



House of Representatives

Supplementary Order Paper

Tuesday, 29 April 2003

Prostitution Reform Bill

Proposed amendments

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

Clause 2

To insert, after the words "this Act" (line 6 on page 2), the words "(other than the provisions referred to in **subclause (2)**)".

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

To add, as *subclause (2)* (after line 7 on page 2), the following subclause:

- (2) **Part 2A and sections 10A and 11(2)** come into force 6 months after the date on which this Act receives the Royal assent.

Clause 4

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

small owner-operated brothel means a brothel—

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

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

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

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

New clause 4AA

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

4AA Definition of operator

- (1) In this Act, **operator**, in relation to a business of prostitution, means a person who, whether alone or with others, owns, operates, controls, or manages the business; and includes (without limitation) any person who—
- (a) is the director of a company that is an operator; or
 - (b) determines—
 - (i) when or where an individual sex worker will work; or
 - (ii) the conditions in which sex workers in the business work; or
 - (iii) the amount of money, or proportion of an amount of money, that a sex worker receives as payment for prostitution; or
 - (c) is a person who employs, supervises, or directs any person who does any of the things referred to in **paragraph (b)**.
- (2) Despite anything in **subsection (1)**, a sex worker who works at a small owner-operated brothel is not an operator of that business of prostitution, and, for the purposes of this Act, a small owner-operated brothel does not have an operator.

Clause 6(1)

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

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

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

*Territorial authority may make bylaws***6C Bylaws controlling signage advertising commercial sexual services**

- (1) A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
- (2) Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that—
 - (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
 - (b) is incompatible with the existing character or use of that area.
- (3) Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.

- (4) Parts 8 and 9 of the Local Government Act 2002 (which are about, among other things, the enforcement of bylaws and penalties for their breach) apply to a bylaw made under this section as if the bylaw had been made under section 145 of that Act.

6D Procedure for making bylaws

- (1) A bylaw made under **section 6C** must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.
- (2) Despite **subsection (1)**, a bylaw may be made under **section 6C** even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

Resource consents

6E Resource consents in relation to businesses of prostitution

- (1) When considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority must have regard to whether the business of prostitution—
- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or
- (b) is incompatible with the existing character or use of the area in which the land is situated.
- (2) Having considered the matters in **subsection (1)(a) and (b)** as well as the matters it is required to consider under the Resource Management Act 1991, the territorial authority may, in accordance with section 105 of that Act, grant or refuse to grant a resource consent, or, in accordance with section 108 of that Act, impose conditions on any resource consent granted.
- (3) **Subsection (1)** does not limit or affect the operation of the Resource Management Act 1991 in any way, and it may be overridden, with respect to particular areas within a district, by the provisions of a district plan or proposed district plan.

Heading above clause 9J

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

Powers of entry

Clause 9J

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

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

- “(a) there is good cause to suspect that an offence under either of the following provisions is being, has been, or is likely to be committed in the place:
- “(i) **section 9C** (which concerns using persons under 18 years in prostitution):
- “(ii) **section 9MA** (which concerns being an operator while not holding a certificate); and” .

Clause 9K(1)(b)

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

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

Clause 9L(1)(d)

To omit the words “an offence against **section 9C**” (line 6 on page 18), and substitute the words “an offence in respect of which the warrant is issued”.

New Part 2A inserted

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

Part 2A Operator certificates

9MA Operators of businesses of prostitution to hold certificates

- (1) Every operator of a business of prostitution (other than a company) must hold a certificate issued under **section 9MB**.
- (2) Every person who, while required by **subsection (1)** to hold a certificate, does not hold a certificate commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (3) If a person who is charged under **subsection (2)** claims that he or she is not an operator because he or she is a sex worker at a small owner-operated brothel and is not an operator of any other business of prostitution, it is for the person charged to prove that assertion on the balance of probabilities.
- (4) Despite **subsection (2)**, no person may be convicted of an offence under that subsection if the period during which the person does not hold a certificate is the first 6 months after this section comes into force.

