PROSTITUTION AMENDMENT BILL 2007

Introduction and First Reading

Bill introduced, on motion by **Mr J.A. McGinty (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.A. McGINTY (Fremantle - Attorney General) [12.32 pm]: I move -

That the bill be now read a second time.

The Prostitution Amendment Bill gives effect to Labor's policy commitment to reform prostitution laws. To reflect this landmark change, the Prostitution Act will be renamed the Prostitution Reform Act. Prostitution has existed in Western Australia since the early days of the Swan River Colony. Existing laws that prohibit managing a brothel and living off the earnings of a prostitute fail to recognise and adequately address the existence of organised prostitution. For many years, the futility of existing laws was reflected in the adoption by police of a policy of containment to regulate the sex industry. In 1975-76, the Honourable J.G. Norris Royal Commission in Western Australia "into matters surrounding the administration of the law relating to prostitution" endorsed the policy of containment. However, the policy was officially abandoned by the Commissioner of Police in 2000. The containment policy lacked a legislative basis and exposed police to potential criticism due to its lack of clarity and its potential for corruption.

Prostitution reform has been a vexed issue for many decades. In 1990, serious attempts at prostitution law reform were undertaken with a community panel appointed by the then police minister, Hon Graham Edwards. The panel comprised eminent community leaders. It was chaired by Miss Beryl Grant, AO, OBE, who is a member of the Uniting Church, and who held other distinguished positions, including magistrate of the Children's Court, president of the Royal Australian Nursing Federation and matron at Ngala early parenting centre. The remainder of the panel consisted of representatives from health: Dr Jim McNulty, AO; consumer affairs, Ms Michelle Kosky; police, Mr Laurie Gibson, APM; and local government, Mayor John D'Orazio.

The panel informed itself of attitudes within the community towards regulating prostitution. The final report of the Community Panel on Prostitution was delivered in September 1990. I note that this group made recommendations that are similar to the recommendations of the 2007 Prostitution Law Reform Working Group recommendations reflected in the bill that is proposed today.

The Grant report recommended changes to the police containment policy. It recommended a licensing system for owner/managers to register premises used for the purpose of prostitution. The report considered local government and planning issues, including transitional provisions for operations working satisfactorily under the containment policy. Health standards and special police powers were also set out in the report.

In relation to the Criminal Code, the Grant report recommended the repeal of existing provisions for prostitution to be replaced with new offences for street soliciting, advertising, and the protection of minors. Throughout the 1990s, despite increasing calls for reform in this area, the then coalition government made ministerial statements of intent to reform the law but failed to introduce legislation to recognise and appropriately regulate the prostitution industry. In 1999, a private member's bill to ban street soliciting was introduced by the member for Midland. In response, the coalition introduced the Prostitution Act 2000. That act failed, however, to deal with the most difficult issue confronting legislators; that is, organised prostitution.

In 2003, the Gallop government introduced the Prostitution Control Bill 2003. The bill lapsed in 2005 when Parliament was prorogued due to the state election. In 2004, the importance of reform in this area was reaffirmed by the report of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. In his report, released on 3 March 2004, Commissioner Kennedy, AO, QC, recommended that the government legislate to clarify the law in this area as a way of assisting police and reducing the risk of corruption.

In September 2006, the government established the Prostitution Law Reform Working Group, chaired by Sue Ellery, MLC. The working group consulted widely with key stakeholders and the public. It received and reviewed a wide range of submissions and examined a variety of models from other jurisdictions. The working group delivered its report, which is accessible via the Internet, in January this year. It recommended that a minimalist decriminalised model be adopted in Western Australia. The model it recommended is broadly based on the model adopted in New Zealand but with additional safeguards to ensure only suitable persons operate or manage sexual services businesses. The working group also made a series of recommendations on the principles for reform in this area. These have been generally endorsed by the government and are reflected in the bill.

The government recognises that engagement in prostitution raises significant moral and ethical issues and is strongly opposed by sections of the community. Whilst not condoning prostitution, the government acknowledges the social reality that the industry does and will continue to exist. To that end, the bill provides a framework for addressing the regulation of prostitution in a manner that is conducive to public health, protects sex workers from exploitation and protects children from being involved in or exposed to prostitution. The complex health, safety, planning and policing issues that arise in this area are best addressed through a minimalist decriminalised model.

Consistent with a decriminalised model, existing offences in the Criminal Code relating to managing a brothel and living off the earnings of a prostitute are to be repealed. Terms such as "prostitute" and "prostitution" will be replaced by less stigmatising terms that simply and accurately reflect the activity. Under new part 3A of the act, operators and managers of sexual services businesses will be required to obtain certificates from the chief executive officer of the Department of Racing, Gaming and Liquor. Various criteria will be required to be satisfied, including a good character test. Certificates will be valid for up to 12 months and be capable of suspension, revocation and renewal. The certification requirements are based on the New Zealand Prostitution Reform Act 2003 but provide for greater scrutiny of applicants to ensure their suitability. This safeguard is particularly important to ensure organised crime elements are not permitted within the industry.

