

First print



New South Wales

# Disorderly Houses Amendment Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to amend the *Disorderly Houses Act 1943*:
    - to remove the habitual use of premises for prostitution from the grounds for declaring premises to be a disorderly house, and
    - to enable a local council to apply to the Land and Environment Court for an order that a brothel operating in the council's area be closed down (or a prescribed authority in the case of land outside a local government area), and
  - (b) to amend the *Summary Offences Act 1988*:
    - to provide that it is not an offence for a person who owns, manages or is employed in a brothel to live on the earnings of prostitution of another person, and
    - to create an offence of inducing a person, by coercive conduct or undue influence, to commit an act of prostitution or to surrender the proceeds of an act of prostitution, and
-

- (c) to amend the *Crimes Act 1900* to abolish the common law offence of keeping a common bawdy house or brothel, and
- (d) to amend the *Land and Environment Court Act 1979* consequentially.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the *Disorderly Houses Act 1943*.

**Clause 4** is a formal provision that gives effect to the Schedule of related amendments to certain other Acts.

## **Schedule 1     Amendment of Disorderly Houses Act 1943**

**Schedule 1 [4]** removes from the list of grounds for declaring premises a disorderly house the ground that the premises are habitually used for the purpose of prostitution.

**Schedule 1 [7]** inserts new provisions into the Act relating to brothels (defined by Schedule 1 [2] as meaning premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose, whether by one or more prostitutes).

Proposed section 16 prevents premises being declared a disorderly house solely because the premises are a brothel or because a person involved in the control or management of the premises has previously been involved in the control or management of a brothel declared to be a disorderly house.

Proposed section 17 enables the Land and Environment Court to make an order against an owner or occupier of premises used as a brothel that the owner or occupier not use or allow the premises to be used as a brothel if the council for the local government area in which the brothel is situated applies for the making of the order. The council must not make the application unless it has received complaints from residents of the area living or using facilities in the vicinity of the brothel or occupiers of premises situated in the area in the vicinity and it must base the application on one or more of the specified considerations that the Land and Environment Court must take into

account when determining the application. Those considerations include whether the operation of the brothel causes disturbance of the neighbourhood because of hours of operation, creation of noise or the amount of traffic, whether the brothel is operating near or within view from a church, hospital, school or place regularly frequented by children for recreational or cultural activities and whether the operation of the brothel interferes with the amenity of the neighbourhood. The proposed clause extends to areas that are not local government areas and enables a prescribed authority to make an application in such a case.

Proposed section 18 enables the Land and Environment Court to make appropriate rules of court in relation to the operation of the new provisions.

Proposed section 19 enables regulations to be made for the purposes of the Act.

**Schedule 1 [5]** enables the Supreme Court to receive an application to rescind a declaration of premises as a disorderly house if the premises could not have been declared a disorderly house after the new amendments.

**Schedule 1 [1]-[3] and [6]** contain consequential amendments.

## **Schedule 2 Related amendment of other Acts**

### **Crimes Act 1900**

**Schedule 2.1** abolishes the common law offence of keeping a common bawdy house or brothel.

### **Land and Environment Court Act 1979**

**Schedule 2.2** includes applications under proposed section 17 of the *Disorderly Houses Act 1943* in Class 4 of the jurisdiction of the Land and Environment Court (environmental planning protection and development contract civil enforcement).

### **Summary Offences Act 1988**

**Schedule 2.3 [1]** provides that it is not an offence for a person who owns, manages or is employed in a brothel to live on the earnings of prostitution of another person.

Disorderly Houses Amendment Bill 1995

Explanatory note

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**Schedule 2.3 [2]** makes it an offence for a person, by coercive conduct or undue influence, to cause or induce another person to commit an act of prostitution or to surrender the proceeds of an act of prostitution. The maximum penalty is 50 penalty units (currently \$5,000) or imprisonment for 12 months, or both. The provisions relating to child prostitution in the *Crimes Act 1900* are not affected.

**Schedule 2.3 [3]** is consequential on the amendment made to the *Crimes Act 1900*.

First print



New South Wales

# Disorderly Houses Amendment Bill 1995

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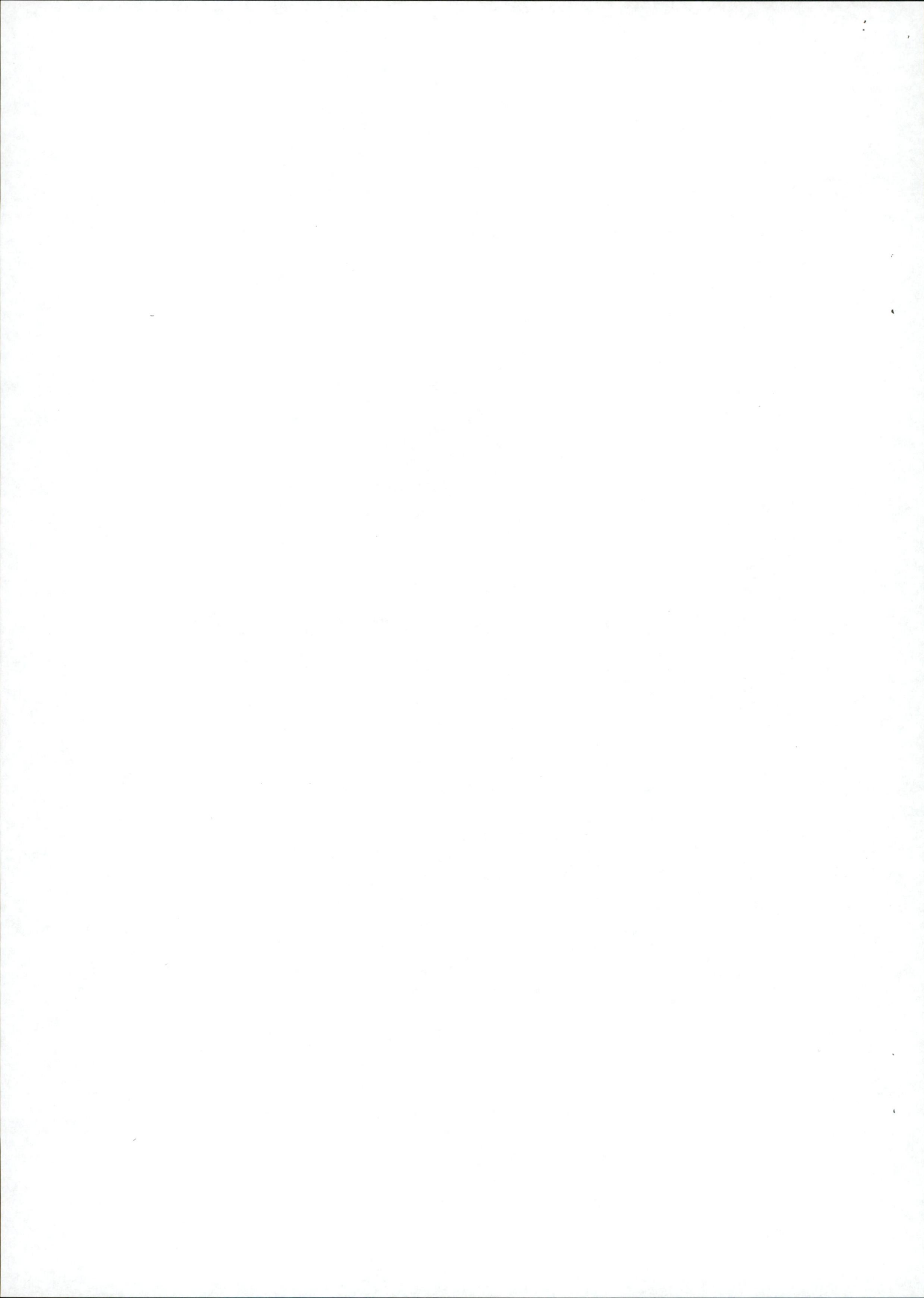
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New South Wales

# Disorderly Houses Amendment Bill 1995

No. , 1995

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## **A Bill for**

An Act to amend the *Disorderly Houses Act 1943* with respect to prostitution and to amend certain other Acts for related purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Disorderly Houses Amendment Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Disorderly Houses Act 1943 No 6**

The *Disorderly Houses Act 1943* is amended as set out in Schedule 1.

**4 Related amendment of other Acts**

Each Act specified in Schedule 2 is amended as set out in that Schedule. 10



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**Schedule 1 Amendment of Disorderly Houses Act  
1943**

(Section 3)

**[1] Part 1 heading**

Insert "**Part 1 Preliminary**" before section 1.

5

**[2] Section 2 Definitions**

Insert in alphabetical order:

*area*, in relation to a local council, means the area of the council within the meaning of the *Local Government Act 1993*.

10

*brothel* means premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose. Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

15

*local council* means a council within the meaning of the *Local Government Act 1993*.

**[3] Part 2 heading**

Insert "**Part 2 Disorderly houses**" before section 3.

**[4] Section 3 Disorderly house—declaration by Supreme Court**

20

Omit section 3 (1) (e) and the word "or" where lastly occurring in section 3 (1) (d).

**[5] Section 14 Existing declarations and savings**

Insert after section 14 (2):

- (3) The Supreme Court is, on application by the owner or occupier of premises, to rescind a declaration under section 3 in respect of the premises (subject to such terms as the Court thinks fit) if: 5
- (a) the declaration was made before the commencement of the *Disorderly Houses Amendment Act 1995*, and
- (b) the Court is satisfied that the declaration could not be made now because of section 16. 10
- (4) An owner or occupier of premises who makes an application under subsection (3) must give notice in writing to a Superintendent or Inspector of Police of the intention to make the application at least 2 days before the hearing of the application. 15

**[6] Section 15 Rules of the Supreme Court**

Omit "Act" where secondly occurring in section 15 (1).  
Insert instead "Part".

