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**The Regulation of Prostitution:  
A Review of Recent  
Developments**

by

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## EXECUTIVE SUMMARY

The regulation of brothels and prostitution in NSW has had a long and difficult history. The Royal Commission into the NSW Police Force brought to light extensive corrupt links between police and brothel operators and was one catalyst for legalisation of brothels in the State.

The history of the regulation of prostitution in NSW is outlined on pages 1 to 5. 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. The Act also amended the *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*. In addition, the *Disorderly Houses Amendment Act 1995* also provided a mechanism for local councils to apply to the Land and Environment Court to close a brothel (pages 5-6).

With the commercialisation of the sex industry, there has been considerable concern in the community about the number and location of brothels. Local councils are now the chief regulatory authority to control the number and location of brothels in their respective areas. Local councils have two main legislative means to close down an illegal brothel or a legal brothel which is causing problems for the community. Firstly, if the brothel operation is in contravention of the *Environmental Planning and Assessment Act*, the council may apply to the Land and Environment Court for injunctive relief. Secondly, under s 17 of the *Disorderly Houses Act*, a local council may make an application to the Land and Environment Court for an order to close a brothel. However, the Council cannot make this application unless it has received sufficient complaints about the brothel to warrant making the application (pages 6-9).

A major complaint 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. Another complaint is that councils are doing little to close down the illegal operators, and are not dedicating enough resources, or do not have enough resources, to do so (pages 9-17).

There are calls in the community for reform of the legislation regulating brothels in NSW. As a comparison, legislation regulating brothels in Victoria is examined (pages 17-24).

## 1.0 Introduction

The *Disorderly Houses Act 1943* has been extensively amended over the years as governments of all persuasions have sought to control gambling, drink and prostitution. Most recently, in mid 1995, the NSW Attorney General, Hon Jeff Shaw MLC, in light of the findings of the Royal Commission into the NSW Police Service, announced that reform of prostitution laws in NSW would be undertaken.<sup>1</sup> Subsequently, legislation was passed to legalise brothels. Local councils became the determining authority of where a brothel was to be located, according to normal planning legislation, and brothels were no longer the concern of the police force.

Since the legalisation of brothels, there has been some concern in the community about the growth of the commercial sex industry. The classified pages of metropolitan and suburban newspapers are testimony to the growth of the industry. 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.

This Briefing Paper looks at: the operation of the *Disorderly Houses Amendment Act 1995*, which legalised brothels, how local councils have reacted to the Act and community responses.

## 2.0 Background<sup>2</sup>

In 1908, legislation was passed in NSW that made 'soliciting by women' an offence for the first time.<sup>3</sup> This was in order to 'meet what has been found to be an obvious difficulty in the way of the police in maintaining order and decency in the public streets.'<sup>4</sup> Under the now repealed *Vagrancy Act 1902*, 'whosoever being a common prostitute, solicits or importunes for immoral purposes any person who is in any public street, thoroughfare, or place' would have been liable to imprisonment with hard labour for a term not exceeding six months. In addition, it was an offence under the *Vagrancy Act 1902* for a male person to knowingly live wholly or in part on the earnings of prostitution. Amendments passed in 1908 created the further offence of running a brothel so that:

[i]f any person, being the owner, occupier, or agent of any house, room, or place, or being a manager or assistant in the management thereof, induces

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<sup>1</sup> Lamont, L, 'NSW to review its laws on prostitutes', *The Sydney Morning Herald*, 13/6/95.

<sup>2</sup> Much of this section is taken from: *Prostitution in New South Wales: Law Reform Issues*. NSW Parliamentary Library Briefing Paper No 27/95 by Vicki Mullen.

<sup>3</sup> Perkins, R et al (Eds), *Sex Work and Sex Workers in Australia*, UNSW Press, 1994, pp 38-39.

<sup>4</sup> *NSWPD*, 6 August 1908, p 468.

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or suffers any female whom he knows to be a common prostitute to be in that house, room, or place for the purpose of prostitution, he shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the justices, to be imprisoned for any term not exceeding six months.

In 1943, the *Disorderly Houses Act 1943* (NSW) was passed in response to the `wartime growth of gambling, sly grog and prostitution<sup>5</sup> and also as a matter of national security<sup>6</sup>. This Act enabled the Supreme Court to declare certain premises to be a disorderly house (the requirements for such a declaration are explained further in section 3.0 of this Paper). Once premises are so declared, persons found in such premises, and the owner and the occupier of the premises may be guilty of certain summary offences. The operation of a brothel was, until 1995, an activity that could have premises declared a disorderly house, and an application could be made to the Supreme Court to close it down.

