

PROSTITUTION CONTROL BILL 2003

Consideration in Detail

Resumed from 25 June.

Part 5: Other obligations and offences -

Debate was adjourned after the part had been amended.

Mr M.J. BIRNEY: This part has a number of clauses, some of which are of interest to me, including the advertising regulations that were discussed yesterday. I draw the minister's attention to clause 79, promoting employment in the prostitution industry, which states -

A person is not to publish or cause to be published a statement that is intended or likely to induce a person to -

- (a) seek employment as, or act as, a prostitute; or
- (b) seek employment in any other capacity in any business involving the provision of prostitution.

Presumably, if prostitution is to be legalised, the business of prostitution will become a legal entity and a legal business. Under clause 79 a brothel owner would be prohibited from advertising, for instance, for a cleaner, a secretary, an accounts manager or somebody involved in the non-core business of prostitution. I am interested to hear the point of view of the Minister for Police as to whether I am reading the clause correctly. If I am, will the minister tell me the rationale behind that school of thought?

Mrs M.H. ROBERTS: This clause sends a message that prostitution is not a desirable occupation. It will prohibit, for example, advertising through Centrelink to encourage people to become prostitutes and it will prohibit prostitution from being promoted at career days at schools etc. It will send a strong message that the Government does not want people to be induced into a career of prostitution.

Mr R.F. JOHNSON: I also refer to clause 79. Very often advertisements are placed in newspapers for people to earn a lot of money in what are described as escort agencies. Members know that the true essence of those ads is to get people involved in the escort industry with a view to becoming prostitutes. Members would have to be naive to pretend that is not the case. How will this Bill deal with legitimate advertisements offering employment in escort agencies? People who are employed in that way might end up becoming prostitutes. There are no provisions in the Bill to ensure people are not misled. Perhaps they are not misled; that could be the normal talk for -

Mrs M.H. Roberts: That is the reason for clause 79(b), which does not refer to the act of becoming a prostitute; it refers to people who seek employment in any other capacity in any business involving the provision of prostitution. Escort agencies and brothels are included under this legislation. For example, the same rules would apply to someone working in an administrative role or as a driver for a brothel. Paragraph (b) will cover those roles.

Mr R.F. JOHNSON: How will that be monitored? People who work in the escort industry might not necessarily become prostitutes. They could act as genuine escorts who go out with people and escort them for an evening to keep them company. Some people feel they need to take a partner to a function; that does happen, although I suggest that in the main, escort agencies are used for the purposes of prostitution. Who will follow up on that type of thing?

Mrs M.H. Roberts: It will be the role of the police to check that escort agencies are bona fide non-prostitution businesses. The police have the capacity to carry out those investigations. Sometimes police act on complaints. If the police are concerned that a business operating as an escort agency is providing prostitution services, despite its claims to the contrary, the Police Service will follow up that matter just as it would with any other contravention of the law.

Mr R.F. JOHNSON: I am concerned that if this Bill becomes law, the police may want to take a few steps back and get on with investigating other areas of crime. The police will have legitimate reasons for believing that the Prostitution Control Board will be running the show and, therefore, that it will sort out any problems in the industry. The police will investigate serious problems only when the board contacts them, and then do whatever is necessary.

Mrs M.H. Roberts: As I highlighted yesterday, the police can conduct an investigation and the board can appoint its own investigators. If those investigators turned up any information that would give the board a reasonable belief that an offence had been committed, the matter would be communicated to the police and further action would be taken.

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Mr R.F. JOHNSON: I am worried because the Police Service is underfunded.

Mrs M.H. Roberts: That is nonsense.

Mr R.F. JOHNSON: Of course it is underfunded. Any police officer on the beat could tell the minister that. The police certainly would not give priority to investigating problems in the prostitution industry.

Mrs M.H. Roberts: The member is expressing a point of view, which will not progress the case much.

Mr R.F. JOHNSON: I am expressing a genuine concern that the police would not consider those types of problems a priority. They have not been considered a priority for many years under the containment policy or since that policy was put to one side. This area has not been of concern to the police.

Mrs M.H. Roberts: At least this would give them something to enforce and to do, whereas now there is nothing.

