



Disorderly Houses Amendment (Brothels) Bill

Second Reading
In Committee
Third Reading

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DISORDERLY HOUSES AMENDMENT (BROTHEL)S BILL

Page: 20247

Second Reading

The Hon. JOHN HATZISTERGOS, on behalf of the Hon. Michael Egan [12.33 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

In 1995, the Government reformed prostitution laws in New South Wales. The Disorderly Houses Act 1943 was amended by the Disorderly Houses Amendment Act 1995 to abolish the common law offence of keeping a brothel. This made brothels a legitimate commercial land use regulated through environmental planning instruments under the Environmental Planning and Assessment Act 1979. At the same time, amendments to the Summary Offences Act 1988 and the Crimes Act 1900 abolished the common law misdemeanour of keeping a common bawdy house or brothel, and provided that people in a legitimate commercial relationship with a sex worker are not guilty of the offence of living off the earnings of prostitution.

These reforms were designed to overcome the effect of the decision of the Court of Appeal in *Sibuse v Shaw* in 1988, which held that a brothel was a disorderly house regardless of whether it was disorderly in the usual meaning of the word. Prior to the Disorderly Houses Amendment Act 1995, police could seek an order to close any premises operating as a brothel. This meant that even orderly, well-run brothels would be closed and prostitutes would be forced back onto the streets. Street prostitution is generally considered to be undesirable. Health and social workers have more difficulty reaching street sex workers with health and safety education programs. Street sex workers are at a greater risk of sexually transmitted infections than those who work in brothels, where some medical supervision exists and where the use of condoms may be enforced.

The Government recognises that it is important to have appropriate regulation of brothels to protect the community from the undesirable aspects of prostitution, to protect public health, and to reduce the potential for corrupt conduct on the part of police. I note that the Wood royal commission uncovered widespread police corruption associated with the operation of brothels. The 1995 reforms to prostitution laws removed this avenue for police corruption. The 1995 reforms allowed brothels to be regulated under the Environmental Planning and Assessment Act 1979 in the same way as any other business. This enables proper control over their impact on communities, through locational and management requirements. Local councils can close a brothel if it does not comply with planning regulations. Councils can also close a brothel if they can demonstrate to the Land and Environment Court that the brothel is having a significant detrimental effect on the local community and that sufficient complaints have been received from nearby residents or occupiers.

In January 2000 the Government established a task force to assess whether the objectives

of the 1995 reforms are being achieved through the planning arrangements adopted by local councils; assess the evidentiary requirements for the prosecution and closure of brothels; and assess the success of occupational health and safety programs for sex workers, their clients and the public. The brothels task force comprised representatives from the Cabinet Office, the Attorney General's Department, the Department of Local Government, the Department of Planning, the Ministry for Police, WorkCover, New South Wales Health, the Police Service, and the Local Government and Shires Associations. The task force representatives consulted with local government, sex workers, and social and health workers about the implementation of the reforms. The task force concluded that the objectives of the 1995 reforms are still relevant and appropriate, and did not recommend any changes to existing policy. However, the objectives of the reforms are not being achieved to the extent that was envisaged. This is not due to deficiencies in the approach taken in the legislation. The task force has recommended that the difficulties that local councils face in dealing with brothels may be addressed by improving their understanding of the law relating to brothels and by helping them to optimise the use of those laws.

In bringing enforcement action in the Land and Environment Court to close or restrain the use of premises as brothels, councils have experienced difficulties in establishing that premises are operating as brothels. This bill is designed to clarify the nature of evidence that a local council may present to the court and that the court may rely on to establish that premises are operating as a brothel. The bill amends the Disorderly Houses Act 1943 to make it clear that the Land and Environment Court can rely on circumstantial evidence to establish that premises are operating as a brothel. Often, direct evidence that premises are operating as a brothel is not available to councils. The bill lists examples of relevant circumstantial evidence that is consistent with the use of premises for prostitution. Considered together, the circumstantial evidence may establish facts from which the court may conclude, as the only rational inference, that the premises are used for the purposes of prostitution. This will assist local councils in proceedings before the Land and Environment Court on an application under the Disorderly Houses Act for premises not to be used as a brothel, or under the Environmental Planning and Assessment Act to restrain the use of premises as a brothel.

This bill is proposed as part of a package of ongoing measures to address the issues identified by the brothels task force. The Government will also be establishing a brothels planning advisory service to provide ongoing assistance to local councils. This support will be provided by a panel, with representatives from state and local government, the sex industry, and someone with expertise in legal issues associated with planning for brothels. This panel will raise awareness in councils of the law relating to brothels. It will assist local councils in developing appropriate planning controls for brothels that identify areas where brothels are compatible with other land uses and which protect the community from amenity impacts. It will also assist councils in developing planning controls which could be easier to enforce. In terms of public health, the task force concluded that the 1995 reforms have had a positive impact on access by sex workers to health services and occupational health and safety programs. The Government proposes to continue these programs.

The Government has received strong support from the Local Government and Shires Associations for the proposed bill and advisory service. The associations were members of the task force and their participation was much appreciated. However, the associations have suggested that the Government set up a licensing system for brothels, similar to the Liquor Licensing Court. The associations propose that the licensing body be responsible for non-planning issues, such as health and criminal matters, leaving local councils to deal with planning issues. The Government does not support this proposal. Similar licensing schemes in other States have not worked. Sex workers avoid licensing to protect their privacy. Unlicensed workers are less likely to participate in occupational health and safety programs, and this has impacts on public health. Unlicensed workers would also be vulnerable to corrupt conduct on the part of licensing authorities. Other proposals for legislative amendment to the regulation of brothels have also been made. The Opposition, for example, has proposed to give local councils powers to issue and enforce orders to

close illegal brothels without the person who is the subject of the order having a right to appeal to the Land and Environment Court.

The 1995 reforms were designed to protect public health and minimise opportunities for corruption. The Government is concerned that some of the proposals to change the regulation of brothels will create new opportunities for corruption and impose a regime that will increase the number of sex workers who are operating illegally. The bill, together with the proposed advisory service, will improve the regulation of brothels. I commend the bill to the House.

The Hon. DON HARWIN [12.34 a.m.]: Prostitution in this city and in this State is as old as the colony itself. It is well known that the colonial authorities officially sanctioned prostitution to avoid what they regarded as even greater vices. John Birmingham, author of the book *Leviathan: the unauthorised biography of Sydney*, described the position of women in the colony as follows:

The women's role was explicit. Their presence was required to stymie any out break of 'perversion' amongst the salty, long deprived men of the fleet. This conception of female immigration as a sort of sexual safety valve still held fast decades later when officers and enlisted men were allowed to take female 'servants', a quaint euphemism exposed by T. W. Plummer who wrote to Governor Macquarie in 1811 that officers, non-commissioned officers were all taking the female convicts 'not only as servants but as avowed objects of intercourse rendering the whole colony little less than an extensive brothel.'

The notoriety of prostitution in Sydney continued into the twentieth century, leading to the Wade Government trying to crack down on prostitution through the Criminal Offences Bill in 1908. But by targeting individual prostitutes who worked the streets, prostitution was transformed into an industry based in brothels. I have talked about Larry Writer's book *Razor* in this House before. That book records that transformation and the rise of syndicated criminal gangs taking over prostitution in the East Sydney/Darlinghurst area. Tilly Devine's gang ran a string of brothels based in Palmer Street, where prostitutes were virtually indentured by virtue of their cocaine habit, which was carefully nurtured by the exploitative Devine and her enforcers. While there were efforts to crush the trade in the 1930s, the Second World War led again to a further period of unofficial sanction, as Birmingham records:

The area around Palmer Street, East Sydney, informally zoned for brothel-keeping by tacit consensus of police, public and government, soon exhibited a fantastic scene of industrial-age whoring. Hundreds of US servicemen queued outside hastily organised establishments with [military police] detailed to keep lines moving, and special clubs for Negro soldiers.

David Hickie in *The Prince and the Premier* records how Prime Minister John Curtin had one of his aides make discreet inquiries of operators of criminal rackets in Sydney, seeking their assistance to establish a more virile vice trade in Brisbane to meet the needs of servicemen in that city. The Sydney prostitutes were given a retainer and were provided with a special train with special clearances to expeditiously transport them from Sydney to Brisbane by the Curtin Government, in the interests of the war effort. After the war, under successive State Governments, illegal prostitution continued to flourish with seeming impunity under police protection. Brothels openly operated in the Palmer Street area and were only rarely prosecuted when someone forgot to pay off someone else.

One case came to light in early 1965 by accident when the madam, Aileen Donaldson, was being sued in the Bankruptcy Court and she was caught trying to conceal her interest in a Palmer Street brothel. Her silent partner was revealed as Detective-Sergeant Harry Giles, head of the Darlinghurst Vice Squad. One notorious criminal, Joe Borg, had 14 brothels in Liverpool Street, Liverpool Lane, Woods Lane and Chapel Street. Along with Palmer Street, Palmer Lane and Berwick Lane, the whole precinct was nicknamed the "doors" area, with prostitutes advertising what was on offer, so to speak, from the front sitting room, visible through an open door.

As a Darlinghurst resident from 1992 until 1999 who owned a terrace in that notorious "doors" area, it was hard to miss what is now often referred to as the sex industry still in action in that area. To this day, an illegal brothel trades in Liverpool Street. Street prostitution, both male and female, is still quite visible. When I lived in Forbes Street, there was considerable activity in the street, involving mainly women and girls who were tragically addicted to intravenous drug use. Of course, when the Horizon building was completed, the police moved the girls on to keep happy some of the new residents with loud and influential voices and connections to the Carr Government.

Those women and girls are now in Bourke Street. I invite honourable members to read the comments of the honourable member for Bligh in another place with respect to this legislation to learn about the ongoing problems. Hypocrisy has characterised so much of the debate about prostitution over the years, in part because it has inevitably been caught up in morality debates. Many people in our community charge prostitution as a moral evil, as is their right, but Parliament needs to make workable laws that protect the community's wider interests but recognise the inevitability of an ongoing sex industry—as it is now often referred to—and protect those who work in that industry. One of the challenges in finding the appropriate balance is to recognise the diversity of the industry.

At one end of the spectrum, mainly women work in illegal brothels exploited by operators in ways not so different from those employed by Tilly Devine and others in the 1920s. This House has only just passed legislation relating to the very real problem of sexual servitude in which mainly South-East Asian women in Sydney who are illegal migrants are virtually enslaved by unscrupulous operators using the threat of arrest and deportation. At the other end of the spectrum, men and women have made conscious choices to work in well-kept and legal brothels, valuing the financial rewards and providing a safe, well-ordered service. Many people work from home, with the assistance of a mobile phone and a classified advertisement in the local newspaper. They are meeting an undeniable demand. In speaking on this legislation, I make no moral judgments about those who follow this profession.

It is my view that it is essential that we not go back to looking at the sex industry through the prism of the criminal law. A regulated industry which allows brothels to operate with development consent from local government, in a compatible environment with the assent of local communities, is the best model. A safe workplace is the right of those working in the industry and an insistence on safe sex practices amongst workers and their clients is in the interests of a healthy community generally. Public policy and legislation must have those objectives. The 1995 amendments to the Disorderly Houses Act went some way towards meeting these objectives. Prior to this legislation, all brothels were considered to be disorderly houses and could be closed down. The 1995 amendments, passed with the Opposition's support, made brothels a legitimate commercial land use that could be regulated by local government under the Environmental Planning and Assessment Act.

The Disorderly Houses Act continued to provide local councils with a remedy against illegal brothels where a detrimental effect on the local community could be proved. Some time ago the Government established a brothels task force to monitor the new legislative arrangements comprising representatives from the Cabinet Office, the Attorney General's Department, the Department of Local Government, the Department of Urban Affairs and Planning, the Ministry of Police, New South Wales Health, the Police Service, and the Local Government and Shires Associations. They issued a report in October 2001, and I thank the Attorney General's office for providing me with a copy of it.

The terms of reference of the task force covered the application of planning controls to brothels, evidentiary requirements, and occupational health and safety issues. The report records that about half of the local councils in New South Wales have prepared local environmental plans that identify locations where brothels may legally operate. The most comprehensive example of the response of local government is the controversial sex industry policy of South Sydney City Council, which effectively licences home business brothels in residential and other zones without even obtaining development consent. The report estimates that 40 per cent of all prostitution takes place in residential areas in small home occupation brothels. Most operate without development consent

except in council areas following the South Sydney model—another example is Marrickville.

The report notes that it would be possible through an amendment to State environmental planning policy [SEPP] 4 for the Carr Government to allow home occupation brothels to operate without development consent across the State, similar to the regulation of other home-based businesses. Frankly, I think that the second section of the report, which focuses on the regulation of brothels, is weak and does not display any comprehension of the degree of difficulty that local government is having with the problem of illegal brothels. Most councils do not believe that they have adequate support to close down illegal brothels. A particular problem is the time lag, with some councils waiting up to 18 months for court orders against illegal brothels to come into effect. No wonder they are proliferating. Councils are also spending considerable sums of money attempting to shut illegal brothels.