**[7] Parts 3, 4** 20

Insert after section 15:

**Part 3 Brothels**

**16 Disorderly house declaration not to be made solely on grounds that premises are a brothel**

A declaration under section 3 may not be made in respect of premises solely because of either or both of the following: 25

- (a) the premises are a brothel,

- 
- (b) a person having control of or managing, or taking part or assisting in the control or management of, the premises has been concerned in the control or management of other premises which have been declared to be a disorderly house under this Act solely because those other premises were a brothel. 5

**17 Application to Land and Environment Court for premises not to be used as a brothel**

- (1) The Land and Environment Court may, on application by a local council, make an order that an owner or occupier of premises that are a brothel and that are situated within the area of the council is not to use or allow the use of the premises for the purpose of a brothel. 10
- (2) The local council must not make an application in relation to a brothel unless it is satisfied that it has received sufficient complaints about the brothel to warrant the making of the application. 15
- (3) The complaints must have been made by:
- (a) residents of the area in which the brothel is situated who live in the vicinity of the brothel, or 20
- (b) residents of the area in which the brothel is situated who use, or whose children use, facilities in the vicinity of the brothel, or
- (c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel. 25
- (4) The application must state the reasons why the local council is of the opinion that the operation of the brothel should cease based on one or more of the considerations referred to in subsection (5) (a), (b), (c), (d), (e) or (f). 30

- (5) In making an order under this section the Land and Environment Court is to take into consideration only the following:
- (a) whether the brothel is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities, 5
  - (b) whether the operation of the brothel causes a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood or other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise and vehicular and pedestrian traffic, 10
  - (c) whether sufficient off-street parking has been provided if appropriate in the circumstances, 15
  - (d) whether suitable access has been provided to the brothel,
  - (e) whether the operation of the brothel causes a disturbance in the neighbourhood because of its size and the number of people working in it, 20
  - (f) whether the operation of the brothel interferes with the amenity of the neighbourhood,
  - (g) any other environmental planning matter that the Land and Environment Court considers is relevant. 25
- (6) This section extends to premises within an area that is not a local government area and in that case a reference to a local council is to be read as a reference to the prescribed authority for the area. 30
- (7) In this section, *church*, *hospital* and *school* have the same meanings as in the *Summary Offences Act 1988*.

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**18 Rules of the Land and Environment Court**

- (1) Rules may be made under the *Land and Environment Court Act 1979* for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions. 5
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Land and Environment Court Act 1979*.

**Part 4 Miscellaneous**

**19 Regulations** 10

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15

## Schedule 2 Related amendment of other Acts

(Section 4)

### 2.1 Crimes Act 1900 No 40

#### Section 580C

Insert after section 580B:

5

#### 580C Abolition of offence of keeping common bawdy house or brothel

(1) The common law offence of keeping a common bawdy house or brothel is abolished.

(2) A person cannot be convicted after the commencement of this section of an offence referred to in subsection (1) whether committed before or after that commencement.

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### 2.2 Land and Environment Court Act 1979 No 204

#### Section 20 Class 4—environmental planning protection and development contract civil enforcement

15

Insert after section 20 (1) (d):

(da) applications under section 17 of the *Disorderly Houses Act 1943*,

### 2.3 Summary Offences Act 1988 No 25

#### [1] Section 15 Living on earnings of prostitution

20

Insert after section 15 (2):

(3) A person does not contravene subsection (1) by living wholly or in part on earnings derived from a brothel if the person owns, manages or is employed in the brothel.

(4) For the purposes of subsection (3), premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

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**[2] Section 15A**

Insert after section 15:

**15A Causing or inducing prostitution**

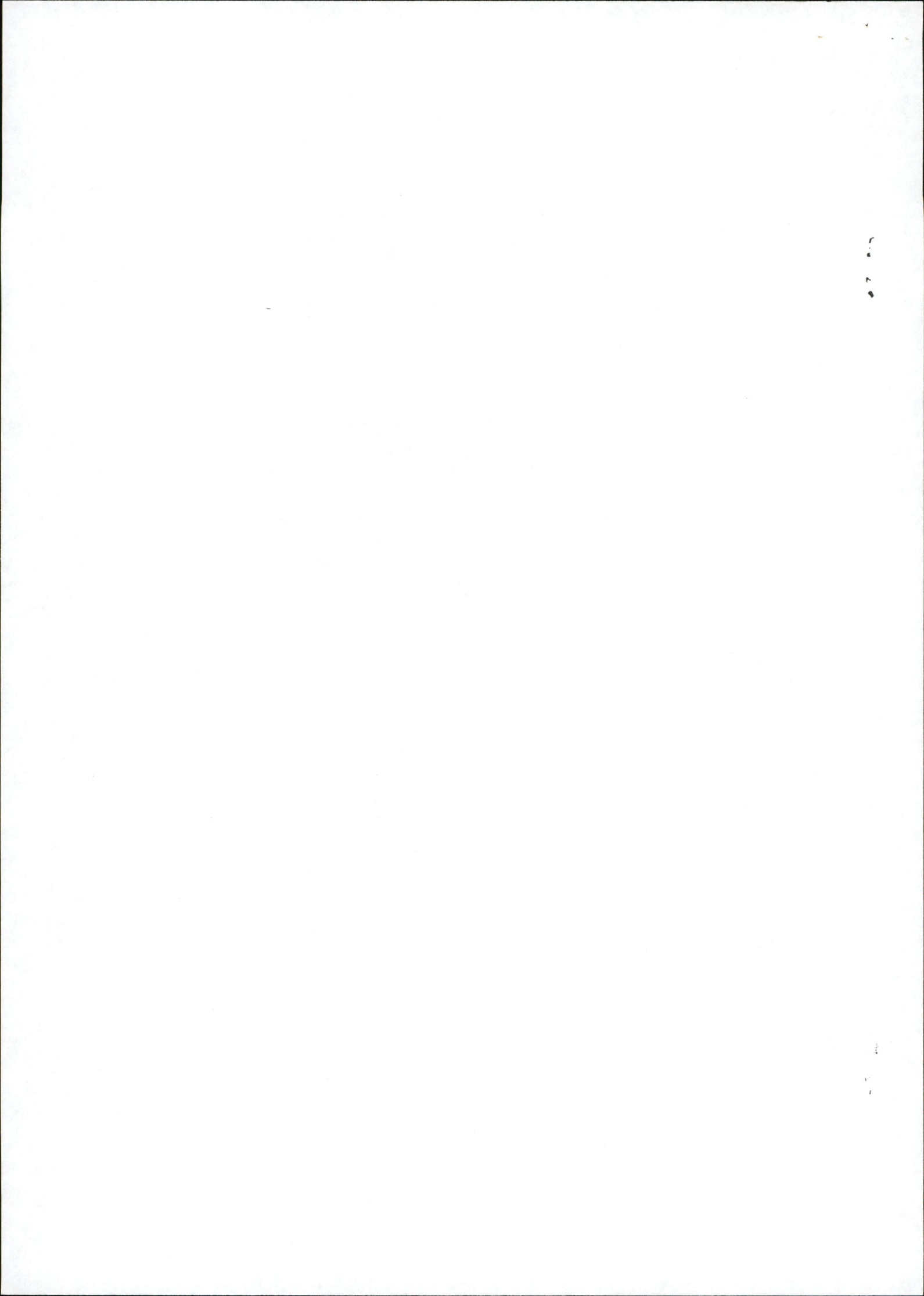
(1) A person must not, by coercive conduct or undue influence, cause or induce another person to commit an act of prostitution. 5

(2) A person must not, by coercive conduct or undue influence, cause or induce another person to surrender any proceeds of an act of prostitution.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 10

**[3] Section 17 Allowing premises to be used for prostitution**

Omit "brothel or" from section 17 (2).





## Amendments in Committee

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C-016  
CTA

### LEGISLATIVE COUNCIL

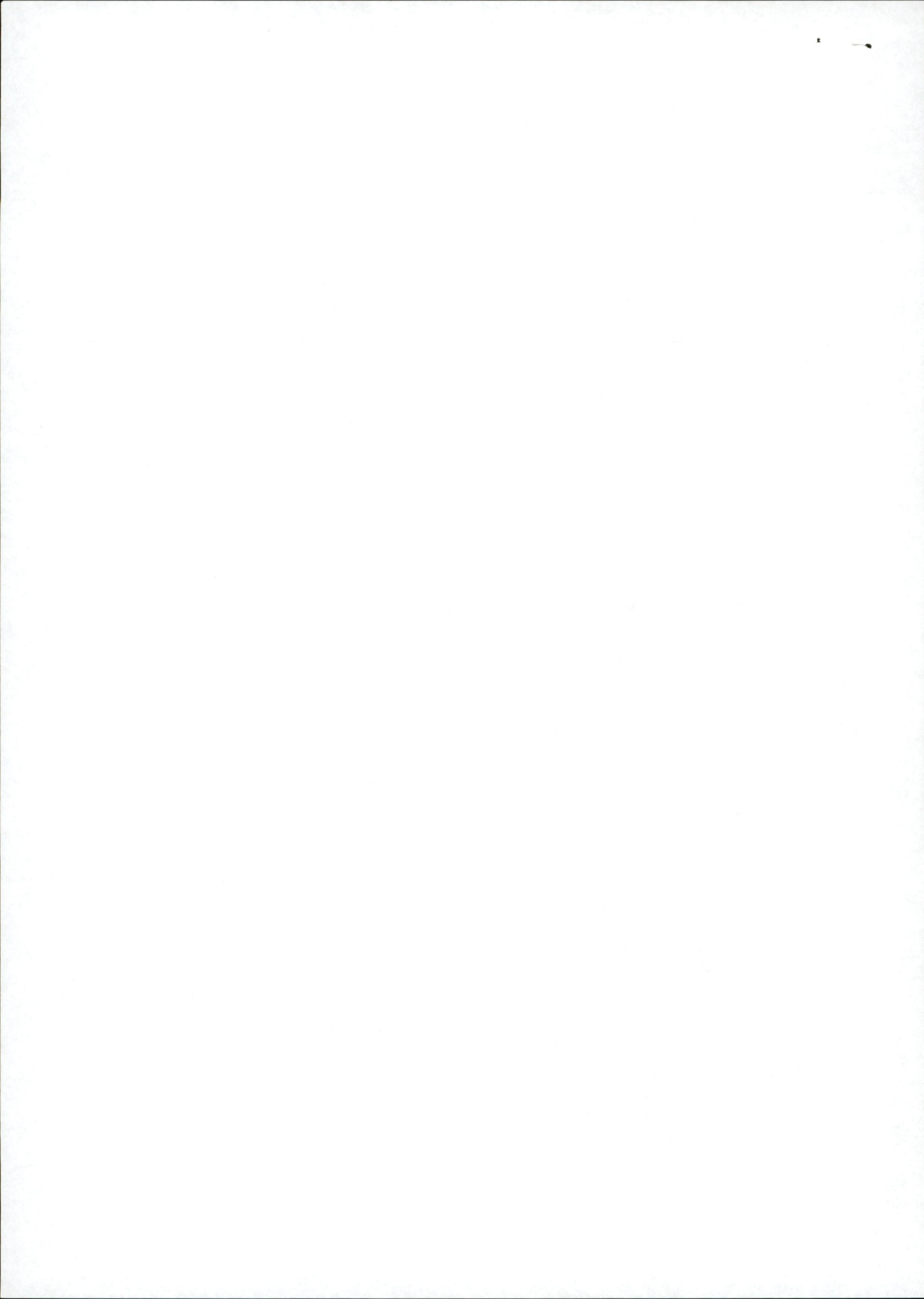
#### Disorderly Houses Amendment Bill 1995