Police will have a role in vetting the suitability of applicants and provision is included in the bill to maintain the confidentiality of information police provide to the CEO where its disclosure might be contrary to the public interest. This can be reviewed by the State Administrative Tribunal in the event an application is made to review a decision of the CEO. Police powers under the existing act will be retained. Police officers will also be empowered to enter sexual services premises to verify that they are being operated and managed by certificated persons.

Sex workers who operate a business on their own or together with one other sex worker will not be required to obtain a certificate or to be registered. To impose such a requirement would be contrary to the philosophy of minimalist decriminalisation. This exception also recognises the difficulty in regulating individual sex workers and the high likelihood that if they were required to obtain certificates or be registered, many sex workers would operate outside the established system. Although sex workers operating on their own or together with one other worker will not need to obtain a certificate to operate, they will remain subject to ordinary planning laws and, where required, will need to obtain approval to operate their business.

In other jurisdictions experience has indicated that difficulty in obtaining local government planning approvals has impeded the successful implementation of a decriminalised or legalised model. The government considers that planning decisions should be dictated by proper planning considerations rather than moral considerations. Sexual service businesses should be regulated but not prohibited.

It is important to the success of the reform that well-managed sexual service businesses, which existed when the review of prostitution laws was announced, are allowed to continue to operate. Special arrangements are therefore to be made in proposed section 21X of the act for those businesses to apply to the chief executive officer of the Department of Racing, Gaming and Liquor for planning approval. The CEO will be required to consult with local government and the police prior to granting approval. The CEO must grant an approval unless he or she considers that the premises are not being managed appropriately after taking into account -

(a) whether the premises has been the subject of prior formal complaints from residents or occupiers in the area;

(b) whether the operation of the premises causes a disturbance in the neighbourhood because of factors such as its size, the number of people working in it, the hours of operation, the noise and vehicular and pedestrian traffic; and

(c) whether the operation of the premises interferes with the amenity of the neighbourhood.

No appeal or right of review will lie from a decision of the CEO to refuse a planning application.

Planning approval for the use of premises for sexual service businesses will otherwise be subject to ordinary planning processes. This is consistent with a minimalist model and recognises the important role of local government in planning decisions. The government is encouraged by indications from the Western Australian Local Government Association and several local councils that they will be able to fairly and reasonably regulate the location of sexual service businesses.

In order to guide local government and ensure consistency, the Western Australian Planning Commission will issue policies and model provisions in relation to the spatial regulation of sexual service businesses. It will of course take some time for existing planning schemes to be amended. In the interim, proposed section 21Y will enable local councils to grant planning approvals in relation to sexual service businesses. Prior to granting an

approval they will be required to have regard to whether the business is likely to cause a nuisance to ordinary members of the public using the area or is incompatible with the existing character or use of land in the area.

An important aspect of the bill is its implementation of measures to promote positive health practices and require that minimum health standards be maintained by operators of sexual service businesses, sex workers and clients. The measures include obligations on operators to provide health information to sex workers and clients, provide them with prophylactics free of charge and take all other reasonable steps to prevent transmission of sexually transmissible infections or viruses.

Operators will be required to employ sex workers or engage them as independent contractors but not under any other arrangement. This will ensure that workers are protected by workers' compensation and work safety legislation. An operator or manager is also required to be present at all times that a business is operating. The Department of Health in consultation with WorkSafe and industry stakeholders is in the process of developing a draft code of practice for the industry. The health department will also work in partnership with WorkSafe and non-government organisations to disseminate information and education to persons in the sex industry.

The government recognises the importance of sex workers being protected from exploitation. The bill strengthens existing protections. The current prohibition on inducing persons to act as sex workers is to be extended to include circumstances of coercion or inducement covered under New Zealand legislation. A provision is included that expressly recognises the right of sex workers to refuse to take part in, or to continue to take part in, a commercial sexual act. Sexual service businesses will also be precluded from operating at or from premises that are the subject of a liquor licence. This will limit the potential for clients choosing to engage sex workers whilst under the influence of alcohol and enhance the safety of workers. The advertising of commercial sexual services will be restricted to the classified sections of newspapers and periodicals and the Internet, in a manner that may be prescribed.

I am sure that members on both sides of the house would agree that protection of children from involvement in and exposure to the sex industry is paramount. In that regard existing protections will be extended. Operators will be required to ensure that children are not employed as sex workers and that no child is present at a place at which a sexual service business is being carried on. Operators will be required to obtain and retain for three years copies of photographic identification establishing that sex workers have reached 18 years of age.

There is no doubt that reform of the law in relation to prostitution is well overdue. Despite its difficulties and challenges, it is a task which the government has remained committed to achieving. The recommendations of the Prostitution Law Reform Working Group provide an achievable blueprint for reform. The minimalist decriminalised model reflected in the bill represents a pragmatic and reasonable approach to regulating this industry. I commend the bill to the house.

Debate adjourned, on motion by **Mr T.R. Sprigg.**