Mr R.F. JOHNSON: The minister said that the board would have the power to employ investigators. However, if it does not have the funds to go with that power, it would be ineffective. It is of concern to me that prostitution would proliferate.

Mrs M.H. Roberts: My view is that, quite clearly, it is better for those powers to be given to the board and to have these provisions in legislation than to have nothing, which is the alternative if this legislation is not supported.

[Quorum formed.]

Mrs C.L. EDWARDES: I have long been interested in the issue of advertising prostitution. In fact, I have presented many petitions to this place about a ban on sex industry advertising. The petitions have asked for bans to be placed on advertisements which promote violent and abusive acts as sexually exciting and which incite adults to view persons of childlike appearance and demeanour as sexually desirable. When I was the censorship minister, I was told on one occasion that the mere -

Point of Order

Mr R.F. JOHNSON: I am sitting almost next to the member for Kingsley, but there are so many conversations going on in this Chamber that I am having a job hearing what she is saying.

The DEPUTY SPEAKER: I ask members to be cognisant of the fact that a speaker is on her feet, and the Hansard staff have a job to do.

Debate Resumed

Mrs C.L. EDWARDES: When I was the censorship minister, there was an argument about young people, who were in fact 18 years old, being promoted for their childlike appearance. Because those young people were 18, action could not be taken against the people responsible. I took the view that action could be taken against those people if they promoted persons who were 18 years of age or more for their childlike appearance. The other aspect related to the advertising of sexual services being restricted to adults-only publications. Those who wished to advertise or use those services could therefore do so without imposing those advertisements on children, for whom they are inappropriate, or on adults who find them offensive. That should be explored even further. I understand the debate that has occurred in the United Kingdom. The argument keeps coming back to the fact that if advertising is banned, telephone boxes in public places will be totally covered with business cards. In fact, I understand that young people are employed to keep replacing business cards as they are removed from telephone boxes. The Government also needs to look at the people involved in England. I believe there would be serious differences between the situation in England and that in Western Australia.

If the Government still wishes to have advertising for the sex industry because it is legalising the sex industry, that advertising should be removed from public newspapers, including community newspapers, and placed in an adults-only publication. *The West Australian* could run those advertisements in a sealed section. It could have an adults-only sex industry publication, from which it would probably make more money than it currently makes from the material following the death notices. In last Thursday's *The West Australian* - I did not grab this morning's newspaper - following the advertisements for "Pets and Livestock Found" and "Wanted to Buy", but before the classified notices, people were advertising \$100 specials for the sexiest girls in town. There must be a competition at the moment, because all these establishments are advertising \$100 specials. Advertisements for 18 and 19-year-olds are predominant throughout the newspapers. I reflect back on part of yesterday's debate. A large number of Asian ladies are promoted. Bearing in mind the trafficking of Asian women, that is of major concern. These people change their names and their mobile telephone numbers. That can be monitored.

When the coalition was in government, a voluntary code of practice was put in place, which involved *The West Australian* and the Community Newspaper Group. I am not sure that that is even monitored - it is certainly not

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being monitored by anybody in government. If the police are responsible for monitoring it, I would be interested to know what has happened since the Prostitution Act has come into operation.

I have a number of questions. First, I raised the issue of advertisements promoting violent and abusive acts as sexually exciting. Will action be able to be taken against the people involved in that? Other advertisements incite adults to view persons of childlike appearance and demeanour as sexually desirable. Will that be banned? Has the Government considered adults-only publications, if it does not support a total ban on advertising? What about complaints? Will complaints go to the Prostitution Control Board? In the past there has been a difficulty in that area, because people did not know to whom complaints should be directed.

Mrs M.H. ROBERTS: The member for Kingsley summarised her comments by asking me four main questions. The first two were about whether the Government could protect the community from certain kinds of advertisements. The answer is yes. That can be done by the Prostitution Control Board. Clause 208, on page 120 under part 9, complements clause 78. Clause 208(2)(d) enables the regulations made by the board to -

provide for the size, form, and content of advertisements of prostitution;

One of the reasons that it was felt important to have this in a regulation was that language changes and evolves. If the prescriptive language is put in certain terms in the legislation, it is much more difficult to change it as time goes by. That is why it has been done in this way. I will give an example. In my emergency services portfolio area, I saw recently in a document an abbreviation for search and rescue and something else that began with "s", so that everywhere in the document "SARS" appeared. This document was supposed to be dealing with something positive about search and rescue, but all the way through it was the abbreviation SARS. I said that it did not look very good to have SARS highlighted throughout the document. People can use their imagination. Language evolves and made-up words take on new meanings. That is why we want that provision. Explicit material, or child pornography or the like, can be dealt with by a combination of clauses 78 and 208. What was the next part of the member's question?