9MB Application for, and grant of, certificates

- (1) An applicant for a certificate must apply to the Registrar.
- (2) In this Part, **Registrar** means the Registrar of the District Court at Auckland, or the Registrar of any other District Court

- identified in regulations made under this Act as the, or a, Registrar who may accept applications under this section.
- (3) The application must be in the prescribed form and be accompanied by the prescribed fee.
 - (4) The application may require the applicant to provide no more than the following:
 - (a) the applicant's full name, date of birth, and gender;
 - (b) any other names by which the applicant is, or ever has been, known;
 - (c) the address to which the applicant wishes any certificate and related correspondence to be sent;
 - (d) a photocopy of any form of official identification that contains a photograph of the applicant, such as a passport or drivers licence, that is authenticated in the prescribed manner;
 - (e) 1 or more recent photographs of the applicant that comply with the prescribed requirements and are authenticated in the prescribed manner;
 - (f) if an order has been made under **section 9MD**, a copy of the order.
 - (5) The Registrar must issue a certificate to an applicant if—
 - (a) the applicant pays the prescribed fee, supplies a properly completed application form, and attaches the required photocopy and photographs; and
 - (c) the applicant is aged 18 years or older; and
 - (b) the applicant is either—
 - (i) not disqualified under **section 9MC** from holding a certificate; or
 - (ii) is disqualified, but has been granted a waiver of disqualification under **section 9MD** and the waiver has not been cancelled.
 - (6) Every certificate must be in the prescribed form and must contain a photograph of the holder.
 - (7) If a certificate is refused, the Registrar must notify the applicant in writing, with reasons, and give information about how to apply for a waiver of disqualification under **section 9MD**.

9MC Disqualification from holding certificate

- (1) A person is disqualified from holding a certificate if he or she has been convicted at any time of any of the disqualifying offences set out in **subsection (2)**, or has been convicted of an attempt to commit any such offence, of conspiring to commit any such offence, or of being an accessory after the fact to any such offence.
- (2) The disqualifying offences are as follows:
 - (a) an offence under this Act (other than an offence under **section 9MF(3)**, **section 9MG(2)**, and **section 9MH(3)**);

- (b) an offence under any of the following sections or Parts of the Crimes Act 1961 that is punishable by 2 or more years' imprisonment:
 - (i) section 98A (participation in an organised criminal group):
 - (ii) sections 127 to 144C (includes sexual crimes):
 - (iii) Part VIII (includes murder, manslaughter, assault, and abduction):
 - (iv) sections 234 to 244 (robbery, extortion, and burglary):
 - (v) section 257A (money laundering).
- (c) an offence under the Arms Act 1983 that is punishable by imprisonment:
- (d) in relation to the Misuse of Drugs Act 1975—
 - (i) an offence under section 6 (other than possession of a Class C controlled drug):
 - (ii) an offence under any of section 9, section 12A, or section 12B:
 - (ii) an offence under any other section, but only if it relates to a Class A or a Class B controlled drug.

9MD Waiver of disqualification

- (1) A person who is disqualified from holding a certificate may apply in writing to the Registrar for an order waiving the disqualification.
- (2) On receipt of an application, the Registrar must—
 - (a) refer the application to a District Court Judge for determination; and
 - (b) send a copy of the application to the Commissioner of Police for a report on the matters referred to in **subsection (4)(b)**.
- (3) The Commissioner of Police must provide a report to the Registrar within 3 weeks of receipt of the request, and the Registrar must immediately forward a copy of the report to the applicant.
- (4) A District Court Judge may make an order waiving a disqualification if he or she is satisfied that—
 - (a) the applicant's offending was of a nature, or occurred so long ago, that it ought no longer to be a barrier to obtaining a certificate; and
 - (b) the applicant is not, and has not recently, been associated or involved with persons who would themselves be disqualified under **section 9MC** and who might reasonably be expected to exert an influence on the applicant.
- (5) The District Court Judge who determines the application—
 - (a) may not make the order until at least 2 weeks after receipt of the report provided under **subsection (3)**; and

- (b) must determine the application on the basis of the material contained in the application, the police report, and any further written material provided by the applicant, whether in response to the police report or otherwise.
- (6) An order waiving disqualification remains in force until it is cancelled under **subsection (7) or subsection (8)**.
- (7) An order waiving a disqualification is cancelled, by operation of this subsection, if the person to whom it applies is convicted of any offence referred to in **section 9MC(2)**.
- (8) A District Court Judge may cancel an order waiving a person's disqualification if—
 - (a) the police make an application to the Registrar for an order cancelling the waiver; and
 - (b) a copy of the police application is sent to the person at the address supplied in his or her application for a certificate; and
 - (c) at least 2 weeks after sending that application, either the Registrar has not received any response from the certificate holder or, if the holder has made submissions in writing, the District Court Judge has considered those submissions; and
 - (d) the District Court Judge is satisfied, on the basis of the police application and any submissions received from the person concerned, that the waiver ought to be cancelled on the grounds that the person is associated or involved with persons who would themselves be disqualified under **section 9MC** and who might reasonably be expected to be exerting an influence over the person.

