



Brothels Legislation Amendment Bill 2007

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Extract from NSW Legislative Assembly Hansard and Papers Wednesday 20 June 2007.

Agreement in Principle

Mr STEVE WHAN (Monaro—Parliamentary Secretary) [11.02 p.m.], on behalf of Mr Frank Sartor: I move:

That this bill be now agreed to in principle.

The Brothels Legislation Amendment Bill 2007 will amend the Environmental Planning and Assessment Act 1979 and the Restricted Premises Act 1943 to strengthen enforcement measures to enable local councils and other authorities to more quickly and effectively take action against brothels that are operating unlawfully. Since 1995 the use of premises as a brothel has not been a criminal offence per se. Premises can be lawfully used as a brothel, but only with appropriate planning consent obtained in accordance with the Environmental Planning and Assessment Act 1979.

The requirement to obtain planning consent ensures that brothels operate only in accordance with relevant planning instruments and conditions of consent. This means that there can be close regulation and supervision by councils of the impact of a brothel on the community. However, the regulation of brothels through the planning regime depends on effective enforcement measures. It is crucial that councils are able to take swift and effective action against brothels which operate without development consent, in contravention of their conditions of consent, or where there is a demonstrated adverse impact on the community. A robust enforcement regime is particularly important where an unlawful brothel operates from premises in a zoned area where brothels should never be permitted, such as near a school.

The measures in this bill are about strengthening these enforcement measures. The bill will amend the Environmental Planning and Assessment Act and the Restricted Premises Act to overcome some of the difficulties that confront councils when they seek to obtain evidence that premises are being used as a brothel. The bill will amend the definition of "brothel" in the Restricted Premises Act 1943 and the Environmental Planning and Assessment Act 1979. The amendments will include clarification that prostitution need not be an habitual use of premises for those premises to constitute a brothel; rather, it will be sufficient for a council to demonstrate that the premises have been used for the purpose of prostitution and that the premises are likely to be used for that purpose in the future.

A new limb will also be added to the definition to mean that premises that are being advertised or represented as being used for the purpose of prostitution and are likely to be used for that purpose will be taken to be a brothel. The bill will also introduce new provisions to make it absolutely clear that in proceedings relating to unlawful or disorderly brothels, courts will be entitled to rely solely on circumstantial

evidence. In particular, the bill will insert new provisions to provide that a court may make a finding that premises are being used as a brothel without any direct evidence of prostitution. These amendments will assist in overcoming the complications faced by councils in identifying and gathering evidence to prove the unlawful use of premises as a brothel—complications that have been exploited successfully by some operators.

The bill will also introduce tough enforcement powers against unlawful brothels. The bill provides that orders given by a council to close a brothel operating unlawfully under the Environmental Planning and Assessment Act will be able to be served on any person involved in the management of the premises, and not solely on the owner or occupier. Non-compliance with such an order will be an offence and penalties will apply. Penalties will also be increased for repeat offenders. Under the bill a council order against an unlawful brothel will also be able to be used to prohibit the use of the premises for specified related sex uses. This is intended to address the problem where an unlawful brothel is ordered to shut down but is immediately transformed into some other related and unauthorised business, such as a massage parlour. The new provisions will mean that the council will be able to take immediate and effective action without having to start the process over again. The bill will enable the brothel closure orders to be made effective within five working days. The bill will also limit the ability of the courts to adjourn enforcement proceedings brought by a council against an unlawful brothel. This means that unlawful brothel operators will no longer be able to continue operating indefinitely while they go through the motions of applying for development consent.

The bill also will enable a council to apply to a court for an order to cut-off the supply of water, gas and electricity to premises as a last resort when a brothel operator persistently flouts the law. Of course the bill includes safeguards to ensure that such a utilities order does not adversely affect third parties or residential properties. It is also intended to bring forward a regulation to allow the Local Court, as well as the Land and Environment Court, to hear appeals in respect of brothel closure orders. This is being proposed with a view to achieving faster access to the courts and more speedy resolution of disputes.

The bill also strengthens the measures available to councils to close down disorderly brothels under the Restricted Premises Act. That Act enables councils to apply for an order from the Land and Environment Court to close down a brothel that is having an adverse effect on the neighbourhood. That Act complements the enforcement regime under the Environmental Planning and Assessment Act. This bill will strengthen the powers under that Act in a number of ways, including expansion of the definition of brothel and clarifying the ability of the court to rely on circumstantial evidence.

The bill will also clarify the circumstances in which a council can apply for a closure order under the Restricted Premises Act. The bill expands the classes of persons from whom complaints can be received so that councils will also be able to take into account complaints received from people who, or whose children, regularly use facilities in the neighbourhood. Amendments will also ensure that closure orders made under the Restricted Premises Act cannot be circumvented. When making an order, the court will be given the power to suspend for up to six months a

development consent that applies to the premises. The amendment will enable the court to crack down on any attempt to evade a closure order by reopening a brothel in the name of another person or company relying upon a pre-existing development consent.

The court will also be able to extend a closure order to other specified related sex uses. Again the purpose of this provision is to deal with the problem of a brothel that is ordered to close down but then reopens as a massage parlour or the like. Another reform introduced by this bill is to extend to other authorised planning and regulatory agencies the powers of local councils to tackle unlawful brothels. The Brothels Legislation Amendment Bill will introduce a tough new regime that targets unlawful brothel operators, especially repeat offenders and those who seek to circumvent the law. I commend the bill to the House.