Mrs C.L. Edwardes: Did you look at adult-only publications, if you did not want to impose a total ban?

Mrs M.H. ROBERTS: No, I cannot say that that was given very much consideration. The member alluded to her time as censorship minister. A reasonably practical approach to matters must be taken. The advertisements in the newspaper to which the member referred have been in *The West Australian* probably for some decades in much the same form and position. The member also asked whether anyone monitored the content of those advertisements. Traditionally, the vice squad has had a monitoring role, and I understand it still monitors those columns. In addition, the police will act on any complaint about the columns. However, the vice squad does proactively monitor them.

Mr M.J. BIRNEY: I will make some points about the penalties in this legislation, and perhaps get the response of the minister. Clause 76 is entitled "Persons with certain health conditions not to use prostitutes", and reads -

A person who knows, or could reasonably be expected to know, that he or she has a sexually transmissible infection commits an offence if he or she invites or allows another person to act as a prostitute for him or her.

This is a reasonable clause, but the part that is unreasonable is the penalty, which for a first offence is a fine of \$6 000. Presumably this would also deal with somebody with acquired immune deficiency syndrome who induced a prostitute to have sex with him or her. I tend to think that a \$6 000 fine for passing on a potential death sentence is a very light penalty indeed. Given that all throughout this legislation jail terms apply for certain offences, I would have thought that if ever a jail term were to be applied, this is the offence to which it would be applied. A \$6 000 fine for passing on a potential death sentence is ludicrous to say the least. It is reminiscent of many of the clauses in this Bill. For instance, clause 75(1) states -

A person is not to live wholly or in part on, or derive a material benefit from, the earnings from prostitution of a person who is prohibited by this Act from acting as a prostitute, whether because the person is banned by or under this Act from acting as a prostitute, or for any other reason.

Penalty: imprisonment for one year.

This is perhaps fair, perhaps it is not, but an interesting comparison can be made with clause 68. Seeking the services of a child to become a prostitute is punished by imprisonment for 20 years, and perhaps that is as it should be. The interesting thing is that, under clause 75, if a person is actually living off the earnings of that child, he or she will be imprisoned for only one year. On the one hand, a person can seek to induce a child to become a prostitute, and rightly get 20 years jail, but on the other hand, as I read this clause, once the child has entered into prostitution, someone living off the earnings of that child will be jailed for only one year. Is my reading of that correct? There are many anomalies in the penalties provided for under this Bill. A 14-year jail

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term applies to someone running a brothel without a licence. That penalty is not even provided for rape and murder in some cases.

Mr J.N. Hyde: What happens under your useless containment policy? You will not defend the containment policy.

Mr M.J. BIRNEY: It sounds like English coming from the member for Perth, but I am not quite sure. I can never be sure.

One of the other penalties in this Bill is a five-year jail term for a person who manages a brothel without a brothel manager's licence. That is a draconian penalty. A fine of only \$6 000 applies to someone who may pass on HIV-AIDS - a death penalty. This seems very odd, and I will be interested in the comments of the minister.

Mrs M.H. ROBERTS: I am pleased to be able to clarify this point. The member will note that clause 76 uses the term sexually transmissible infection. That is not necessarily HIV, or AIDS, as the member has described it.

Mr M.J. Birney: Could it apply to AIDS?

Mrs M.H. ROBERTS: I will give a full explanation, and answer the member's question at the end, if he has one.