Research conducted in June by my colleague the honourable member for Pittwater, the shadow Minister for Planning, showed that in the Sutherland Shire Council area there were 10 known illegal brothels, with \$59,200 spent in legal costs over the past 3½ years to close them down; in the Rockdale City Council area there was one known illegal brothel, with \$88,000 spent closing down five illegal brothels; in the Burwood Council area there were several illegally operating brothels, with \$66,750 spent closing down 12 illegal brothels since 1995; and in the Parramatta City Council area there were nine known illegal brothels operating. That council estimates that the minimum cost to ratepayers in closing an illegal brothel is \$2,550, and one particular case cost more than \$50,000. In the Liverpool City Council area four known illegal brothels were operating illegally. That council advised that the cost of inspecting a suspected illegal brothel is \$500.

Some councils have had to go to ridiculous lengths to prove that brothels are operating illegally, including hiring private investigators to enter illegal brothels and hiring prostitutes. The task force's report has only one solution to the problem: seeking to clarify the existing legislative provisions relating to the evidentiary burden, and this legislation, which provides for the admission of circumstantial evidence in proceedings before the Land and Environment Court, for the purpose of proving that certain premises are being used illegally as brothels. Notes appended to the bill give examples of the types of circumstantial evidence that the Land and Environment Court may consider in determining whether premises are being used as an illegal brothel.

Any legislative change that facilitates the closure of illegally operating brothels is to be welcomed. However, it must be said that the bill does not go nearly as far as the Opposition's proposed Community Protection (Illegal Brothels) Bill 2001—which stands in my name on the notice paper of this House and in the name of the honourable member for Pittwater on the notice paper of the other place. The bill presently being debated will only ease the evidentiary burden on local councils in actions before the Land and Environment Court. It will not stop this from being a lengthy and costly process. Ratepayers could be forgiven for believing that their rate dollars could be better spent. They should have a right to speedy relief from the loss of amenity and public safety which results from the operation of illegal brothels near their homes, schools and churches.

Under the Coalition's proposed legislation councils would be given the power to serve notice on the owners or operators of suspected illegal brothels, requiring that they demonstrate within 48 hours that their premises are not being used for that purpose. Failure to comply with such a request would result in closure of the premises by council officers, using whatever reasonable means necessary, including police assistance. A large number of local councils have expressed their support for the Opposition's foreshadowed Community Protection (Illegal Brothels) Bill. Mark Pigram, the Mayor of the City of Holroyd, complained of the expense and delays involved in shutting down illegal brothels. He said:

Council agrees that local government should have more effective means of dealing with illegal brothels in a cost-effective manner. Accordingly, my Council supports the thrust and objectives of the Bill.

The Mayor of Pittwater, Patricia Giles, also praised the Coalition's initiative. She said:

The proposed bill and the authority it will confer on Council to act to preserve the community amenity is considered to be of considerable value. I am pleased to offer Council's support for this bill and to commend the form and content of the proposed legislation.

It is not only city councils that have problems with illegal brothels. Tamworth City Council wrote to my colleague the shadow Minister in another place in the following terms:

The move to enable local government sufficient powers to close the operations of an illegal brothel is supported by Tamworth City Council. Tamworth City Council has faced numerous, lengthy and costly proceedings to close such activities only to find that the proponents cease trade immediately before any order expires and open in new or different premises, leaving Council to recommence proceedings on a new site.

Other councils that have expressed their support for our bill include Berrigan Shire Council, Gunnedah Shire Council, Sutherland Shire Council, Grafton City Council, Cooma-Monaro Shire Council, Wyong Shire Council, Gilgandra Shire Council, Narrabri Shire Council, Inverell Shire Council, Lismore City Council, Gosford City Council, Tenterfield Shire Council and the Council of the Shire of Hornsby. The Coalition has consulted widely and received considerable support for its bill: the Community Protection (Illegal Brothels) Bill. The Government's bill is a poor substitute; indeed, it has engendered some opposition, although much of it unfounded.

Honourable members have received many emails from concerned health industry professionals and sex workers, and this has caused understandable concern. The AIDS Council of New South Wales [ACON] has written to the Premier, and copies of its letter have been sent to the Opposition. The council's letter raises two principal concerns. The first is that the clarification of the evidentiary burden will enable councils to use safe sex equipment and literature as circumstantial evidence in a prosecution under the Disorderly Houses Act. On behalf of my Opposition colleagues, a number of whom have expressed concerns, I raised this issue with the Attorney General in a letter dated 11 December.

New South Wales has an enviable record in HIV-AIDS prevention, and it would be a pity if that record were jeopardised. I am sure many members of this House share that view. I have received a verbal assurance from the Attorney's policy adviser that the Opposition's concerns are perhaps not as serious as has been represented. However, as this issue will, I suspect, be extensively canvassed in Committee, I will say no more about it at the moment. I note that the Greens have circulated amendments that deal directly with that matter. ACON's second concern seems to be the future of home-based sex workers in home occupation brothels. Its letter reads:

Sex workers currently working from their homes unnoticed by residents, may be forced into working outside their homes, increasing health risks as well as disruption to local residents.

It seems that ACON assumes that home occupation brothels will be easier to shut and that this will force sex workers "underground". As a result of the bill, it may ultimately be easier to shut home occupation brothels that do not have development approval, just as it may be possible to shut all brothels that do not have development approval. However, the Opposition believes that the effect of the legislation will be, at best, marginal. The question, then, is whether one supports an approach based upon local councils, elected by their local communities, being empowered to decide the character of the suburbs and towns and the compatibility of land uses. Under this approach, councils have the right to regulate land use in their areas, including where brothels can operate. This issue will also be canvassed extensively in Committee, and I will say more about it then.

Nothing in this bill will alter the ability of councils such as South Sydney City Council to permit home occupation brothels. Those who have concerns need to think of creative solutions to the problem of convincing councils to adopt such policies. If they do not think this is possible, I repeat that the Carr Government can address this through SEPP 4 without any amendment to the legislation. In some respects, a planning instrument is a much more flexible instrument, and it is

likely to be a more responsive solution than legislation. The Opposition will not oppose the bill. Our policy is clear. We believe that local government is the appropriate avenue for regulating an industry that has been around forever and is clearly here to stay. We believe that regulation must be reasonable, but also responsive, to the aspirations of local communities. Our commitment to the national strategies that deal with HIV-AIDS prevention is well known. We believe that the Coalition's Community Protection (Illegal Brothels) Bill is an even more effective solution to the problems of illegal brothels than the Government's Disorderly Houses Amendment (Brothels) Bill.

The Hon. IAN COHEN [12.54 a.m.]: The Greens oppose the Disorderly Houses Amendment (Brothels) Bill in its present form and will move amendments in Committee. As the Hon. Don Harwin said, New South Wales has an enviable record in HIV-AIDS prevention, and it would be a great shame if Australia's position in the international community, of which it is very proud, were lost by virtue of restrictive legislation that makes it difficult for certain elements of the industry to operate in an appropriate and hassle-free environment. At the outset I point out that the Greens support appropriate language when referring to sex workers and the services they provide. This counters prejudice and contempt, and reduces stigmatisation of sex workers. The appropriate term to describe a provider of sexual services is "sex worker", not "prostitute". The Greens support full legalisation of the sex industry. We believe that sex workers should have the same rights as any other workers: the right to join a union, the right to pay tax, the right to make superannuation contributions, the right to holiday and maternity pay, and access to workers compensation if injured.

The Greens oppose the bill for two main reasons. First, it will impact in a negative way on private home-based sex workers; and, second, aspects of the bill will seriously undermine harm minimisation measures achieved through the introduction of the 1995 amendments to the Disorderly Houses Act. The bill has major impacts on public health initiatives, human rights, women's rights, tax compliance, and occupational health and safety in relation to sex workers and their clients. It fundamentally undermines all global HIV-AIDS policies and is counter to the objectives outlined in the 2001 United Nations Declaration of Commitment on HIV-AIDS, entitled "Global Crisis—Global Action ", which specifies:

By 2003, enact, strengthen or enforce as appropriate legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups; in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support, treatment, information and legal protection, while respecting their privacy and confidentiality, and develop strategies to combat stigma and social exclusion connected with the epidemic.

Sex workers fit into the vulnerable groups category due to their livelihood. The Disorderly Houses Amendment Act was introduced in 1995 to address public health concerns of clients and workers in the sex industry and to combat corruption. The system of regulation intended under the Disorderly Houses Amendment Act was outlined by the then Attorney General and reiterated clearly by a number of Government backbenchers. When looking at the bill it is useful to revisit the rationale and intent behind the amending 1995 Disorderly Houses Amendment Act. The then Attorney General, Jeff Shaw, specified:

It is not the intention of the bill that brothels be permitted to operate unregulated. To this end, it also provides an avenue for the community to make complaints to local councils where a brothel is having a significant detrimental effect on the neighbourhood. Councils are empowered under these provisions, to apply to the Land and Environment Court to have a brothel closed down.

Neither is it our intention, with the introduction of these provisions, to limit those applications appropriately based on planning controls vested under the Environmental Planning and Assessment Act 1979. The only change to existing law affected by this proposal is to the basis for, and the jurisdiction of, applications under the Disorderly

Houses Act to close a brothel which is not otherwise disorderly.

The Hon. Meredith Burgmann said in her speech:

The Disorderly Houses Amendment Bill is about decriminalisation, not legalisation. Brothels do not have to seek approval to operate. The only system of regulation is the right of councils to go to the Land and Environment Court to have a brothel closed if there are sufficient residential complaints. The bill clearly states who has the right to complain and what criteria the Land and Environment Court has to consider when deciding on an application to close a brothel. Broadly, this criteria includes whether a brothel is operating near or within view from a church, hospital or school, or any place regularly frequented by children for recreational or cultural activities, and whether the brothel is disturbing the neighbourhood.

This is a very important part of the legislation. It allows people in the residential neighbourhood to complain if a brothel is causing problems in relation to noise, parking or sanitation. It does not allow the busybody groups who believe that prostitution should be illegal to take a case to close down a brothel. It is clear who has the right to object in any circumstances: residents in the area can complain to their local council about noise, sanitation and parking. The bill implies only small changes, but they will eliminate opportunities for corruption. In addition, the proposed system of relying on residents' complaints is a simple and inexpensive one.

The central aim of the 1995 reforms was to ensure that brothels are located in areas where they are compatible with other land uses. Clearly, the intent of the legislation was to enable a brothel to be closed down only if it impacts on the amenity of the area and when sufficient complaints from residents within the vicinity of the brothel are established. Low amenity impact businesses could operate within residential areas without development consent. However, there have been a number of developments since this legislation which have undermined its original intent. I will refer to those later. I will deal first with the issues faced by private home-based sex workers, who operate in a very different work environment from sex workers employed in larger brothels.

Facts supplied by the Private Worker Alliance and the Sex Workers Outreach Project specify the following about the sex workers. Most have worked previously in brothels and other jobs prior to becoming independent sex workers. Most are older workers in their 30s, 40s and 50s. Most are highly skilled and experienced. The majority of male sex workers operate as private workers. Intravenous drug use in the private worker sector is low. The anonymity of private sex workers and their ability to control all aspects of their business and services delivered are key components of their security and health strategies. Clients are seen on an appointment-only basis. All services are negotiated directly; there is no third party involved. Both the client and the worker are on an equal footing in regard to requiring confidentiality. Home-based workers may not disclose their occupation to anyone. For safety reasons some home-based workers choose to team up with another worker. Condom use is very high and the sexually transmitted disease rate is low. The premises need not be known as a sex industry location in order to be successful. They operate with no or low amenity impact for residents and neighbouring businesses. Unlike brothels, which rely on high turnover and volume, private workers offer more personal attention and often have a high proportion of regular clients.

The Hon. Doug Moppett: You have been taken in by the advertising hype.

The Hon. IAN COHEN: I do not think it is advertising hype. These sorts of industries do not advertise at all.

The Hon. Doug Moppett: You are talking about extra services. You are giving them a good wrap-up.

The Hon. IAN COHEN: I think they deserve it, actually.

The Hon. Doug Moppett: I couldn't offer an opinion.

The Hon. IAN COHEN: Sex workers generally in these discreet businesses offer a service that has minimum impact on the rest of society but, in many cases—and I will come to this shortly—it is a very valuable service in the community, particularly to people with disabilities and people in society who would find it difficult to cope without this sort of assistance. They are like front-line social workers in many ways, and that needs to be acknowledged.

The Hon. Doug Moppett: That is remarkable.

The Hon. IAN COHEN: It is an observation. Businesses may be conducted on a part-time, occasional or full-time basis. They represent up to 40 per cent of sex industry businesses in New South Wales. In a letter to Dr Refshauge, the Minister for Planning, dated 23 May 2001 the Private Worker Alliance raised the original implications of the 1995 Act in the following terms:

In 1995 a small group of Private Workers represented the interests of Private Workers to the Attorney General's Department in the consultations leading up to the Disorderly Houses Amendment Bill 1995. Then we were assured that nothing contained in the Bill would affect the way we work, discreetly in pairs from a residential dwelling in a residential area. Next thing we knew, we were classed as a brothel and in some instances required to apply for a DA and or work in industrial areas.

The appalling situation private sex workers find themselves in since 1995, is due to the inclusion of private workers in the definition of a brothel in the Disorderly Houses Amendment Bill of 1995, and the additional powers given to councils to prohibit brothels in residential areas in 1996.

During the past two years, the Private Workers Alliance has consulted with Councils, resident groups, the LGSA, the Health Department and the Taskforce. It is generally understood that private workers are not an issue with regards to amenity impact.

The recent Brothels Taskforce noted:

Local councils have adopted a range of planning controls for home based brothels. Many councils prohibit all brothels in residential zones. Others allow home based brothels without development consent if they are operated by one resident sex worker (as a "home occupation"); and allow them with development consent if they are operated by a maximum of two non-resident sex workers (as a "local business").