#### First Print

#### Amendments to be moved in Committee

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- No 1 Page 3, Schedule 1 [4], lines 21 and 22. Omit all words on those lines, insert instead:
- Insert ", or the local council for the area in which the premises are situated," after "Police" in section 3 (1).
- No 2 Page 4, Schedule 1 [5], lines 1-16. Omit all words on those lines.
- No 3 Pages 4 and 5, Schedule 1 [7], line 23 on page 4 to line 7 on page 5. Omit all words on those lines.
- No 4 Page 5, Schedule 1 [7], lines 10-11. Omit "The Land and Environment Court may, on application by a local council", insert instead " A local council may, by resolution".
- No 5 Page 5, Schedule 1 [7], line 15. Omit "application", insert instead "order under this section".
- No 6 Page 5, Schedule 1 [7], line 18. Omit "application", insert instead "order".
- No 7 Page 5, Schedule 1 [7], lines 28-31. Omit all words on those lines.
- No 8 Page 6, Schedule 1 [7], lines 1-3. Omit all words on those lines, insert instead "In making an order under this section, a local council is to take into consideration the following:".
- No 9 Page 6, Schedule 1 [7], line 5. After "school", insert ", residence".
- No 10 Page 6, Schedule 1 [7]. After line 23, insert:
- (g) whether the operation of the brothel is against public morals or good order,



AMENDMENTS IN COMMITTEE

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- No 11 Page 6, Schedule 1 [7], line 24. Omit "environmental planning".
- No 12 Page 6, Schedule 1 [7], line 25. Omit "Land and Environment Court", insert instead "council".
- No 13 Page 6, Schedule 1 [7], lines 27-30. Omit all words on those lines, insert instead:
- (6) The provisions of the *Local Government Act 1993* relating to orders under Part 2 of Chapter 7 of that Act (except the provisions referred to in subsection (7)) apply to orders under this section.
  - (7) Sections 153 (2) and 154-157 of the *Local Government Act 1993* (provisions enabling the Minister to give an order and to modify or revoke a local council's order) do not apply to orders under this section.
  - (8) This section extends to premises within an area that is not a local government area and in that case:
    - (a) a reference to a local council is to be read as a reference to the prescribed authority for the area, and
    - (b) the provisions of the *Local Government Act 1993* referred to in subsection (6) apply to an order of a prescribed authority under this section in the same way as they apply to an order of a local council under this section, but with such modifications (if any) as may be prescribed.
- No 14 Page 7, Schedule 1 [7], lines 1-8. Omit all words on those lines.
- No 15 Page 7, Schedule 1 [7]. After line 16, insert:
- 20 Objects of Disorderly Houses Amendment Act 1995**  
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.
- No 16 Page 8, Schedule 2.1, lines 3-12. Omit all words on those lines.
- No 17 Page 8, Schedule 2.2, lines 13-18. Omit all words on those lines.
- No 18 Page 8, Schedule 2.3 [1], lines 23 and 24. Omit "if the person owns, manages or is employed in the brothel", insert instead "unless the person is involved in procuring clients for the brothel".
- No 19 Page 9, Schedule 2.3 [3], lines 12 and 13. Omit all words on those lines.
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DISORDERLY HOUSES AMENDMENT BILL 1995

SECOND READING SPEECH

LEGISLATIVE COUNCIL

(MR PRESIDENT CALLS NOTICE OF MOTION IN NAME OF MINISTER)

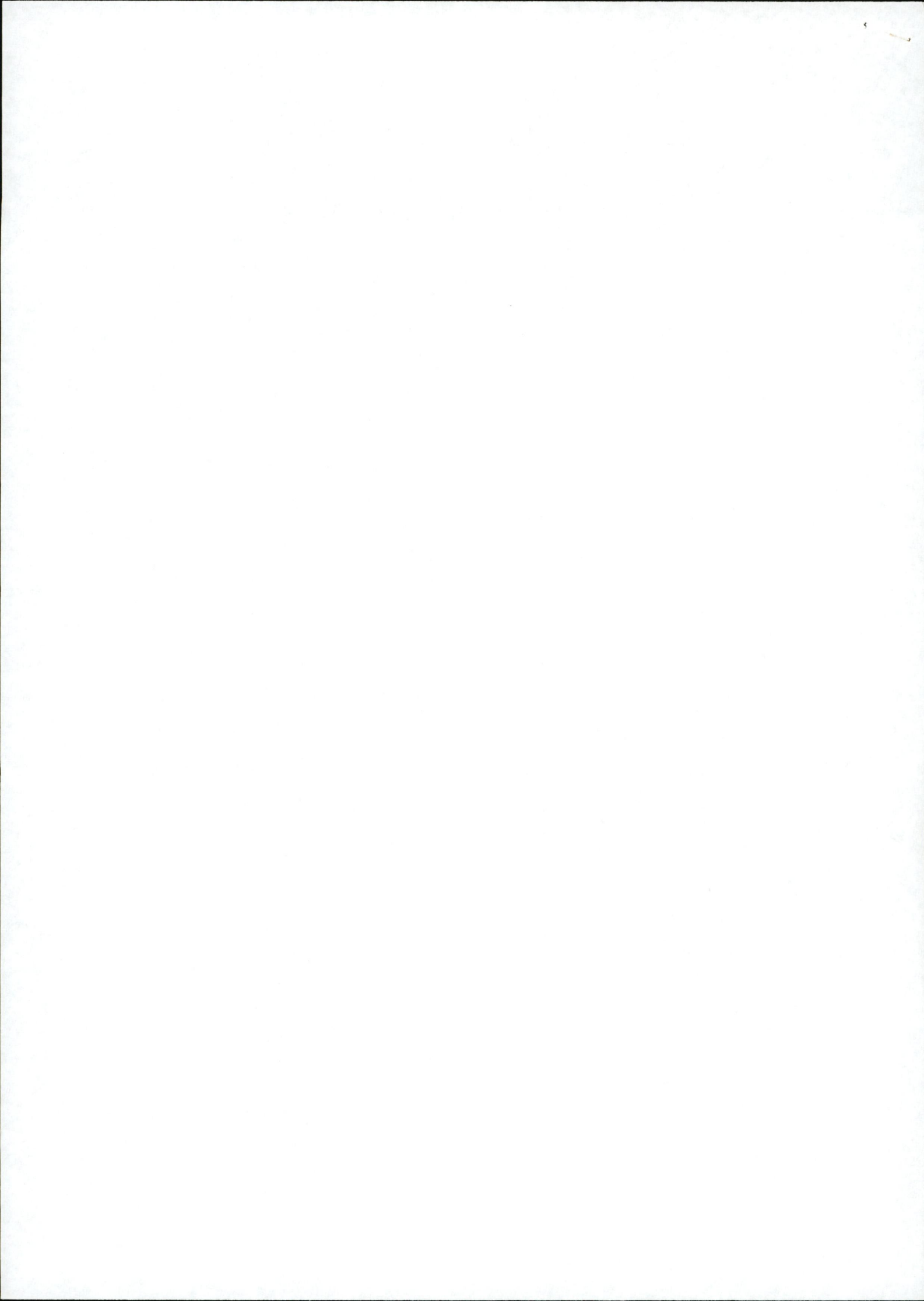
THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I MOVE THAT LEAVE BE GIVEN TO BRING IN A BILL FOR AN ACT TO AMEND THE DISORDERLY HOUSES ACT 1943 WITH RESPECT TO PREMISES USED FOR PROSTITUTION; AND TO MAKE RELATED AMENDMENTS TO THE SUMMARY OFFENCES ACT 1988, THE CRIMES ACT 1900 AND THE LAND AND ENVIRONMENT COURT ACT 1979.