I am told that the sexually transmissible infections likely to be prescribed for this purpose are chancroid, donovanosis, genital chlamydia, gonorrhoea, hepatitis B, HIV and syphilis. I am told that all of those, with the exception of hepatitis B and HIV, are curable. Even syphilis is curable in its early stages, and the others are completely curable. The circumstances could well arise in which somebody who has a disease or illness may offer him or herself as a prostitute. The disease that person has may be perfectly curable in a short period. That is why that penalty of \$6 000 is provided, rather than a heavier penalty. If a person knowingly passes on a life-threatening illness, such as HIV or hepatitis B, which are not curable, that person would be dealt with under the Criminal Code, under which the penalty is 14 years. There are options for charging people, but the general theme is that police would go for the more serious charge, not the lighter charge. That is generally their practice. If the member is concerned only about the transmission of HIV or hepatitis B, we could rely on the provisions of the Criminal Code for grievous bodily harm. Those provisions have been tested under law, and provide a 14-year penalty for giving someone a death sentence. This clause complements the Criminal Code, so if somebody knowingly passes on one of these curable STIs, an appropriate punishment is in place.

Mr M.J. BIRNEY: I refer to the discussion I had with the minister yesterday about Hay Street in Kalgoorlie. She said she would introduce a regulation under the Prostitution Act 2000. As I understand it, the Prostitution Act 2000 is currently in force, and the minister can prescribe a regulation to ensure that people can seek the services of prostitutes in Hay Street, for instance, in public view without going to jail for two years, as would be the case under this legislation.

Mrs M.H. Roberts: I am happy to have someone from legal services liaise with the member in the formulation of that regulation, and I hope that the regulation would be acceptable to the City of Kalgoorlie-Boulder as well.

Mr M.J. BIRNEY: I appreciate the minister's offer, but my point is that under this legislation someone could still be charged with seeking the services of a prostitute in a public place. I wonder if one piece of legislation supersedes the other. I know that certain crimes are punishable under certain Acts of Parliament, and police can very often choose which Act they will charge somebody under. Offences against children and the like can be prosecuted under different Acts of Parliament. Although I appreciate the offer of the minister to introduce the regulation under the Prostitution Act 2000, would she also want to do something under this Bill? If that was not done, could police, under this Bill, theoretically still charge somebody in my electorate for seeking the services of a prostitute in public view?

Mrs M.H. ROBERTS: This Bill repeals the Prostitution Act 2000 and incorporates all of its provisions. Any regulations put in place under that Act would be incorporated in the regulations under this Bill. If, for example, under the Prostitution Act 2000 an agreement was reached on a regulation for Kalgoorlie, when this Bill becomes law it would incorporate those provisions and the same regulation would exist under this Act.

Mr M.J. Birney: Would this legislation incorporate all the regulations under the Prostitution Act 2000, or would they have to be re-enacted?

Mrs M.H. ROBERTS: Not specifically, because a provision is not required in this Bill to be able to do that. It is pretty much commonsense to ensure that the complementary regulations are included.

Mr M.J. Birney: Will the regulations that are currently contained in the Prostitution Act 2000 be introduced again when this legislation is enacted?

Mrs M.H. ROBERTS: Yes, as well as additional regulations to complement this legislation.

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Mr M.J. Birney: Time will elapse between the passing of this legislation -

Mrs M.H. ROBERTS: No. It will be absolutely seamless. There is no issue. The member has asked about the vulnerability of people in his electorate to being prosecuted under this legislation. They have been vulnerable ever since the previous Government put its regulations through. No regulation has been enacted since then. If it is of concern to people in the member's electorate, and I understand it is, I will provide him with assistance to come up with a reasonable recommendation. My suggestion to the member is to have it agreed with the City of Kalgoorlie-Boulder. I will then put it in place.

Mrs C.L. EDWARDES: I refer the minister to clause 96, which deals with a ban on someone acting as a prostitute. If a person is banned from acting as a prostitute, the board may give the person a notice in writing. The ban may be indefinite or as specified in the notice. It will occur if a person has been declared a drug trafficker, found guilty of an offence under schedule 2 of the Bill, or for any other reason that the board sees fit. I have several questions. The legislation contains an appeal provision to the District Court, but I cannot imagine that many sex workers will appeal a decision to that court. To some extent, it is superfluous.

Mrs M.H. Roberts: Once it is established, appeals will be made to the State Administrative Tribunal.

Mrs C.L. EDWARDES: How will a notice in writing banning a person be achieved without the registration of sex workers? How will their names and addresses be discovered? Under the licensing provisions, those details do not have to be provided by brothels. What criteria will be used "for any other reason that the board sees fit"? If the criteria are not set in regulation, how will a prostitute know what criteria he or she must meet? It is particularly important regarding other clauses of the Bill that deal with allegations etc.