Prohibiting private workers in home-based businesses in residential areas does not result in private sex workers moving from their homes and relocating to areas where brothels are permissible. Instead, workers are forced underground. Sex workers in private worker home-based businesses do not seek development consent; to do so would reveal their identity and location. They are then often subjected to various forms of abuse, violence and vilification. The identification of individual sex workers through the development application process is contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS, the policies of the Australian Federation of AIDS Organisations and the AIDS Council of New South Wales. Such requirements are also counter to the United Nations Declaration of Commitment on HIV-AIDS 2001.

Requiring development consent for private worker home-based businesses also reduces access to health and safety programs. Most other low amenity impact-causing home-based businesses located in residential mixed-use and other zones currently operate statewide without requirements for development consent. It was interesting that the recent controversial legislation that passed through the House dealing with planning laws exempted small developments from the consent process of council, yet this industry has been discriminated against. In the interests of the health of sex workers, their clients and families the Greens support ensuring that private home-based workers are appropriately regulated in order to achieve a supportive environment for optimum health and safety standards in the provision of their services.

Street work, the other independent option for workers in this industry, must not be the only option for women who want to work illegitimately, independently, away from a big brothel and without a middle person. Currently, the Disorderly Houses Act defines that a "premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution". Therefore, amendments to the Act will include home-based operations. Brothels are not only regulated by the Disorderly Houses Act but also the planning system, in particular, the Environmental Planning and Assessment Act. Those who want to operate a brothel have to put in a development application to their local council to obtain development consent to operate such a brothel. The question is: Should home-based businesses be treated equitably with other home-based businesses and should those that are of minimal impact be allowed to operate illegitimately without consent?

If one compares private home-based sex workers with other home-based businesses in New South Wales, one sees that it is glaringly apparent that sex workers are discriminated against. Generally, home-based businesses in New South Wales are permitted and are highly unregulated. This is in sharp contrast to home-based sex workers. Discrimination occurs through the Disorderly Houses Act and the planning system. As mentioned before, the Act classifies even a one sex-worker operation as a brothel. Therefore, private worker home-based businesses are not regulated equitably with other comparable land users such as masseurs and architects. Further, the 1996 Department of Urban Affairs and Planning ministerial directive allows councils to prohibit brothels in all zones except industrial zones, ignores the needs of home-based sex workers and has reduced the ability of this kind of home-based business to operate in residential areas where most other home-based businesses are. Planning instruments such as State environmental planning policies, State regional environmental policies, local environmental policies, development control plans and council policies all discriminate against sex workers in home businesses, either through prohibiting brothels as home-based businesses or home occupations, prohibiting them in residential areas, where they naturally are, or singling them out to apply for development consent, restricting the number of operators and prohibiting them from advertising in certain papers.

Unlike other minimal environmental impact-causing home occupations, private home-based operations are not treated as exempt development. This discrimination exists despite the many commonalities between private worker home-based operations and other home-based businesses. The Greens believe that a maximum of two workers operating from home should be exempt from the need to obtain development consent. We believe that workers should be allowed to work anonymously, in pairs, in all appropriate zones, including residential zones. South Sydney Council has gone part of the way down this path. In a letter dated 31 October 2001 addressed to the Private Worker Alliance, the council explains the policy in detail:

I refer to your query concerning South Sydney City Council's Sex Industry Policy and its provisions for Private Worker Home Based Businesses (PWHBBs). The policy was drafted to ensure that such premises do not require the consent of the Council, as is the case for all other home businesses.

In respect of the PWHBBs not requiring development consent, the policy reiterates the provisions of South Sydney LEP 1998 and indeed this exemption has been the case since the City of Sydney Planning Scheme Ordinance of 1971.

However, Council's Exempt and Complying Development LEP and DCP... further restricts such premises to only one resident sex worker, and the working room or area must not occupy more than 10 per cent of the floor area of that part of the storey containing the dwelling... Where the home business changes the classification of the building, a DA is required.

There exist many PWHBBs operating in South Sydney, and this has indeed been the case for many years. Intuitively, the great majority of these businesses are intentionally discreet by nature, with anonymity being one necessary part of the continuation.

It is considered that those that cause disturbance or amenity impacts will quickly come to the attention of neighbours and, soon thereafter, Council. If upon investigation it is determined that there are tangible amenity impacts, the premises will fall outside the definition of a home business, and would require development consent. By definition, such premises may not interrupt residents' amenity. Where Council verifies such complaints upon inspection, then the matter may be pursued legally.

That is, local residents and councils have all manner of opportunities to deal with workplaces that cause nuisance to the public or local residents. So already there is sufficient legal recourse for those who wish to complain in a legitimate way. There does not need to be strengthening of that provision by the bill. The letter continues:

The alternative of prohibiting home business private sex workers is likely to result in the further marginalisation, intimidation and coercion of this minority group in our community (as has been the case in the past).

To maximise the potential for compliance with the law, and to optimise public health and safety, the Greens would like to go one step further and support the original South Sydney Council policy for private workers. Between 1997 and 2000 the South Sydney Council allowed a maximum of two sex workers to operate from a residential premise at any one time. During this time the council received no complaint against those discreet home-based businesses. Why is it preferable to allow two workers to operate rather than one?

The Hon. Doug Moppett: Economies of scale.

The Hon. IAN COHEN: Safety and lack of abuse are perhaps the relevant issues for those working in an industry that is very vulnerable. Isolating private workers from each other has negative health and safety consequences. There must always be the opportunity for a newer worker to team up with someone who has more experience. Two workers operating together are in a much better position to circumvent any difficult situations that may arise. This is the minimum health and safety requirement. The Attorney General in Parliament on 29 November 2001, on advice from the health department, commented that "prostitutes working in brothels are more strictly supervised with medical checks and condom use than street prostitutes." That makes the assumption that the excellent health and safety record of New South Wales sex workers is based on enforcement by brothel owners.

Reverend the Hon. Fred Nile: They are often forced not to use condoms.

The Hon. IAN COHEN: I am surprised that in this debate I am agreeing with Reverend the Hon. Fred Nile, but I have heard time and time again of women in those types of institutions being forced to have unsafe sex. In that type of institution there is more pressure on the workers to provide that type of service.

The Hon. Dr Brian Pezzutti: It is even worse for the man—only because the risk is much higher.

The Hon. IAN COHEN: I dispute that. I think men who insist on unsafe sex place the women in the industry at great risk of sexually transmitted diseases. But I agree with Reverend the Hon. Fred Nile about vulnerability to risk of sex workers. I am told that sex workers operating from private premises not only have more independence; they also have more control over their clients. They tend to have more regular customers, and that provides far more safety for the women involved.

The Hon. Elaine Nile: Sometimes they knock on the wrong doors.

The Hon. IAN COHEN: I acknowledge the interjection of the Hon. Elaine Nile. However, present laws and council regulations clearly cover circumstances in which brothel operations cause nuisance to neighbours. Neighbours have recourse under current laws. That in itself is not a reason to ban home-based sex worker activities. If noise or other problems such as that mentioned by the

Hon. Elaine Nile are caused to neighbours, those problems can already be dealt with by authorities under local government bylaws.

The Hon. Elaine Nile: If they are in a unit, it is very difficult to deal with them.

The Hon. IAN COHEN: I visit my parents in a multiple-unit block that is eight storeys high. People come and go from those units and one would not know whether they were family members, sex workers or young people on holidays.

The Hon. Duncan Gay: I visit every council in this State, and that is the biggest single complaint.

The Hon. IAN COHEN: Surely that can be remedied under the existing laws.

The Hon. Duncan Gay: No, it cannot, and that is the problem. That is why this legislation is before this Chamber. It is a pity that the Government did not use John Brogden's bill.

The Hon. IAN COHEN: We would disagree with that. The assumption that brothel owners have a greater interest in protecting sex workers and the public health than sex workers themselves is erroneous and patronises sex workers. A paper published by M. Neave entitled "The Failure of Prostitution Law Reform" in the *Australian and New Zealand Journal of Criminology* of 1988, pointed out:

Women who work in a co-operative situation with another woman, or in small brothels, have greater ability to control the conditions under which they provide sexual services. They are more likely to be able to refuse drunken or diseased clients, refuse particular kinds of sexual services, or insist on the use of condoms, than women working in very large brothels, controlled by business men seeking to maximise their profits.

A policy which discourages or even prohibits the establishment of large brothels and moves the industry towards small-scale or 'cottage industry' prostitution would give those who work as prostitutes a greater degree of practical ability to protect themselves against abuse and corruption.

The Women's Electoral Lobby also argues that prostitutes have a clear incentive to protect their sexual health and are not major transmitters of diseases. They are, however, at risk. There is evidence that in some large brothels the client's refusal to use a condom is backed by management. The Greens point out that the New South Wales HIV-AIDS prevention strategy has been uniquely successful because it is based entirely on voluntary compliance and peer-based education.

In summary, sex workers in home-based businesses should have the opportunity to work in small collective teams. Prohibiting private workers to work anonymously in pairs from their homes in all suitable zones, including all residential zones, endangers the health, safety, confidentiality and privacy of sex workers, clients and families. I am also advised that, in terms of business services, "doubles" are very popular. Not allowing this to occur in a home-based situation is an unfair restraint on trade. The Greens believe that the South Sydney Council policy with the Greens amendment of allowing a maximum of two workers should be enshrined in a SEPP. Currently, councils adopt a range of planning controls for private worker home-based businesses. Many councils simply prohibit brothels in residential zones and as home occupations. A new SEPP would ensure that all councils allow this kind of low-impact operation to occur without development consent. A recent report of a ministerial task force on brothels made a finding on this issue. At page it 13 states:

An amendment to SEPP 4 development without consent and miscellaneous complying development could be made to allow home-based brothels without development consents across the State. This would make the regulation of home-based brothels similar to the regulation of other home occupations. Home-based brothels regulated in this manner could still be closed by local councils if they had an adverse impact on the amenity of the

neighbourhood.

The Disorderly Houses Act should also be amended so that the definition of brothel is "premises constitute a brothel only if they are used by more than two prostitutes for the purpose of prostitution". I now turn to the negative impact the bill will have on harm minimisation measures. It is worth revisiting the Premier's answer to a question on the legislation when it was first passed. On 16 November 1995 he said:

With the decriminalisation of brothels, I expect that health and safe sex education programs in these premises can be expanded and improved. The new ... legislation can result in significant health benefits, particularly to the health of sex workers ...

The legislation removes the remaining legal impediments and stigmatisation that in the past have impeded health education and preventative initiatives.

This bill will place new barriers in the way of health education and preventative initiatives. The bill proposes to enable the Land and Environment Court to rely on circumstantial evidence to establish that premises are being used as a brothel. The bill lists examples of the types of circumstantial evidence that may be consistent with the use of premises as a brothel, such as advertising the premises for the purpose of prostitution or the arrangement of the premises, including any equipment or articles on the premises.

The use of circumstantial evidence under the Disorderly Houses Amendment Act, particularly the reference to "the arrangement of the premises or of the furniture, equipment or articles in the premises", will discourage best practice in occupational health and safety standards, safe sex practices and safe and enabling work environments. Other examples of circumstantial evidence listed in the legislation, such as "information in books and accounts", will discourage sound business practices, including bookkeeping practices and the paying of tax.

A huge concern is that the removal of harm minimisation equipment and literature, such as condoms and safe sex literature, will lead to a significant increase in HIV-AIDS and other sexually transmitted diseases. In short, this move undermines the present high compliance of sex industry businesses with occupational health and safety standards and sound business practices. Workers will remove anything from their home if there is a possibility it will be used in court against them as circumstantial evidence.

Another example of circumstantial evidence that is of concern is the use of telephone conversations. Allowing the content of telephone conversations to be used as evidence in court will prevent private workers from negotiating sex, including safe sex, on the phone. In the interest of public health, and to prevent potentially violent situations in their homes, private workers must be able to discuss the service, the fee, and safe sex practices frankly on the phone before they give out their address and invite the client home.

There would be a great danger if advertisements for private workers were allowed to be used as circumstantial evidence. To avoid detection by councils, private workers will have to solicit their clients in the streets of their local neighbourhood. Driving sex workers from their homes onto the street is extremely undesirable. The bill will also catapult businesses that currently have a high compliance rate with regular business duties such as account keeping and paying tax, back into the dark ages.

Part of the rationale behind the introduction of the 1995 amendments was to address corruption, particularly police corruption. Decriminalising the sex industry helped to stamp out corruption. During the years, however, corruption has shifted from the police to councils. There is evidence that corrupt council officers harass non-approved brothels. They do this by posing as council officers and demanding free sexual services from private workers in home-based business on the basis that their use is unauthorised.

The Hon. Dr Brian Pezzutti: That is illegal; refer to it to ICAC.

The Hon. IAN COHEN: Certainly, but it is happening in this sort of industry. There is evidence that corruption has increased significantly during the past 18 months and has great potential to become systemic. Some cases involving private workers have been reported to the ICAC. That would interest the Hon. Dr Brian Pezzutti. The bill will only increase the likelihood of corruption. It was pointed out on page 10 of the brothels task force that:

... illegal operators are vulnerable to corrupt conduct by council officers—as they were vulnerable to corrupt conduct by police before the DHA Act.

The Hon. Doug Moppett: Where does all this material come from?