9ME Expiry, renewal, and replacement of certificate

- (1) A certificate expires 1 year after the date on which it is issued.
- (2) A certificate holder may apply, at any time within 2 months before the expiry of his or her certificate, for renewal of the certificate, in which case **section 9MB** applies as if the application for renewal were an application for a certificate.
- (3) If an application for renewal is made, but not determined, before a certificate expires, the original certificate does not expire until the application for renewal is determined.
- (4) The Registrar may issue a replacement certificate to a certificate holder if—
 - (a) the holder applies for a replacement certificate and the Registrar is satisfied that the original certificate has been lost or destroyed; and
 - (b) the holder supplies 1 or more recent photographs of himself or herself that comply with the prescribed

requirements and are authenticated in the prescribed manner; and

- (c) the holder pays the prescribed fee (if any).

9MF Cancellation of certificate

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

9MG Operator to produce certificate on request

- (1) A member of the police may, on producing evidence that he or she is a member of the police, require any person who the member believes on reasonable grounds is an operator to produce that person's certificate for inspection, and the person must produce his or her certificate to the member, or to another member of the police at a local police station, within 24 hours of the request.
- (2) If a request under **subsection (1)** is made to the holder of a certificate, that holder commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, if he or she fails without reasonable excuse to produce his or her certificate as required by that subsection.

9MH Court records

- (1) Court records concerning the identity of applicants for certificates, applicants for waiver of disqualification, and certificate holders may be searched, inspected, or copied only by—
- (a) the applicant or holder concerned; and
 - (b) the Registrar; and
 - (c) the police, but only for the purpose of investigating an offence.
- (2) Nothing in this section limits the power of the Registrar to prepare and supply (whether for use by the Department for Courts or any other purpose) statistical information about applicants for certificates, applicants for waiver of disqualification, and certificate holders, as long as the information is

supplied in a form that does not identify individual applicants or certificate holders.

- (3) A person who, in contravention of this section, obtains or uses information that is sourced from, or purports to be sourced from, the court records referred to in this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

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

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

Clause 9S

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

- (ab) prescribing the forms, certificates, and fees required under **Part 2A** in connection with operator certificates:
- (ac) prescribing how the photographs and photocopies required under **Part 2A** are to be authenticated:
- (ad) prescribing the size, or range of size, of photographs to be supplied with an application for a certificate, and the number of copies:
- (ae) prescribing that the Registrar of a particular District Court is the, or a, Registrar for the purposes of **Part 2A**, whether in addition to, or instead of, the Registrar of any other District Court:

Clause 10

To omit from the heading the words “and revocations” (line 2 on page 23), and substitute the words “coming into force on the day after Royal assent”.

To omit *subclause (1)(b)* (line 6 on page 23).

To omit *subclause (2)* (lines 9 and 10 on page 23), and substitute the following subclause:

- (2) Sections 30(1)(e), 31(1)(d) and 32 of the Massage Parlours Act 1978 are repealed.

New clause 10A

To insert, after *clause 10* (after line 10 on page 23), the following clause:

10A Repeals and revocations coming into force when Part 2A comes into force

- (1) The Massage Parlours Act 1978 (1978 No 13) is repealed.
- (2) The Massage Parlours Regulations 1979 (SR 1979/35) are revoked.

Explanatory note

This Supplementary Order Paper (SOP), which replaces SOP 70 in the name of Hon Phil Goff, does the following main things:

- it requires every operator of a business of prostitution to hold a certificate. A certificate is evidence that the person has either never been convicted of a disqualifying offence or, if he or she has been so convicted, has had the disqualification waived by a District Court Judge. Provision for this was included in SOP 70, but in this SOP the procedures have been modified to make them more workable (*Part 2A*), and the description of the disqualifying offences has been tidied up (*clause 9MC*):
- it requires territorial authorities, when considering an application for a resource consent for a land use relating to a business of prostitution, to consider 2 extra matters in addition to those to be considered under the Resource Management Act 1991 (*clause 6E*). This provision replaces a proposed clause in SOP 70 giving territorial authorities power to make bylaws controlling the location of brothels:
- it amends the commencement date so that most provisions of the Bill come into force immediately (ie, on the day after the date of Royal assent) while those relating to certification are delayed for 6 months. This is to give time to organise the administrative systems necessary for certification. The provisions of the Massage Parlours Act 1978 that relate to prostitution are repealed immediately, but the rest of that Act is not repealed until the certification regime is in force. Under SOP 70, all the provisions of the Bill came into force 6 months after assent:
- *new clauses 6C and 6D* (which are about bylaws controlling signage) replace the original ones, in order to align the tests with those in new *clause 6E*, and to reflect changes in local government legislation. These clauses are the same as were in SOP 70.