Mrs M.H. ROBERTS: Officers of the Prostitution Control Board will have the right to inspect records of brothels. They will be able to ascertain information about prostitutes from those records. That will assist in the service of any notice. Criteria to be used by the board will include community safety and health.

Mrs C.L. EDWARDES: I refer to clause 102, which deals with the reporting of a notifiable sexually transmissible infection. What is the interaction between this provision and notifiable diseases under the Health Act? I believe there are some differences. Does this provision refer to all sexually transmissible infections? Does the Health Act require a doctor to notify such STIs?

Mrs M.H. ROBERTS: The obligation of notification is with the prostitute. The notifiable diseases under the Health Act are hepatitis B and HIV. The difference is that, under the Health Act, the requirement is to notify the Department of Health about hepatitis B and HIV. This provision establishes a requirement to notify the Prostitution Control Board.

Mrs C.L. EDWARDES: I take it that a doctor is still required under the Health Act to notify the Department of Health in any event. This provision relates to a prostitute, but it does not take away the requirement under the Health Act?

Mrs M.H. Roberts: Yes.

Mrs C.L. EDWARDES: Clause 103(5) states -

For the purposes of subsection (4), a person has an interest in a sole operator brothel business or a sole operator agency business if -

- (a) the person receives any pecuniary or other benefit from the carrying on of that business; or
- (b) the person could reasonably be expected to receive a benefit described in paragraph (a),

except that a benefit received or expected to be received as a spouse or de facto partner . . .

During the debate on the gay and lesbian legislation, the issue arose of how many de facto partners a person could have. That problem translates to this legislation. A person could have a number of de facto partners. It was recognised as a reality in the Adoption Act 1994. The Act was amended to state that a person could have only one nominated de facto partner. That was to ensure there was no overlay of the legislation. Has the minister sought advice on whether this provision will allow for more than one de facto partner?

Mrs M.H. ROBERTS: Yes, advice has been sought. The provision in front of us is the result of the advice. I did not follow the adoption legislation particularly closely; however, this legislation contains an obligation for someone to prove a marriage-like relationship. I find it difficult to believe that a person could sustain several de facto relationships.

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Mrs C.L. Edwardes: The point has been argued. A person can have a marriage-like relationship with more than one person. It was a concern under the inheritance legislation.

Quorum

Dr J.M. WOOLLARD: I draw the attention of the Acting Speaker to the state of the House.

[Quorum formed.]

The ACTING SPEAKER (Mr A.D. McRae): Before consideration in detail is resumed, I call the member for Kingsley to order. Members are not to leave the Chamber during the ringing of the bells for a quorum.

Debate Resumed

Mrs M.H. ROBERTS: I have sought advice on this point and been told that it is not considered necessary to limit the definition to one spouse or de facto partner. In relation to a spouse, a person legally married to more than one person commits an offence under the bigamy provisions in section 339 of the Criminal Code and could be liable to seven years imprisonment. When establishing whether a person is a de facto partner, consideration will be given to the length of the relationship; whether the two persons have resided together; the nature and extent of the common residence; whether there is or has been a sexual relationship; the degree of financial dependence or interdependence and arrangements for financial support; the ownership, use and acquisition of property, including property owned individually; the degree of mutual commitment to a shared life; whether they care for and support children; and the reputation and public aspects of the relationship.

Mrs C.L. EDWARDES: When we explored the de facto legislation, even with all its requirements, it came down to the fact that a person could have more than one de facto. That might not meet the requirements of this provision to overcome people claiming that their de factos have an interest and therefore are excluded from gaining any benefit from a sole operator's business. If people have several legitimate de factos, obviously those requirements will be met. The concern is that people might set up the business so that more than one person benefits.

Mrs M.H. Roberts: There is an obligation to check the legitimacy of those claims pretty thoroughly.