The Hon. IAN COHEN: It is official, in black and white on page 10 of the brothels task force report, and I am disappointed that the Hon. Doug Moppett has not read it.

Ms Lee Rhiannon: They are not as thorough.

The Hon. IAN COHEN: We saw an indication of that in the lack of opposition from the Coalition earlier. Changing the definition of a brothel to allow two workers to operate in premises without its being defined as a brothel, and the introduction of a State environmental planning policy to exempt low amenity impact operators with up to two workers in residential areas, would significantly stamp out opportunities for corruption at the council level. I want to put on the record an individual's experience as a private home-based worker. She said:

I am a private sex worker, working from home. I am a mature woman, in my later stage of life, and found myself unemployable, as I don't have the skills required to be up with the times, and by the time I would have acquired them, I would have starved. I have been able to feed, clothe, and house my daughter, which I would not have been able to do otherwise.

A few weeks ago council issued an order for me to stop working from home. If I did that I would soon be homeless and on the dole. Last week two policeman came to my house. They said they were on council business. It's so scary. In all my years of being a private sex worker, I have never experienced harassment.

My home is a safe, clean environment, and I have a quiet and private entry, which is separate. I maintain good hygienic practices, and use hospital strength disinfectant in the shower areas and floors. I supply liquid soap so no contact can be made with a bar of soap. I have a quality abode, which my clientele like, as its very discreet.

I only work part time, and I am in an area zoned mixed residential and commercial. I have other business around me. I am a good person, and wish to be able to make the choice of what to do in my own time and place.

My girlfriend comes and stays with me. She also is a sex worker, and I feel safe, when we are here together as she has been bashed doing outcalls. I prefer to be at home, so we can look after each other.

I am fully aware there is a power play, that the owners of brothels would like to control all the working girls, and not let them have their own choices. I thought this country is a free place, and encourages free enterprise practices, so I don't know why there is not a more definite understanding of the need for the choice of where you want to work, and if it's privately, it should be without harassment.

Our lives are in a turmoil due to the feeling of the need to keep moving, due to the harassment of council, which makes you feel sad as it would be nice to settle in one home and completely unpack so we can be the normal family unit we are trying to maintain. We feel very sad, that we can not put everything out on display, like our good pictures and china.

That is a simple basic statement from a person who wants to live her life and not be harassed at work. A media release entitled "Start Counting Your Condoms" states in part:

The bill would allow for councils to include evidence of "equipment" normally associated with prostitution so we are asking the question about condoms.

How many condoms is too many condoms?

For two decades we've been telling people to grab a handful of condoms and this message has earned us an international reputation for HIV prevention.

Now it looks like if you're a responsible and sexually active adult you may come under the spotlight for having too many condoms.

How many condoms can I have beside the bed or in my bathroom cabinet before I am considered to be running a brothel?

How many condoms can I have in my home before the local council comes knocking on my door demanding a development application as a brothel?

Melissa Hope from New York City sent an email which states:

After consultation with organized sex workers in NSW and as a member of the International Committee for Sex Workers' Rights and the Network of Sex Work Projects, I send the following:

It is in the interest of the public health; the health, safety and privacy of sex workers; and their clients and their families, that sex workers have a legal and anonymous option to work from home—off the streets and without a middleman.

I most strongly urge you to support to Green Party Amendments to the Disorderly Houses Amendment (Brothels) Bill to redefine a brothel as having more than two workers. In addition, up to two private sex workers—(2 for safety reasons) must be able to work in all zones, including residential zones.

I have also received an email from Kate Larkin.

The Hon. Dr Brian Pezzutti: Are you going to read all of them? I have about 80 emails.

The Hon. IAN COHEN: I am reading small, selected parts for the record and for the edification of honourable members. She states:

This legislation has major flaws that will immediately cause immense damage to the NSW Health Department's HIV prevention strategies—proven to lower the risks of HIV transmission within the Sex Industry in NSW.

The clients of female sex workers engage in multiple risk-taking behaviours in relation to HIV/AIDS. "Clients are twice as likely to have had unsafe sex with twice as many people as non-client men are. They are twice as likely to have had sex with another guy, and three times as likely to have used injecting drugs".—(Venereology, the International Journal of Sexual Health—Volume 12, #1, 1999. "Characteristics, Attitudes and Risk Behaviours of Australian Men Who Visit Female Sex Workers". S Moore)

If the Government's Amendments go through as they are, they will totally de-stabilise the delicate balance of confidentiality and tolerance that exists between private sex workers, their clients and the general public. This Bill will dis-empower sex workers when negotiating safer sex and non-penetrative options with their clients, and force sex workers from their

safest working environment—their own home.

This Govt Bill, in its present form, raises major issues of concern in regard to Public Health, Human Rights, Women's Rights, Workplace Health & Safety and the right of the general adult public to anonymously access the discreet environment private sex workers provide. However none of these issues have been raised by Local Councils.

One of the ill-advised changes to the Disorderly Houses Amendment Act (1995) will allow Local Councils to use Adult Services advertisements as circumstantial evidence in Court. Councils will be encouraged to spy on private workers and their clients and publicly expose them by taking them to Court. This will force privates to either work underground—(vulnerable to corrupt Local Council Officers), visibly on the streets, or in large mainly male-run brothels, giving away half their earnings from every job and losing control over which clients they see.

Other Government Amendments will also suddenly allow Local Councils to use workplace safe sex equipment—(condoms, lubricant, rubber gloves), safe sex literature and other sex industry safety resources as evidence of a premises being used for the purposes of prostitution. That will totally undermine all current HIV/AIDS prevention programmes within the Sex Industry.

Marilyn Bliss, Area Co-ordinator HIV, HCV and Sexual Health Services, Public Health Unit, Wollsworth, New South Wales, writes:

My colleagues and I have worked very hard over the years to educate sex industry workers. Do not accept bills that are detrimental to and likely to put sex workers underground. Sex Workers have been very responsible in using condoms and having safe sex and therefore not spreading HIV among the heterosexual community. There needs to be an acceptance of the varying forms of sex work and legislation needs to ensure the safety of them all.

Saul, whom I met today, states:

The Disorderly Houses Amendment (Brothels) Bill 2001, will give Local Councils the same policing power over the Sex Industry—the NSW police used to have. The Disorderly Houses Amendment Act of 1995 was instigated because the Woods Commission made it abundantly clear that the NSW police abused their powers over the Sex Industry. Driven by their greed and empowered by inappropriate regulation they showed great dedication to lining their own pockets with the money they stole from sex workers using stand-over tactics—knowing full well that individual sex workers were unlikely to stand up to them.

The Hon. Helen Sham-Ho: Point of order: Standing order 85, which relates to continued irrelevance or tedious repetition, states:

The President or the Chairman of Committees may call the attention of the House or the Committee to continued irrelevance or tedious repetition on the part of a Member, and may direct such Member to discontinue his speech: Provided that the Member so directed shall have the right to require the President or Chairman to put the Question that he be further heard, and such Question shall be put without debate.

The Hon. Ian Cohen has spoken for half an hour or 40 minutes about sex workers' sad stories. I think he should stop at this point.

The Hon. IAN COHEN: To the point of order: The Hon. Helen Sham-Ho has taken the floor time and again in this House to speak about subjects that interest her. It goes against the traditions of the House to prevent a member from expressing his views and quoting different constituents who wish to put their opinions before the Parliament. The Hon. Helen Sham-Ho is generally impatient and intolerant when the hour is late. She seeks to curtail the speaking time of others while speaking at length herself on matters that concern her. I do not choose to speak at 1.30 a.m.; it is the

Government's agenda. I would be quite happy to return tomorrow, continue the debate at a reasonable hour, and work throughout the day. I believe that the Hon. Helen Sham-Ho is going against the traditions of the House that allow members to express themselves in this place.

The Hon. John Jobling: To the point of order: I understand why the Hon. Helen Sham-Ho has drawn your attention to standing order 85. However, the Hon. Ian Cohen has been giving a series of examples—many of which I concede are very similar—and quoting different people. All honourable members have received many emails and much correspondence, the contents of which are similar, to say the least. However, I do not believe the Hon. Ian Cohen has transgressed the standing orders, as he has been giving different and separate examples and quoting different people.

The Hon. Helen Sham-Ho: Further to the point of order: I do not think it is fair of the Hon. Ian Cohen to attack me personally. In answer to the Hon. John Jobling's point, the Hon. Ian Cohen was repeatedly giving examples in debate.

The ACTING-PRESIDENT: Order! There is no point of order. Although the Hon. Ian Cohen's examples were similar, they were, as the Hon. John Jobling pointed out, separate examples and he has quoted from different correspondence he has received. The Hon. Ian Cohen may proceed.

The Hon. IAN COHEN: Thank you, Mr Acting-President. I will proceed quickly. These are different examples, should honourable members wish to listen to them.

The Hon. Duncan Gay: Are these from the emails that we all received?

The Hon. IAN COHEN: You may well have received them.

The Hon. Duncan Gay: Aren't you an idiot!

The Hon. IAN COHEN: Takes one to know one, doesn't it? As I said before, I do not set the agenda. We are here because the Government chooses for us to be here, and I will make my speech regardless of the hour.

The ACTING-PRESIDENT: Order! The Hon. Ian Cohen will return to the substance of the bill.

The Hon. IAN COHEN: The Deputy Leader of the Opposition can go to bed. He is being totally unreasonable. The Government sets the agenda, so the House is sitting late. I would be happy to sit on Friday. It is a reserved sitting day; that is not a problem. Saul, who is a male sex worker and whose point of view should be put to the House, continued:

Look at the evidence attached to see how some Councils have already consciously used devious means to bypass the current Disorderly Houses Amendment Act 1995, in attempts to bully individual sex workers who work from home, or motel rooms in their area. Gosford Shire Council is obviously guilty of this in the attached file.

If the Councils are already bypassing the DHA Act 1995, what evil will they do when they achieve greater powers to close down individual sex workers.

Rindy writes:

As a private sex worker, working primarily with people with disability or with sexual dysfunction, I am deeply concerned about the short and long term implications of the Disorderly Houses Amendment (Brothel) Bill 2001, which has been tabled in the Upper House.

This legislation has major flaws that will immediately cause immense damage to the New South Wales Health Department's HIV prevention strategies—proven to lower risk of HIV transmission within the Sex industry in NSW.

The Hon. Doug Moppett: We have listened to an avalanche of words and I am still not sure whether you are in favour or against the bill. You just go on and on with these examples.

The Hon. IAN COHEN: If the honourable member wants me to explain it all over again I will do so. I believe that other honourable members have a greater ability to comprehend this debate.

The ACTING-PRESIDENT: Order! The honourable Hon. Ian Cohen has the call.

The Hon. IAN COHEN: Darren Tonko states:

As a Disabled person who uses the sex industry I am deeply concerned about the short and long term implications of the Disorderly Houses Amendment (Brothel) Bill.

Disabled people have written to us about this legislation. Essentially, the Greens oppose the bill in its current form. I will move amendments to this legislation in Committee. It might be necessary for me to laboriously go through all these amendments which are essential for the safety of people in the industry. These basic human rights amendments will enable us to roll back a bill which the Greens strongly oppose.

Ms LEE RHIANNON [1.41 a.m.]: I join my colleague the Hon. Ian Cohen in opposing the Disorderly Houses Amendment (Brothels) Bill. I hope that the Hon. Doug Moppett is now aware that the Greens are opposing this bill as he appears to be confused about the Greens position. On behalf of my colleague the Hon. Ian Cohen I express appreciation to the Private Workers Alliance and the sex workers outreach project for providing us with research and a great deal of general help in formulating our position on these important issues. This legislation is certainly causing workers in the industry as well as people who use the industry much distress.

The Greens oppose this bill because it militates against safe work practices in the sex industry and because it further marginalises private sex workers. This bill directly contradicts the harm minimisation approach to the sex industry. By allowing the presence of items that could encourage safe sexual practices, such as the use of condoms and literature, to be used as circumstantial evidence in a Land and Environment Court hearing to close an illegal brothel, this bill would directly discourage safe sexual practices in the industry. One of the issues that honourable members must take into account tonight when they vote on this legislation is that they will be voting—if they support the bill—for practices that will result in the spread of HIV and sexually transmitted diseases.

Under this bill a sex worker would be discouraged from purchasing large volumes of condoms which could be used in a court hearing as circumstantial evidence of running a brothel. This increases the risk of a worker running out of condoms on a busy Saturday night and hence being driven into unsafe practices. This bill threatens to compromise both public health and the safety of workers. It is going in the wrong direction. It will do nothing but add to the already large risks faced by sex workers in their daily lives. The Disorderly Houses Act 1995 that this bill seeks to amend is well founded on the concept of replacing prohibition with regulation. This approach works well for many social issues, including the sex industry and drugs.

By removing unhelpful legal barriers opportunities can be created for harm minimisation measures, such as access to health and counselling services. However, the Greens are concerned that the good intentions of the Disorderly Houses Act are being undermined by the 1996 Department of Urban Affairs and Planning [DUAP] regulation which gives councils the ability to ban brothels in all but industrial areas. The Greens are highly sympathetic to the needs of neighbourhoods to maintain amenity. I emphasise that point because it is one on which our position is frequently distorted. Many communities have valid concerns about the adverse aspects of large brothels, including noise, amenity, safety and nuisance.