Laws relating to prostitution were expanded in 1968 with amendments to the *Vagrancy Act 1902* and the *Disorderly Houses Act 1943* by the *Vagrancy, Disorderly Houses and Other Acts (Amendment) Act 1968*.

In 1970, the *Summary Offences Act 1970* (NSW) was passed which repealed the *Vagrancy Act 1902*. Under Division 3 of the Act, soliciting in or near a public place was an offence; a reputed prostitute in or on premises habitually used for the purpose of prostitution or soliciting was guilty of an offence; the use of premises held out as being available for the provision of massage etc for prostitution was an offence; living on the earnings of prostitution was an offence; and the owner, occupier or manager etc who knowingly suffered or permitted premises to be used for the purpose of prostitution was guilty of an offence.

In 1979, the *Summary Offences Act 1970* was repealed and the *Prostitution Act 1979* (NSW) commenced which contained those provisions which the Government considered necessary to control the more repugnant aspects of prostitution not otherwise the subject of the criminal law.<sup>7</sup> The following offences were re-enacted and enacted:

- knowingly living wholly or in part on the earnings of prostitution of another person;
- the use, for the purposes of prostitution, or of soliciting for prostitution, of any premises held out as being available for the provision of massage, sauna baths etc;
- allowing (ie knowingly suffer or permit) such premises (ie premises held out as being available for the provision of massage etc) to be used for the purpose of prostitution, or of soliciting for prostitution; and

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<sup>5</sup> Parliament of NSW, *Report of the Select Committee of the Legislative Assembly upon Prostitution*, P. Rogan Chairman, April 1986, p 244.

<sup>6</sup> *NSWPD*, 19 May 1943, p 3420.

<sup>7</sup> *NSWPD*, 23 April 1979, p 4923.

- the publication of an advertisement or the erection of any sign indicating that any premises are used, or are available for use or that any person is available, for the purposes of prostitution.

It is interesting to note that the specific offence of *soliciting* was abolished as:

[a]ny truly offensive behaviour in, or within view from, a public place...will be governed by other offences. If a prostitute behaves in such a way as would be likely to cause a reasonable person justifiably in all the circumstances to be seriously alarmed or seriously affronted, an adequate remedy will lie under the proposed general offence as outlined in clause 5 of the Offences in Public Places Bill. The offence of being a reputed prostitute on premises habitually used for prostitution is also to be done away with because of its discriminatory nature.<sup>8</sup>

In 1983, the *Prostitution Act 1979* was amended to again provide for the specific offence of soliciting. This new section created the offences of soliciting for the purpose of prostitution in a public street near a dwelling, school, church or hospital, or for soliciting for the purpose of prostitution in a school, church or hospital. In the Second Reading Speech to the Prostitution (Amendment) Bill 1983, it was stated that:

[t]he aim of this legislation is to ensure that persons who reside in basically residential areas are not subjected to the flagrant and unseemly aspects of prostitution, which cause severe inconvenience. Prostitution is an activity that has traditionally been confined to commercial areas. The effect of creating an offence of soliciting in the terms of the proposed section 8A, will be to redirect what is essentially a commercial activity back into commercial and industrial areas.<sup>9</sup>

In 1988, the *Summary Offences Act 1988* (NSW) commenced which repealed certain Acts including the *Prostitution Act 1979* and the *Offences in Public Places Act 1979*. Part 3 of the Act dealt with prostitution and provided for the offences of: living on the earnings of prostitution; prostitution or soliciting in premises held out as being a massage parlour etc; allowing premises (by managers, owners etc) that are held out as being a massage parlour etc to be used for prostitution; advertising premises used for prostitution; advertising for prostitutes; soliciting; and public acts of prostitution.

In the case *Sibuse Pty Ltd v Shaw* (1988) 13 NSWLR 98, the Criminal Court of Appeal ruled that the *Disorderly Houses Act 1943* enabled the Supreme Court to declare premises a disorderly house where those premises were habitually used for prostitution, whether or

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<sup>8</sup> NSWPD, 23 April 1979, at p 4923.

<sup>9</sup> NSWPD, 29 March 1983, p 5244.



not those premises were 'disorderly' in the ordinary sense of the term. This meant that people in, on, entering or leaving the premises could be convicted of an offence, and the repetition of prostitution upon the premises might render the owner or occupier guilty of an offence.

