

INQUIRY INTO THE REGULATION OF BROTHELS

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TO:

Select Committee on the Regulation of Brothels
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Submission in response to the Legislative Assembly Select Committee on the Regulation of Brothels

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As a small unfunded organisation, Touching Base regrets we do not have the capacity to respond to all of the issues raised in the Select Committee’s Terms of Reference. We will therefore limit our focus in this submission to the issues identified above.

Introduction

Dear Chair,

The Touching Base Committee of Management would like to thank you for the opportunity to submit to the Select Committee on the Regulation of Brothels. We would welcome a further invitation to provide oral evidence and answer any questions this submission will raise for the committee during the public hearing stage of the inquiry.

Who we are

Touching Base was established in 2000, with the goal of assisting people with disability and sex workers to connect with each other. The work of Touching Base focuses on areas such as access, discrimination, human rights, legal issues and the attitudinal barriers that these two marginalised communities can face.

The Touching Base Committee of Management is led by sex workers and people with disability and is supported by organisations including People with Disability Australia Inc, Cerebral Palsy Alliance formally The Spastic Centre of NSW) and Family Planning NSW.

Touching Base is also an Associate Member of Scarlet Alliance – the Australian Sex Workers' Association and we take this moment to formally endorse their submission to your inquiry.

We seek an evidence-based approach that reflects best practice

Speaking broadly, Touching Base supports evidence-based sex industry planning approaches that:

- (a) enable the rights of sex workers to safely engage in their work in a range of scales and types of sex industry premises and
- (b) enable the rights of people with disability, including the right to gain access, in a safe and dignified manner befitting the individual's level of ability, to the range of various scales and types of sex industry premises that occur within any given Local Government Area (LGA), without experiencing discrimination or systemic barriers.

Guiding Principles of sex industry regulation

We refer you to the guiding principles within the *Sex Services Premises Planning Guidelines 2004* (SSPP Guidelines)¹. Even though some parts of the SSPP Guidelines need updating to reflect changes since 2004, they still remain the most comprehensive resource available when considering planning provisions for sex services in NSW. The guiding principles are still as important and relevant today as they were in 2004, as follows:

Before reading the following guiding principles it is important to note that in the SSPP Guidelines (2004) the definition of 'sex services premises' at that time covered all scales and types of premises where sex work occurs – from the largest commercial enterprises to the smallest home-based activities. In 2007 the *Standard Instrument—Principal Local Environmental Plan* was enacted, which re-defined 'sex services premises' to exclude sex worker home occupations.

- *appropriate planning for sex services premises can provide councils with greater control over their location, design and operation*
- *planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients*
- *sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions*
- *planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impact of each premises*
- *reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council, the local community and health service providers*
- *provision and consideration of sound information enables appropriate policy and decision-making processes, and*
- *engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of sex services premises and recognise that they are a legitimate land use to be regulated through the NSW planning system.*

Maintaining a focus on these guiding principles can assist all parties, including councils, the sex industry and the local community, by providing clarity and consistency of regulation, minimising amenity impacts and ensuring the health and safety of workers and clients.

¹ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 3
http://www.scarletalliance.org.au/library/ssppg_04/view

Enabling equitable access for people with disability to Sex Services Premises (SSP)

“The prohibition of premises at street level can tend to create a physical barrier for people with a disability”²

Councils have not provided any rationale to explain, nor evidence to justify, why commercial SSP are not permitted to have ground floor locations in their local government area.

The Touching Base Committee would recommend that commercial SPP be permitted at ground level locations within all Commercial and Mixed Use zones to enable access for people with temporary or permanent disability and/or mobility impairments, where possible.

All levels of government are required to enable improved access to all built structures to facilitate equal access for people with disability in our society. The access rights of people with disability should not be sacrificed due to moralistic objections which should not have any weight in planning decisions.

Further, the Land and Environment court has confirmed that morality is not a planning consideration³.

RECOMMENDATION:

In order to address the need for premises to provide access for people with disability, including mobility impairments, Touching Base recommends that the Department of Planning encourage all NSW councils to allow SSPs to operate in commercial or mixed used zones within their LGA, with provisions such as ground floor access to suitable facilities for clients with disability.

² Marrickville Development & Environmental Services Committee Meeting 5 March, 2002 - DRAFT DCP 37 pg 178

³ Liu, Lonza and Beauty Holdings Pty Limited v Fairfield City Council (1996)

Prohibiting commercial sex services premises from commercial and Mixed Use zones

Councils have not provided any rationale to explain, nor evidence to justify, why they prohibit SSP from commercial and mixed use zoned areas. Prior to the Standard Instrument LEP being introduced in 2007, many councils permitted this use in Business zones equal to other commercial premises. This is because up until that time, councils had chosen not to separately define SSP in their LEPs. To our knowledge there is no evidence available to suggest such a prohibition is necessary in any LGA, therefore we regard this prohibition as *unnecessarily restrictive*.

In fact in 2002 Marrickville planners at the time noted that “...*the [SSP] use itself is not incompatible with a business zoning and Councils have been encouraged by the State Government to properly regulate brothel uses by enabling them to locate in appropriate areas.*”⁴

The SSPP Guidelines note that “...*the practice of permitting commercial sex services premises in industrial areas raises safety and accessibility issues as these areas are often isolated, singular in purpose and devoid of activity after hours.*”⁵

Due to the inherently unsafe and isolated environment of industrial zones and the lack of public transport etc, it is unfounded for Councils to force clients with disability to only be able to access sex services within industrial zones.

RECOMMENDATION:

In order to accommodate the planning principle of equity, in the absence of evidence of negative amenity impacts of SPP in non-industrial zones, Touching Base recommends that the Department of Planning encourage all NSW councils to allow SSPs to operate in commercial or mixed used zones within their LGA.

⁴ Marrickville Development & Environmental Services Committee Meeting 5 March, 2002 - DRAFT DCP 37, 5.4

⁵ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p.29

Prohibiting home occupation (sex services)

In spite of the decriminalisation reforms of 1995, recent research⁶ (July 2015) conducted by the University of Technology, Sydney for Touching Base Inc shows that 20 years later sex workers are now often unable to work in a safe and legal environment. This is obviously due to the imposition of overly restrictive planning regulations by the majority of councils.

The current approved Local Environmental Plans (LEPs) of 40 Sydney metropolitan councils were reviewed and analysed to discover the impact of local planning regulations on the permissibility of sex work. A Fact Sheet outlining findings from stage 1 of this research is attached as **Appendix A**.