There are strong arguments for restricting medium and large-scale brothels in residential areas. The Greens accept the need to regulate medium-size and large brothels to achieve this in

recognition of their essentially commercial nature and the adverse impacts that they can have on a neighbourhood amenity. But there is another side to the sex industry—the home-based private sex workers who operate discreetly from a residence, usually singly or in pairs. These home businesses are discreet by nature. It is not in their interests to make a fuss or to make their presence felt. Both workers and their clients strive for anonymity. Consequently, they have little or no impact on residential amenity beyond that of a standard residential dwelling. It is clear, for example, that the adverse impact on residential amenity of a single 20-worker brothel can be far greater than the impacts of 10 small two-person home-based industries.

The Hon. Duncan Gay: You would not notice it on a busy Saturday night.

Ms LEE RHIANNON: I urge all honourable members to really weigh that up. I note the interjection of the Deputy Leader of the Opposition. I have been told by many of these home-based sex workers that they stagger their clients over a period. More often than not they do not have busy periods as they are able to control their clients' visits. Home-based sex businesses are also safer for both workers and clients as they are less able to be exploited. Home-based sex businesses create far better opportunities to encourage safe sex and allow for access to counselling and other health services. Today, when I met with people from these organisations, one of the concerns that was expressed was how difficult it would be to track many of these workers when they are forced out of their residences onto the road or into big brothels.

Home-based sex businesses remove workers from the inevitable risk of physical harm from being on the street and they allow workers more control over their clients. Often these businesses develop a regular clientele which militates against the spread of disease and lowers the risk for workers. Home-based sex businesses encourage a sex industry that is based on more control for the worker and that creates a more respectful attitude amongst clients. Taking into account the fact that the majority of members who have been interjecting in this debate are men I suggest to them that they should watch their comments. We are dealing with an industry that is able to get more respect from its clients.

If we undermine and possibly destroy that industry we will be placing mainly women sex workers in some dangerous situations. I find disturbing the fact that the male members of this House are not able to grapple with, or they are refusing to grapple with, that issue. Home-based sex businesses encourage the payment of taxes and the joining of organisations such as unions, which promote the rights of these workers and assist in the development of safe practices. There are profound reasons for letting small home-based businesses operate without harassment. At the moment, what we are doing is a form of harassment. Many councils are using DUAP's regulation to pursue these businesses, even when there are no residential complaints against them. I find that totally unacceptable.

These people are operating in many places and nobody actually knows that they are there. When we pass this legislation it will be open slather. People will conduct private investigations and track down these businesses and waste council money in an attempt to get rid of them. Some are being tracked simply from their advertisements in local newspapers. How could that possibly hurt anybody? There is an appalling element of sanctimonious discrimination in the ill-treatment of home-based sex workers. There is no valid argument for treating these workers differently from any other home-based occupation of equivalent amenity impact, other than a judgmental and discriminatory attitude to prostitution.

Such attitudes are unhelpful in the battle to minimise the harmful and exploitative impacts of prostitution. They also ignore the wide range of men who frequent the services of sex workers. Stigmatising sex workers or their clients will not resolve the problems relating to and the impacts on their industry. In particular, it will make the control of AIDS and other sexually transmitted diseases more difficult. It will make access to these workers more problematic and it will create greater opportunities for workers to be placed at physical risk. This bill, however, is an open invitation to harass private sex workers and their clients operating from home. The male members in this House have real trouble understanding the big difference it will make when many of these sex workers are forced from private homes onto the streets and into big brothels.

It will encourage vigilantes and spying and it will compromise the anonymity of clients. By allowing appointment books and other accounting documents to be used as evidence, it will discourage proper bookkeeping and hence will militate against sex workers paying tax. This bill makes it easier for councils to harass these businesses. By allowing circumstantial evidence to be used against them, the bill shifts the focus away from amenity impacts and onto judgments about the trade itself. It will drive small home-based workers onto the street and it will expose them and their households to unnecessary neighbourhood scorn. It is an attack on their rights to privacy. The Greens strongly support the protection of neighbourhood amenity. Our track record in campaigning against inappropriate development and other assaults on the residential environment is second to none. But we can never support the kind of unjudgmental vigilantism that this bill encompasses.

The Hon. John Hatzistergos: It is non-judgmental.

Ms LEE RHIANNON: I note the interjection of the Hon. John Hatzistergos that it is non-judgmental. How could he possibly say that? The only possible explanation is that it is 10 to 2 in the morning. However, the worst aspect of this bill is that it allows equipment and articles that are consistent with the use of premises for prostitution to be used as circumstantial evidence. This works directly to discourage safe sex practices. No sex worker will be happy to keep an adequate supply of condoms, gloves, lubricants or mouth dams if they are in fear of being closed down on the basis of circumstantial evidence. The ridicule going on in this place is absolutely disgusting. Members should at least sit in silence rather than show their feelings on this issue. Again, it is one of those issues on which the male members of this House have severely compromised themselves. No worker will keep a supply of safe sex literature. No worker will arrange their space so they can ensure that their clients wash before sex. Australia has done an excellent job in controlling sexually transmitted diseases. Our progress has been based largely on our ability to confront sexual practices and talk about them openly and without judgment. That is the essence of our low HIV rate in this country. We have encouraged the use of a range of equipment to prevent infection with remarkable success. It is a tragedy that this bill now attempts to create a barrier to the use of safe sex equipment.

The Hon. John Hatzistergos: Why can't they just set themselves up legally? Get the development consent and they are set up legally.

Ms LEE RHIANNON: Members know why the development consent is being used: as a form of harassment to move sex workers on. That is plain logic and you are hiding behind it if you say that it is not. My colleague the Hon. Ian Cohen will be moving an amendment to address some of these issues. The most blatant failing of this bill is excluding safe sex equipment from the evidence that can be used in a Land and Environment Court challenge. I urge members to think carefully about this amendment because it is one way we can offer some protection to sex workers.

The Hon. John Hatzistergos: This morning you were supporting local government; now you're out bagging them.

Ms LEE RHIANNON: We actually have a balanced attitude. The Hon. John Hatzistergos seems to have woken up at this late hour. I point out that we do not give absolute support to anything in this life. That is an unwise course, if that is where life is taking you.

The Hon. John Hatzistergos: It is good to see you getting into this debate, unlike the National Party.

The Hon. Dr Brian Pezzutti: She's not a Green.

Ms LEE RHIANNON: I have been here for three years and once again we hear the old tired argument that I am not a Green. I would have thought by now you would have come up with something more original. The Treasurer started it by saying, "She's not a Green, she's an old com" and all of you just lamely follow him. Surely you could have come up with something original. As it was the Treasurer's original line maybe he can keep it, but the rest of you are giving a pretty

weak-kneed performance. I urge honourable members to put aside their prejudices and personal views on sexual practices and remember that our responsibility is to protect the lives and health of all Australians.

It is our paramount duty to ensure that sex workers face no disincentives to safe practices. It is easy to take the so-called high moral ground and denounce prostitution. It is simple to say that all brothels are immoral or that all prostitution is exploitation. While both these statements may or may not be true, neither helps in the task of minimising the harm and risk posed by the industry. Our culture, largely because its evolution has been male dominated, has spent much effort excoriating prostitutes while ignoring that prostitution involves both workers and clients. I hope members heard that comment: it involves workers and clients. It is time we redirected that effort into making the industry safe for the workers and for the clients. This bill does not achieve that important outcome. Again, on behalf of the Greens I place on record our appreciation to the Private Workers Alliance and the Sex Workers Outreach Project for their assistance on this important subject.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.56 a.m.]: On behalf of the Australian Democrats I express great disappointment at the Disorderly Houses Amendment (Brothels) Bill. The bill will insert an additional section 17A in part 3 of the principal Act. Under the proposed section, the council making an application to the Land and Environment Court to prevent premises from being used as a brothel may present to the court circumstantial evidence assisting its case. The types of evidence on which the court may rely, but is not limited to, include advertising material, accounting records, furniture and interior arrangements, and type of patronage that would indicate the premises in question are indeed a brothel.

Prostitution has been and may remain a controversial issue regarding morality and public policy. However, one would hope that some progress could be made in this area. Ignorance seems to lead to fear. When a child first rolls over, everybody is happy; when it makes its first sound everyone is happy; when it crawls, everyone is happy; when it walks everyone is happy. People rejoice about every milestone a child achieves, but as soon as that child asks about sex there is panic. We have a strange attitude to sex—perhaps because it is an elemental force in our lives that we do not want to confront. Those who are more enlightened recognise a social need for prostitution and for sex as part of the need for emotional health in society. I do not pretend that I have read something like the *Function of the Orgasm* by Wilhelm Reich, but I believe it is generally recognised that a reasonable sex life gives one a balance in life that is not present if one does not have a reasonable sex life.

The Hon. Ian Cohen: Are you saying that the Opposition is somehow deprived?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I was not making that implication, but funny you should bring it up! The historical reasons for monogamy were to help determine inheritance—which was very important to the upper classes and was aped by the lower classes—and to prevent infections, which were something of a problem, particularly when syphilis was introduced from the New World. When I visited Stratford-upon-Avon I discovered that in the days when infant mortality was very high and a large number of people were dying of the plague, there was not a great deal of concern about who gave birth and who was responsible for the children of the village. The main problem was to keep the birth rate sufficiently high so there were enough people to gather the harvest. It was only inheritance that made monogamy so important to the other classes. In Victorian times the only respectable way to have a sex life was in a married, monogamous relationship. That has caused great difficulties, which have led to the continuation of prostitution.

The Hon. Dr Brian Pezzutti: It was just a little bit before Victoria.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The point is taken, but prostitution is said to be the oldest profession, and again that reflects the way the human being is structured. We often forget that we are effectively animals with animal drives that do not necessarily fit into a social construct that some might like to impose upon us. The criminality associated with prostitution—

The Hon. Michael Egan: Point of order: The bill before the House, the Disorderly Houses Amendment (Brothels) Bill, has a very limited object. It is to facilitate proof of the use of premises as a brothel in proceedings before the Land and Environment Court. I do not think the House needs to hear the history of the world to understand or decide how we are going to vote on this bill. The Hon. Dr Arthur Chesterfield-Evans is making remarks that have nothing to do with the bill. Just because he is talking about prostitution at some stage in the world's history does not mean that it is relevant to the bill. I know that taking this point of order will have no impact on him at all but I think I should, at least on one occasion tonight, take that point.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: I suggest there is no point of order. The Treasurer is merely making a debating point. As the person who regularly wastes most of question time rabbiting on and not answering questions, I suggest he has no case at all.

The ACTING-PRESIDENT: Order! The honourable member will confine his remarks to the objects of the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I was just laying down the philosophical framework for prostitution in society. One should always work from the general, the philosophical, to the particular—which is the bill that we are happy to deal with this morning. People sometimes turned to prostitution because of a desperate need for money to buy drugs. That introduced a criminal element because drugs were expensive and crimes were associated with their illegality. Other criminality derived from the corruption that occurred because of the illegality of prostitution. That resulted in corruption in the police force, and that corruption was investigated by the Wood royal commission. The concern I have with this legislation is that corruption in councils, which are regulating brothels, is replacing the corruption that formerly occurred in the police force when it was regulating brothels. Individual sex workers, peak industry bodies and health agencies have approached the Democrats with concerns about the potential effects of this bill. In his speech on the 1995 bill the former Attorney General the Hon. Jeff Shaw said:

In 1998 the Court of Appeal held, in *Sabuse v Shaw* that a brothel is a disorderly house regardless of whether it is disorderly in the usual meaning of the word. This being the case, police may seek an order from the Supreme Court that any premises operating as a brothel be closed down merely because the premises are being used for that purpose.

If police took this action with every brothel that came to their attention, it would mean that even orderly, well-run brothels would be closed and the prostitutes would be forced back on to the streets. Thus, prostitutes to ply their trade would use many more city and suburban streets. This is unsuitable and undesirable for a number of reasons:

- Street prostitution is generally offensive and undesirable.
- Health and social workers have more difficulty reaching street prostitutes with their health and safe sex practices education programs.
- Street prostitutes are at greater risk of HIV infection than those who work in brothels where some medical supervision exists and where the use of condoms may be enforced.

It is not the intention of the bill that brothels be permitted to operate unregulated. To this end, it also provides an avenue for the community to make complaints to local councils where a brothel is having a significant detrimental effect on the neighbourhood. Councils are empowered under these provisions, to apply to the Land and Environment Court to have a brothel closed down.

Neither is it our intention, with the introduction of these provisions, to limit those applications appropriately based on planning controls vested under the Environmental Planning and Assessment Act 1979. The only change to existing law affected by this proposal is to the basis for, and jurisdiction of, applications under the Disorderly Houses

Act to close a brothel, which is not otherwise disorderly. Thus police will still be able to apply to the Supreme Court for a declaration under the Disorderly Houses Act where it is disorderly in the usual sense of the word.

I am not as harsh on street prostitutes as the Attorney was in 1995, but I acknowledge that they are conspicuous and offend some people and affect the amenity of a suburb. It was clear when the Disorderly Houses Act was amended in 1995 that it was an attempt to force councils to develop policies in consultation with their communities about managing brothels and prostitution in their local government areas. The report of the brothels task force in October this year noted:

It was clearly the intent of the 1995 reforms that all brothels would be regulated under the Environmental Planning and Assessment Act, including private workers operating outside of residential dwellings or home-based brothels.