This court decision created some concern in the Government, the problem being that if police fully exercised their powers under the *Disorderly Houses Act*, many prostitutes would take up street soliciting which would not be in the best interests of the local residents or the prostitutes. In fact, shortly after the *Sibuse v Shaw* decision, the police applied for the closure of about 40 of the state's estimated 260 brothels by declaring them disorderly houses.<sup>10</sup>

As a result of the decision in *Sibuse*, the then Attorney General, the Hon P Collins QC MP, introduced the Disorderly Houses (Amendment) Bill 1992 in order to clarify the law and to reduce incentives for prostitutes to solicit in the streets. The reasons for the need for reform were thus stated:

[i]f police enforce the law as it now stands, well-run orderly brothels will be closed down, forcing prostitutes back on to the streets. This will result in more street prostitution, which is generally offensive and undesirable. Health and social workers also have more difficulty reaching street prostitutes with their education campaigns concerning health and safe sex than they do reaching prostitutes who work in brothels. Street prostitutes are more likely to be carriers of the HIV virus than prostitutes who work in brothels, where there can be some medical supervision of the health of prostitutes and provision for enforcing the use of condoms. Whilst the Government does not wish to regulate brothels closely, it is undeniable that they will continue to exist irrespective of their legal status. As brothels are currently considered to be disorderly houses and as such are subject to closure, any lack of action by police to close them down will no doubt lead to allegations of corruption.<sup>11</sup>

The Bill did not proceed beyond the Second Reading stage.

The nexus between police corruption and brothels was illustrated by the Report of the Select Committee of the Legislative Assembly upon Prostitution in 1986. Various evidence was collected by this Committee from prostitutes and allegations of police corruption were received. The Committee was of the opinion that:

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<sup>10</sup> Hatty, S "Violence Against Prostitute Women: Social and Legal Dilemmas" in *Australian Journal of Social Issues*, Vol 24 No 4, 1989, at 241.

<sup>11</sup> *NSWPD*, 25/2/92, p 71.

police corruption has been a facet of brothel prostitution for a considerable number of years. The structure and organisation of this corruption cannot on the information available to the Committee be accurately determined but there is little doubt that such corruption exists. In certain areas, in particular Sydney's inner city, there appear to be regular payments made to certain police. There are also indications that brothel owners and managers in other areas of New South Wales are also paying corrupt police.<sup>12</sup>

With the release of the Royal Commission into the NSW Police Service, which documented extensive police corruption and payments from brothel operators<sup>13</sup>, the case for reform became stronger.

### **3.0 The Disorderly Houses Amendment Act 1995**

On 20 September 1995, the Minister for Police, Hon Paul Whelan MP, introduced into the Legislative Assembly the Disorderly Houses Amendment Bill 1995. The Bill was similar to that introduced by the previous government but with additional provisions to close down a brothel by application to the Land and Environment Court by a local council. The Minister noted that he introduced the Bill in recognition of the *Sibuse vs Shaw* case and in an attempt to eliminate the potential for police corruption.<sup>14</sup> After considerable debate in the Parliament on the moral and religious issues surrounding prostitution, the legislation was passed with Opposition support and was assented to on 22 November 1995.

The *Disorderly Houses Amendment Act 1995* legalised brothels and living off the earnings of a prostitute. The Act also amended the *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*. In addition, the *Disorderly Houses Amendment Act 1995* also provided a mechanism for local councils to apply to the Land and Environment Court to close a brothel, as explained further below.

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

The *Disorderly Houses Act* provides the means for the Supreme Court, upon application by the police, to close down a disorderly house. Section 3 of the Act defines such a house as:

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<sup>12</sup> Ibid, pp 227-228.

<sup>13</sup> New South Wales, *Royal Commission into the NSW Police Service*, 1997.

<sup>14</sup> NSWPD, 20 September 1995, at p 1187.

- (a) that drunkenness or disorderly or indecent conduct or any entertainment of a demoralising character takes place on the premises, or has taken place and is likely to take place again on the premises, or
- (b) that liquor or a drug is unlawfully sold or supplied on or from the premises or has been so sold or supplied on or from the premises and is likely to be so sold again on or from the premises, or
- (c) that reputed criminals or associates of reputed criminals are to be found on or resort to the premises or have resorted and are likely to resort again to the premises, or
- (d) that any of the persons having control of or managing or taking part or assisting in the control or management of the premises:
  - (i) is a reputed criminal or an associate of reputed criminals, or
  - (ii) has been concerned in the control or management of other premises which have been declared to be a disorderly house under this Act, or
  - (iii) is or has been concerned in the control or management of premises which are or have been frequented by persons of notoriously bad character or of premises on or from which liquor or a drug is or has been unlawfully sold or supplied,

However, with the passage of the *Disorderly Houses Amendment Act 1995*, a disorderly house declaration cannot be made solely on grounds that the premises are a brothel. Yet a brothel may still be closed down under the Act if any of the above 'disorderly' conditions have been satisfied. So in theory, criminal elements associated with legal brothels should be restricted.