This up-to-date research showed that the most common approach provided by these councils was to completely prohibit private Home Occupation (Sex Services) - HO(SS), while only allowing commercial Sex Services Premises SSP with consent in a small number of specified zones.

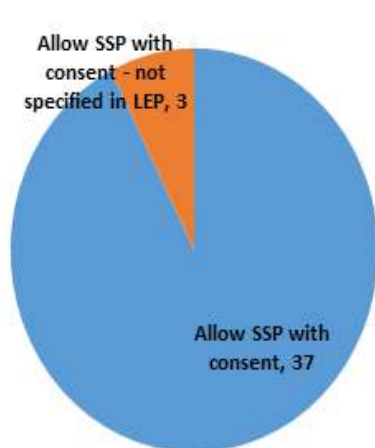


Figure 1: Council zoning regulations for commercial Sex Services Premises

While 40 of 40 councils allow commercial Sex Services Premises with consent in at least one zone (Figure 1) only 8 of 40 councils allow private sex workers with consent in at least one zone. Only one council allows Home Occupation (Sex Services) to operate without consent as an exempt development, which is the same as all other types of home occupations (Figure 2).

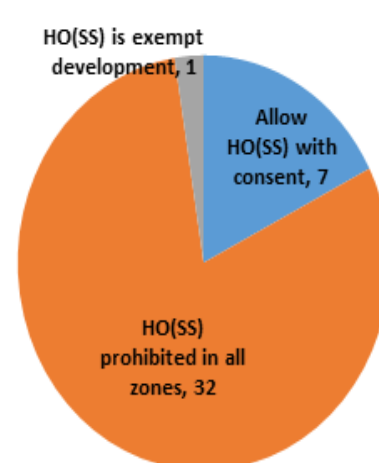


Figure 2: Council zoning regulations for Home Occupation (Sex Services) (HO(SS))

Failure to consult or consider consequences

Not one Council has provided any rationale to explain, nor evidence to justify, why they have prohibited private sex workers from conducting their lawful business from their natural location in residential zones. In fact, we have identified that some councils, when adapting their prior LEP to reflect the Standard Instrument LEP template, did not have a consultation process. This identifies the fact that these councils were changing their policies from permitting HO(SS) as exempt developments, to prohibiting them without evidence or rationale.

⁶ See Appendix A – The Subversion of Progressive Intent – Sydney metropolitan local councils' unworkable sex industry regulations

██████ – a case study in unilateral decision making

Under the ██████ LEP 2003, the LEP was 'silent' in regards to sex services. Therefore all sex workers working from home were previously regulated equally to other home occupations and were permitted as exempt developments in all applicable zones. In addition, the previous definition of home occupation in the LEP 2003 also permitted up to two non-residents to operate on the premises.

However the new LEP 2010 adopted the discriminatory definitions in the Standard LEP Instrument. These definitions separately define home occupations and home occupations (sex services) HO(SS). In the ██████ LEP 2010 HO(SS) are now prohibited in all zones. Commercial Sex Services Premises are only permitted in General Industrial zone.

A ██████ council planning officer informed on the October 16 2009⁷, that changes to the LEP were made as a result of 'directions' from the NSW Planning Department - however they also asked for a call on another day when the chief planning would be available.

This officer also said they had never had enquiries about sex services premises during their work with Council. We noted that, at least since 2003, sex worker home occupations had been permitted as exempt developments, so there had been no need for sex workers working from home to seek consent from Council. This was the case regardless of whether a sex worker worked by themselves from home, with any number of other permanent residents, and/or with up to 2 other non-residents.

Further discussion with the Chief Planning Officer at ██████ Council on 22nd October 2009 revealed the following points:

- a) to his knowledge his department has never received any complaint about home based sex workers in the ██████ LGA;
- b) there was no investigation into the likely impacts of the change of provisions affecting home based sex workers;
- c) the planner faced "*100s of definitions to choose from*" in the Standard LEP Instrument and said there was "*no great process*" of decision making when choosing which definitions to use for home based businesses and how to zone their permissibility - "*it was just a thought...not a conscious decision*";
- d) the change in provisions for home based sex workers was not brought to the Councillors attention, and the planner said councillors were probably unaware of the previous LEP permissibility for sex workers with up to 2 non-residents as exempt development;

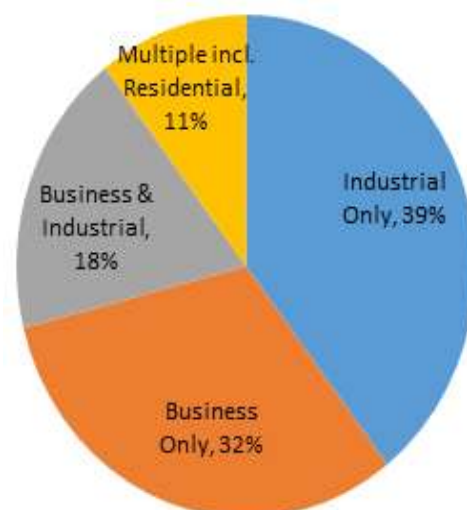
⁷ Phone call to ██████ council on October 16 2009

e) he said he knows this subject "*can be a bit sensitive when brought up*" so he "*avoided making special resolutions*" about the sex industry provisions in the LEP documentation councillors received so that the DRAFT LEP approval process would be "*less contentious*";

f) he confirmed for Touching Base that "*the Department had approved the current DRAFT LEP 2009 prior to public exhibition*"; and finally;

g) requested "*a submission of concerns*".

Where councils do permit Sex Services Premises or Home Occupation (Sex Services) Premises, they are often only permitted within industrial zones which can pose a greater safety risk to both sex workers and their clients. Industrial zones are particularly unsuitable for home occupations of any type because residential use is clearly incompatible with industrial zones.



The SSPP Guidelines note that:

The larger scale of industrial premises is unsuited to small sex worker businesses and is inconsistent with their clients' needs for a discreet encounter in a residential setting. When added to the inherent advantages of undertaking a small-scale operation from home..., it is unlikely that private workers would establish in industrial areas in compliance with council controls.

