would obviously like to further expand his point.

Mr M.J. BIRNEY: I thank the member for Kingsley. I am interested in this clause. It states that a person cannot do anything with the intention of inducing another person to act as a prostitute. The clause conjures up a couple of images. Firstly, the handing over of money would certainly induce somebody to act as a prostitute. That is what actually happens when prostitution takes place. Secondly, with an employer-employee relationship, such as between a madam and a worker, surely the madam, as the owner or perhaps boss of the business, would have a right to ensure that her employees were working. When a person works as a prostitute, he or she works as a prostitute! Firstly, is this abrogating the duty of a boss who would otherwise be required to ensure that her workers are working? Secondly, does it involve the handing over of money for prostitution services?

Mrs M.H. ROBERTS: No, the member has come to some wrong conclusions. To induce someone involves more than merely the exchange of money or a payment. I am advised that the paying of a prostitute by a client would not constitute an inducement, nor would that occur with a madam paying an employee who is a prostitute. I understand that the legal definition of induce means more than merely the exchange of money.

Mr M.J. Birney: What about a madam who berates a worker for not working hard enough?

Mrs M.H. ROBERTS: There are other provisions in the legislation that deal with the intimidation of people.

Mr M.J. Birney: If we are going to make this legal, surely the boss has a right to use authority to ensure that her workers are working. Would that constitute inducing them to work?

Mrs M.H. ROBERTS: No, it would not.

Mrs C.L. EDWARDES: I alert the minister to the fact that the clause I referred to in the second reading debate was clause 71, not the other one. It is getting late in the evening -

Mrs M.H. Roberts: You are just trying to confuse me.

Mrs C.L. EDWARDES: There I was apologising and saying I had misread the provision when in actual fact I was talking about clause 71. Clause 71(1) states -

A child is not to seek another person to act as a prostitute.

Penalty: \$6 000.

Clause 71(3) states -

It makes no difference -

(a) whether or not the child -

Mrs M.H. Roberts: Are you suggesting that is to stop?

Mrs C.L. EDWARDES: Why are we penalising a child as a prospective client and not an adult?

Mrs M.H. Roberts: The previous Government's Prostitution Act 2000 provided a six-month penalty. Under the sentencing legislation put forward by the Attorney General, that converts to a penalty of \$6 000. I have merely included a comparable penalty to that in the Prostitution Act 2000 where that legislation stipulates six months.

Mrs C.L. EDWARDES: I understand that and I think I said in the second reading debate that I know it has come from the Prostitution Act. I know it was something that went through in the previous Government's legislation and, hey, I missed it while I was a minister of that Government.

Mrs M.H. Roberts: I will also add - as the member probably knows better than I do - that the provisions of juvenile sentencing also apply here -

Mrs C.L. EDWARDES: But why are we penalising a child? What is the public policy behind penalising a child who seeks out the services of a prostitute?

Mrs M.H. Roberts: If you would like to have the penalty removed, I have no issue with that. We have merely put it in because it was part of the Prostitution Act 2000. I am not being facetious, but I understood that the Liberal Party supported that and I wanted to increase the likelihood of this legislation being supported in the Parliament. That is part of the reason for keeping the penalties equitable with those in the Prostitution Act 2000. I thought that if we diverted from them too much, we were likely to run into more problems.

Mrs C.L. EDWARDES: However, if advice was given to us about this provision when we were in government, there must have been some rationale behind its insertion. I admit that I fail to understand why we would penalise a child as a prospective client.

Mrs M.H. Roberts: The rationale behind it - a sentencing judge would have to take this into account - is that a person very close to 18 years of age might be trying to attract clients or the like and -

Mr M.J. Birney: That is the point I just made; the one you pooh-poohed.

Mrs M.H. Roberts: By the way, I think you two are in dispute with each other. You are making it very hard for me to accommodate you both if you take different positions.

Mr M.J. Birney: You are in dispute with yourself.

Mrs C.L. EDWARDES: I am on clause 71.

Mr M.J. Birney: I know exactly what the member for Kingsley is saying.