As noted, there are provisions for local councils to try and close down a brothel. Firstly, if the brothel operation is in contravention of the *Environmental Planning and Assessment Act* the council may apply to the Land and Environment Court for injunctive relief.

In addition, under s 17 of the *Disorderly Houses Act*, a local council may make an application to the Land and Environment Court for an order to close a brothel. However, the Council cannot make this application unless it has received sufficient complaints about the brothel to warrant making the application. The complaints must have been made by:

- (a) residents of the area in which the brothel is situated who live in the vicinity of the brothel; or
- (b) residents of the area in which the brothel is situated who use, or whose children use, facilities in the vicinity of the brothel; or

(c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel.

The Council's application must state the reasons why the brothel should be closed by the Court, yet can only make reference to five reasons as outlined in the Act. Similarly, the Court must restrict its consideration to the same five reasons. These reasons are:

(a) whether the brothel is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities;

(b) whether the operation of the brothel causes a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood or other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise and vehicular and pedestrian traffic;

(c) whether sufficient off-street parking has been provided if appropriate in the circumstances;

(d) whether suitable access has been provided to the brothel;

(e) whether the operation of the brothel causes a disturbance in the neighbourhood because of its size and the number of people working in it;

(f) whether the operation of the brothel interferes with the amenity of the neighbourhood;

(g) any other matter that the Land and Environment Court considers is relevant.

On 29 December 1995, not long after the commencement of the *Disorderly Houses Amendment Act*, the Department of Urban Affairs and Environment wrote to all local councils. The Department reiterated that where a brothel is not prohibited by a Local Environment Plan, council may consider the development application for a brothel in the same way as any other permissible development. It was noted that a blanket prohibition of brothels through LEPs, making the establishment of brothels illegal under planning law, would not be supported by the Minister for Urban Affairs and Planning (who must sign off each LEP). The Department noted that such an action by a council would contradict the intention of the legislative reforms, may result in increased street prostitution and could encourage attempts to corrupt council staff. The Department concluded that brothels are most suitable in commercial and industrial premises that are not adjacent to schools or facilities frequently used by children.<sup>15</sup>

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<sup>15</sup> Department of Urban Affairs and Planning, *Council Circular - Planning Control of Brothels*, 29 December 1995.

The Department again wrote to all councils some seven months later advising that the Minister would not object if councils limited permissible sites for brothels to those zoned for industrial purposes. This was in response to community concerns about the possibility of brothels being located in shopping centres. Councils could therefore restrict brothels to industrial areas that are not adjacent to schools or facilities frequently used by children. The Department reiterated that a blanket ban on brothels through LEPs would not be supported.<sup>16</sup>

In regard to determining a development application - including a brothel, section 79C of the *Environmental Planning and Assessment Act 1979* provides the criteria to which a local council must use to determine the application. These are:

(1) Matters for consideration - general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and
- (iii) any development control plan, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

Under the current legislation, if a brothel applicant satisfies the planning criteria as indicated above, there is no opportunity for councils to include moral considerations in their determination of an application. If the consent authority, usually the local council, refuses a development application for a brothel, the applicant is able to appeal to the Land and Environment Court. In this case, the Court will rehear the case in its entirety, and make a

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<sup>16</sup> Department of Urban Affairs and Planning, *Council Circular - Planning Control of Brothels*, 16 July 1996.

determination which will replace the council's decision. As explained in sections 3.1 and 3.2 of this paper below, the decisions of the Land and Environment Court have caused some concern in the community.

### 3.1 Commentary on the operation of the Disorderly Houses Amendment Act 1995

A major complaint about the current brothel regulatory environment is that controls are not extensive enough. Anyone who wishes to open a brothel can. All that is required is to lodge a development application with the local council, and, providing the owner of the premises provides their consent, the council can determine the application on planning factors only. Once consent has been given to operate a brothel, it is retained for the building, not the operator.