Information from the sex industry and local councils suggests that most home-based sex services premises operate illegally [sic: unlawfully] until they are moved on, and then set up elsewhere. So prohibition does not deter private workers, although they live in fear of being closed down or subjected to stand-over tactics in the same way they were subjected to police corruption before the 1995 reforms. In addition, the relocation process can frustrate the achievement of health and safety objectives, as ties with key health service providers can be severed. Blanket prohibition of home-based sex work is not in the spirit of the 1995 reforms.⁸

⁸ Sex Services Premises Planning Guidelines (2004), NSW Department of Planning, p. 30

RECOMMENDATION:

Remove the discriminatory different definitions and treatment between home-based sex work and other home-based enterprises by amending the Codes SEPP, the definitions in the Standard Instrument LEP, and clauses in the EP&A Act and the Restricted Premises Act

See Appendix B for detailed schedule of the changes required

This will formalise the current practice of regulating the entire home-based workforce under a complaints based system, without unnecessarily discriminating against private sex workers. It is well recognised that this sector of the industry have not attracted complaints based on amenity impacts.

Requiring a DA from home based sex workers

Under no circumstances is it safe or reasonable to require independent sex workers working from residential areas to submit to the Development Application (DA) process. In fact the SSPP Guidelines note that there are no known advantages in requiring a DA from private sex workers, only disadvantages, as follows:

- *sex workers are unlikely to comply with it, as a DA or Complying Development Certificate reveals sex workers' addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises. As a result, home occupations would continue to exist illegally within council areas, which is to be discouraged as it keeps them 'underground' and isolated from sex worker peer support and health services;*
- *it is inequitable as there is no evidence that home-based sex work has any more impact than other home occupations e.g. an architect working from home, accountant, tax agent, photographer etc;*
- *the low, or negligible, impact does not warrant a DA, which involves considerable cost and time and raises the possibility of neighbour objections; and*
- *it drives home occupations underground with most of them operating unauthorized. This then provides opportunities for corruption, which the Disorderly Houses Amendment Act 1995 specifically sought to redress.*

The Report of the Brothels Taskforce (2001) stated (p.12):

"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 Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001."

Advice from the Sex Workers Outreach Project and the Private Worker Alliance as discussed in the report to the Marrickville Council Development and Environmental Services Committee Meeting 02/02, 5 March 2002, is that for instance, situations have been reported where men claiming to be council officers demand free sexual services or financial benefits in return for not disclosing unauthorised home occupations.⁹

One of the primary intentions of the decriminalisation of sex work in 1995 was to eliminate the systemic corruption of the industry by the NSW Police¹⁰. Trying to enforce a prohibition of home-based sex work within local councils is

⁹ *Sex Services Premises Planning Guidelines* (2004), NSW Department of Planning, p. 54

¹⁰ As discussed in the *Wood Royal Commission*

unreasonable and unjustifiable and it would unnecessarily increase the potential for corruption to re-emerge.

Private sex workers are more likely to have attended the Touching Base Professional Disability Awareness Training workshop than workers in commercial SSP. Many clients with disability prefer to access the services of home-based sex workers. Touching Base believes local councils should not be in the business of enacting discrimination against sex workers, nor creating systemic barriers for adults with disability wanting to engage in consensual sexual acts in private.

To our knowledge there has been no Development Applications submitted by private sex workers since the Standard Instrument LEP has been introduced. Feedback from our members and other networks indicate that, due to privacy and safety concerns, no private worker in NSW has any intention of submitting to such a dangerous process.

RECOMMENDATION:

Remove the discriminatory different definitions that currently allow councils to require a DA from HO(SS) by amending the Codes SEPP, the definitions in the Standard Instrument LEP, and clauses in the EP&A Act and the Restricted Premises Act

See Appendix B for detailed schedule of the changes required

Other locational restrictions between commercial SPP

Councils have not provided any rationale to explain, nor evidence to justify, why they extend unreasonable separation distances for commercial SSP. We concur with the SSPP Guidelines which note that:

*“Despite gaining popularity in recent years, anti-clustering controls are not appropriate or necessary as a generic control for all councils. Few areas have a high concentration of sex industry premises and many councils receive few, if any, DAs for commercial sex services premises. **It is inappropriate to apply an anti-clustering provision unless genuine impacts emerge from the clustering of commercial sex services premises.** [Our bold] Furthermore, implementing these provisions concerns health agencies, which have observed its impact on the sex industry.”¹¹*

Some councils, like North Sydney, now have implemented a large separation distances of up to 500m, without justification.

RECOMMENDATION:

In light of the absence of evidence of negative amenity impacts of SPP in Business or Mixed Use Zones, we strongly recommend that councils delete all anti-clustering controls in their LEPs and Development Control Plans, as they are clearly unnecessary.

¹¹ Sex Services Premises Planning Guidelines (2004), NSW Department of Planning, p. 37

No to the ‘Swedish Model’

As an organisation that assist clients with disability to access sex workers, Touching Base does not support the ‘Swedish Model’.

While the ‘Swedish Model’ is a general term referring to the criminalizing of clients of sex workers, other laws introduced also restrict how sex workers can operate in Sweden. While providing sexual services is legal, **every element** of the sex worker’s business activities has become illegal. This places the sex worker in a complete social and economic void.

The ‘Swedish model’ is inappropriate within the Australian context where sex work is already a legally recognised occupation. The Prostitution Licencing Authority (Qld) has also formally recognised this via their publication [*The Ban On Purchasing Sex In Sweden: The So-Called ‘Swedish Model’*](#)¹²

It is important to note how the ‘Swedish model’ laws negatively affect sex workers. These include:

1. Sex workers’ may be evicted if their landlord becomes aware of their occupation
2. Sex workers who work from a shared rented premises can be charged with ‘exploiting each other’s sexual labour’.
3. Hotels can refuse to rent a room to a ‘suspected’ sex worker.
4. Unlike any other occupation, sex workers cannot advertise in print media or online websites within Sweden – having to solely rely on websites hosted in other countries.
5. Sex workers who live with family members, friends or in other shared accommodation can run the risk of having everyone around them charged.
6. Known sex workers have been monitored and put under surveillance by the police so that their clients can be charged and arrested after they visit their home.
7. Sex workers are not able to openly talk about and clearly negotiate the services they offer (and don’t offer) and clients are not comfortable to openly discussing their needs, out of fear of being monitored by the police

The ‘Swedish Model’ is an extraordinary waste of tax-payers’ money. It would work directly against the intentions of the 1995 NSW reforms of decriminalisation to

¹²

<http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf>

reduce corruption and increase the health and safety of sex workers, their clients and therefore the general population.

Under decriminalisation sex workers, clients with disability and all third parties helping to facilitate an appointment are able to openly and explicitly discuss all aspects of a sex worker appointment. This is important for sex workers and their clients to give informed consent as well as making sure access and other specific requirements are met in a dignified and respectful manner.