The Sex Workers Outreach Program [SWOP] estimates that private workers comprise 40 per cent of the industry. Since then councils have adopted, and even developed, their planning policies dealing with prostitution. Some councils completely ban brothels in residential areas and allow them to operate only on industrial estates. However, material evidence that councils may provide to the Land and Environment Court appears to be contrary to the brothels task force report. Page 12 of the report states:

Prohibiting home-based brothels may not result in sex workers relocating to areas where brothels are permissible. Instead they may continue to operate illegally in residential areas.

Sex workers in home-based brothels are less likely to seek development consent, because it reveals their identity and location, with the result that they can be subject to various forms of abuse and violence. The identification of individual sex workers through the development application process is also contrary to the recommendations of the legal working party of the intergovernmental committee on AIDS, the AIDS Council of New South Wales [ACON] and the policies of the Australian Federations of AIDS Organisations. The circumstantial evidence outlined in note (e) attached to proposed section 17A (2) reads:

evidence of the arrangement of the premises, or of the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

This item warrants the concern of the Democrats. The list could apply to condoms, safe-sex literature or other articles to prevent sexually transmitted diseases. As a health professional I am concerned about the possible interpretation of this clause. Health education is extremely important and it is often extremely hard to get to the targeted people. Whether we are talking about sex or the use of tobacco, the people most likely to engage in unhealthy practices are those that it is hardest for conventional campaigns to reach. Stevie Clayton from the AIDS Council of New South Wales is concerned that the potential application of this section on home-based sex workers would mean they would not use condoms or have educational material because such articles are consistent with the use of the premises for prostitution and, thus, they may expose them to more hazards from people who are attempting to close them down. Section 4.1 of the report of the brothels task force states:

The last independent review of the implementation of the National HIV/AIDS strategy ("the Feachem Report") in Australia found that a HIV epidemic among sex workers had been avoided in this country. The finding was based on analysis of nationally available data regarding HIV-related knowledge, attitudes and behaviour among sex workers in addition to epidemiological data.

Overall condom use among brothel-based workers was found to approach 100% and condom use with non-client sexual partners was assessed as probably as good as, if not better than, that reported by non-sex workers and their sexual partners. The scientific literature on sexually transmitted infections [STIs] supports that finding and documents the changes in behaviour which occurred in the female sex industry between 1984 and 1991.

O'Connor *et al* reported zero prevalence rates for chlamydial and gonococcal infections at first presentation of female sex workers to Sydney Sexual Health Centre in 1996; and comparable STI rates among female sex workers to that of the general heterosexual population.

That means that the practices engaged in by sex workers and their educational function are extremely important, and the use of safe-sex aids in their practices makes a hell of a difference to the prevalence of disease in Australia, and thus has immense public health significance. That is what I am talking about. Clients of female sex workers engage in multiple risk-taking behaviours in relation to HIV-AIDS. An article entitled "Characteristics, Attitudes and Risk Behaviours of Australian Men Who Visit Female Sex Workers" in *Venereology, the International Journal of Sexual Health*, Volume 12, No. 1, 1999, stated:

Clients are twice as likely to have had unsafe sex with twice as many people as non-client men are. They are twice as likely to have had sex with another guy, and three times as likely to have used injecting drugs.

That article was also quoted by my colleague the Hon. Ian Cohen. The point it makes is that the educational function of sex workers, the way they work and where they work are extremely important. Page 13 of the report of the brothels task force states:

Workers in illegal home based brothels are less likely to access occupational health and safety programs. The prevalence of HIV infection and sexually transmitted diseases among Australia sex workers remains one of the lowest in the world. The low STI and HIV/AIDS prevalence in NSW sex workers is largely due to the voluntary cooperation of sex workers with outreach and advocacy services. These services are undertaken by specialist sex workers projects in addition to the statewide network of sexual health services. These measures protect public health by minimising the transmission of disease and infection. Prohibiting home based brothels, or requiring development consent for these brothels, may have the effect of creating barriers to these services and programs.

While we understand the consequences of not having stable situations for workers, we are obviously at risk. That was acknowledged by Alexander Downer when he spoke at the October 2000 Asia-Pacific Ministerial Meeting. In a statement headed "HIV-AIDS and development in Asia and the Pacific—a lengthening shadow" he said:

We acknowledge the fundamental importance of the full realisation of human rights and freedoms and that the presence of stigma, silence, discrimination, denial, gender inequality and inadequate legislative frameworks limits our ability to combat the HIV/AIDS epidemic.

Mr Downer further said:

Policymakers have contributed to the culture of denial that has severely limited their countries' ability to respond effectively to STDs. The strong dichotomy between public disapproval of premarital and extramarital sex coupled with their acceptance for men is seen in the political arena as well. While a politician may be firmly convinced of the need for action to address STDs and HIV, in public he or she takes a more conservative stand for fear of political consequences. If progress is to be made to contain these diseases, the governments and policy makers need to be convinced that it is in their own best interest to change restrictive laws and address the issues now.

The regulation of brothels is primarily a health objective and should be treated as such. It should not be treated as merely a question of what the neighbours like or do not like.

Reverend the Hon. Fred Nile: Would you like a brothel next to your house?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is interesting that Reverend the Hon. Fred Nile should make that interjection. When I was growing up in Port Kembla there was a house

opposite which always had taxis pulling up and leaving. I thought it was a funny house because we could not afford a taxi, which was a great luxury, yet all these people arrived and left in taxis. I remember that the taxis came and went continuously. Years later my parents told me that the house was a brothel and that was why all the people came and went. I must confess that, having lived there as a kid and knowing practically everyone in the street, it never bothered me in the slightest.

The Hon. Doug Moppett: It might have been an SP bookie!

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, he lived three houses down on the other side. The fact that it was a brothel made absolutely no difference to me as a kid growing up in Port Kembla. My parents were aware of it; I was not.

Reverend the Hon. Fred Nile: Were they happy with it?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: They certainly made no comments to me one way or another, so perhaps they were more enlightened than I gave them credit for. In terms of personal protective equipment, the New South Wales WorkCover booklet entitled "Health and Safety Guidelines for Brothels" states:

This includes condoms, dams, gloves, water-based lubricants and other personal protective equipment such as towels and linen.

Obviously a sex worker is likely to have a large supply of sex toys such as vibrators and dildos. The WorkCover booklet further states:

Equipment such as sex aids which have the potential for contact with another person's body fluids should be covered with a new condom for each partner and equipment cleaned according to manufacturers instructions.

Sex industry businesses and independent or private sex workers have supplies of printed educational resources. Some may be on display in their businesses: for example, safe-sex messages for their clients such as those distributed by the Sex Workers Outreach Program [SWOP] to the New South Wales sex industry. As I said, it is important that these materials can be accessed, and sex workers have an important role to play in the education of their clients. Although sex industry businesses may not be in a position to display their development consent, sex workers might proudly display other certificates on their wall. For example, SWOP recently held disability awareness training for sex workers in conjunction with the Family Planning Association health group. Sex workers who completed this two-part training received a certificate of attendance.

A person from SWOP commented to me about the clause that provides that circumstantial evidence includes persons entering or leaving premises. She said she hoped that these visits were from outreach workers as well as clients. Basically, there is a problem with councils trying to stop the development applications of workers working in their own homes or in private premises. The Greens have amendments to this bill that would rectify the situation. I believe they are extremely good amendments in terms of increasing to two the number of people who may share premises, and in terms of exempting safe-sex aids from being used in evidence so that there is no discouraging effect. I had been trying to work out how to phrase an amendment to that effect, and I congratulate the Greens on their amendment. I believe that these amendments must be supported.

The problems that exist with home-based businesses was explained to me by the Private Workers Association, which said sex workers in New South Wales are experiencing harassment and standover tactics. This time it is not the police or organised crime that is the problem. In some areas of New South Wales local councils are protecting the interests of large brothel owners by forcing smaller operations and private workers to work outside the law. Private workers are estimated to account for 40 per cent of all sex industry business. The New South Wales Government must act now to prevent further corruption, and to safeguard the health and safety

interests of the whole community.

The system which places councils in charge of a backdoor registration system—development application [DA] approval for all brothels—has proved a winner for a few owners of larger brothels who have the networks, money and stamina to fight for their DAs in court. Costs for brothel development applications through court proceedings vary greatly and range from a minimum of \$15,000 to \$100,000. According to the report of the ministerial task force on brothels, most court cases were won by the brothel owners, many because sufficient complaint or adverse amenity impact could not be established. After incurring such expense, some brothel owners with DAs are anxious to limit competition. That provides an incentive for owners to lobby council to eliminate perceived competition.

Most New South Wales councils currently prohibit private home-based businesses or small collectives in residential areas, which are generally female or worker-owned. There are reports of regional monopolies and councils targeting predominantly private workers in their homes. Because they are unauthorised home businesses, these workers are vulnerable to corrupt behaviour by authorities. While most sex workers do not consider reporting to authorities the violence perpetrated against them, the Private Worker Alliance [PWA] understands that some cases involving private workers and corrupt council offices have been reported to the ICAC.

As I have stated before, the report of the ministerial task force on brothels states that sex workers in home-based businesses are less likely to seek development consent because it reveals their identity and location, with the result that they can be subject to various forms of abuse and violence. The task force report suggests that an amendment to State environmental planning policy [SEPP] No. 4 relating to development without consent and miscellaneous complying development could be made to allow home-based brothels without development consents across the State. That would make the regulation of home-based brothels similar to the regulation of other home occupations. Home-based brothels regulated in this manner could still be closed by local councils if they had an adverse impact on the amenity of the neighbourhood.

The final report of the task force goes into great detail about the benefits of allowing home-based brothels to operate without development consent, yet fails to make a recommendation to implement the changes to the SEPP. That is a great disappointment and I believe it should be taken up by the Department of Health with more courage than has been the case to date. The New South Wales Attorney General, Bob Debus, supports a non-discriminatory approach to private workers. During the two-year deliberations of the ministerial task force on brothels, the New South Wales Department of Health repeatedly advised local councils and the Department of Urban Affairs and Planning that prohibiting home-based workers or zoning small collectives out of residential areas endangers public health. It stated:

... in treating sex work as an industry and regulating it like any other analogous, personal services business, public health objectives are much more likely to be achieved.

Unfortunately, none of the councils took up the recommendation of the New South Wales Department of Health to look at South Sydney City Council's sex industry policy, which only two weeks ago won the Annual Royal Australian Planning Institute Award for Excellence in Planning in the category of Urban Planning Achievement, a major award, for guidance on the benefits of treating all home-based businesses equitably, based on their impacts on surrounding properties. Currently, most of the 3,000 private workers in New South Wales operate underground. This is counter to the intent of the reform as stated by Mr Carr in 1995 as follows:

The legislation removes the remaining legal impediments and stigmatisation that in the past have impeded health education and preventive initiatives. In the past there have been reports of fear of police [now council] harassment amongst sex workers, and reluctance on the part of sex industry owners and managers to allow access by health workers.

The additional evidence sought to be permitted in court as proof that a place is a brothel is entirely inappropriate in the context of a home-based business. For example, allowing the content of

telephone conversations to be used as evidence in court will prevent private workers from negotiating safe sex over the telephone. In interest of public health, and to prevent a potentially violent situation at home, private workers must be able to discuss the service, pay and safe sex practices frankly on the telephone. I regard that as an invasion of their privacy, in the sense that they would be unable to hold a private conversation without it being used as evidence.

The solution to the problem, as I said before, is partly dealt with in the Greens amendment. Excluding two private home-based sex workers from the definition of a brothel, and making them exempt development statewide would undermine brothel monopolies and protect councils from acting as pimps for big business. Allowing home-based workers to operate within the law would help to normalise the industry, assist in bringing prices charged for DA-approved brothels in line with the true value of the business and attract non-criminal sex industry interest—people who are prepared to compete on fair grounds, rather than rely on the Government to pimp for them and eliminate their perceived competition, that is, small businesses and home-based businesses in residential areas.

The Private Worker Alliance urges the New South Wales Parliament to continue its bipartisan support for sensible sex industry regulation and public health strategies, and would appreciate the support of members of this House for an amendment that redefines brothels in accordance with the New South Wales Department of Health recommendations, as follows: revising the definition of a brothel to exclude operations of up to two private sex workers, and, for safety and corruption minimisation reasons, allowing private workers to work in pairs. The Sex Workers Outreach Project and the Private Worker Alliance, who have lobbied the crossbench, have conducted a very professional, practical and intelligent campaign. They have provided more factual information and reasoned sensible arguments for this bill to be amended, than the Government or the Opposition have managed.

The Hon. Dr Brian Pezzutti: You didn't even listen to the speech of the Hon. Don Harwin, which was very good. His speech was excellent, but you didn't even listen to him.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I listened to some of it. Erica Red, from the Private Worker Alliance wrote to me in the following terms:

As the Carr Government whips up a how to get tough on brothels campaign, private workers risk becoming cannon fodder in the weekly "get the prostitutes, law and order" stories leading up to the 2003 election.

It won't be the first time that this happens. Private workers have been used as a political football over and over again by councils, especially Parramatta, Gosford, Newcastle, South Sydney, Bankstown, Sutherland and many regional centres. How much satisfaction is there to be gained from repeatedly kicking private sex workers, many of whom are older women supporting children?

We are 40% of the industry. For the past two years private sex workers have been desperately trying to get our discreet home based businesses recognised as exempt development. Little is known about us, even though there are about 3,000 home based sex workers in New South Wales. It's just that we are so discreet. Discretion is the basis of the business.