Mrs C.L. EDWARDES: I refer the minister to clause 119. I understand from the objectives mentioned in the minister's second reading speech that one of the key aspects of the legislation is the obligation to ensure that a prostitute has an employment contract. When we debated the Government's industrial relations legislation, one of the very strong principles that was highlighted was unequal bargaining. The reason that many of what I consider to be prescriptive requirements were inserted into that legislation was to ensure that there would not be unequal bargaining. I do not necessarily agree with some of those strong prescriptive requirements; for instance, a person under the age of 16 who enters into an employer-employee agreement must not only get his or her parent's signature but also have that parent's signature witnessed. Quite frankly, I think that is over the top. What the Government is providing for does not address the unequal and, I suggest, unfair relationship between a madam and a prostitute. The capacity of a sex worker to influence the contract of employment in this industry would be very small.

Mrs M.H. Roberts: I can certainly appreciate the member's concern, but can she make a suggestion about how we can avoid that?

Mrs C.L. EDWARDES: If the Labor Government can come up with all the prescriptive requirements in the industrial relations legislation to protect young people, vulnerable people, women and any small business people, surely it can think about sex workers.

Mrs M.H. Roberts: We have thought about it and we have tried very hard, and this is the best we have been able to come up with.

Mrs C.L. EDWARDES: I do not think, and no-one has any confidence, that this legislation will work. Numerous cases of unfair dismissal and the like have been taken to the Western Australian Industrial Relations Commission. Even though the actual work is regarded as illegal, that has never deterred the Western Australian Industrial Relations Commission from making a decision in this area. This may give the commission a firmer base on which to make a decision. I hope so. I also understand there is a huge amount of contracting and/or subcontracting. For instance, at one of the brothels in Joondalup the prostitutes must hire the rooms. Obviously that is experienced in other brothels.

Mrs M.H. Roberts: Some people would suggest that that is not genuine subcontracting.

Mrs C.L. EDWARDES: It certainly is not, because they do not necessarily determine the client, the services to be provided and the rest of it. However, if money changes hands between the prostitute and the client, and the

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prostitute pays the madam for the room, it starts to cause some difficulties. The Government's legislation does not adequately address those types of situations, unless the minister can explain it to me. There will be a tightening up of all those provisions. The superannuation, workers compensation and employment contract issues will avail themselves of nothing.

Mrs M.H. ROBERTS: The member for Kingsley has made some good points, and I do not substantially disagree with her. The Government believes that the most important issue is the employer-employee relationship and the obligations that places on the madam or the employer. I believe we have achieved something in that regard. Whichever way we attempt to organise it, there will inevitably be an unequal relationship between the employer and the employee when dealing with a madam and a prostitute. There is also the further difficulty in that prostitutes are less likely than most other employees to avail themselves of the opportunities of redressing their concerns with their conditions of employment and so forth.

Part, as amended, put and a division taken with the following result -

Ayes (26)

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

Noes (17)

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

Pairs

Mr S.R. Hill	Mr M.F. Board
Dr G.I. Gallop	Mr J.L. Bradshaw

Part, as amended, thus passed.

Part 6: Supervisory provisions -

Mrs C.L. EDWARDES: Clause 131 deals with allegations. Subclauses (1) and (2) read -

- (1) A person may allege to the Board that another person is doing or has done anything as a result of which the Board should take action under this Act.
- (2) The allegation may be about anything related to prostitution and need not relate to a contravention of this Act or any other law.

Apart from the proposed trafficking provisions under the Criminal Code, what else does this clause cover?

Mrs M.H. Roberts: It may be something like a madam repeatedly intimidating or bullying someone. It would not quite be a contravention or breaking of the law.

Mrs C.L. EDWARDES: That would not therefore be caught under minor provisions of the Police Act or the Criminal Code.

Mrs M.H. Roberts: That is correct.

Mrs C.L. EDWARDES: Clause 134 deals with injunctions. Subclause (1) reads -

The Board may apply to the Supreme Court or the District Court for an injunction to prevent a person from engaging in illegal conduct.

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Engaging in illegal conduct is then defined. The minister said yesterday that the board would have a very small office. Does this clause imply that the board will have its own investigators or police; will police be seconded to it; will it be working with police; will it have its own lawyers; or will it be using crown lawyers?