The 'Swedish Model' would make this impossible and criminalise and further stigmatise an already marginalised community, as well as criminalising their support staff, carers, parents and siblings who are sometimes needed to facilitate their appointments with sex workers.

Touching Base recognises the importance of both sex workers and their clients with disability to have their voices heard. This has enabled sex workers and people with disability to come together and collaborate the development of education and training for both sex workers and disability support staff and to facilitate better pathways of communication between all parties. This has led to developments such as the production of the Touching Base Inc [*Policy and Procedural Guide for disability service providers supporting clients to access sex workers*](#) (2011), which has been purchased by over 100 disability organisations across Australia to date.¹³

Due to decriminalisation both groups have also felt more comfortable in speaking out publically without fear of persecution or arrest. These are just a few recent examples which assist to inform the general population about their lived experiences:

- [*Scarlet Road*](#) (documentary, 2011)¹⁴
- [*'I have cerebral palsy and I enjoy having sex'*](#) (SBS online)¹⁵ &
- [*'This is Fleur, she's a sex worker'*](#).¹⁶

RECOMMENDATION:

Touching Base rejects the 'Swedish Model'. This is consistent with the policies of The United Nations Population Fund, United Nations Development Fund, Amnesty International, UNAIDS, all of which support the decriminalisation of sex work over licencing, the 'Swedish Model' or any other form of regulation.

¹³ <http://www.touchingbase.org/resources/policy-and-procedural-guide>

¹⁴ www.scarletroad.com.au

¹⁵ <http://www.sbs.com.au/news/article/2014/07/30/i-have-cerebral-palsy-and-i-enjoy-having-sex>

¹⁶ <http://www.touchingbase.org/wp-content//2015/06/CosmopolitanArticleMay2015.pdf>

No to Licensing

Touching Base does not support any regulatory reforms that would include licensing for SSP or individual sex workers.

Licensing creates a two-tiered system with no advantages over decriminalisation. Research has shown mandatory testing is an expensive and unnecessary requirement. In Victoria it clogs up the public health care system by forcing sex workers to undertake forced testing.¹⁷

Police Corruption:

It has been proven that police are inappropriate regulators of the sex industry and that where police are regulators, corruption increases. Decriminalisation was introduced in NSW as a direct result of systemic police corruption¹⁸. Licensing models necessarily reintroduce police as regulators of the sex industry. Touching Base is opposed to taking an enforcement-based approach to the regulation of the sex industry.

This is consistent with the position of NSW Police, as stated in 2011 by D.W. Hudson, Assistant Commission Commander at NSW State Crime Command:

*"What is clear, is that the issue of imposing a licensing regime on the sex industry in NSW has been the subject of numerous Task Forces, Working Groups and Interagency meetings, particularly since the decriminalisation of the sex industry in 1995. The licensing of the sex industry has and remains a sensitive area. It is envisaged that any regime to introduce such a policy would be best viewed from a health perspective. The NSW Police would be an affected party should legislative amendments be made in this area, and it is expected that NSW Police would be involved in any future discussions regarding amendments to the legislation"*¹⁹

Under Licensing, Sex Workers Do Not Report Crimes/Mistrust of Police

Sex workers working under licensing models are reluctant to report crimes against them to police, for fear of arrest, discrimination or not being taken seriously²⁰. This also leaves them vulnerable to exploitation by criminals who target sex workers,

¹⁷ E. Jeffreys, J. Fawkes and Z. Stardust, "Mandatory Testing for HIV and, Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention," *World Journal of AIDS* Vol. 2 No. 3, 2012, pp. 203-211.

¹⁸ For an extensive review of this see the *Wood Royal Commission*
<https://www.pic.nsw.gov.au/RoyalCommission.aspx>

¹⁹ The full letter from Assistant Commission Commander Hudson to Saul Isbister is provided as **Appendix C** dated 26 August 211

²⁰ <https://theconversation.com/victorian-rape-law-needs-reform-to-protect-sex-workers-39460>

knowing they are less likely to report crimes to police²¹. Further, there have been instances where people have posed as council representatives or police officers in order to extort sexual services from sex workers²². Sex workers in these areas also face standover tactics and blackmail if they are currently working outside of the prescriptive licensing frameworks.

Negative Public Health Outcomes:

The definitive word on the negative impact of licensing on public health comes from The Kirby Institute's 2012 [Report to the NSW Ministry of Health](https://kirby.unsw.edu.au/projects/sex-industry-new-south-wales-report-nsw-ministry-health), which states that licensing is a “**threat to public health**”²³

Victorian Model

Adopting a Victorian licencing model would create an enormous dislocation of the way services are currently provided in NSW. Creating additional limitations on the locational operations of private sex workers would add further barriers for people with disability wishing to access their services. NSW allows many options for clients which do not involve additional costs such as hiring a hotel room for a day when it may only be required for an hour's appointment. For some clients their personal circumstances do not allow for sex workers to be able to visit them in their supported accommodation or private homes (many adults with disability still reside with their parents).

RECOMMENDATION:

Touching Base recommends that the Select Committee rejects any proposal of introducing a licencing system for the NSW sex industry.

²¹ <http://www.dailylife.com.au/news-and-views/dl-opinion/how-did-we-let-adrian-bayley-happen-20130613-2o67f.html>

²² <http://www.theage.com.au/victoria/city-of-melbourne-by-laws-officer-posed-as-policeman-for-sexual-favours-court-told-20141121-11rlnm.html>

²³ <https://kirby.unsw.edu.au/projects/sex-industry-new-south-wales-report-nsw-ministry-health> (p7)

Cease using private investigators for direct evidence.

Touching Base believes that the practice of utilising rate-payers' money to hire private investigators to gather evidence is morally corrupt, when they are having sex with sex workers under false circumstances. We understand that this may leave local councils liable to be sued for shock and damages by a deceived worker if they are not provided an opportunity to provide 'informed consent'.

In 2007 Parliamentarians viewed the use of private investigators to gather direct evidence to be an abhorrent practice; which mirrored the views of the public then, and now. To eliminate the use of private investigators having sex with sex workers the government introduced 'advertising' as another category of permitted circumstantial evidence.

The shortest path to eliminating the need for private investigators is for councils to create policies that enable SSP to operate in their natural environment alongside other commercial uses.

In this current political environment where politicians and councils are being scrutinized for mismanagement and unnecessary spending, local councils should be supported to embrace easy-to-implement ways to reduce red tape and avoid costly enforcement actions.