The major complaint is that there are no controls to ensure that those applying to operate a brothel are a 'fit and proper' person.<sup>17</sup> Even hotel licensees are required to be screened to ensure that they fit this description, yet anybody can apply to the local council to open a brothel. Given the background of graft and corruption in regards to brothels and police, many people claim that the 'new legal industry' should be free of this image. However, by not screening applicants, the reforms fail to filter out those less savoury elements. The *Sydney Morning Herald* claims that its investigations have found that there are several owners/operators who have criminal connections and operators with links to the illegal immigration trade. In addition, two of Sydney's big name brothels are being run by a man who could not get a licence to run a brothel in Victoria because he was fined for allowing a 16 year old girl to work as a prostitute.<sup>18</sup>

Similarly, there are concerns about illegal immigration prostitution rackets. The *Herald* reported that in NSW the Australian Federal Police have not acted against any organised crime syndicates involved in the 'sex slave' trade since brothels were made legal in 1995. Dozens of illegal Asian sex workers are being deported routinely after being found working in brothels by officers of the Department of Immigration.<sup>19</sup>

Another complaint is that councils are doing little to close down the illegal operators, and are not dedicating enough resources, or do not have enough resources, to do so. For instance, Parramatta City Council has only one full time and one part-time officer to investigate illegal uses of premises. In August this year those two people were investigating 40 premises, including six brothels.<sup>20</sup> A big problem for Councils is that even when they successfully investigate an illegal brothel, the illegal operators may simply close shop and

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<sup>17</sup> "Behind closed doors" in *The Sydney Morning Herald*, 31 August 1999.

<sup>18</sup> "Law and disorder in a booming industry" in *The Sydney Morning Herald*, 30 August 1999.

<sup>19</sup> "It's open slather for slave traders" in *The Sydney Morning Herald* 31 August 1999.

<sup>20</sup> "Law and disorder in a booming industry" in *The Sydney Morning Herald*, 30 August 1999.

open again elsewhere. Councils are also not happy with the expense of investigating illegal brothels. Parramatta City Council is reported to have said that an average ‘brothel investigation’ costs \$2,550, including \$600 per private investigation visit, and if the case goes to the Land and Environment Court it may cost the Council up to \$50,000. Often, the Council prepares all the evidence, only for the operator to move before the court case, so the entire investigation process begins again.<sup>21</sup>

A major problem for councils is to prove that an illegal brothel is actually operating as a brothel. Councils have resorted to hiring private investigators to have sex in a suspected illegal brothel in an attempt to prove that the premises are being used illegally, and then commencing proceedings to close them down. One investigator is reported to have said that he has investigated illegal brothels for at least ten local councils.<sup>22</sup> It was reported that Lane Cove Council hired an investigator to install secret video and audio surveillance equipment in a suspected illegal brothel. While this had the cooperation of the building’s owner, who leased the premises to the brothel operator, the legality of the covert video and audio surveillance is open to question. For instance, the *Listening Devices Act 1984* states that without a warrant:

A person shall not use, or cause to be used, a listening device:

- (a) to record to listen to a private conversation to which the person is not a party; or
- (b) to record a private conversation to which the person is a party.

An audiovisual device, which records both picture and sound, is regulated as a listening device. Currently there is no specific legislation covering the use of video surveillance.<sup>23</sup> This means that councils, or their private investigation agencies, can legally install video surveillance cameras - with no audio capability, into a suspected brothel to gain evidence of use of premises as an illegal brothel. The entry onto the premises to install such cameras must be legal - such as with the permission of the building owner. Where the suspected illegal brothel operator also owns the premises, this condition may be more difficult to meet. The use of audiovisual devices, such as video with audio recording, by Council officers or agents is illegal unless the Council has successfully sought a warrant to do so from a Judge.<sup>24</sup> The failure of a Council or its investigators to conduct surveillance lawfully runs the risk of

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<sup>21</sup> “Law and disorder in a booming industry” in *The Sydney Morning Herald*, 30 August 1999.

<sup>22</sup> “Council pays private eye to have sex” in *The Sydney Morning Herald*, 4 July 1999.

<sup>23</sup> Apart from the *Workplace Video Surveillance Act 1998*, which covers covert video surveillance in the workplace, and is not applicable to this situation.

<sup>24</sup> For more information see: *Listening Devices and other forms of surveillance: issues and proposals for reform*. NSW Parliamentary Library Briefing Paper No 20/97 by Rachel Simpson.

their evidence not being admissible in a court.