Mrs M.H. Roberts: Part of the rationale for this is that even 16 or 17-year-olds are not necessarily innocent. For example, some people of that age are involved in Asian street gangs and get involved in things they should not. There is the potential for people to be coerced or involved through outlaw motorcycle gangs, Asian gangs and other forms of organised crime.

Mrs C.L. EDWARDES: The Government will penalise the child rather than the adult as a prospective client.

Mrs M.H. Roberts: The child might not be an innocent party.

Mrs C.L. EDWARDES: The adult is not an innocent party either.

Mrs M.H. Roberts: There are much larger penalties for the adults involved.

Mrs C.L. EDWARDES: Is this clause not limited to a public place?

Mrs M.H. Roberts: What is the issue with that?

Mrs C.L. EDWARDES: It is not limited to just streetwalking. I am talking about a child who seeks the services of a prostitute as a client. The child will be penalised but the adult will not. I am trying to work out the public policy when the child might not be an innocent person and the adult is obviously innocent.

Mr R.F. JOHNSON: I wanted to ask similar questions on this clause. However, the member for Kingsley said she would like to ask some questions first. I have great concerns with this clause. Some problems I have with it are similar to the problems the member for Kingsley has. However, there are some differences. Clause 71 provides that a child is not to seek another person to act as a prostitute, the penalty for which is \$6 000.

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Presumably, that provision refers to people younger than 17 years old. Where on earth will people under the age of 17 get \$6 000 to pay the penalty? They will not have a hope in hell of paying that penalty.

Mr M.J. Birney: Maybe they will pay it off over 20 years.

Mr R.F. JOHNSON: That is right. They would have to have very rich parents who could afford to pay them that amount of pocket money. If the Government wants to deter people from seeking another person to act as a prostitute and if it wants to provide a penalty that is workable, surely it could include some form of incarceration as a penalty rather than a fine of \$6 000. The Government could enforce incarceration, but it could not enforce a \$6 000 fine on a 16-year-old, who would not have that amount of money.

The point the minister has missed is that members have been talking about a child seeking another person to act as a prostitute. That could be another person who is under the age of 18. A 17-year-old boy might offer to pay a 17-year-old girl for sex. They would both be guilty. How on earth could that be policed? The penalties in this Bill are not achievable. The minister is living in cuckoo land if she thinks a kid will have \$6 000 in his back pocket to pay such a fine. Why has the Government included clauses in this legislation that are completely unenforceable? Clause 71(1) states -

A child is not to seek another person to act as a prostitute.

Penalty: \$6 000.

That is nonsense. If a prostitute is available for sex and a 17-and-a-half year-old boy seeks out that person, he is seeking that person as a prostitute, which is against the law. However, it would not be against the law if the prostitute was over 16 years old. Does the Government class an adult as being 16 or 18 years old?

Mrs M.H. Roberts: People are classed as adults at the age of 18.

Mr R.F. JOHNSON: Therefore, the prostitute will be committing an offence.

Mrs M.H. Roberts: That is right.

Mr R.F. JOHNSON: Also, surely, the child will be committing an offence.

Mrs M.H. Roberts: That is right, too.

Mr R.F. JOHNSON: You therefore want to clobber a 16-year-old boy, who may look 18, with a \$6 000 fine because he wants to try sex with a prostitute.

Mrs M.H. Roberts: The hope is that it will discourage him from walking the streets looking for the services of prostitutes.

Mr R.F. JOHNSON: He would not even know that there was a penalty of \$6 000 for that offence.

Mrs M.H. Roberts: I point out again that it is a maximum penalty.

Mr R.F. JOHNSON: It does not say that it is a maximum penalty; it says that the penalty is \$6 000.

Mrs M.H. Roberts: That is a standard practice in legislation. There was a recent case under the Prostitution Act 2000 involving a 14-year-old girl on whom the judge did not impose a fine or custodial sentence.

Mrs C.L. Edwardes: Why are you penalising a juvenile as against an adult? It is the public policy issue that I cannot grasp.