RECOMMENDATION:

That local councils are required to cease the resourcing of private investigators paid to engage in sex with sex workers.

Reform options to achieve social health and planning benefits

Rather than seeking to adopt an entirely new system of regulation, it is obvious that decriminalisation in NSW needs to be further supported and strengthened in order to meet the original intentions of the 1995 reforms. NSW governments of the last 20 years should be congratulated on their bipartisan support of decriminalisation in order to maintain high levels of health & safety of sex workers, their clients and the general population as well as focusing on eliminating corruption within the police force.

These benefits have been globally recognised and as such, NSW has a continuing international role to play in ensuring that the intentions of decriminalisation are reflected within the policies of local councils. It is important to ensure that the successes to date are not eroded due to unsubstantiated concerns and fears being elevated above evidence-based policy development.

The way forward can be easily implemented through a number of simple adjustments to how the current laws and regulations are worded and applied.

The first step is to clearly separate the regulation of home-based sex workers with that of commercial SSP and regulate them equally to other home-based enterprises. This will eliminate the considerable confusion that currently exists around definitions and appropriate levels of regulation. The simplest way to do this is to change definitions in laws and regulations - outlined clearly and succinctly in **Appendix B**.²⁴

It is a massive waste of tax-payers money for councils to be pursuing enforcement action against SSP who have not caused any amenity impact. When introducing decriminalisation, both sides of the House conceded that it was important that councils were not given the power to close down “well run brothels”:

“I want to emphasise the fact that this legislation is not about legalising brothels but about decriminalising brothels. There is a very big difference between decriminalising and legalising. The purpose of the bill is to ensure that brothels that do not disturb the peace or the local community are no longer subject to police interference. ... I want to briefly refer to the role of local government in respect of this issue. It has been suggested to me by one local councillor in my electorate that local government will be given the responsibility of approving brothels with the result that councils would be subject to a lot of criticism from the community if they dared to consider an application for a brothel. Nothing could be further from the truth. There is no provision whatsoever in the bill to allow local government to determine an application for a brothel. I repeat, the main objective of the bill is to enable authorities to turn a blind eye to those premises that are operating as brothels but do not offend against the Act as it currently stands. In

²⁴ Appendix B: Schedule of detailed amendments for laws and State-wide regulations

other words, it will allow brothels to operate if the community is not disturbed by them²⁵.

Therefore, consistent with the intentions of the reforms of 1995 the second step would be to create a directive to local councils to cease taking enforcement actions under the EP&A Act until the following steps have been undertaken:

1. The production and endorsement of updated SSP Planning Guidelines for all local councils
2. The production of community resources to assist councils, the sex industry and the public in understanding the rationale of planning policies – in a range of community languages.
3. The development and facilitation of training and advisory opportunities to inform councils and the sex industry of the application of the updated SSP Planning Guidelines

Sex workers must continue to be recognised as key stakeholders and experts within their field and therefore play an integral role at all levels of consultation, development and implementation of the steps above.

RECOMMENDATION:

Clearly separate the regulation of home-based sex workers with that of commercial SSP and regulate them equally to other home-based enterprises. Create a directive to local councils to cease taking enforcement actions under the EP&A Act. In conjunction with sex workers update the SSP Planning Guidelines & create resources and training to ensure their successful implementation.

CONCLUSION

The changes we recommend to the laws and regulations do not leave the home based sector unregulated. Instead, they will continue to be regulated under the same complaints based system as any other home based enterprise.

The moratorium on enforcement actions under the EP & A Act in no way interferes with the capacity of councils to take action utilising the Restricted Premises Act against commercial sex services premises under a complaints based system.

Touching Base would welcome the opportunity to clarify and expand upon any aspects of our submission during the oral hearing stage of the inquiry.

²⁵ [NSW Hansard, Legislative Assembly Disorderly Houses Amendment Bill, Second Reading Speeches](#), Mr Moss, 18/10/1995

Summary of Recommendations

RECOMMENDATION 1

In order to address the need for premises to provide access for people with disability, including mobility impairments, Touching Base recommends that the Department of Planning encourage all NSW councils to allow SSPs to operate in commercial or mixed used zones within their LGA, with provisions such as ground floor access to suitable facilities for clients with disability.

RECOMMENDATION 2

In order to accommodate the planning principle of equity, in the absence of evidence of negative amenity impacts of SPP in non-industrial zones, Touching Base recommends that the Department of Planning encourage all NSW councils to allow SSPs to operate in commercial or mixed used zones within their LGA.

RECOMMENDATION 3

Remove the discriminatory different definitions and treatment between home-based sex work and other home-based enterprises by amending the Codes SEPP, the definitions in the Standard Instrument LEP, and clauses in the EP&A Act and the Restricted Premises Act

See Appendix B for detailed schedule of the changes required

RECOMMENDATION 4

Remove the discriminatory different definitions that currently allow councils to require a DA from HO(SS) by amending the Codes SEPP, the definitions in the Standard Instrument LEP, and clauses in the EP&A Act and the Restricted Premises Act

See Appendix B for detailed schedule of the changes required

RECOMMENDATION 5

In light of the absence of evidence of negative amenity impacts of SPP in Business or Mixed Use Zones, we strongly recommend that councils delete all anti-clustering controls in their LEPs and Development Control Plans, as they are clearly unnecessary.

RECOMMENDATION 6

Touching Base rejects the 'Swedish Model'. This is consistent with the policies of The United Nations Population Fund, United Nations Development Fund, Amnesty International, UNAIDS, all of which support the decriminalisation of sex work over licencing, the 'Swedish Model' or any other form of regulation.

RECOMMENDATION 7

Touching Base recommends that the Select Committee rejects any proposal of introducing a licencing in NSW.

RECOMMENDATION 8

That local councils are required to cease the resourcing of private investigators paid to engage in sex with sex workers.

RECOMMENDATION 9

Clearly separate the regulation of home-based sex workers with that of commercial SSP and regulate them equally to other home-based enterprises.