In the above case with Lane Cove Council, the Council successfully gained the evidence and confronted the operator who agreed to move his prostitutes to another brothel he operated in Darlinghurst.<sup>25</sup> In this case the Council achieved its aim of closing the brothel without having to resort to the expense and time of starting official legal proceedings - where the legality of their evidence may well have been questioned and not admitted.

A look through the classified pages of metropolitan and suburban newspapers shows that there are no restrictions on the advertising of the sex industry. Anybody can advertise a brothel, illegal or not. Legal operators complain that they may have spent around \$50,000 getting their development application through the council, and perhaps the Land and Environment Court, while illegal operators, who have outlaid none of this expense, can advertise just as freely as the legal ones.<sup>26</sup>

There is also the perspective of the brothel client as well. With both legal and illegal brothels advertising extensively in the newspapers, clients of brothels have no idea whether they are visiting a legal establishment or an illegal one. On the basis that legal brothels have had to satisfy council codes, such as building, health and safety, clients (and employees) are more likely to be in a 'safe' environment compared to an illegal brothel which may have none of these features - and certainly no regular council inspections.

Much has been written in the press about the role of the Land and Environment Court in approving brothels on appeal after a council has refused a development application. Brothel owners are claiming that councils are refusing brothel applications so that they can save face with ratepayers. One commentator noted that even if councils knew they were going to lose the case in the Court, they would rather do that than face the political recriminations. When the council does lose, it blames the Court for approving brothels.<sup>27</sup> Other community groups, such as the NSW Council of Churches, have also criticised the Land and Environment Court, but from a different perspective. From this perspective, the Court has been criticised for over-ruling councils many times when there were concerns that proposed brothels were near schools and churches. The President of the Council of Churches, Mr Ray Hoekszema, is reported to have said that the Government should change the legislation so that councils had the final decision on brothels, not the Land and Environment Court.<sup>28</sup>

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<sup>25</sup> "Sex, lies, video: how a brothel was stung" in *The Sydney Morning Herald*, 9 May 1999.

<sup>26</sup> "Law and disorder in a booming industry" in *The Sydney Morning Herald*, 30 August 1999.

<sup>27</sup> "Law and disorder in a booming industry" in *The Sydney Morning Herald*, 30 August 1999, reporting comments of town planner Ms Meg Levy.

<sup>28</sup> "Court gives green light to red lights" in *The Sydney Morning Herald* 25 June 1999.



The Council of Churches considers the *Disorderly Houses Amendment Act 1995* to be a failure, stating “the State Government has passed the buck to local government, giving them responsibility to administer brothels, but with very little local authority.”<sup>29</sup>

NSW Opposition Leader Kerry Chikarovski MP was quoted as saying: “What concerns us is that local government was supposedly given the authority [as to] where brothels should be. Clearly that’s not working... we think that local government should have that authority.”<sup>30</sup> Liberal Deputy Leader Barry O’Farrell MP noted two problems with the current legislation. The first was that local councils cannot issue blanket bans on the operation of brothels in their area. The second, and larger problem, is that councils’ decisions to ban brothels are being over-ridden in the Land and Environment Court. Mr O’Farrell commented:<sup>31</sup>

Councils are best placed to determine where brothels should operate. Councils should be supported by the State Government in making those decisions. The State Government should make the necessary legislative changes to stop the Land and Environment Court thwarting the operation of the 1995 Act. In short, we should admit we got it wrong and try again to get it right. Unless we do so there is no guarantee that this place or any council can offer local communities any guarantees about where brothels can and cannot operate.

As noted, the Local Government Association and the NSW Council of Churches have also called for a review of the legislation. In response to a Parliamentary Question without Notice about brothel regulation on 9 September 1999, the Premier Hon Bob Carr MP replied:<sup>32</sup>

This area will never be fixed. It will always be a potentially tragic and unsatisfactory area of public policy. In anyone has a dramatic solution, they had better advance it because the administration of the sex industry or of brothels will always be fraught with difficulty.

The Premier concluded his reply with the statement:

I have to consider some form of review to see whether any change in the way the law works might be satisfactory.

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<sup>29</sup> “Brothel laws a failure: churches” in *The Sydney Morning Herald* 3 July 1998.

<sup>30</sup> “Liberals promise brothel review.” in *The Daily Telegraph* 3 February 1999.

<sup>31</sup> *NSWPD*, 25 June 1998, at p 6696.

<sup>32</sup> *NSWPD*, 9 September 1999, at p 282. In reply to Question without Notice by Clover Moore MP.

