

## **INQUIRY INTO THE REGULATION OF BROTHELS**

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The Chair  
Committee on the Regulation of Brothels

Email: [ROBIquiry@parliament.nsw.gov.au](mailto:ROBIquiry@parliament.nsw.gov.au)

Dear Sir/Madam

**Re: Regulation of brothels in New South Wales - Randwick City Council  
Submission**

Thank you for the opportunity to comment on the inquiry into the regulation of brothels in New South Wales.

Historically the legalisation of brothels in NSW commenced with the passing of the *Disorderly Houses Amendment Act 1995*, which legalised brothels and living off the earnings of a prostitute.<sup>1</sup>

The *Disorderly Houses Amendment Act* also amended the *NSW Crimes Act 1900* to abolish the common law offence of keeping a brothel and related common law offences. With the passage of the legislation, a brothel then became a commercial business requiring local council approval under the *Environmental Planning and Assessment Act 1979*.<sup>1</sup>

This Act also provided a mechanism for local councils to apply to the Land and Environment Court to close a brothel.<sup>1</sup>

The problems of identifying and closing illegal brothels, the lack of industry regulation, and the role of the Land and Environment Court in approving brothels when they have been refused by local councils have all been identified as areas of concern.

**The Role of Local Councils**

Currently the role of local government, in respect to the location and use of premises as brothels, is both as the consent authority (for the *development* of land) and the regulatory authority as conferred by the *Environmental Planning and Assessment Act 1979*.

Under these provisions, councils can regulate brothels, from a land use perspective, through Local Environmental Plans (LEPs) and Development Control Plans (DCPs), made in accordance with the *Environmental Planning and Assessment Act 1979*.

Through local planning controls councils can limit brothels from being located in inappropriate areas (e.g. in residential zones, near schools, places of worship and locations frequented by children). Local controls can also specify the 'development standards' by which development applications for brothels are assessed against.

<sup>1</sup> NSW Parliamentary library research service, *The Regulation of Prostitution a Review of Recent Development*, Stewart Smith, Briefing Paper No 21/99, November 1999.

In addition, the State Government requires that Local Environmental Plans in NSW provide for brothels (defined as sex services premises) somewhere in the Local Government Area and the selected land use zone/s are required to reflect how Council will adequately provide for this use.

Consistent with this direction, the Randwick Local Environmental Plan 2012 (RLEP) controls the location of sex services premises in Randwick City through zoning and dedicated controls.

Under the RLEP, sex services premises are currently only permitted in the IN2 Light Industrial Zone and a number of B2 commercial Zones. In addition, clause 6.15 of the RLEP – Location of Sex Services Premises provides greater guidance on the location of sex services premises to minimise land use conflicts in relation to sensitive land uses and to address amenity impacts.

In considering a development application for sex services premises, Council's planning controls requires consideration to be given to the proximity of the proposed location in relation to residential zones and public open space. Council is to also consider the impact of the proposed development and its hours of operation on places that may be frequented by children.

Council's Development Control Plan 2013 (DCP) provides additional guidance for sex services premises to ensure proposals are well located, designed and managed to avoid adverse impacts on the surrounding area and also maintain high levels of amenity (both internal and external).

Section D14 of the DCP contains a number of controls to address matters such as privacy and noise, as well as health and safety. It also requires that proposals be supplemented with a management plan setting out clear procedures and responsibilities for the ongoing operation and oversight of the premises.

### **The Public Health Act 2010 and Public Health Regulation 2012**

The responsibilities of local government relating to environmental health under Section 4 of the *Public Health Act 2010* states:

*A local government authority has, in relation to its area, the responsibility to take appropriate measures to ensure compliance with the requirements of this Act in relation to public swimming pools and spa pools, regulated systems and premises on which skin penetration procedures are carried out. However, there are no provisions for brothels (and other sex industry premises) to be regulated, licenced or controlled under the Public Health Act and Regulation.*

Businesses that carry out skin penetration activities e.g. tattoo parlours & beauty salons are regulated under the Public Health Act and can be inspected by NSW Health or Council officers.