Mrs M.H. Roberts: Essentially all the alternatives the member has suggested are options for the board. The final budget has not yet been set. That is in part because I have not directed people to do more work on it as a result of the uncertainty of this legislation passing through the upper House. Officers from the Police Service are at my disposal. If I have no confidence that there will be a change of heart in the upper House, it would seem a little pointless for me to direct them to start drawing up further budgets. The board could have its own investigators, it could second police officers and it would be able to get advice from crown lawyers.

Mrs C.L. EDWARDES: Clause 135 deals with interim orders. It reads -

- (1) Despite anything else that may be being done under this Part, the Board may give to a person who has a licence an order in writing under this section.
- (2) The order may -
 - (a) prohibit the person from doing anything specified in the order in the course of a prescribed activity;
 - (b) impose conditions or restrictions specified in the order on the doing of anything by the person in the course of a prescribed activity.

A prescribed activity is defined as -

... anything that it would be an offence under this Act for the person to do if the person had no licence,
-

A person under subclause (1) would have a licence. It continues -

but that person could, if not precluded by an order under this section, do without committing an offence under this Act.

Could the minister explain the clause?

Mrs M.H. Roberts: An explanation has been given in the explanatory memorandum. We have suggested that one of the things that could be done is to specify the operating hours of a business. For example, if a premises was causing some noise or nuisance at a certain time of night, operating hours could be set or something like that, in much the same way as liquor licensing can impose certain special conditions on premises that sell alcohol.

Mrs C.L. EDWARDES: I can understand that example. However, the clause states that the board may give an order to a person who has a licence. The order may prohibit the person from doing anything specified in the order in the course of a prescribed activity, which means imposing conditions.

Mrs M.H. Roberts: It could be opening after a certain time, for example.

Mrs C.L. EDWARDES: It must mean more than just opening hours; it must be dealing with illegal, criminal acts.

Mrs M.H. Roberts: Criminal acts would be dealt with elsewhere in the legislation and in the Criminal Code.

Mrs C.L. EDWARDES: This seems to be a very broad and wide clause giving enormous powers to the board to do something more than dealing with opening and closing hours, particularly in reference to a prescribed activity, because subclause (3) reads -

... anything that it would be an offence under this Act for the person to do if the person had no licence
...

Mrs M.H. Roberts: That is right. Basically it allows us to take action against an illegal operation as if it were a legal operation.

Mrs C.L. EDWARDES: No. Subclause (1) states that the board may give to a person who has a licence an order. It therefore applies to a legal operation. It could apply to anything the person was doing if the person had no licence.

Mrs M.H. Roberts: It has been put to me that it may be to vary the conditions of a licence until such time as the board could meet to vary those conditions.

Mrs C.L. EDWARDES: That would make sense to some extent, except for the fact that again the wording is very broad. It refers to a prescribed activity, which "means anything that it would be an offence under this Act

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for the person to do if the person had no licence". Therefore, an offence under this Act when a person had no licence is now an offence being done by a person with a licence.

Mrs M.H. ROBERTS: I am also advised that if a serious allegation were made, it would enable the board to close a brothel down for a period. That is one of the other advantages of having this clause in place. I agree with the member that it gives the Prostitution Control Board very strong powers. I have drawn the analogy with liquor licensing. The Department of Racing, Gaming and Liquor has very strong powers when dealing with hotels and liquor outlets. I believe that strong powers are appropriate. They give the board many options in many circumstances. If the board uses the powers frivolously, there is always a right of appeal and action can be taken. Ultimately, if the board abused its powers in any way, I am sure that Parliament would be very quick to amend the legislation. We have erred on the side of ensuring that the board has the power to have control over brothels.

Mrs C.L. EDWARDES: I refer the minister to clause 139 in division 2, which deals with some powers of authorised persons. These are not the sole powers available to police for taking action.

Mrs M.H. Roberts: That is right.

Mrs C.L. EDWARDES: What is provided in this clause that is not provided elsewhere in legislation, in particular exceptional powers legislation?

Mrs M.H. ROBERTS: Last night I referred to the definition of an authorised person on page 2 of the Bill, which could be a police officer, an investigator or a person who has been issued with a certificate, and so forth. The clause essentially makes a person an authorised officer under the proposed Act, which would give the person inspectorial roles that a police officer may not have if he or she is not performing a function for the board.

Mrs C.L. Edwardes: That means the powers in this clause are not necessarily extra powers that police need but are for other authorised persons, does it?

