

**Submission
No 39**

INQUIRY INTO THE REGULATION OF BROTHELS

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17 August 2015

Select Committee on the Regulation of Brothels
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Sir,

HOLROYD CITY COUNCIL RESPONSE – INQUIRY INTO THE REGULATION OF BROTHELS

Thank you for the opportunity to provide comments and feedback to the Inquiry into the Regulation of Brothels in New South Wales.

Please find attached Council's comments in relation to the questions posed in the Discussion Paper.

Yours faithfully,

Greg Raft

Director Environmental & Planning Services Department

a place for everyone



Attachment

Response to the Select Committee Review of the Regulation of Brothels in NSW

Introduction

The NSW State Government has commissioned an inquiry into the regulation of brothels in New South Wales.

The Select Committee (known as the Select Committee on the Regulation of brothels) has been formed to examine and report on the following Terms of Reference:

- Appropriate local and state government regulatory and compliance functions for brothels;
- The demarcation in local and state government roles and responsibilities; and,
- Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.

As a part of the consultative process, Council has been asked to respond to a list of questions as outlined below. Council's submission presents additional information for consideration by the Select Committee relating to the regulation of Brothels.

Council's Response

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

Holroyd City Council currently has three legal brothels operating under development consent. Anecdotal evidence suggests that up some lawfully approved therapeutic massage parlours, that are operating in the area, are alleged to offer and engage in illegal sex services.

Council's conditions of development consent strictly forbid the offering of sex services from such massage parlours and Council has issued, over time, numerous infringement notices and Brothel Closure Orders under s121ZR of the *Environmental Lanning and Assessment Act (NSW) 1979*, on the operators of such premises.

Whilst each Local Council has an identical charter under the *Local Government Act 1993*, wording and inclusion of specific development consent conditions, with regard to brothels/massage parlours, may differ between each council.

It could reasonably be argued that "massage parlours" providing illegal sex services are far more prevalent than authorised brothels. Obtaining the necessary evidence to close such premises is both time consuming and problematic for Council Officers not specialised in such tasks.

Furthermore, a recent Land & Environment Court decision in relation to proving a massage parlour constitutes a brothel reinforces this problem.

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

The current regulation of brothels and other sex premises in NSW is found in:-

- *Restricted Premises Act 1943*
- *Environmental Planning and Assessment Act (NSW) 1979*
- *Crimes Act 1900 (sex offences)*

The Restricted Premises Act provides definitions as to what constitutes a brothel and related sex uses with the Crimes Act defining sexual intercourse. These definitions assist Local Council's in formulating conditions of development consent controlling the use of these premises.

Enforcement of condition of development consent pertaining to legal brothels as well as the power to close illegal brothels is primarily achieved through Council issuing s121 Orders under the *Environmental Planning and Assessment Act*.

A study of the Queensland model to control sex premises with the formation of the "Prostitution Licencing Authority" in that state seems to have merit.

(c) Penalties and enforcement powers required to close illegal brothels

Community expectation is for Council to be able to shut down premises operating as an illegal brothel, however, the legislative process preceding the Local or Land & Environment Court enforcing Council's section 121 Brothel Closure Order, by way of a utilities cessation or Court Order is both costly and time consuming.

Section 124AB of the *Environmental Planning and Assessment Act*, prohibiting the court from adjourning Brothel Closure proceeding, unless justified by exceptional circumstance (not including intent to or having already lodged a development consent), streamlines this process however listing such a hearing takes time and any interlocutory relief sought may not be pressing enough for court dates to be vacated thereby allowing an immediate hearing.

Council Officers are often the first authority to receive complaints and subsequently enter and inspect brothels on a regular basis. Unfortunately there is little current legislative assistance allowing authorised officers to enter a brothel without notice (apart from entry via a search warrant), nor do authorised officers have the power to demand particulars from any person (primarily sex workers) found inside such premises.

Investigation methodologies used in gathering evidence required to enable enforcement of conditions of development consent are varied and can at times be problematic with regard to power of entry requiring notice to be given.

The provision for Council's to issue penalty infringement notices for non-compliance with conditions of development consent (legal brothels) or for development without development

consent (illegal brothels) does nothing to regulate the persons involved in the sex industry, merely how and when those services are offered.

(d) *Options for reform including a scheme of registration or licensing system for authorised brothels*

Legislation requiring brothels to be licenced would assist in regulating the sex industry and deliver positive outcomes, including improved public health, reduction of organised crime influence and greater protection of sex workers.

