

INQUIRY INTO THE REGULATION OF BROTHELS

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The Chair
Committee on the regulation of brothels
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Committee Manager,

Submission in response to the inquiry into the regulation of brothels

I refer to your recent invitation seeking public submissions regarding the inquiry into the regulation of brothels. Please find below a submission on behalf of Penrith City Council.

It is noted some of the areas the Committee Inquiry will consider are not relevant to local government. This submission focuses mainly on Penrith City Council's comments in relation to public health and development compliance.

(a) *The current extent and nature of the brothel industry in New South Wales;*

Attempting to determine how many brothels are operating in the local government area can be challenging, time consuming and expensive in the local government context. Trying to determine if a premises is indeed a 'sex premises' or brothel rather than a premises offering massage with no sex service can be difficult. Penrith City Council currently has 16 approved brothels, however it is unknown how many commercial brothels are operating illegally.

The main challenge when investigating businesses alleged to be operating as a brothel is gathering evidence to confirm their operations. Often complaints will be made against massage parlours and it is often very difficult to prove that services other than massages are being offered. In these situations it is often difficult to take further action due to a lack of evidence.

Another difficult challenge faced by Council Officers is compliance with the Building Code of Australia in terms of fire safety. In Penrith many of the brothels operate under existing use rights, and therefore fire safety upgrades and maintenance is not captured by conditions of consent. In these cases Notices and Orders under the *Environmental Planning and Assessment Act 1979* can be issued requiring the owners to carry out upgrade works to a building in order to ensure compliance.

(b) *Current regulation of brothels in New South Wales and other states;*

The comments in this submission only relate to the current regulation of brothels in New South Wales.

The regulation of brothels differs between councils in NSW depending on available resources. The policy direction of Councils will also largely determine if brothels are regulated proactively (regular routine inspection program) or reactively (complaint only basis inspections).

From a public health perspective the legislation is largely silent on regulation matters. Specifically, the *Public Health Act 2010* and the *Public Health Regulation 2012* do not have dedicated sections or clauses devoted to brothels like other public health issues, such as skin penetration, legionella control, private water supplies and public swimming pools and spas. As a result, brothels are often regulated through conditions of consent, relevant industry guidelines such as the publication by NSW WorkCover 'Health and Safety Guidelines for Brothels' and other NSW legislation under certain conditions (e.g. where the brothel is selling food or has a spa).

Penrith City Council generally inspects brothels if it receives public health complaints or to investigate fire safety, planning or approval concerns. If it was proposed local government take a greater role in the regulation of brothels, such as an expectation to routinely inspect, these decisions should not be made without adequately consulting Councils and giving proper consideration to capacity and resourcing, funding and cost recovery models, skill and knowledge requirements and in general if local government is best placed to regulate the brothels in their area.

The lack of legislative framework particularly around public health hampers the ability to regulate brothels. Getting proprietors to effect change can be challenging unless brothels have been approved with public health related conditions in a development consent. Environmental and public health requirements as well as safety requirements should be specifically listed, possibly as standards, in the Public Health Act and Regulation similar to those existing for skin penetration premises. Specific brothel standards could be formulated using guidelines such as the one from NSW WorkCover.

Unauthorised brothels can be regulated under the *Environmental Planning and Assessment Act 1979* in regards to the issuing of Notices, Orders and Penalty Notices which require the unauthorised use to cease.

As previously highlighted, this is also the case with non-compliances in relation to fire safety. Council can issue Notices and Orders that require an owner to carry out upgrade or maintenance works to a building in order to meet compliance.

- (c) ***Penalties and enforcement powers required to close illegal brothels;***
From a public health perspective the adoption of brothel specific legislation that allows the issue of a Prohibition Order similar to those under the *Food Act 2003* for food businesses and the *Public Health Act 2010* for skin penetration premises, swimming pools and spas would provide appropriate government agencies the ability to close a business where there was a significant public health risk.

As mentioned previously Councils have the power under the *Environmental Planning and Assessment Act 1979* to issue Notices, Orders and Penalty Notices for brothels that are found to be operating without development consent. This process has been made easier as sex service premises have been separately defined in Penrith's LEP. Depending on the zoning of a particular property, operators may be able to seek approval for their operations through the Development Application (DA) process.