Mr R.F. JOHNSON: Nor can I; I agree with the member for Kingsley.

Mrs M.H. Roberts: Do you think there should be no deterrent for children who seek the services of a prostitute?

Mrs C.L. Edwardes: Why would we do that?

Mrs M.H. Roberts: Do you think there should be no deterrent?

Mrs C.L. Edwardes: I was talking about education and all the rest of it.

Mr R.F. JOHNSON: Of course there should be a deterrent.

Mrs M.H. Roberts: What do you want?

Mr R.F. JOHNSON: We want a deterrent that is achievable.

Mrs M.H. Roberts: Tell us what you want.

Mr R.F. JOHNSON: A forced education session. The Government is bringing in education sessions for cannabis users.

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Mrs M.H. Roberts: That is an option.

Mr J.N. Hyde: The member for Hillarys is soft on crime!

Mr R.F. JOHNSON: No, the Government is the one that is soft on crime. This penalty will never be enforced.

Mrs M.H. ROBERTS: I want to help the member for Hillarys. A forced education session or another penalty that the member for Hillarys believes is appropriate could be imposed by the Children's Court. In fact, the experience with the Prostitution Act 2000 indicates that the maximum penalty was not imposed and other remedies were put in place. The judge in the Children's Court has many options on the appropriate penalty for this offence or requirements that can be placed on a child or even recommendations to the parents of a child.

Mr R.F. Johnson: It is your legislation. If you agree that a fine of \$6 000 imposed on a young boy under 18 years of age for trying to attract the services of a prostitute is completely unachievable, why don't you put a different penalty in the clause?

Mrs M.H. ROBERTS: There is the potential under the member for Hillarys' proposal - the member for Kalgoorlie should be interested in this - for 16 and 17-year-olds to run a prostitution racket in the form of a gang or with a link to organised crime with no penalty. I do not believe that is a sustainable position.

Mrs C.L. Edwardes: No, I am talking about a 16-year-old seeking the services of a prostitute as a client, which is the reverse situation.

Mrs M.H. ROBERTS: In considering such an offence, I presume the magistrate would take that into account. Again, if the Opposition believes this is not an appropriate penalty, it should move an amendment; we will then know where the Liberal Party stands.

Mr M.J. BIRNEY: I return to clause 74, to which I referred the Minister for Police and which says, in part, that a person is not to do anything else, or refrain from doing anything, with the intention of inducing another person to act as a prostitute. I asked the minister whether that meant theoretically that someone need not hand over money to a person to induce that person to act as a prostitute and the minister said that was not the case because the word induce means something more than to hand over money. I have with me the Oxford dictionary, which describes inducement as an attractive offer. Presumably, a couple of hundred-dollar notes would be an attractive offer. The dictionary goes on to say that inducement also means incentive. Presumably a couple of hundred-dollar notes would be an incentive to undertake an act of prostitution. It also goes on to say that inducement could mean a bribe. Presumably, a bribe deals with monetary matters. Again, a couple of hundred-dollar notes may well be considered a bribe. The minister said to me earlier that the word inducement covers her position, because inducement means something more than to hand over money. However, I put it to the minister, with the support of the Oxford dictionary, that that is not the case. If the minister is not sure, perhaps we could look at this again tomorrow. As I read it, inducement means an attractive offer. A couple of hundred-dollar notes would be an attractive offer to a prostitute, and that would constitute inducement. Will the minister please clarify the matter for me?

Mrs M.H. ROBERTS: I will make a couple of points. The first is that the member referred to a dictionary definition. That is not the interpretation put on it in the Western Australian legal dictionary. The member asked me whether I want to reconsider this or that. I have had clear advice on this matter. The persons who are giving me advice have no doubts about it. The other matter that I ask the member to consider is that inducement also carries with it a connotation that someone would do something that he or she would not normally do. The member may think that he is a bush lawyer and knows more about the law than does parliamentary counsel. I put it to the member that he does not know more about legal definitions or the law than does parliamentary counsel.

Debate adjourned, on motion by Mrs M.H. Roberts (Minister for Police and Emergency Services).