### 3.2 Land and Environment Court Judgements

As councils must apply to the Land and Environment Court to close a brothel either on planning grounds or under the *Disorderly Houses Act*, it is appropriate to review some of the decisions of the Court in regard to brothel operations. From late 1995, when brothels were legalised, to June 1998, the Court heard 27 appeals from brothel applicants who were refused development consent by their respective local council. Of these 27 appeals, the Court upheld 20.<sup>33</sup> Some examples of these cases and others are presented below.

#### **FAIRFIELD CITY COUNCIL v. TAOUK & ORS [1998] NSWLEC 132**

A brothel, which had no planning permission, had been operating in the Fairfield Commercial CBD for a number of years - which the police basically had no problems with.

After a visit by council officers, on 8 May 1996 the brothel owners lodged a development application for a brothel at the premises. At that stage, a brothel was a permissible activity within its business zone.

On 22 August 1997, Fairfield Local Environmental Plan 1994 (Amendment No 15) was Gazetted, under which brothels became prohibited in business zones. Four days later, on 26 August 1997, the Council refused its consent to the brothel development application. It did so after having taken in excess of fifteen months to determine the application, and having just changed the zoning to prohibit brothels in that area. On 4 December 1997 the Council commenced proceedings in the Land and Environment Court to seek injunctive relief to close the brothel.

The proceedings were brought under section 123 of the *Environmental Planning and Assessment Act* rather than the *Disorderly Houses Act*. Lloyd J noted: "The activity with which the two Acts are concerned is different. The *Environmental Planning and Assessment Act* is concerned with brothels which breach relevant planning laws, while the *Disorderly Houses Act* is concerned with brothels which breach the various criteria established in s 17(5). It is therefore clear, with the aid of the Minister's second reading speech, that the Parliament intended that the Acts operate together and that they are complementary in their operation."

In making a decision on a case, section 124(1) of *Environmental Planning and Assessment Act* establishes that:

Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

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<sup>33</sup>

Information supplied by the Land and Environment Court.

The discretion of the Court under this section is unfettered. Lloyd J noted that the relevant factors for the Court's consideration in this case included whether the breach complained of is purely technical; any delay in instituting the proceeding; the necessity of upholding the integrated and coordinated nature of planning law; whether the application for enforcement of the Act is made by a public authority; and whether the application of these general factors will produce an unjust result in the circumstances of the particular case.

Whilst the Judge found that the *Environmental Planning and Assessment Act* is the relevant Act in this particular case, he also considered that the factors mentioned in the *Disorderly Houses Act* can be properly considered by him in the exercise of the Court's discretion under s 124 of the *Environmental Planning and Assessment Act*.

In this case, the Judge found that if the Councils's application was made under the *Disorderly Houses Act* it would have had little chance of obtaining an order restraining the premises from being used as a brothel because it had not received sufficient complaints from the nominated classes of people required under subsection (3) of s 17. Moreover, the brothel in question satisfied almost every criteria established by the Act under subsection (5) of s 17.

With this in mind, Lloyd J ordered the brothel to be relocated to an area zoned for brothels, but softened the order by giving the operators 18 months to comply with the ruling.

**Tammy Dixon v Marrickville Council (Unreported, NSW Land and Environment Court, Assessor Bly, 10355/96, 3 October 1996), as in *Local Government and Planning Law Guide, Part 2 1997*.**

In this case the applicant appealed to the Court to approve a brothel refused by Marrickville Council. The brothel was on commercial premises on a busy arterial road. The council argued several reasons for refusal including: inadequate car parking; access; and intoxicated brothel patrons. The Council also requested that, if the Court found in the brothel owners favour, a trial period be applied. The Commissioner noted that after 18 years of illegal operation, where the brothel operated without complaint, this was an adequate trial period. The Commissioner found in favour of the brothel owner, but in the knowledge that , if sufficient complaints were made by residents, the *Disorderly Houses Act 1995* would allow the council to apply to the Court to close the brothel down.