(d) Options for reform including a scheme of registration or licencing system for authorised brothels;

If separate legislation was to be introduced focusing on brothels similar to the *Boarding House Act 2012* there may be an opportunity to require operators to register their business. If this is the case there could also be penalties attached for operators who do not register. Registered businesses could then be inspected by an appropriate government agency to ensure the appropriate public health and safety standards are being met.

(e) The protection of sex workers, including issues around organised crime and sex trafficking;

Council is concerned about the health and wellbeing of all workers within our community.

In relation to sex trafficking and organised crime it is considered more appropriate to defer to the expertise of relevant State or Federal Government agencies with a regulatory responsibility for these issues.

(f) Options to maintain the high level of public health outcomes;

From a single local government authority perspective it is unclear whether the current level of enforcement is proportionate to the risks involved in the sex industry in NSW.

It may be beneficial for local and state government to have a stronger network in relation to the regulation of brothels improving the sharing of information between regulators. It could easily take shape in the form of Sex Services Premises Working Groups in each Public Health Area. These groups could be convened on an ongoing basis to review and update further legislative frameworks and Guidelines and should be attended by stakeholders such as NSW Police and NSW WorkCover.

Another option could involve the development of a monitoring and compliance protocol between NSW regulators to clarify respective roles and responsibilities and to determine the appropriate frequency of inspections, what is to be inspected on the premises and for what reasons.

As indicated in sections above requirements could be specifically listed, possibly as standards, in the *Public Health Act* and *Regulation* similar to those existing for skin penetration premises. Specific brothel standards could be formulated using guidelines such as the one developed by NSW WorkCover. These standards could then be enforceable with the provision of legislative tools such as Improvement Notices, Prohibition Orders and Penalty Infringement Notices similar to the framework put in place for skin penetration premises and the like under the existing *Public Health Act 2010* and Regulations.

Information obtained by NSW Health of the rates of sexually transmitted disease by public health area could be used more efficiently to provide a basis for a targeted education campaign by Public Health Units in their Local Health District. Whilst it is acknowledged that not all sexually transmitted diseases are contracted in brothels, this may assist in the reduction of some transmission rates.

(g) Residential amenity and the location of sex services premises;

Under the Penrith LEP 'sex service premises' are separately defined and approval can be sought if the property is located with the applicable zone and meets the zoning objectives. These zones are Zone B3 Commercial Core and Zone B4 Mixed Use.

In general it is considered that sex service premises should not be permitted in any residential zones including mixed zonings which permit residential uses.

In Penrith most known brothels operate under existing use rights and are often located within close proximity to other brothels.

(h) Any legislative changes that may be required; and

Please see comments made previously in items (b), (f) and (i) in relation to legislative changes that may be required.

Legislative review should be considered (i.e. *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979*, *Public Health Act, 2010* and the Regulations) to:

- provide better financial disincentives and penalties for businesses found non-complying;
- allow the issue of Penalty Infringement Notices for minor offences observed during inspection to negate the need for formal court action;
- simplify the process of regulation where serious public health and safety concerns are identified;
- clarify the role of regulators;
- consider mechanisms for regulators to recover inspection, administration and compliance costs

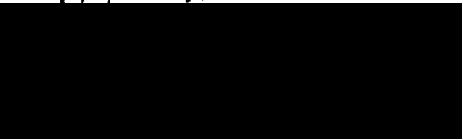
(i) Any other related matters.

As mentioned above, if it was proposed local government should have a greater role in the regulation of brothels then these decisions should not be made without adequately consulting Councils and giving proper consideration to capacity and resourcing issues, funding and cost recovery models, skills and knowledge requirements and evaluating the agencies best placed to regulate brothels.

A greater focus may also be needed on education programs and materials developed to promote consistent public health and safety messages across the State. This would apply to all stakeholders and in particular for brothel operators in relation to their legal responsibilities, operating standards and meeting social obligations.

For further information regarding this matter please contact Council's Health Team Leader Mr Michael Middleton on (02) 4700 7501

Yours faithfully,



Anthony Price
Environmental Health Coordinator