Mrs M.H. ROBERTS: They are for all authorised persons, including police officers.

Mrs C.L. Edwardes: Do the police have these powers elsewhere in any event?

Mrs M.H. ROBERTS: I suspect that they have most of the powers.

Mrs C.L. Edwardes: What powers do they have under this clause that they do not have elsewhere?

Mrs M.H. ROBERTS: Normally police would need certain powers to enter a place without a warrant, for example. Inspectorial powers would be given under this proposed Act for the Prostitution Control Board to authorise persons so that someone would be able to carry out that inspectorate work as a person authorised by the Prostitution Control Board, which that person would not normally be able to do with the powers of an average police officer.

Mrs C.L. EDWARDES: I share the minister's pessimism that this legislation will not pass through the Parliament. Will the Government introduce into any appropriate Act the extra powers provided in this Bill that the police need to help them deal with the sex industry?

[Quorum formed.]

Mrs M.H. ROBERTS: It makes sense to put the powers into one piece of legislation, as has been done with the Misuse of Drugs Act. I undertake to give some consideration to introducing these powers in any event or in the event that this legislation does not pass through the upper House.

The ACTING SPEAKER (Mr A.D. McRae): Please sit down for a moment, minister. Order, members! We are having trouble with the audio system. I would appreciate it if members would keep the noise in the Chamber down.

Mrs M.H. ROBERTS: I can provide an undertaking to give consideration to additional powers being given to police officers. However, a difficulty arises in giving police additional powers without a proper framework. That does not seem to be a very positive thing to do, especially if the member's suggestion is that the police should be given additional powers to deal with an illegal industry; that is, the brothel industry. That is fraught with difficulties. I draw the member for Kingsley's attention to the fact that the Police Act is currently under review. I have chosen not to progress that review until the conclusion of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. That is an issue to which the royal commission would have given some attention. We will learn a fair bit from the royal commission. Post-royal commission, the Government will step up its progress on the Police Act, and all powers and parts of that Act will be reviewed.

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Mrs C.L. EDWARDES: I refer the minister to clause 146. One issue we have learnt about from the police royal commission is the concern raised about the Anti-Corruption Commission. The Corruption and Crime Commission has now been proposed. The issue is that hearings should be held in public. This Bill provides that hearings of the Prostitution Control Board will generally not be held in public. How will the board determine which hearings should be conducted in private and who may be present at those hearings? Issues arise about public accountability and the confidence people will have in the board and the process it will follow. This provision is so broad that the chairman of the board would have to be almost superhuman. The various models of corruption commissions that have been considered have shown that the personalities of the chairmen of these commissions can determine the sorts of matters that are made public. This usually depends on the peculiarities of a chairman and whether he is a publicity hound or someone who wants to deal with matters in a way that minimises any impact. A certain amount of fairness and natural justice is linked with the issue of public accountability.

Mrs M.H. ROBERTS: It is always a matter of striking a balance. One of the things the Government clearly wants to do is to protect people who come before the board. Members have already alluded to the fact that there are potential links between this industry and organised crime and/or people involved with drugs and the like. Prostitutes should be able to come forward in confidence and make presentations to the board without fear of threats or intimidation. With some court cases large groups of outlaw motorcycle gang members have sat in the public galleries and, to some extent, intimidated not just witnesses but also juries. That is the principal reason the Government has erred on that side; it wants to give people engaged in the industry some encouragement to participate, come forward and be open with the board. That is why the Government is determined to go this way. As the member has noted, the Bill provides the capacity for the board to hold public hearings when appropriate. The Commissioner of Police or his delegate and the Commissioner of Health or his delegate will be present at these hearings. I expect both commissioners or their representatives will be mindful of the need for accountability, privacy and the protection of people, both in terms of personal health disclosures and the like and criminal intelligence, with associated concerns about intimidation and potential links with organised crime.

Part put and a division taken with the following result -

Ayes (26)

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

Noes (16)

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

Pairs

Mr S.R. Hill	Mr M.F. Board
Dr G.I. Gallop	Mr J.L. Bradshaw
Mr J.R. Quigley	Mr A.D. Marshall

Part thus passed.

Debate interrupted, pursuant to standing orders.

[Continued on page 9427.]