In trying to comply with the legislation, some of us decided to come out at least in limited ways. We were determined to give this revolutionary legislative framework called the Disorderly Houses Amendment Act 1995 a good go. We wanted to fulfil our part of the bargain.

We consulted with councils and resident groups, and the Local Government and Shires Associations. We were excluded from officially participating in the ministerial task force on brothels deliberations. I do not know any other industry that would be excluded from deliberations intended to bring reform!

Since 1995, sex workers and specialist sex worker projects, have not been consulted in relation to how additional regulation made since the Act impacts on the health, safety, privacy and confidentiality of workers.

For the last two years the NSW Health Department made representation to over one hundred councils, the Department of Urban Affairs and Planning and the task force on brothels, informing them that current regulation of home based businesses is counter to this sector's minimum health and safety requirements. Councils ignored the recommendation on all counts.

The Health Department was only in an advisory role so it could not do more than advise. It is absolutely unacceptable for the Health Department to take yet another back seat on the issue of sex industry regulation on other advisory committees. It beggars belief that, in the midst of a new hetero-sexually based HIV-AIDS epidemic in this region, the sex industry will again be seen as predominantly a planning matter.

The new advisory body is designed to give those councils which are openly defying the legislation a chance to fulfil their obligation to allow at least one brothel per council area. Unfortunately this means that 90% of the industry will remain illegal and that almost all home-based workers will be underground, on the streets, or working for a middleman. Blind Freddy can see that councils in charge of regulating the industry doesn't work, until councils are ready to treat the industry like any other. Let us call a spade a spade and acknowledge that it has been many councils which have not fulfilled their end of the bargain.

The Ministerial Task Force on Brothels report noted that the health and safety of home-based workers could well be protected through statewide regulation and that this measure would also protect workers from violence and abuse in their home. Why is it that all the vilification and corrupt abuse experienced by workers during the task force deliberations, and acknowledged in the report, failed to produce a recommendation that stops the abuse? Why is it that the NSW Health Department is prepared to fork out \$60,000 for a project to rescue private workers, yet it is not prepared to take a strong stance on the issue and remedy the root problem?

At this point, we have lost all faith in the Government's ability to meaningfully engage with us. We question if the Government was ever serious about its reform intentions, or if even in 1995 the health and safety of sex-workers and clients was used as a reason for reform which would have otherwise had to come about by focusing on corrupt police.

So now that we have councils with the same powers that police used to have regulating brothels through Development Applications. This is at a time when ICAC found that 37% of corruption complaints in Councils were made in regards to DA applications. With 90% of the industry "illegal", I can see where this is heading.

So what's the answer I hear you say?

- 1) Get rid of the back door council licensing system (Development Approval) for all brothels. It's the blueprint for wide spread corruption opportunities.
- 2) Go back to the most elegant piece of sex industry regulation in the world, and implement the original intention of the Disorderly Houses Amendment Act before it became undermined through wimpy regulations. Do this by:
 - 1) Allowing councils to act only on sufficient complaints made by residents in the vicinity of the neighbourhood. The complaint must be about amenity impact. This is targeted action and it doesn't involve rate-payers money to be misused on "brothels" that blend discreetly into the amenity of the neighbourhood, but don't have a DA.

I will not support the Christian Democratic Party amendment, which basically states that local councils may prohibit brothels. That is simply saying that local councils may prevent many people from having a sex life. That would be a gross prohibition and an almost absurd and outrageous attack on people's civil rights. It is just extraordinary. I think it shows how out of touch people can be, even members of this Parliament. I hope that the Greens amendment will be passed so that it can mitigate the effect of the bill. Otherwise, the bill will have to be opposed.

Reverend the Hon. FRED NILE [2.32 a.m.]: The Christian Democratic Party supports the Disorderly Houses Amendment (Brothels) Bill. We recognise that it is a bandaid solution to a major problem but it is one small step towards trying to rectify a serious situation that has now developed in this State. The bill will amend the Disorderly Houses Act 1943 to clarify the existing law concerning the evidence that the Land and Environment Court may rely on to establish that premises are being used as a brothel. The note following proposed section 17A (2) states:

Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of the premises being advertised expressly or implicitly for the purposes of prostitution (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) evidence of appointments with persons at the premises for the purpose of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (d) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (e) evidence of the arrangement of the premises, or of the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

Those provisions should allow the Land and Environment Court to prove that premises are a brothel without council officers having to be sent into the brothel, as some councils proposed, to gain evidence of brothel activities. The current serious problem originated in 1995, when the Government passed the Disorderly Houses Amendment Bill and pretended that it was only decriminalising or reforming prostitution laws in New South Wales, a claim that the Government maintains. But one person who spoke the truth back in 1995 was the then Labor member for Kiama, Mr Bob Harrison. In his speech he bravely said:

I reiterate that the legislation is about legalising prostitution by stealth. Prostitution is about attracting young girls who are relatively attractive and, in most cases, poorly educated, into a life of shame. In that regard, it affects girls from working-class backgrounds who see an opportunity to earn some money to feed a drug habit or to overcome homelessness and other such problems. Instead of attacking the root cause of these problems, the bill will give the industry the imprimatur of the Government. In that regard, the bill is profoundly anti-working class. I am particularly ashamed of the fact that I am a member of the Fifty-first Parliament which will give this bill its blessing.

That was an accurate statement. Bob Harrison spelt out the truth. The Christian Democratic Party and other members of the House, who may or may not be Christians, and I am certain the majority of people in this State, regard prostitution as exploitation of women. Anyone who has the money can buy a woman and treat her as his property for half an hour, an hour or longer. I regard it as a modern form of white slavery. From a Christian point of view it is also sinful and immoral. It is unhealthy and involves degradation and exploitation. In 1995 I moved an amendment that was accepted by the House to add to the objects of the Disorderly Houses Amendment Act these

words:

The enactment of the *Disorderly Houses Amendment Act 1995* should not be taken to indicate that Parliament endorses or encourages the practice of prostitution, which often involves the exploitation and sexual abuse of vulnerable women in our society.

I believe the acceptance of that amendment showed a degree of unhappiness among members about what was happening. Although the bill was passed we instinctively realised that we cannot be proud of having a prostitution industry operating in our State. The Greens and the Hon. Dr Arthur Chesterfield-Evans are blase about prostitution. They speak as if we should almost be promoting it as something that we should be proud of. But the test is whether people would be happy if their daughter or sister decided to become a prostitute. I would be surprised if anyone in this House would be happy about that happening. That shows that we should be doing all we can to prevent women entering the prostitution industry. We should do all we can to help those who are being exploited in the prostitution industry. I do not see them as the enemy to be attacked or hurt. I know that there is no simple way to help them. We should try to get them out of the industry, retrain them, educate them and help them to have a real career of which they can be proud.

Some prostitutes here tonight are giggling while I am speaking. They spoke to me earlier. They are happy at present in what they are doing. But I believe that in due course when they look in the mirror they may think differently. In the future the younger one may not be as happy as her friends pretend to be at this moment. Local councils were able to take action to restrain the use of premises as brothels by refusing development applications. I organised rallies in council areas to encourage councils to stop brothels opening in their areas. We succeeded in mobilising the ratepayers and the councils to adopt a policy of not having brothels.

That is the right of ratepayers in a democracy. They can come together and lobby their council and the council can respond. That is why I am suspicious of the so-called Brothels Planning Advisory Panel. Will it be some heavy-handed panel to force councils to have brothels when the ratepayers do not want brothels in their area? The wording indicates that the advisory panel will be able to assist local councils, but I would be very concerned if it was in some way standing over the councils and telling them that they will have to accept brothels as well as telling the councils where to put them.

The Hon. John Hatzistergos: Do you want them on the street?

Reverend the Hon. FRED NILE: I do not want them on the street either. That is why I oppose the Government's legalisation of prostitution. New South Wales is the only State in the world that has legalised street prostitution. I know that street prostitution exists and that people act against it, but it is legal in this State. People can legally solicit on the street in certain places and the police cannot do anything about it. It is legal. It cannot be done in view of a residence, a church, or a school, but there are places where prostitution can be engaged in on the street. There are no other places in the world where that can be done.

The Hon. John Hatzistergos: It is decriminalised.

Reverend the Hon. FRED NILE: It is legalised.

The Hon. John Hatzistergos: It is decriminalised.

Reverend the Hon. FRED NILE: It is legalised if a law against something is repealed. For example, in 1995 when the repeal bill went through, I showed the statute books contain laws against being on premises that were used for prostitution, running a brothel and living off the earnings of prostitutes, and those laws were all repealed. They are not on the statute books any more.

The Hon. John Hatzistergos: The correct term is "decriminalised".

Reverend the Hon. FRED NILE: No. That is a soft word that is used to confuse the public. People think that the Government has only decriminalised offences. Some people are very naive and think that decriminalisation means getting rid of the criminals, whereas it means getting rid of the police so that the criminals can freely run prostitution in this State. And they are doing so, just down the road in Pitt Street.

The Hon. John Hatzistergos: In what community has prostitution been successfully outlawed?

Reverend the Hon. FRED NILE: We could try. I am just saying that we should lead. New South Wales should set a pattern for the rest of the world and let us see what happens. I would prefer to take a healthy, positive approach, rather than give in and throw in the towel. The argument advanced by the Hon. John Hatzistergos is the very same argument that was used to perpetuate slavery. Wilberforce had to combat the very same arguments. People said that slavery was an institution, it had been around forever and nothing could be done. Wilberforce said that he did not believe that, and for 20 years he worked to convince people.

No-one is proud of slavery, but in those days people were proud of it. Even the churches opposed the legislation to abolish slavery. Initially the churches opposed the policy, so Wilberforce was fighting the churches as well as everybody else. The churches said that slavery was part of society and that it was an institution. The Hon. John Hatzistergos is arguing on the same premise in relation to the prostitution industry—namely, that it is inevitable and we should do nothing about it, so let us regulate it. I am saying that we should adopt a positive attitude. I am concerned about the people involved in the prostitution industry who are being abused and exploited.

The councils that I have worked with have taken proper steps and have gone to the Land and Environment Court. After those councils have spent thousands of dollars on court cases, the Land and Environment Court has rejected their applications and has supported the brothel owners. I think a trick has been played on the councils because the Land and Environment Court should never have been involved with prostitution and brothels. It was never set up to deal with that, but suddenly it has been given the power to hear the applications of brothel owners. The court invariably rejects councils' applications.

The Hon. Dr Arthur Chesterfield-Evans: The court hears every other application, so why should it not hear those applications?

Reverend the Hon. FRED NILE: Because prostitution is different.

The Hon. Dr Arthur Chesterfield-Evans: It is a business.

Reverend the Hon. FRED NILE: The Hon. Dr Arthur Chesterfield-Evans believes it is a business. That is his view, and that is the Australian Democrats' view. I do not believe it is a business at all. The Hon. Dr Arthur Chesterfield-Evans wants it to be like a business—for example, a newsagency or a cake shop—except that it engages in illegal and immoral activity and should be treated differently. Applications concerning brothels should be heard in the Supreme Court or some other court, but not in the Land and Environment Court. As evidence of that, when the councils had their first cases people such as James McClelland said, "These brothels are not disorderly. They are neat and tidy. They have little tables and they have a little tablecloth and a pot of flowers, and so on." He made a fool of the law.

"Disorderly" had nothing to do with "order" at all. It was simply legal terminology that was used in the bill back in 1943. That term was then used in some court decisions to reject councils' applications by arguing that the brothel was orderly. I appreciate now that this bill will hopefully give the councils—I say "hopefully" because we will not know until the legislation is tested in the courts—greater success, but I still believe that these matters should not be heard before the Land and Environment Court. They should go to a proper court such as the Supreme Court, which would hear the evidence and weigh it up.

The Hon. John Hatzistergos: That is an outrageous attack on the Land and Environment Court. It is insulting.

Reverend the Hon. FRED NILE: No, it is not insulting.

The Hon. John Hatzistergos: You said that it is not a proper court.

Reverend the Hon. FRED NILE: I see it as a court that deals with environmental and planning issues. James McClelland and others actually said in the court, "We are not here to take into consideration the morality of the application." He said that the Land and Environment Court does not do that, but the Supreme Court could. Other courts could take into consideration morality and harm to the community and so on, whereas the Land and Environment Court ascertains whether there are enough car parking spaces to park the cars, whether there is a fire escape and whether the establishment is noisy. They are the matters that the Land and Environment Court deals with. It is not the court that should be dealing with brothels.

The Christian Democratic Party agrees in principle with the legislation but, as I have said, it is only a bandaid solution to a problem that the Government has allowed to develop. We now have hundreds of illegal brothels and hundreds of legal brothels. I guarantee that if a referendum were held today asking the people of New South Wales whether they are happy with what the Government has done the answer would be no. I warn the Opposition of the consequences because the speech made by the Hon. Don Harwin sounded almost identical to the Labor position. If the Coalition wants to get some votes it should develop a clear distinction between its policy and Labor Party policy.

I have prepared an amendment which I trust the Chamber will sincerely consider. Its purpose is to give the councils a black and white power to close down brothels. Why should brothel owners, many of whom are criminals, have a right of appeal? The amendment would give councils the power to close down brothels, and that would be the end of the matter. If an appeal process is provided, brothel owners who have thousands of dollars will ensure that the cases go on and on. I hope that the Chamber will accept the amendment and clean up the prostitution industry in our State.