(MR PRESIDENT PUTS QUESTION THAT LEAVE BE GIVEN - NO DEBATE ALLOWED)

(WHEN AGREED TO)



THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I BRING UP THE BILL

(MINISTER HANDS TWO COPIES OF THE BILL TO CLERK  
WHO READS IT A FIRST TIME)

THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I MOVE THAT THIS BILL BE READ A SECOND TIME

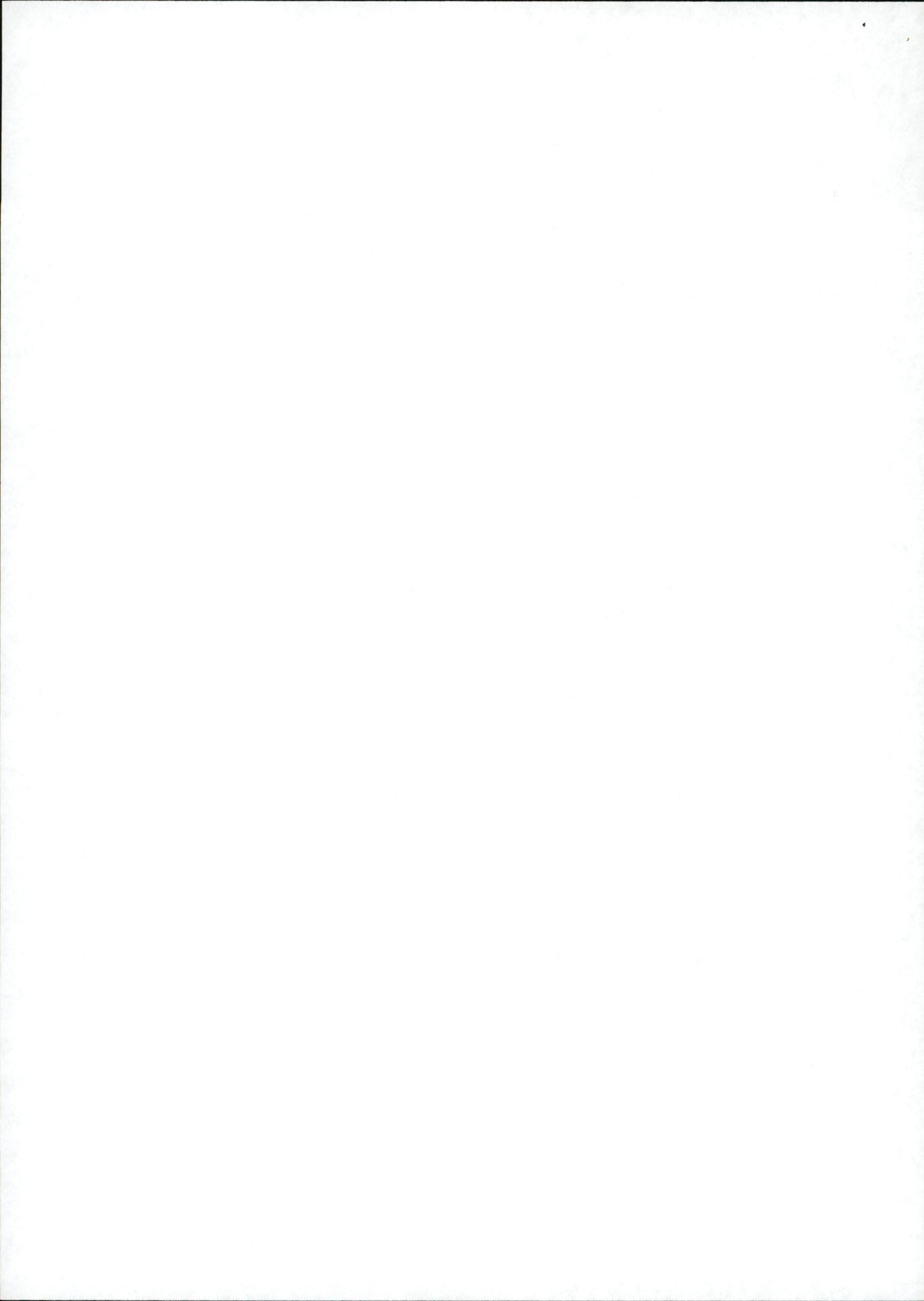
IN 1943 WHEN THE DISORDERLY HOUSES ACT WAS  
PROCLAIMED, ITS MAIN PURPOSE WAS TO KEEP  
AMERICAN SERVICEMEN OUT OF SLY GROG SHOPS AND  
UNLICENSED NIGHTCLUBS. THE GOVERNMENT OF THE  
DAY WAS CONCERNED THAT NEARBY RESIDENTS MAY BE  
DISTURBED BY DRUNKEN OR INDECENT BEHAVIOUR BY  
SERVICEMEN VISITING SUCH PREMISES.





ALTHOUGH THE CONNECTION WITH AMERICAN SERVICEMEN IS A HISTORICAL ANACHRONISM, THE ACT PROVIDES THAT WHERE DRUNKEN OR INDECENT BEHAVIOUR OR ENTERTAINMENT OCCURS, WHERE LIQUOR OR DRUGS ARE SOLD UNLAWFULLY OR WHERE CRIMINALS CONSORT, POLICE MAY APPLY TO THE SUPREME COURT TO HAVE THE PREMISES DECLARED A DISORDERLY HOUSE.

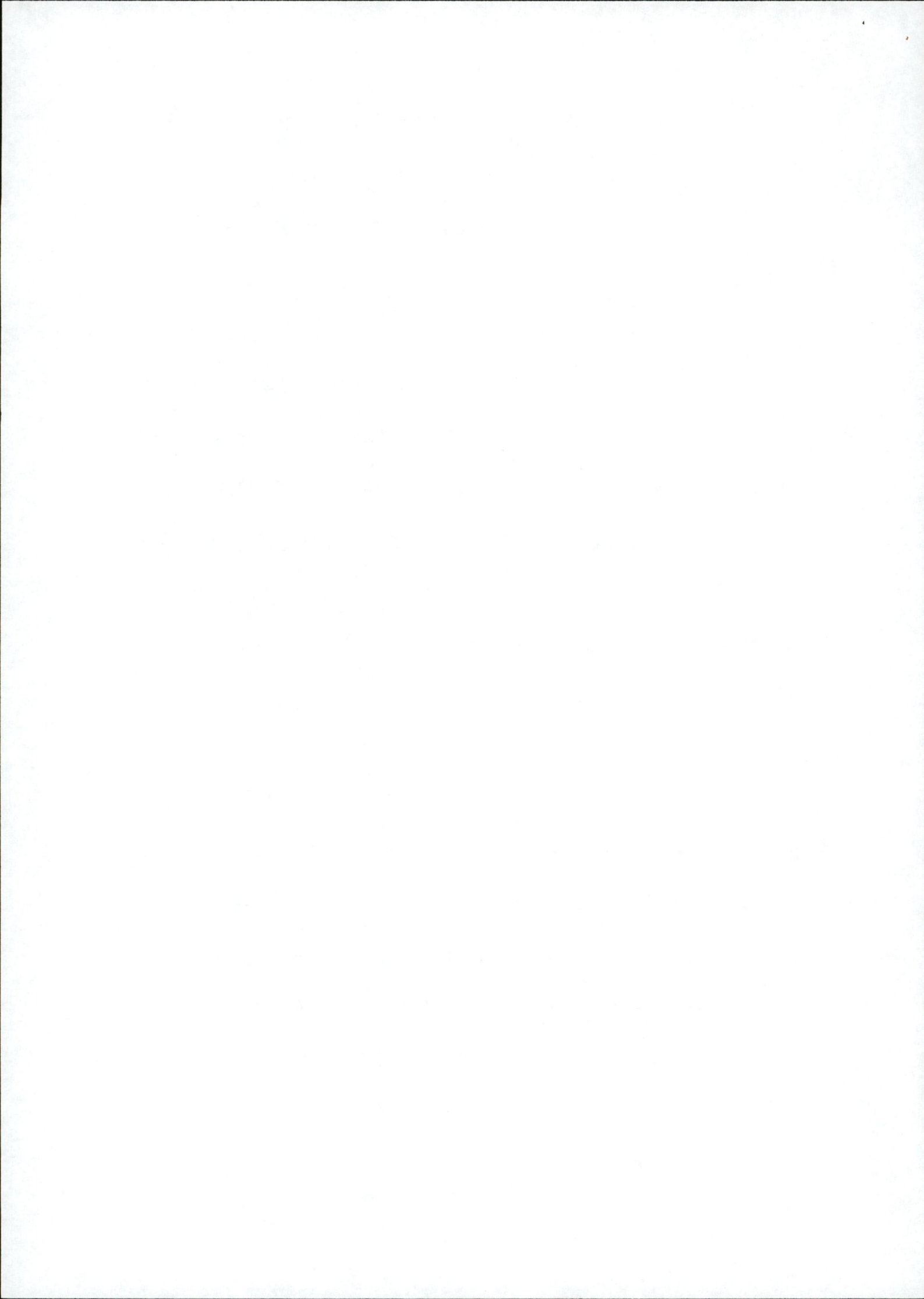
THE EFFECT OF SUCH A DECLARATION IS THAT THEREAFTER ANY PERSON ENTERING THE PREMISES IS GUILTY OF AN OFFENCE UNDER THE ACT. THE OCCUPIER AND THE OWNER MAY ALSO BE GUILTY OF AN OFFENCE IF THE OCCUPIER ALLOWS THE DISORDERLY BEHAVIOUR TO CONTINUE OR IF THE OWNER FAILS TO EVICT THE OCCUPIER. POLICE MAY ENTER THE PREMISES AT ANY TIME WITHOUT A WARRANT TO SEIZE LIQUOR, DRUGS, OR RELATED ITEMS FOUND ON THE PREMISES.



IN 1968 THE ACT WAS AMENDED TO ADD "PREMISES HABITUALLY USED FOR PROSTITUTION" TO THE CLASSES OF PREMISES WHICH MAY BE DECLARED DISORDERLY.

HOWEVER IN 1988 THE COURT OF APPEAL HELD, IN SIBUSE 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 WHICH CAME TO THEIR ATTENTION, IT WOULD MEAN THAT EVEN ORDERLY, WELL-RUN, BROTHELS WOULD BE CLOSED AND THE PROSTITUTES WOULD BE FORCED BACK ONTO THE STREETS. THUS MANY MORE CITY AND SUBURBAN STREETS WOULD BE USED BY PROSTITUTES TO



PLY THEIR TRADE. THIS IS 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 PROGRAMMES.
- 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.

THIS BILL IS THEREFORE DESIGNED TO OVERCOME THE EFFECT OF THE DECISION IN SIBUSE V SHAW.



IT IS NOT THE INTENTION OF THIS BILL THAT BROTHELS WILL 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 THE 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 EFFECTED BY THIS PROPOSAL IS TO THE BASIS FOR, AND TO THE JURISDICTION OF, APPLICATIONS UNDER THE DISORDERLY HOUSES ACT TO CLOSE A BROTHEL WHICH IS NOT OTHERWISE DISORDERLY. THUS POLICE WOULD 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.