RECOMMENDATION 10

Create a directive to local councils to cease taking enforcement actions under the EP&A Act until the following steps have been undertaken:

- a) The production and endorsement of updated SSP Planning Guidelines for all local councils
- b) The production of community resources to assist councils, the sex industry and the public in understanding the rationale of planning policies – in a range of community languages.
- c) The development and facilitation of training and advisory opportunities to inform councils and the sex industry of the application of the updated SSP Planning Guidelines

List of Appendices: PDF files

A: The Subversion of Progressive Intent – Sydney metropolitan local councils' unworkable sex industry regulations (Fact Sheet)

File Name: Touching_Base_A_Subversion_of_Progressive_Intent_2015

B: Schedule of detailed amendments for laws and State-wide regulations

File Name: Touching_Base_B_Detailed_Legislative_Amendments

C: Letter from NSW Police Assistant Commission Commander Hudson to Saul Isbister

File Name: Touching_Base_C_NSWPoliceCommand_Aug2011

The Subversion of Progressive Intent: Sydney metropolitan local councils' unworkable sex industry regulations



This year, 2015, marks 20 years since sex work was decriminalised in New South Wales as a result of police corruption uncovered by the Wood Royal Commission.

The sex industry is decriminalised in NSW, however, this Fact Sheet – based on recent research conducted by the University of Technology, Sydney for Touching Base Inc – will show how sex workers are still often unable to work in a safe and environment that complies with local council regulations. Touching Base believes this is mainly due to overly restrictive planning regulations by the majority of councils.

The current approved Local Environmental Plans (LEPs) of 40 Sydney metropolitan councils were reviewed and analysed to discover the impact of local planning regulations on the permissibility of sex work.

This research showed that the most common approach provided by these councils was to completely prohibit private Home Occupation (Sex Services) - **HO(SS)**, while only allowing commercial Sex Services Premises **SSP** with consent in a small number of specified zones.

Touching Base seeks evidence-based planning that reflects best practice that:

- ✓ enable the rights of sex workers to safely engage in their work in a range of scales and types of sex industry premises and
- ✓ enable the rights of people with disability, including the right to gain access, in a safe and dignified manner befitting the individual's level of ability, to the range of various scales and types of sex industry premises that occur within any given Local Government Area (LGA).

- ✗ **8 Sydney metropolitan councils only allow sex worker home occupations with a Development Application (DA)**
- ✗ **32 metro councils prohibit sex worker home occupations entirely**
- ✓ **City of Sydney is the only metro council to allow sex worker home occupations as an exempt development**
- ✗ **15 metro councils allow commercial sex services premises or sex worker home occupations in Industrial zones only**
- ✗ **30 metro councils have additional clauses which further restrict the possible locations of commercial sex services premises**

Touching Base believes local councils should not be in the business of enacting discrimination against sex workers, nor creating systemic barriers for adults with disability wanting to engage in consensual sexual acts in private.

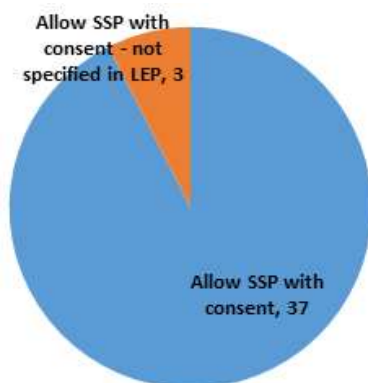


Figure 2: Council zoning regulations for commercial Sex Services Premises (SSP)

While 40 of 40 councils allow commercial Sex Services Premises with consent in at least one zone (Figure 1) only 8 of 40 councils allow private sex workers with consent in at least one zone. Only one council allows Home Occupation (Sex Services) to operate without consent as an exempt development, which is the same as all other types of home occupations (Figure 2).

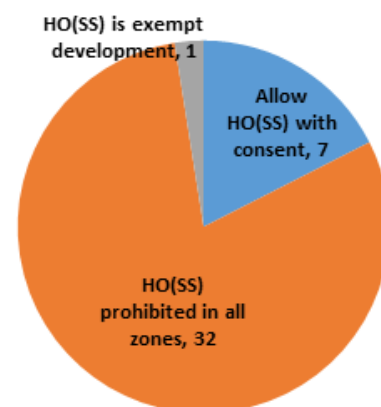


Figure 1: Council zoning regulations for Home Occupation (Sex Services) (HO(SS))

Where councils do permit Sex Services Premises or Home Occupation (Sex Services) Premises, they are often only permitted within industrial zones which can pose a greater safety risk to both sex workers and their clients. Industrial zones are particularly unsuitable for home occupations of any type because residential use is clearly incompatible with industrial zones.

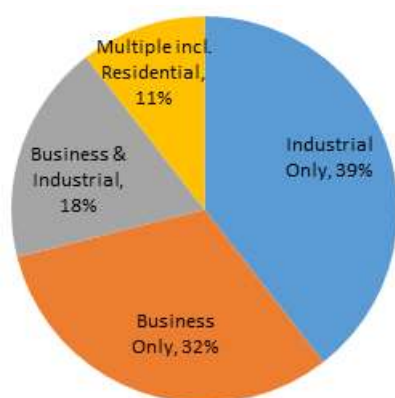


Figure 3: Zones in which sex work is permissible with/without consent

Very few councils permitted sex work in residential zones, with Home Occupation (Sex Services) being permitted in residential zones by only 4 councils as illustrated in Figure 3. All other home occupations are exempt developments under a state-wide planning regulation.

These results highlight that within metropolitan councils, sex work is regulated in a way that makes it incredibly difficult for sex workers to operate within the regulations, leading to higher numbers of unauthorised premises.

Councils which require a DAs for sex worker home occupations put them in danger

Under no circumstances is it safe or reasonable to require independent sex workers working from residential areas to submit to the Development Application (DA) process. In fact the Sex Services Premises Planning Guidelines (2004) note that there are no known advantages in requiring a DA from private sex workers. These guidelines highlight there are only *disadvantages*, as follows:

- × *sex workers are unlikely to comply with it, as a DA or Complying Development Certificate reveals sex workers' addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises. As a result, home occupations would continue to exist without a DA within council areas. This is a result of stigma and discrimination against sex workers, and keeps sex workers 'underground' and isolated from sex worker peer support and health services;*
- × *it is inequitable as there is no evidence that home-based sex work has any more impact than other home occupations e.g. an architect working from home, accountant, tax agent, photographer etc;*
- × *the low, or negligible, impact does not warrant a DA, which involves considerable cost and time and raises the possibility of neighbour objections or violence towards sex workers; and*
- × *it drives home occupations underground with most of them operating unauthorised. This then provides opportunities for corruption, which the Disorderly Houses Amendment Act 1995 specifically sought to redress.*