The Hon. Dr PETER WONG [2.46 a.m.]: I will comment briefly on the bill. I am concerned that the Greens and the Australian Democrats seem to think that we have rights and that our rights can override the law and sometimes other people's rights. When the Hon. Dr Arthur Chesterfield-Evans stated that sex workers in fact have an educational role in decreasing sexually transmitted diseases [STDs], I felt compelled to make the point that less sexual activity and fewer sex workers will result in less STD.

The Hon. Ian Cohen: And that has worked in the past, too!

The Hon. Dr PETER WONG: It is the reality, is it not?

The Hon. Ian Cohen: Why? If no-one had sex, no-one would have STDs.

The Hon. Dr PETER WONG: If a person did not have sex, where would that person contract an STD, may I ask—from a dream?

The Hon. Dr Arthur Chesterfield-Evans: It will not solve the problem.

The Hon. Dr PETER WONG: It does not, but this is the reality. If you do not accept facts, you should not be arguing.

The Hon. Ian Cohen: You do not accept the fact that the whole world is having sex.

The Hon. Dr PETER WONG: How does one get an STD if one does not have sex?

The ACTING-PRESIDENT: Order! I ask members to have some consideration for the

Hansard staff. Interjections, which are disorderly, make it very difficult for them to report the proceedings.

The Hon. Dr PETER WONG: No-one can deny that prostitution is a major cause of STDs. Is the Hon. Dr Arthur Chesterfield-Evans going to deny that too? I am glad he is not a doctor. He pretends he is a medical expert, yet he knows nothing. How would he know? He should ask the Hon. Dr Brian Pezzutti.

The Hon. Dr Arthur Chesterfield-Evans: What's the difference between us and Asia? Asia has many sex workers.

The Hon. Dr PETER WONG: The Hon. Dr Arthur Chesterfield-Evans is making many comments on medical matters that he knows nothing about.

The Hon. Dr Arthur Chesterfield-Evans: Australia has one of the best records for controlling STD.

The Hon. Dr PETER WONG: That is right, exactly, but the Hon. Dr Arthur Chesterfield-Evans cannot deny that prostitution is the major cause of STDs. How can the honourable member deny that?

The Hon. Ian Cohen: You are very narrow minded.

The Hon. Dr PETER WONG: I am speaking of facts, not narrow mindedness. The Hon. Ian Cohen knows nothing about medicine. In fact, he knows nothing about this issue whatsoever. He is the one who is narrow minded.

The Hon. Ian Cohen: I have a wealth of experience.

The Hon. Dr PETER WONG: He thinks only of his own rights, not other people's rights.

The ACTING-PRESIDENT: Order! The Hon. Dr Peter Wong will address the content of the bill.

The Hon. Dr PETER WONG: In fact it is also true that a properly run massage parlour promotes safe sexual practices.

The Hon. Ian Cohen: I agree with that.

The Hon. Dr PETER WONG: That is exactly right. I am trying to tell you the same thing.

The Hon. Ian Cohen: That prevents the spread of disease.

The Hon. Dr PETER WONG: That is exactly right. I am trying to tell you that I am not supporting Reverend the Hon. Fred Nile. I am stating a fact: Prostitution is the major cause of STDs. The Hon. Dr Arthur Chesterfield-Evans cannot deny that fact.

The Hon. Dr Arthur Chesterfield-Evans: Are you comparing it with other sex or are you comparing it with no sex?

The ACTING-PRESIDENT: Order! That sort of discussion is for the Committee stage. The Hon. Dr Peter Wong has the call, and he should not be interrupted.

The Hon. Dr PETER WONG: We have spoken about the rights of sex workers, but what about the rights of the people who live in the same block of units or surrounding houses? One of the major concerns expressed by residents is that councils either do not or cannot act on their complaints.

The Hon. Ian Cohen: That is because there is a lack of education on all those issues.

The Hon. Dr PETER WONG: We are here to make laws, not break them. I hope the Hon. Ian Cohen understands that. In conclusion, I should like to tell the House a simple story. For many years I looked after Chinese migrants, many of whom lived in the Ashfield area. At one time I was told that a few Asian girls were living in Australia illegally and working as prostitutes. They were being controlled by the criminal element. We reported it to the police, but they could not do anything because there was no evidence. We reported it to the council, but the council refused to act. Finally, we reported it to the immigration department. Those girls, who are now in prison, also have rights. What do the Greens and the Democrats think of that?

The Hon. JOHN HATZISTERGOS [2.52 a.m.], in reply: I thank honourable members for their contributions, and I commend the bill to the House.

Question—That this bill be now read a second time—put.

The House divided.

Ayes, 27

Ms Burnswoods	Mr Harwin	Mrs Sham-Ho
Mr Colless	Mr Hatzistergos	Ms Tebbutt
Mr Costa	Mr Moppett	Mr Tsang
Mr Dyer	Mrs Nile	Mr West
Mr Egan	Reverend Nile	Dr Wong
Ms Fazio	Mr Obeid	
Mrs Forsythe	Mr Pearce	
Mr Gallacher	Dr Pezzutti	<i>Tellers,</i>
Miss Gardiner	Mr Ryan	Mr Jobling
Mr Gay	Mr Samios	Mr Primrose

Noes, 4

Mr R. S. L. Jones
Ms Rhiannon
Tellers,
Dr Chesterfield-Evans
Mr Cohen

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

The Hon. IAN COHEN: I seek leave to move a motion to suspend standing orders to allow the moving of a motion forthwith for an instruction to the Committee of the Whole in relation to the bill.

Leave not granted.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1

The Hon. IAN COHEN [3.03 a.m.]: I move Greens amendment No. 1:

No. 1 Page 3. Insert before line 3:

[1] Section 2 Definitions

Omit "Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution." from the definition of **brothel**.

Insert instead "Premises constitute a brothel only if they are used by more than two prostitutes for the purposes of prostitution."

The Hon. John Hatzistergos: Point of order: Mr Chairman—

The TEMPORARY CHAIRMAN (The Hon. Henry Tsang): Order! The amendment is out of order because the Hon. Ian Cohen was not granted leave to move his motion to suspend standing orders.

Reverend the Hon. FRED NILE [3.04 a.m.]: I move Christian Democratic Party amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 7:

[2] Section 16A

Insert after section 16:

16A Local council may prohibit brothels

- (1) This section applies to any brothel, whether established or operating legally or illegally.
- (2) A local council may, by order served on the owner or occupier of premises that are a brothel and that are situated within the area of the council, prohibit the owner or occupier from using or allowing the use of the premises for the purpose of a brothel.
- (3) An order of a local council under this section has the same effect as an order of the Land and Environment Court under section 17, and may be enforced accordingly.
- (4) An order (or purported order) of a local council under this section may not be appealed against, reviewed, quashed or called into question by the Land and Environment Court or any other court or tribunal (whether on an issue of fact, law or otherwise).
- (5) A judgment or order that, but for this section, might be given or made in order to grant relief or remedy (whether by order in the nature of prohibition, certiorari or mandamus, by injunction or declaration or otherwise) may not be given or made in relation to an order (or purported order) of a local council under this section.

The TEMPORARY CHAIRMAN: Order! I rule the amendment out of order for the same reason as the amendment of the Hon. Ian Cohen was ruled out of order.

The Hon. IAN COHEN [3.05 a.m.]: I move Greens amendment No. 2:

No. 2 Page 3, proposed section 17A. Insert after line 20:

However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not constitute evidence of any kind that the premises are used as a brothel.

[*Interruption*]

Despite the frivolous interjections of the Hon. Dr Brian Pezzutti, important matters need to be ventilated and put on the record. The bill seeks to amend the Disorderly Houses Act to specify that the Land and Environment Court may rely on circumstantial evidence to establish that premises are being used as a brothel. The Greens are particularly concerned about the fifth category of circumstantial evidence that a court can rely on, namely, "which is evidence of the arrangement of the premises or of the furniture, equipment or articles in the premises that is consistent with the use of the premises for prostitution". By doing this the Government may impede the best practices in occupational health and safety standards in the sex industry. In particular, reference to equipment and articles could discourage condom use and the availability of literature that encourages the use of condoms or prophylactics or informs individuals about the early detection of sexually transmitted diseases.

Allowing these items to be used as evidence discourages their availability and use. Thus, it works directly against the best interests of workers, their clients and society as a whole. The Greens amendment specifically excludes articles or equipment that facilitate or encourage safe sex practices being used as circumstantial evidence. Put simply, this is not a moral option but a health option for workers in the industry, for clients who go to these workers and for the whole of society.

The Hon. DON HARWIN [3.07 a.m.]: As I foreshadowed in my contribution to the second reading debate, the Opposition shares many of the concerns raised by the Hon. Ian Cohen. We are concerned to ensure, no matter what happens, that even in illegal brothels nothing is done to impede important HIV and other sexually transmittable disease prevention measures. That is important and is something that the Opposition supports. However, I am advised that the Government will not support the amendment. Therefore, the Opposition has decided to try to find a middle ground and a form of words that best describes what the Hon. Ian Cohen is trying to achieve in terms of prevention of sexually transmitted diseases and looking after the occupational health and safety of sex workers. Therefore, I move the following amendment to Greens amendment No. 2:

No. 1 In GRNS Amendment No. 2 omit "does not constitute" from proposed section 17A (2). Insert instead "does not of itself constitute".

I am advised that that form of words may be in a acceptable to the Government. Hopefully, therefore, some allowances will be able to be made to meet the concerns that have been raised with the Opposition about an amendment to the bill.

The Hon. JOHN HATZISTERGOS [3.10 a.m.]: The Government will accept the Opposition amendment to the Greens amendment. We wish to make it quite clear, contrary to some of the alarmist statements that have been made, that condom and safe sex literature will not of itself be enough to be probative evidence.

The Hon. IAN COHEN [3.10 a.m.]: Appreciating that the Greens amendment will fail, I thank the Hon. Don Harwin for making representations and putting forward the Opposition amendment, which at least goes a great part of the way towards achieving the desired end on this matter.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.11 a.m.]: I do not know where the amendment of the amendment came from. I do not know whether it came from the Hon. Don Harwin. I congratulate the Hon. Ian Cohen on his amendment. I had responded to a number of people who had written to me asking what was the solution other than increasing the number of sex workers allowed to work in private, home-based premises. However, it is important that the amendment has been won.

Reverend the Hon. FRED NILE [3.11 a.m.]: I pose the question, if premises have all these sorts of things in them, what would they be if not brothels?

The Hon. John Jobling: A chemist shop.

Reverend the Hon. FRED NILE: No-one would declare a chemist shop to be a brothel. What would such premises be?

Amendment of amendment agreed to.

Amendment as amended agreed to.

The Hon. IAN COHEN [3.12 a.m.]: I move Greens amendment No. 3:

No. 3 Page 4, lines 3-5. Omit all words on those lines.

As I have mentioned previously, the fifth category of circumstantial evidence as specified in the note will discourage best practice occupational health and safety. This amendment simply deletes this category. I commend the amendment.

The Hon. DON HARWIN [3.13 a.m.]: This amendment is not acceptable to the Opposition. As the Committee has just agreed to an amendment that deals with real concerns about health matters, surely nothing in the provision could now be objected to—if one is to preserve the policy of the bill, which seeks to do something about the problem of illegal brothels. Therefore the Opposition will not support the amendment.

The Hon. JOHN HATZISTERGOS [3.14 a.m.]: The Government will not support the amendment.

Amendment negated.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with an amendment and report adopted.

Third Reading

The Hon. JOHN HATZISTERGOS [3.15 a.m.]: I move:

That this bill be now read a third time.

The Hon. IAN COHEN [3.15 a.m.]: As I was not able to put Greens amendment No. 1, and having opposed the bill, I would like at the third reading to put on the record that I wished to move that important amendment, which was:

No. 1 Page 3. Insert before line 3:

[1] Section 2 Definitions

Omit "Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution." from the definition of **brothel**.

Insert instead "Premises constitute a brothel only if they are used by more than two prostitutes for the purposes of prostitution."

Currently, the definition of "brothel" in the Act is defined as follows:

Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

This means that for the purposes of the Act there is no differentiation—

The Hon. Duncan Gay: Point of order: It is outside the leave of the third reading of the bill to speak to an amendment that was ruled to be outside the leave of the bill.

The Hon. John Jobling: On the point of order: I concur with the remarks of my colleague the Deputy Leader of the Opposition. The question before the House is that the bill be read a third time, not an amendment that was ruled to be outside the leave of the bill.

The Hon. Michael Egan: On the point of order: The Deputy Leader of the Opposition and the Opposition Whip are right, but I have a feeling that we might deal with matters more quickly if we allow the honourable member to make his speech.

The ACTING-PRESIDENT: Order! The remarks of the Hon. Ian Cohen are outside the leave of the bill.

Motion agreed to.

Bill read a third time.

Bill Name:	Disorderly Houses Amendment (Brothels) Bill
Stage:	Second Reading, In Committee, Third Reading
Business Type:	Bill, Debate, Division, Motion
Keywords:	2R, COMM, 3R
Speakers:	Hatzistergos, The Hon John; Harwin, The Hon Don; Cohen, The Hon Ian; Acting-President; Rhiannon, Ms Lee; Chesterfield-Evans, The Hon Dr Arthur; Nile, Reverend The Hon Fred; Wong, The Hon Dr Peter; Temporary-Chairman (The Hon Henry Tsang); Temporary-Chairman
Database:	LC Hansard Extracts - 52nd Parliament of NSW / 522pc169 / 50

[Next Page](#)
[Previous Page](#)