BY AMENDMENTS TO THE SUMMARY OFFENCES ACT 1988  
AND THE CRIMES ACT 1900, THE BILL ABOLISHES THE  
COMMON LAW MISDEMEANOUR OF KEEPING A COMMON  
BAWDY HOUSE OR BROTHEL; PROVIDES THAT THOSE  
PERSONS WHO ARE IN A LEGITIMATE COMMERCIAL  
RELATIONSHIP WITH A PROSTITUTE ARE NOT GUILTY OF  
THE OFFENCE OF LIVING OFF THE EARNINGS OF  
PROSTITUTION; AND ENSURES THAT WOMEN,  
PARTICULARLY YOUNG WOMEN ARE NOT EXPLOITED AS A  
RESULT OF THE RECOGNITION OF BROTHELS AS A  
LEGITIMATE COMMERCIAL ENTERPRISE.

IN 1983 A SELECT COMMITTEE OF THE LEGISLATIVE  
ASSEMBLY WAS FORMED TO INQUIRE INTO PROSTITUTION  
IN NEW SOUTH WALES. BETWEEN 1983 AND 1986 THE  
COMMITTEE MET ON 76 OCCASIONS TAKING EVIDENCE

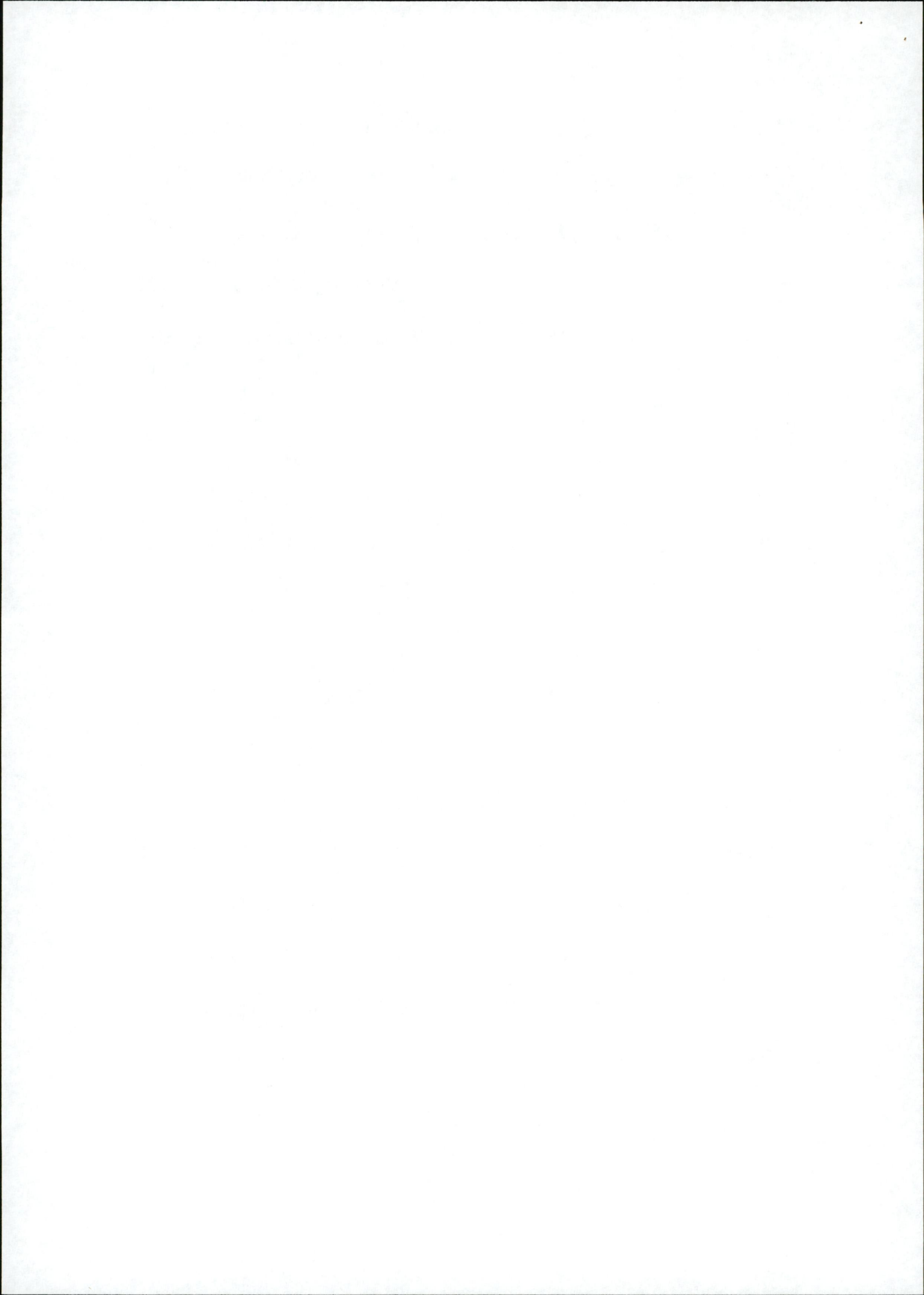


FROM A WIDE CROSS SECTION OF THE COMMUNITY INCLUDING PROSTITUTES, THEIR CLIENTS, SOCIAL AND HEALTH WORKERS, POLICE, MINISTERS OF RELIGION AND REPRESENTATIVES OF NUMEROUS INTEREST GROUPS. THE REPORT OF THE COMMITTEE IS COMPREHENSIVE AND THOROUGH.

THE RECOMMENDATIONS IN THE SELECT COMMITTEE'S REPORT HAVE BEEN TAKEN INTO ACCOUNT IN THE DRAFTING OF THIS BILL.

I TURN NOW TO THE DETAILS OF THE BILL:

CLAUSE 16 PROVIDES THAT BROTHELS MAY NOT BE CLOSED DOWN, UNDER THE DISORDERLY HOUSES ACT, SOLELY ON THE GROUNDS THAT THEY ARE BEING USED AS BROTHELS OR THAT A PERSON CONTROLLING OR MANAGING THE PREMISES HAS BEEN CONCERNED IN THE CONTROL OR MANAGEMENT OF OTHER PREMISES WHICH

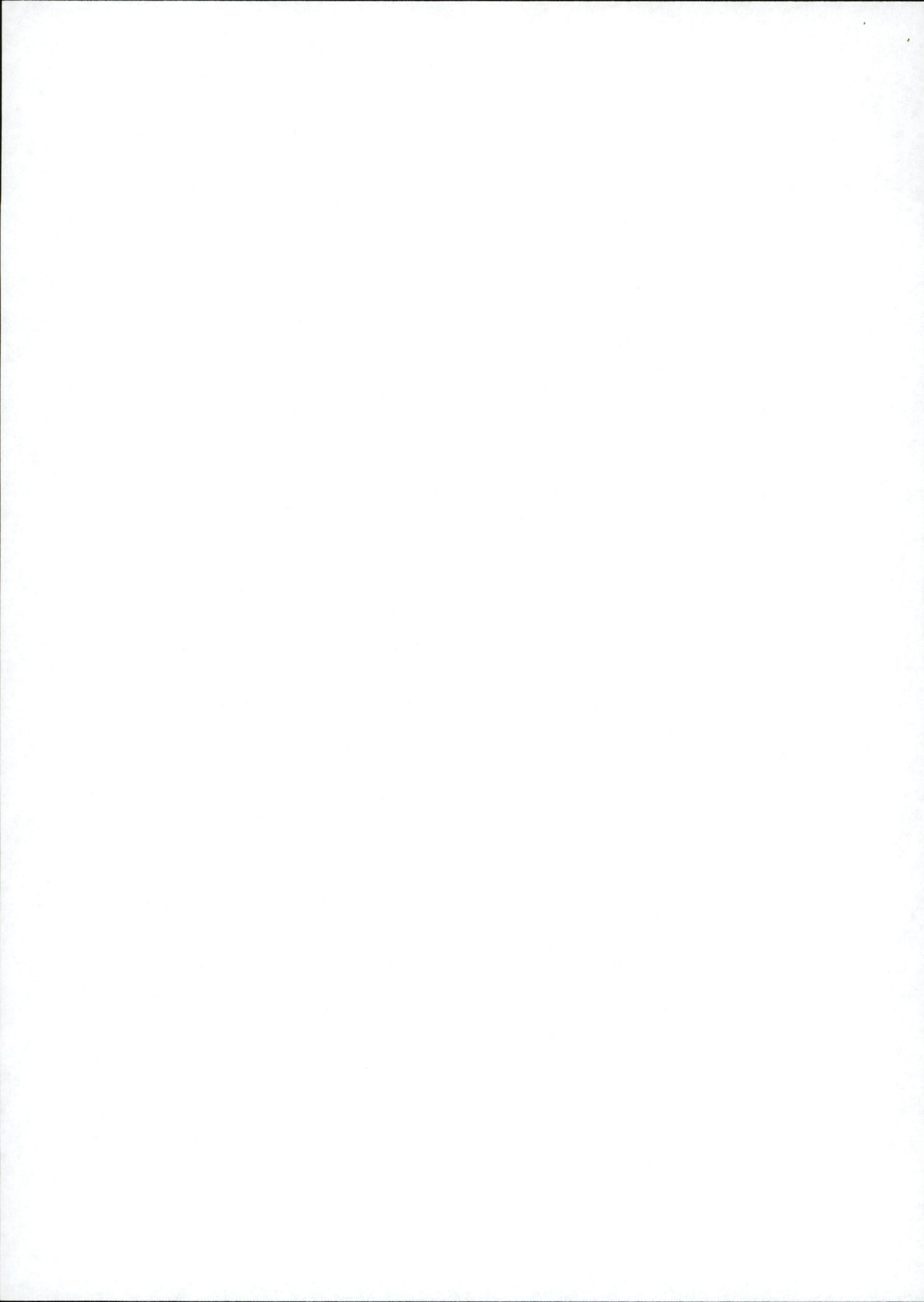


HAVE BEEN DECLARED A DISORDERLY HOUSE SOLELY BECAUSE THOSE OTHER PREMISES WERE A BROTHEL.

IF NO STEPS WERE TAKEN TO OVERCOME THE DECISION IN SUBUSE V SHAW, THE EFFECT WOULD BE TO FORCE PROSTITUTES OUT OF BROTHELS AND ONTO THE STREETS.