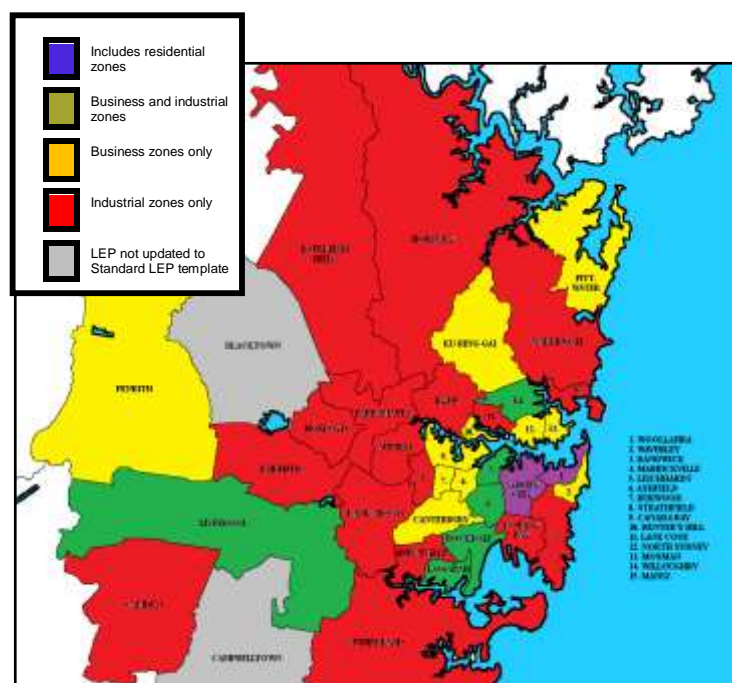


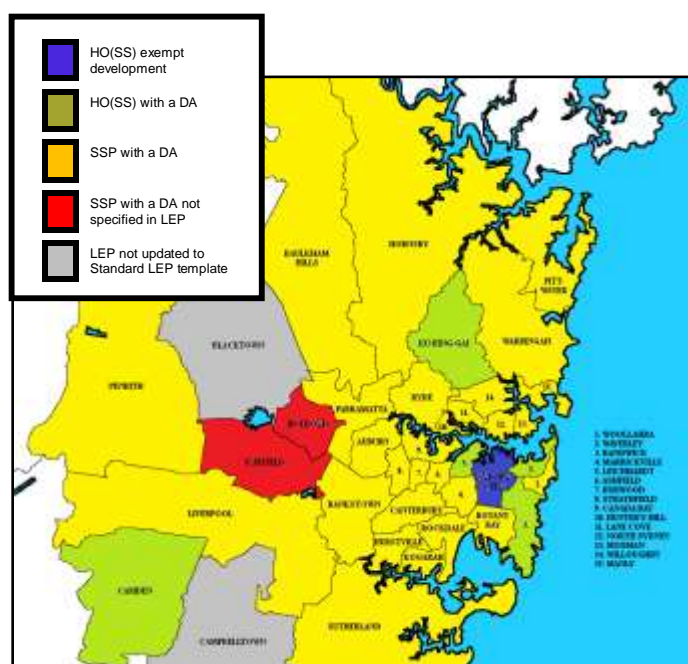
Figure 4 highlights the dire situation across Sydney councils in terms of where the sex industry can operate.

The carpet of red in Figure 4 emphasises the wide-spread practice by a majority of Sydney metropolitan councils to try to force sex workers to only work in highly unsuitable Industrial zones. This has safety implications for sex workers and their clients with disability. In practice this is a devious way of effecting a total prohibition of home-based sex work in those council areas.

Figure 4: Types of zones where sex work is permissible

As can be seen in Figures 4 and 5, the City of Sydney has the most permissive policy. By making Home Occupation (Sex Services) premises an exempt development, the City of Sydney is the only metropolitan council that complies with the Sex Services Premises Planning Guidelines guiding principles for effective policy development.

Figure 5: Permissibility of sex work



The Next Stage

In the next stage of this Touching Base research project with UTS we hope to gather important information about:

- the number and nature of any complaints received about commercial SSP and home-based sex workers by these councils, and
- whether or not the council found it necessary to undertake any enforcement actions.

ACKNOWLEDGEMENTS: This research project was conducted under the guidance of UTS Shopfront for Touching Base, with particular thanks to students Cailin Anning & Yolanda Thomas; UTS Shopfront supervisor Claire Pettigrew; consultants Eva Cox & Peter Woods (Touching Base Patrons); and Touching Base supervisor Saul Isbister.

Recommended Legislative Amendments to:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Standard Instrument—Principal Local Environmental Plan
- Environmental Planning and Assessment Act 1979 No 203, and
- Restricted Premises Act 1943 No 6

<u>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</u>	
Subdivision 22 Home businesses, home industries and home occupations	
Current clauses	Recommended clauses
<p>2.43 Specified development</p> <p>A home business, a home industry or a home occupation that does not involve the manufacture of food products or skin penetration procedures is development specified for this code.</p> <p>2.44 Development standards</p> <p>The standards specified for this development are that the development must:</p> <p>(a) not involve a change of building use, and</p> <p>(b) if the development is on land to which a local environmental plan made under section 33A of the Act applies, comply with the applicable standards specified under clause 5.4 (2) and (3) of that plan.</p> <p>Note 1. The elements that must comprise this development are specified in the definition of home business, home industry or home occupation the Standard Instrument.</p> <p>Note 2. Under the <i>Building Code of Australia</i>, a change of building use involving a floor area greater than 10% of the floor area of a building would cause the building to contravene the development standard.</p>	<p>No change required</p> <p>No change required</p>

Standard Instrument—Principal Local Environmental Plan

Dictionary

Current clauses	Recommended clauses
<p><i>brothel</i> has the same meaning as in the Act.</p> <p>Note. This definition is relevant to the definitions of <i>home occupation</i> (sex services) and <i>sex services premises</i> in this Dictionary.</p>	<p><i>brothel</i> has the same meaning as in the Act.</p> <p>Note. This definition is relevant to the definition of <i>sex services premises</i> in this Dictionary.</p>
<p><i>home business</i> means a business that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:</p> <p>(a) the employment of more than 2 persons other than those residents, or</p> <p>(b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or</p> <p>(c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or</p> <p>(d) the exhibition of any signage (other than a business identification sign), or</p> <p>(e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,</p> <p>but does not include bed and breakfast accommodation, <i>home occupation</i> (sex services) or sex services premises.</p> <p>Note. See clause 5.4 for controls relating to the floor area used for a home business.</p>	<p><i>home business</i> means a business that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:</p> <p>(a) the employment of more than 2 persons other than those residents, or</p> <p>(b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or</p> <p>(c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or</p> <p>(d) the exhibition of any signage (other than a business identification sign), or</p> <p>(e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,</p> <p>but does not include bed and breakfast accommodation or sex services premises.</p> <p>Note. See clause 5.4 for controls relating to the floor area used for a home business.</p>

home industry means a dwelling (or a building ancillary to a dwelling) used by one or more permanent residents of the dwelling to carry out an industrial activity that does not involve any of the following:

- (a) the employment of more than 2 persons other than those residents,
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter,
- (d) the exhibition of any signage (other than a business identification sign),
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,

but does not include bed and breakfast accommodation or sex services premises.