However, the definition of skin penetration under Section 5 of the *Public Health Act 2010* precludes brothels (and other sex industry premises). Brothel establishments are not regulated under the Public Health Act and have no legal obligation to allow Council or NSW Health to inspect these premises. The Public Health Act should be amended to include the regulation of brothels and other premises providing sex services and allow for these premises to be subject to regular inspections undertaken by NSW Health and Council.

### **Approved Brothels**

Within the City of Randwick there are two approved brothels which are situated in one of the City's busiest commercial precincts. It is important to note that these premises,



over many years of operation have not generated community concern or given rise to any disturbances which have resulted in complaints to Council. In the absence of any regulatory regime that requires Council to inspect these premises the inference that is drawn is that these two brothels operate discreetly and would appear to be well managed.

### **Illegal brothels**

Local councils face problems with identifying and closing illegal brothels and also, the lack of industry regulation.

Local councils expend significant amounts of rate payer money (in some cases tens of thousands of dollars in investigative and legal costs) and resources identifying and closing illegal brothels. Essentially, councils rely on the enforcement provisions contained in Part 6 of the *Environmental Planning and Assessment Act 1979*, to address the unauthorised use of premises for the purpose of a brothel.

In 2007 and in an attempt to bolster the enforcement capability of councils in respect to unauthorised brothels the then NSW Parliament enacted the *Brothel Legislation Amendment Bill 2007*. This legislation, amongst other things, introduced Brothel Closure Orders and Utility Orders into the enforcement provisions of the *Environmental and Planning and Assessment Act 1979*.

Nevertheless, these provisions have done little to improve the closure of unlawful brothels. Randwick City Council understands that since the introduction of these provisions no Utilities Orders have been issued.

Should this be correct this only illustrates how cumbersome, not to mention how expensive it is, for a council to address the unlawful use of premises for the purpose of prostitution through the existing civil enforcement provisions of the *Environmental Planning and Assessment Act 1979*.

A further concern about the current brothel regulatory environment is that controls are not extensive enough. There are no controls to ensure that those applying to operate a brothel are a fit and proper person. Empirically, there is a history that the sex trade potentially may have links to other criminal activity.

Until there is put in place a regulatory regime that allows for a cost and time effective regime to 'close down' illegal brothels local government will be unable to address this issue. While it may be the case that a council is the appropriate consent authority in respect to the administration of the approvals process for brothels, councils alone, may not be the appropriate regulatory authority for the sex industry.

An option could be that consideration be given to a concurrent approval and licensing regime similar to that which applies to the liquor industry. This could operate with the local council having jurisdiction under the *Environmental Planning and Assessment Act 1979*, as it presently does, with a parallel licensing system administered by an applicable State authority with NSW Police having the enforcement jurisdiction.

### ***The roles of the State (NSW Health and WorkCover NSW)***

The State guidelines 'Health and Safety Guidelines for Brothels (2001) describe the roles of NSW Health and Work Cover NSW with regard to public health and workplace health and safety issues.

NSW Health has primary responsibility for dealing with compliance related to public health and for monitoring health standards as set out in the guidelines.

WorkCover NSW is responsible for the promotion of health and safety and prevention of work place injury and illness in the sex industry. The State guidelines and best industry practice, includes detailed health standards and operational requirements for each type of premises.

However, the Health and Safety Guidelines for Brothels (2001) are voluntary guidelines. In the interest of public health and safety compliance the guidelines should be a legislative requirement of the Public Health Act with NSW Health being the appropriate regulatory authority due to the specialised nature of health issues that are particular to the sex industry.

Should a change in legislation be proposed, consideration should also be given to establishing a State-wide licensing regime with a NSW government agency responsible for the overall regulation of brothels in NSW.

We again thank the Parliament of New South Wales for providing Randwick City Council with the opportunity to comment on the inquiry into the regulation of brothels in New South Wales.

Should you wish to discuss this submission in greater detail, please do not hesitate to contact Janice Dennany, Acting Coordinator Environmental Health, at [REDACTED] or on [REDACTED], during business hours Monday to Friday.

Yours faithfully

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