IN ORDER TO PROVIDE FOR THE CLOSURE OF BROTHELS WHICH ARE HAVING A SIGNIFICANT DETRIMENTAL EFFECT ON THE LOCAL COMMUNITY, CLAUSE 17 OF THE BILL PROVIDES FOR RESIDENTS OR OCCUPIERS TO MAKE COMPLAINTS TO THEIR LOCAL COUNCILS WHICH IN TURN MAY TAKE ACTION IN THE LAND AND ENVIRONMENT COURT TO HAVE THE BROTHEL CLOSED.

COUNCILS MAY ONLY MAKE AN APPLICATION UNDER THESE PROVISIONS IF SUFFICIENT COMPLAINTS HAVE



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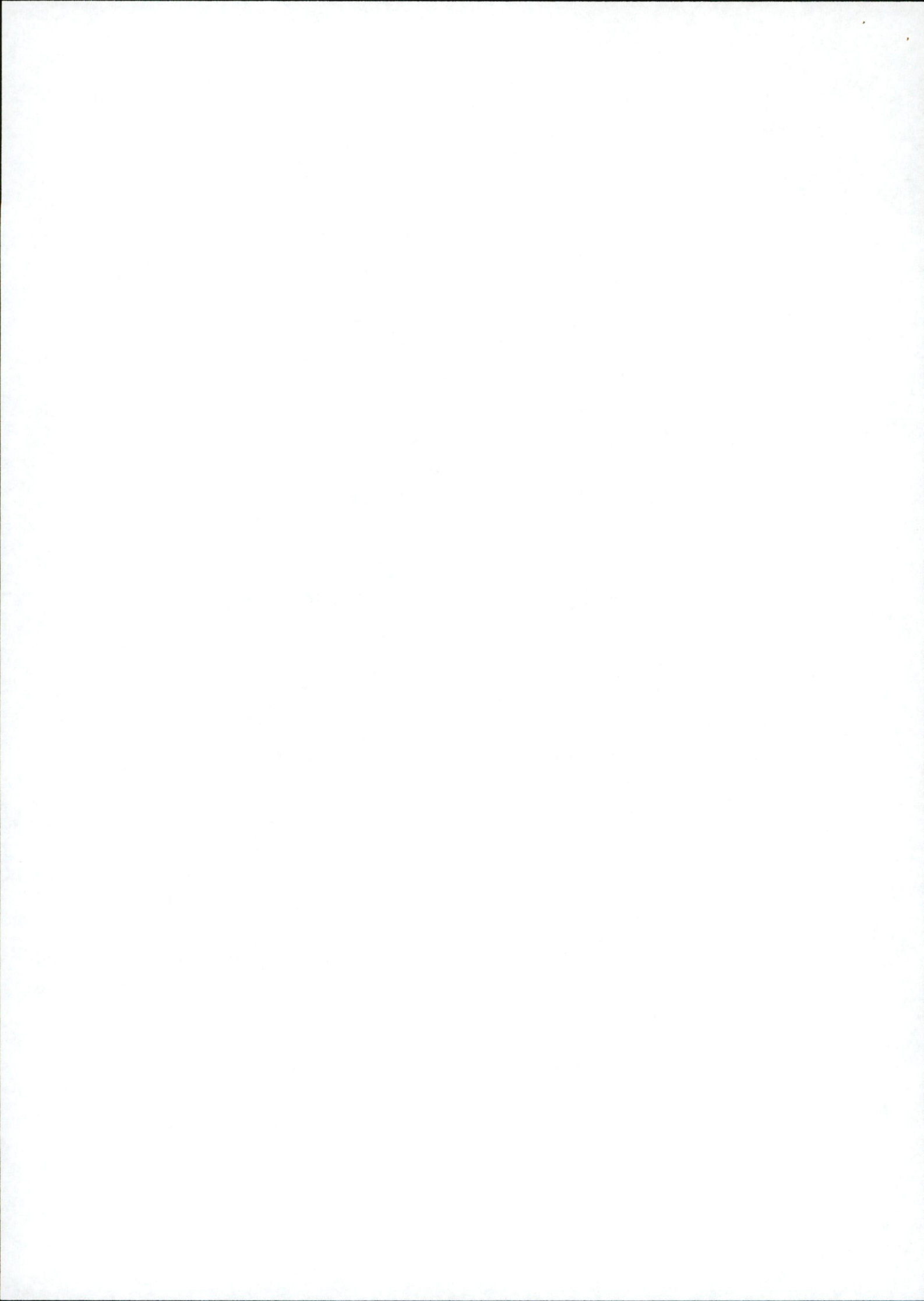
**RESIDENTS LIVING IN THE VICINITY OF THE  
BROTHEL OR**

**RESIDENTS OF THE AREA IN WHICH THE BROTHEL IS  
SITUATED WHO USE OR WHOSE CHILDREN USE,  
FACILITIES IN THE VICINITY OF THE BROTHEL OR**

**OCCUPIERS OF PREMISES IN THE VICINITY OF THE  
BROTHEL.**

**AN APPLICATION MUST BE BASED ON ONE OR MORE OF  
THE FOLLOWING CRITERIA:**

**(A) WHETHER THE BROTHEL IS OPERATING NEAR OR  
WITHIN VIEW FROM A CHURCH, HOSPITAL, SCHOOL,  
OR ANY PLACE REGULARLY FREQUENTED BY  
CHILDREN FOR RECREATIONAL OR CULTURAL  
PURPOSES.**





(B) WHETHER THE OPERATION OF THE BROTHEL CAUSES A DISTURBANCE IN THE NEIGHBOURHOOD WHEN TAKING INTO ACCOUNT OTHER BROTHELS OPERATING IN THE NEIGHBOURHOOD OR OTHER LAND USE WITHIN THE NEIGHBOURHOOD INVOLVING SIMILAR HOURS OF OPERATION AND CREATING SIMILAR AMOUNTS OF NOISE AND VEHICULAR AND PEDESTRIAN TRAFFIC,

(C) WHETHER SUFFICIENT OFF-STREET PARKING HAS BEEN PROVIDED, IF APPROPRIATE IN THE CIRCUMSTANCES,

(D) WHETHER SUITABLE ACCESS HAS BEEN PROVIDED TO THE BROTHEL,



(E) WHETHER THE OPERATION OF THE BROTHEL CAUSES A DISTURBANCE IN THE NEIGHBOURHOOD BECAUSE OF ITS SIZE AND THE NUMBER OF PEOPLE WORKING IN IT,

(F) WHETHER THE OPERATION OF THE BROTHEL INTERFERES WITH THE AMENITY OF THE NEIGHBOURHOOD.

UNLIKE LOCAL COUNCILS, THE LAND AND ENVIRONMENT COURT IS NOT RESTRICTED TO CONSIDERATION OF THESE CRITERIA ALONE, BUT MAY ALSO TAKE INTO ACCOUNT ANY OTHER ENVIRONMENTAL PLANNING MATTER WHICH IT CONSIDERS RELEVANT.

THE CRITERIA ARE WIDE ENOUGH FOR PARTICULAR CHARACTERISTICS OF THE LOCAL GOVERNMENT AREAS TO BE TAKEN INTO ACCOUNT. THE OVERRIDING CONSIDERATION IS THAT THE BROTHEL OPERATES IN A



DISCREET MANNER CONSISTENT WITH THE AMENITY OF THE NEIGHBOURHOOD.

A RIGHT OF APPEAL ALREADY EXISTS FROM THE LAND AND ENVIRONMENT COURT TO THE SUPREME COURT, AND PROVISIONS ALREADY EXIST FOR ORDERS FOR COSTS TO BE MADE AT THE COURTS DISCRETION. THESE PROVISIONS SHOULD DISCOURAGE SPURIOUS ACTIONS BY LOCAL COUNCILS, BUT ALSO ALLOW THEM TO RECOVER COSTS, WHERE APPROPRIATE, IN BOTH THE LAND AND ENVIRONMENT COURT AND THE SUPREME COURT.

RECENT PUBLICITY GIVEN TO THE ALLEGED NEXUS BETWEEN POLICE CORRUPTION AND THE OPERATION OF BROTHELS HAS SPARKED CONSIDERABLE PUBLIC DEBATE REGARDING THE MERITS OR OTHERWISE OF LEGALISING PROSTITUTION. THIS PROPOSAL WILL GO A CONSIDERABLE WAY TOWARDS REMOVING THE OPPORTUNITY FOR CORRUPT CONDUCT ON THE PART OF POLICE. IT WILL NOT, HOWEVER, PREVENT POLICE FROM