Note. See clause 5.4 for controls relating to the floor area used for a home industry.

Home industries are a type of **light industry**—see the definition of that term in this Dictionary.

No change required

<p>home occupation means an occupation that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:</p> <ul style="list-style-type: none"> (a) the employment of persons other than those residents, or (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or (c) the display of goods, whether in a window or otherwise, or (d) the exhibition of any signage (other than a business identification sign), or (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, <p>but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.</p>	<p>home occupation means an occupation that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:</p> <ul style="list-style-type: none"> (a) the employment of persons other than those residents, or (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or (c) the display of goods, whether in a window or otherwise, or (d) the exhibition of any signage (other than a business identification sign), or (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, <p>but does not include bed and breakfast accommodation or sex services premises.</p>
<p>home occupation (sex services) means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:</p> <ul style="list-style-type: none"> (a) the employment of persons other than those residents, or (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or (c) the exhibition of any signage, or (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, <p>but does not include a home business or sex services premises.</p>	<p>Delete entire definition of home occupation (sex services)</p>
<p>sex services premises means a brothel, but does not include home occupation (sex services).</p>	<p>sex services premises means a brothel.</p>

Environmental Planning and Assessment Act 1979 No 203

4 Definitions

Current clauses	Recommended clauses
<i>brothel</i> means a brothel within the meaning of the Restricted Premises Act 1943 , other than premises used or likely to be used for the purposes of prostitution by no more than one prostitute.	<i>brothel</i> means a brothel within the meaning of the Restricted Premises Act 1943
<ul style="list-style-type: none">• 121ZR Special provisions relating to brothel closure orders - No change recommended at this time	
<ul style="list-style-type: none">• 121ZS Enforcement of orders by cessation of utilities - No change recommended at this time	
124AB Proceedings relating to use of premises as brothel - No change recommended at this time	

Restricted Premises Act 1943 No 6

2 Definitions

Current clauses	Recommended clauses
<p><i>brothel</i> means premises:</p> <p>(a) habitually used for the purposes of prostitution, or</p> <p>(b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or</p> <p>(c) that have been expressly or implicitly:</p> <p>(i) advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means), or</p> <p>(ii) represented,</p> <p>as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.</p> <p>Premises may constitute a brothel though used by only one prostitute for the purposes of prostitution.</p>	<p><i>brothel</i> means premises:</p> <p>(a) habitually used for the purposes of prostitution, or</p> <p>(b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or</p> <p>(c) that have been expressly or implicitly:</p> <p>(i) advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means), or</p> <p>(ii) represented,</p> <p>as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.</p> <p>Premises other than a <i>home occupation</i>, <i>home business</i> or <i>home industry</i>, as defined in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, may constitute a brothel.</p>

Part 2 Disorderly houses

Part 3 Brothels: 16 Disorderly house declaration not to be made solely on grounds that premises are a brothel

- No change recommended at this time

17 Application to Land and Environment Court for premises not to be used as brothel	
Current clauses	Recommended clauses
<p>(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.</p> <p>(1A) An order under subsection (1) may also provide that the owner or occupier of the premises is not to use or allow the use of the premises for specified related sex uses.</p> <p>(1B) The Land and Environment Court may, if it makes an order under subsection (1), also make an order suspending or varying the operation, for a period not exceeding 6 months, of any development consent relating to the use of the premises for the purpose of a brothel or the use of the premises for specified related sex uses.</p> <p>(1C) An order under subsection (1B) has effect despite any provision of the Environmental Planning and Assessment Act 1979 or any instrument made under that Act.</p> <p>(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.</p> <p>(2A) For the purposes of subsection (2), one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used for the purposes of prostitution by 2 or more prostitutes.</p> <p>(3) The complaint or complaints must have been made by:</p> <p>(a) residents of the area in which the brothel is situated who live in the vicinity of the brothel, or</p> <p>(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</p>	<p>(2) The local council must not make an application in relation to a brothel unless it is satisfied that it has received sufficient substantiated complaints about the brothel to warrant the making of the application.</p> <p>Delete entire clause (2A)</p>

<p>(c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel, or</p> <p>(d) persons who work in the vicinity of the brothel or persons who regularly use, or whose children regularly use, facilities in the vicinity of the brothel.</p> <p>(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).</p> <p>(5) In making an order under subsection (1) the Land and Environment Court is to take into consideration only the following:</p> <p>(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,</p> <p>(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,</p> <p>(c) whether sufficient off-street parking has been provided if appropriate in the circumstances,</p> <p>(d) whether suitable access has been provided to the brothel,</p> <p>(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,</p> <p>(f) whether the operation of the brothel interferes with the amenity of the neighbourhood,</p> <p>(g) any other matter that the Land and Environment Court considers is relevant.</p> <p>(5A) In making an order under subsection (1B), the Land and Environment Court is to take into consideration only the following:</p>	
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(a) the likelihood that the premises will continue to be used for a brothel or will be used for related sex uses (whether or not by a person who is subject to the order under subsection (1)),

(b) having regard to the kinds of matters considered before granting the order under subsection (1), the effect on the amenity of the neighbourhood of any such use or uses,

(c) the permitted uses for the land on which the premises are situated under any applicable environmental planning instruments or approval under the [Environmental Planning and Assessment Act 1979](#),

(d) 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:

(a) in relation to Lord Howe Island—as a reference to the Lord Howe Island Board, and

(b) in relation to such part of the land in the Western Division of the State as is not in a local government area—as a reference to the Western Lands Commissioner, and

(c) in relation to any other area that is not a local government area—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](#).

development consent has the same meaning as it has in Division 2A of Part 6 of the [Environmental Planning and Assessment Act 1979](#).

local council includes a person or body that:

<p>(a) exercises planning or regulatory functions in respect of the area in which premises are situated, and</p> <p>(b) is authorised by the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> to exercise the functions of a local council under this section.</p>	
<p>17A Evidence of use of premises as brothel - No change recommended at this time</p>	