A scheme of registration should provide offences and penalties for both sex premises operators and sex workers carrying on the activity of an operator or worker without an appropriate licence and include short title penalty notice offences for sex workers or operator not producing a licence, working unlicensed or with expired licence etc.

Any such legislation also should allow authorised officers the power of entry without a warrant (similar to the Food Act 2003).

A licensing system would allow any Authorised Regulating Authority to enforce specific conditions for the operation of a Brothel, similar to liquor, tattoo and pawnbrokers licensing provisions currently in place.

Such an initiative would engender public support and allow more prompt and adequate enforcement of the industry.

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

Enacting legislation requiring both sex premises and sex workers (including those persons conducting the business of operating a sex premises) to be registered and licenced will greatly assist in the protection of sex workers and significantly limit the opportunities for organised crime to legitimise income obtained through illegal practices.

Legislation requiring the entry/exit doors of licenced sex premises to be continuously monitored by CCTV (aligning with the current Australian Standard in relation to CCTV cameras and data retention times) will also aid in the protection of sex works by assisting in the identification of persons committing offences under various acts.

Licencing of sex workers would allow authorised officers (including Council Officers with appropriate delegations) to demand a sex worker produce a licence thus making sex trafficking more difficult due to the chance of immediate exposure.

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

Any regulation of brothels in NSW should have sections that are specific to public health. When the Public Health Act changed in 2010 the health of sex workers and their clients was largely ignored.

This has left Council's with little legislation to enforce public health matters. At this point Councils are using two points of the Public Health Act 2010, Order 21 of the *Local Government Act 1993* and *Environmental Planning and Assessment Act* (conditions of consent) to enforce public health.

Should legislation be created specific to the regulation of brothels, the following matters should be included to ensure an acceptable levels of public health:

- A Plan of Management that is specific to the venue should be developed and should include the following (as a minimum):
 - Owners contact details
 - Managers names and contact details
 - Security staff names and contact details
 - Names of employees – also ensuring that they have correct working visa's etc.
 - Emergency procedures
 - Complaint procedures
 - Cleaning procedures
- Provide sex workers with information that is current, in writing and where necessary available in different languages regarding safe sex practices, how to identify sexually transmitted infections (STI's) and support services, including health services (e.g. Sex Workers Outreach Program – SWOP)
- Provide clients with material that is current, in writing and where necessary available in different languages regarding safe sex practices, how to identify STI's and support services, including health services
- Ensuring that the premises and equipment are constructed in a manner that allows it to be easily cleaned. For example, smooth and impervious floors, walls, equipment, etc.
 - Ensure that all equipment is in a good state of repair. This includes beds, chairs, slings, sex toys, etc.
 - Provide showers in each room as well as hand wash basins.
 - Provide soap and paper towel to the hand wash basin
 - Lighting should be provided that allows enough illumination for the sex worker to check clients for STI's and to allow for thorough cleaning
 - Provide clean linen in each room as well as a receptacle for soiled linen.
- Ensure the provision of safe sex equipment (e.g. Condoms in various sizes, dental dams, lubrication in single use pouches) for free
- Ensure that linen is changed between clients and laundered at temperatures that will allow it to be sanitised.
- Should a brothel use equipment that penetrates the skin (this is common in BD&SM parlours) that they are required to comply with the Public Health Act 2010, in that they use disposable needles and sterilise equipment as necessary.

- Any spa's or pools are to be registered with Council.
- Douching facilities are to have a backflow prevention device which is certified annually by a licensed plumber.

Public health and other planning considerations could be encompassed in a NSW State Environment Planning Policy (SEPP) dealing solely with sex premises.

(g) *Residential amenity and the location of sex service premises*

Current provisions contained in section 17 (5) of the Restricted Premises Act 1943 in relation to location of, parking requirements, access, size, community impact, cumulative disturbances in the vicinity of and general neighbourhood amenity of brothels are the current benchmarks for minimising community impact.

Similar provisions are contained in most Councils Local Environment and Development Control Plans and any new SEPP controlling planning matters pertaining to brothels, could also include these specific development controls.

(h) *Any legislative changes that may be required*

New legislation aimed specifically at the sex industry, encompassing the matters raised above would facilitate positive outcomes in comparison to those currently being achieved.

(i) *Any other related matters*

Any review of the regulation of Brothels should include other sex premises and sex workers. For example, cruise clubs (sex on premises venues), BD&SM parlours, adult book stores that have private viewing booths and adult massage venues.