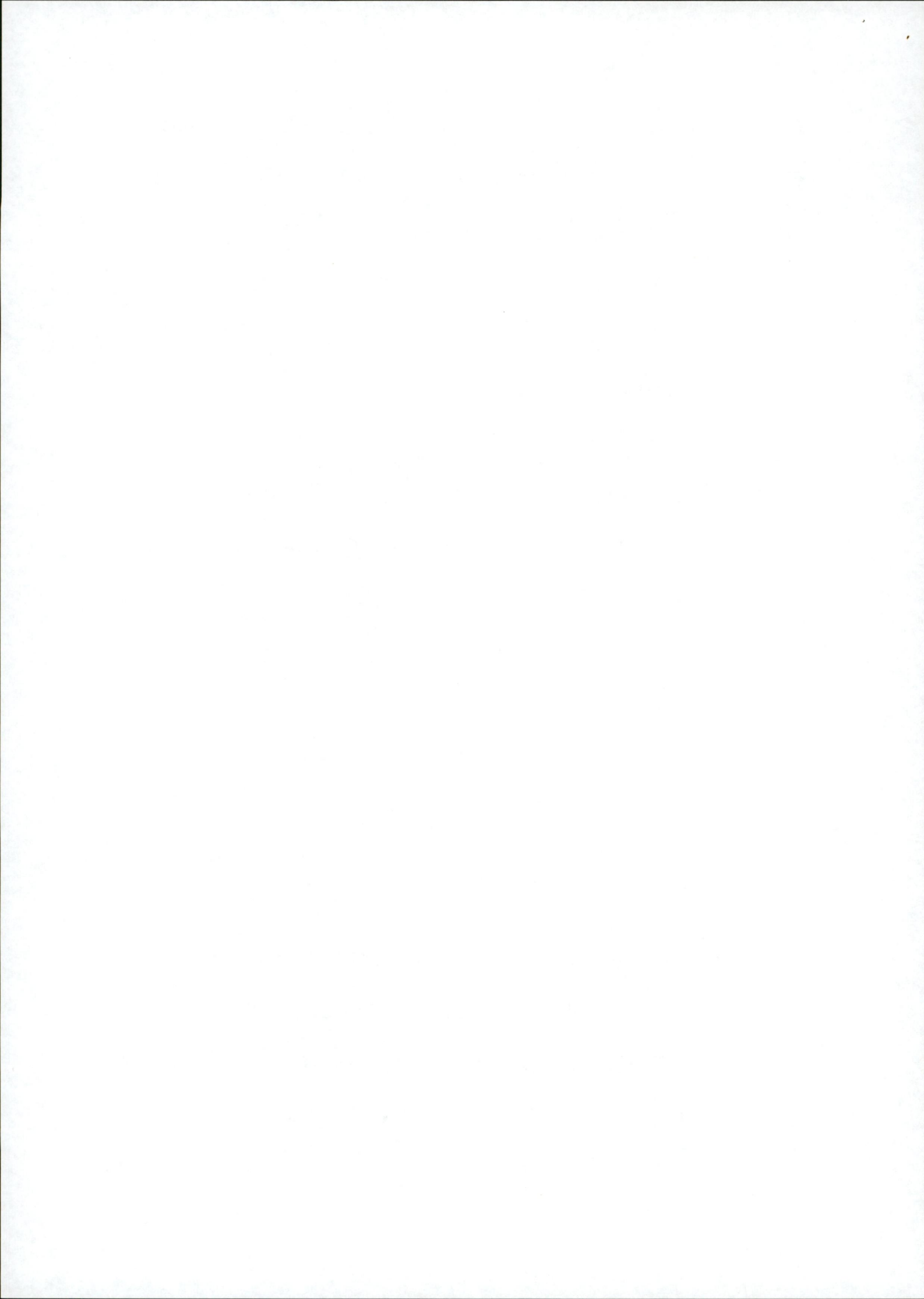


PURSUING LEGITIMATE INQUIRIES IN RELATION TO CHILD PROSTITUTION, DRUG POSSESSION OR SUPPLY, OR ANY OTHER SERIOUS CRIMINAL OFFENCE REASONABLY SUSPECTED OF BEING COMMITTED WITHIN A BROTHEL.

UNDER SCHEDULE 2 OF THE BILL:

THE CRIMES ACT 1900 IS AMENDED BY THE  
INSERTION OF SECTION 580C WHICH ABOLISHES THE  
COMMON LAW OFFENCE OF KEEPING A COMMON  
BAWDY HOUSE OR BROTHEL.

THE SUMMARY OFFENCES ACT 1988 IS AMENDED BY  
INSERTING SUBSECTIONS 15(3) AND (4) TO PROVIDE  
THAT A PERSON LIVING WHOLLY OR IN PART ON  
EARNINGS DERIVED FROM A BROTHEL, IF THE  
PERSON OWNS, MANAGES OR IS EMPLOYED IN THE  
BROTHEL, DOES NOT COMMIT THE OFFENCE OF  
LIVING OFF THE EARNINGS OF PROSTITUTION; AND  
THAT PREMISES MAY CONSTITUTE A BROTHEL EVEN





IF ONLY ONE PROSTITUTE USES THE PREMISES FOR THE PURPOSE OF PROSTITUTION.

IT IS ALSO AMENDED BY INSERTING SECTION 15A WHICH CREATES AN OFFENCE OF INDUCING A PERSON TO COMMIT AN ACT OF PROSTITUTION. THIS WOULD INCLUDE, FOR EXAMPLE, THE OFFERING OF HEROIN TO A HEROIN ADDICT SO THAT HE OR SHE ENGAGES IN AN ACT OF PROSTITUTION.

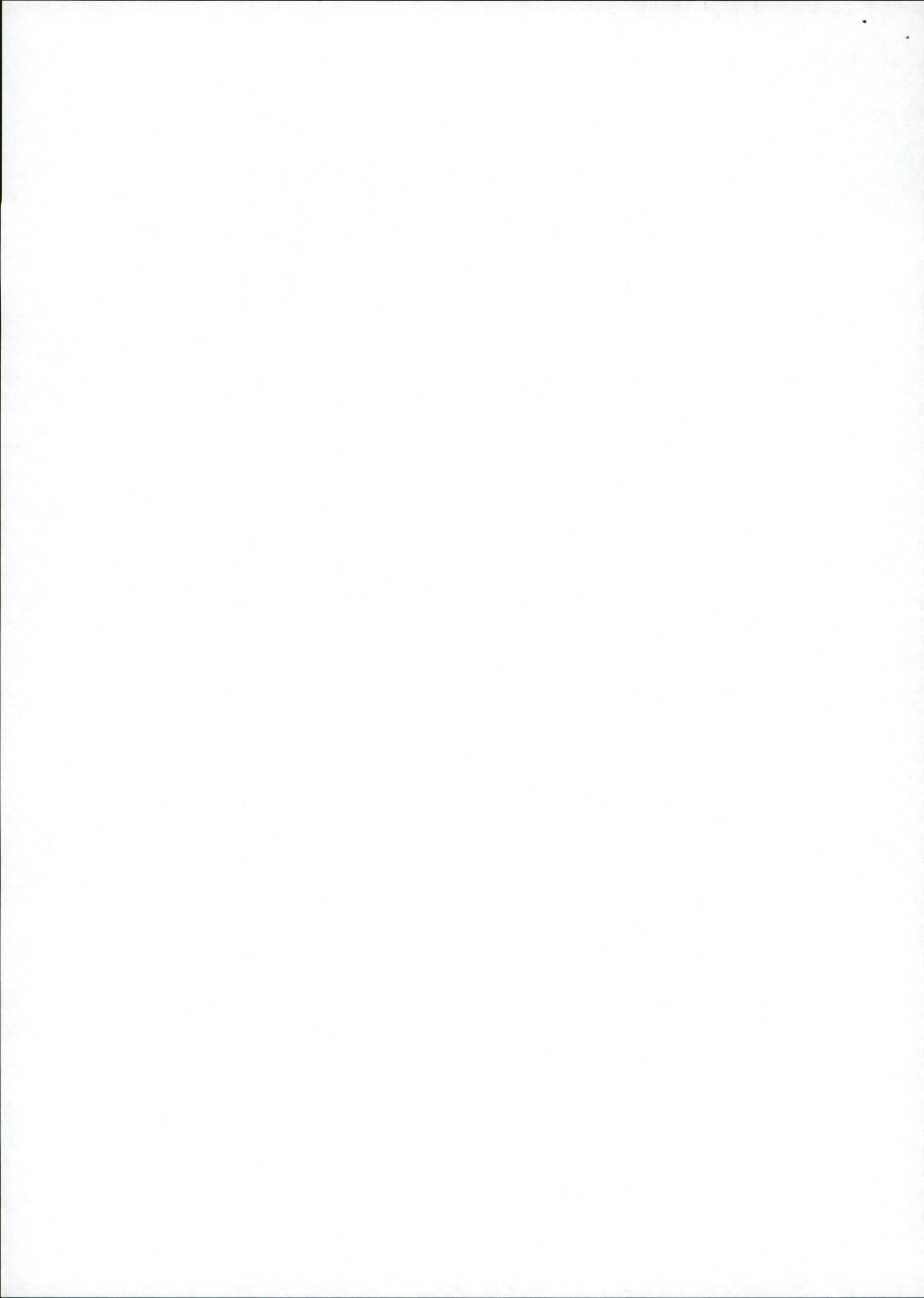
THIS PROVISION IS ALSO CAPABLE OF ENSURING THAT THE EXPLOITATION OF YOUNG WOMEN IN PARTICULAR DOES NOT RESULT FROM THE RECOGNITION OF BROTHELS AS LEGITIMATE COMMERCIAL ENTERPRISES. THE SECTION PROVIDES THAT A PERSON MUST NOT INDUCE ANOTHER PERSON TO COMMIT AN ACT OF PROSTITUTION *OR SURRENDER THE PROCEEDS OF PROSTITUTION*. THIS IS DISTINGUISHABLE FROM



LIVING OFF THE EARNINGS OF PROSTITUTION WHICH REQUIRES A CONTINUOUS ASSOCIATION WITH THE "INDUSTRY" AND HABITUAL RECEIPT OF MONEY FROM THE EARNINGS OF PROSTITUTION.

THE PROVISIONS RELATING TO CHILD PROSTITUTION IN THE CRIMES ACT 1900, ARE NOT AFFECTED.

THE LAND AND ENVIRONMENT COURT ACT 1979 IS AMENDED TO INCLUDE APPLICATIONS UNDER CLAUSE 17 OF THE DISORDERLY HOUSES ACT 1943 IN CLASS 4 OF THE JURISDICTION OF THE LAND AND ENVIRONMENT COURT, WHICH DEALS WITH ENVIRONMENTAL PLANNING PROTECTION AMONGST OTHER THINGS. THIS JURISDICTION IS ALSO USED FOR APPLICATIONS TO CLOSE BROTHELS WHICH ARE BASED ON PLANNING CONTROLS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.



THE GOVERNMENT CAN NOT LEGISLATE TO CONTROL THE MORAL VALUES OF THE COMMUNITY, AND PROSTITUTION PER SE IS NOT ILLEGAL. HOWEVER THE GOVERNMENT CAN AND SHOULD LEGISLATE TO REDUCE PUBLIC HEALTH RISKS TO BOTH THE PROSTITUTES AND THEIR CLIENTS AND TO PROTECT THE COMMUNITY, AND PARTICULARLY ITS YOUNG PEOPLE, FROM THE MORE UNDESIRABLE ASPECTS OF PROSTITUTION. THIS BILL DOES ALL THOSE THINGS, AND IN SO DOING HAS THE SUPPORT OF A WIDE CROSS SECTION OF THE COMMUNITY.

I WILL CLOSELY MONITOR THE EFFECTS OF THIS LEGISLATION AND WILL THEN REVIEW THE LAWS PERTAINING TO STREET PROSTITUTION AT AN APPROPRIATE TIME.

I COMMEND THIS BILL TO THE HOUSE.





New South Wales

# Disorderly Houses Amendment Act 1995 No 53

## Contents

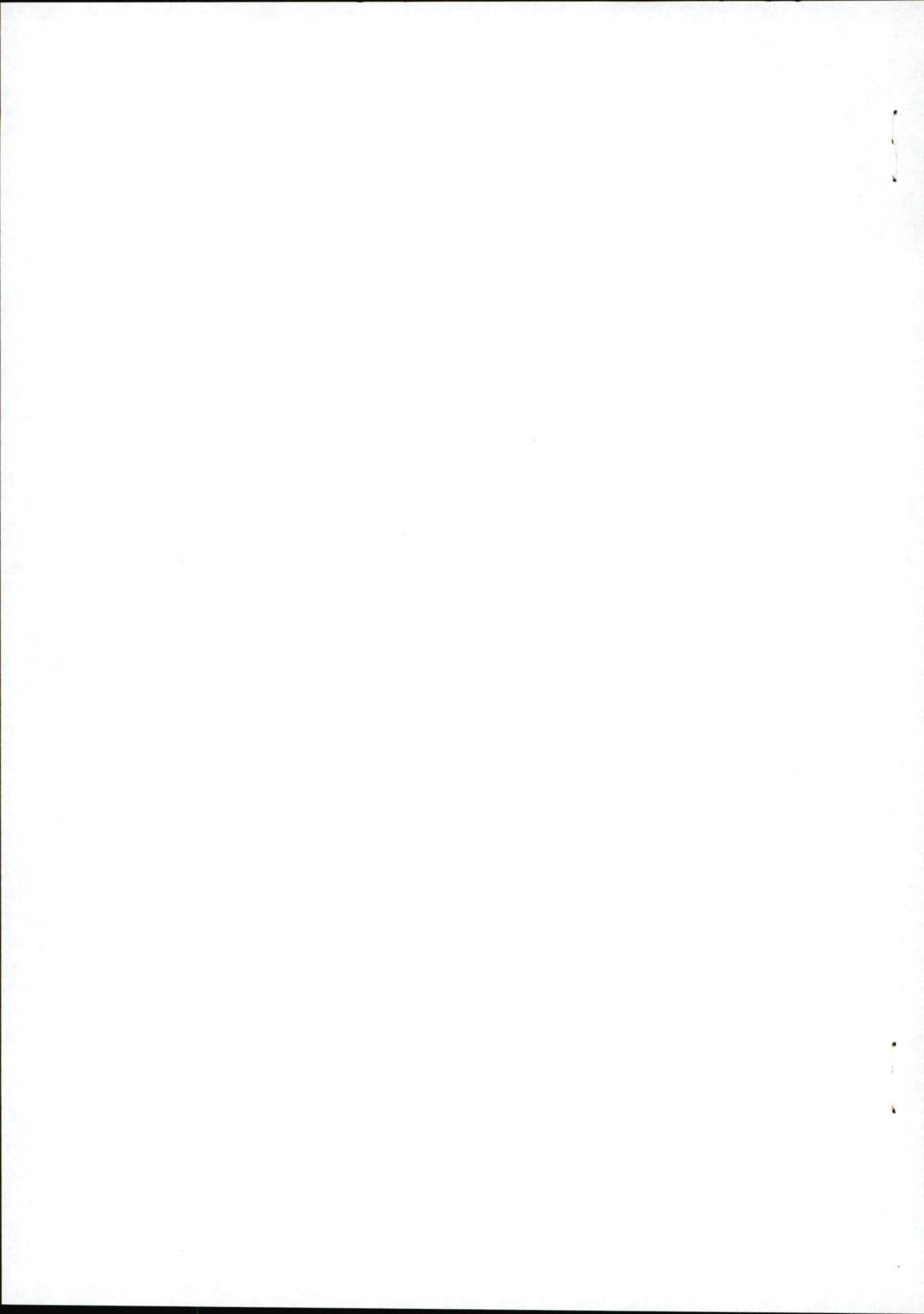
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New South Wales

# Disorderly Houses Amendment Act 1995 No 53

Act No 53, 1995

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An Act to amend the *Disorderly Houses Act 1943* with respect to prostitution and to amend certain other Acts for related purposes. [Assented to 22 November 1995]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Disorderly Houses Amendment Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Disorderly Houses Act 1943 No 6**

The *Disorderly Houses Act 1943* is amended as set out in Schedule 1.

**4 Related amendment of other Acts**

Each Act specified in Schedule 2 is amended as set out in that Schedule.

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## **Schedule 1    Amendment of Disorderly Houses Act 1943**

(Section 3)

**[1]    Part 1 heading**

Insert "**Part 1 Preliminary**" before section 1.

**[2]    Section 2 Definitions**

Insert in alphabetical order:

*area*, in relation to a local council, means the area of the council within the meaning of the *Local Government Act 1993*.

*brothel* means premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose. Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

*local council* means a council within the meaning of the *Local Government Act 1993*.

**[3]    Part 2 heading**

Insert "**Part 2 Disorderly houses**" before section 3.

**[4]    Section 3 Disorderly house—declaration by Supreme Court**

Omit section 3 (1) (e) and the word "or" where lastly occurring in section 3 (1) (d).

**[5] Section 14 Existing declarations and savings**

Insert after section 14 (2):

- (3) The Supreme Court is, on application by the owner or occupier of premises, to rescind a declaration under section 3 in respect of the premises (subject to such terms as the Court thinks fit) if:
  - (a) the declaration was made before the commencement of the *Disorderly Houses Amendment Act 1995*, and
  - (b) the Court is satisfied that the declaration could not be made now because of section 16.
- (4) An owner or occupier of premises who makes an application under subsection (3) must give notice in writing to a Superintendent or Inspector of Police of the intention to make the application at least 2 days before the hearing of the application.

**[6] Section 15 Rules of the Supreme Court**

Omit "Act" where secondly occurring in section 15 (1).  
Insert instead "Part".

**[7] Parts 3, 4**

Insert after section 15:

**Part 3 Brothels**

**16 Disorderly house declaration not to be made solely on grounds that premises are a brothel**

A declaration under section 3 may not be made in respect of premises solely because of either or both of the following:

- (a) the premises are a brothel,

- (b) a person having control of or managing, or taking part or assisting in the control or management of, the premises has been concerned in the control or management of other premises which have been declared to be a disorderly house under this Act solely because those other premises were a brothel.

**17 Application to Land and Environment Court for premises not to be used as a brothel**

- (1) The Land and Environment Court may, on application by a local council, make an order that an owner or occupier of premises that are a brothel and that are situated within the area of the council is not to use or allow the use of the premises for the purpose of a brothel.
- (2) The local council must not make an application in relation to a brothel unless it is satisfied that it has received sufficient complaints about the brothel to warrant the making of the application.
- (3) The complaints must have been made by:
  - (a) residents of the area in which the brothel is situated who live in the vicinity of the brothel, or
  - (b) residents of the area in which the brothel is situated who use, or whose children use, facilities in the vicinity of the brothel, or
  - (c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel.
- (4) The application must state the reasons why the local council is of the opinion that the operation of the brothel should cease based on one or more of the considerations referred to in subsection (5) (a), (b), (c), (d), (e) or (f).

- (5) In making an order under this section the Land and Environment Court is to take into consideration only the following:
- (a) whether the brothel is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities,
  - (b) whether the operation of the brothel causes a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood or other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise and vehicular and pedestrian traffic,
  - (c) whether sufficient off-street parking has been provided if appropriate in the circumstances,
  - (d) whether suitable access has been provided to the brothel,
  - (e) whether the operation of the brothel causes a disturbance in the neighbourhood because of its size and the number of people working in it,
  - (f) whether the operation of the brothel interferes with the amenity of the neighbourhood,
  - (g) any other matter that the Land and Environment Court considers is relevant.
- (6) This section extends to premises within an area that is not a local government area and in that case a reference to a local council is to be read as a reference to the prescribed authority for the area.
- (7) In this section, *church*, *hospital* and *school* have the same meanings as in the *Summary Offences Act 1988*.

## **18 Rules of the Land and Environment Court**

- (1) Rules may be made under the *Land and Environment Court Act 1979* for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Land and Environment Court Act 1979*.

## **Part 4 Miscellaneous**

### **19 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **20 Objects of Disorderly Houses Amendment Act 1995**

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.

## **Schedule 2 Related amendment of other Acts**

(Section 4)

### **2.1 Crimes Act 1900 No 40**

#### **Section 580C**

Insert after section 580B:

#### **580C Abolition of common law offences relating to brothels**

- (1) The common law offence of keeping a common bawdy house or brothel is abolished.
- (2) A person cannot be convicted after the commencement of this section of an offence referred to in subsection (1) whether committed before or after that commencement.
- (3) A person cannot be convicted after the commencement of this section of the common law offence of keeping a common, ill-governed and disorderly house, whether committed before or after that commencement, solely because:
  - (a) the relevant premises were used for the purposes of prostitution, or
  - (b) the person had control of or managed, or took part or assisted in the control or management of, premises used for the purposes of prostitution.



## **2.2 Land and Environment Court Act 1979 No 204**

### **Section 20 Class 4—environmental planning protection and development contract civil enforcement**

Insert after section 20 (1) (d):

- (da) applications under section 17 of the *Disorderly Houses Act 1943*,

## **2.3 Summary Offences Act 1988 No 25**

### **[1] Section 15 Living on earnings of prostitution**

Insert after section 15 (2):

- (3) A person does not contravene subsection (1) by living wholly or in part on earnings derived from a brothel if the person owns, manages or is employed in the brothel.
- (4) For the purposes of subsection (3), premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

### **[2] Section 15A**

Insert after section 15:

#### **15A Causing or inducing prostitution**

- (1) A person must not, by coercive conduct or undue influence, cause or induce another person to commit an act of prostitution.

- (2) A person must not, by coercive conduct or undue influence, cause or induce another person to surrender any proceeds of an act of prostitution.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**[3] Section 17 Allowing premises to be used for prostitution**

Omit "brothel or" from section 17 (2).

[Minister's second reading speech made in—  
Legislative Assembly on 20 September 1995  
Legislative Council on 19 October 1995]

BY AUTHORITY