**Cameron v Willoughby City Council ((Unreported, NSW Land and Environment Court, Assessor Jensen, 10603/96, 14 February 1997), as in *Local Government and Planning Law Guide, Part 4 1997*.**

Again the Court upheld an appeal by a brothel owner after development refusal by the local council. The Commissioner noted that he would be guided by s.90<sup>34</sup> of the EPAA and s 17

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<sup>34</sup>

The heads of consideration have been since amended to be section 79C of the EPAA.

of the Disorderly Houses Act. In regard to the site of this proposed brothel, the Commissioner noted that it: “was in the middle of an intensively developed commercial area, not in any apparent view of a church or hospital, children do not come there for recreational or cultural purposes, no apparent evidence of neighbourhood disturbance; adequate car parking, discreet access; and small numbers of employees and patrons.” The Commissioner concluded: “whilst it is clear that the *Disorderly Houses Act 1995* has removed a fundamental obstacle to the approval of a brothel in a commercial zone that does not mean that the public is necessarily ready for shopfront sex for sale as practised in places like Amsterdam. The provision of s.17 of the *Disorderly Houses Act* suggests very clearly the public expects its more susceptible and impressionable members should be protected from overt commercial sex. Further, it is expected that brothels should operate in a discrete low key manner.”

**Lui Lonza & Anor v Fairfield City Council (Unreported, NSW Land and Environment Court, Assessor Jensen, 10384, 10555 and 10556/96, 9 December 1996), as in *Local Government and Planning Law Guide, Part 3 1999.***

In this case the morality of a brothel was brought into the argument. The Land and Environment Court’s Commissioner Murrell said: “Community standards and views on the morality of brothels are not relevant under any s.90(1) head of consideration. While the morality issue per se is irrelevant, the demonstrable effect of a particular brothel is relevant under s90(1)(d).”

Numerous cases in the Court have highlighted the need for the so-called effects of a brothel to be demonstrable. With the legalisation of brothels in 1995, many illegal brothels, some of which had been operating for years, put forward development applications to become legal establishments. The long running period of operations, even though illegal, has provided arguments for brothel owners to present evidence that their operation has produced no demonstrable effects over that period of time. A Council must provide a convincing argument to the Court about the demonstrable effects of a proposed brothel. If found wanting, the Court is likely to find in the brothels favour.

For instance, in a case against Canterbury Council, the Council did not provide convincing argument against a brothel application. The Court replied: “this particular activity [ie the brothel] had been in place since 1996, the Chamber of Commerce, although against it, did not know of its existence, the church that complained could not explain what was the nature of their concern and they had witnessed no improper or indiscreet behaviour. There was no evidence of any particular interaction between the children and the brothel, and there was no heavy traffic of a vehicular or pedestrian nature.” See *Zhang v Canterbury City Council* (Unreported, NSW Land and Environment Court, Commissioner Brown, 10748, 10749/98, 11 March 1999), as in *Local Government and Planning Law Guide, Part 3 1999.*

**Ryde City Council v Zuger & Ors [1999] NSWLEC 172 (24 May 1999), 40217/98.**

In this case the Council sought an order from the Court that the respondents were using premises for a commercial purpose, namely a brothel, and that this use should be restrained. The premises were in an industrial area, in which commercial premises are a prohibited use. On 17 August 1998, the respondents lodged a development application to use the premises for a brothel. The application was refused on the basis that it was a commercial use and was thus prohibited within the zone.

However, on 30 April 1999 the Council amended their LEP which made brothels a permissible use with consent in an industrial zone. The respondents lodged a further development application shortly after the amendment. In the meantime, they also lodged an appeal in the Land and Environment Court against the determination of the original development application lodged on 17 August 1998.

Whilst the respondents consented to the Court making an order as to the Council's application to close the premises, they sought a postponement until after the Council had determined the second development application and the Court ruled on the appeal.

However, Lloyd J found in favour of the Council, noting that the premises are proximate to residences, a school and a church, and ordered that the operation of the brothel should be restrained. This provides an example of where, even in an industrial area, brothels may be an inappropriate land use.

### **3.3 The Role of Local Councils**

Local government now has a determining role in the location of brothels. How this has come about, and its response, is discussed in this section. In 1986 the Rogan Select Committee of the Legislative Assembly upon Prostitution considered the relevant operation of the *Environmental Planning and Assessment Act 1979* and recommendations were made to 'increase the power of local councils to control and regulate brothels, and prostitution-related activities in their areas'.<sup>35</sup> In regard to planning issues the Committee recommended the following (pp 279-283):

- a system of planning controls and supervision of premises used for the purpose of prostitution be developed;
- having regard to the principles of planning law and the desirability of local decision-making on the siting and other relevant factors of such premises, local councils be the authority in the first instance to be involved in assessing the situation of individual premises;

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<sup>35</sup> Parliament of NSW, *Report of the Select Committee of the Legislative Assembly upon Prostitution*, P. Rogan Chairman, April 1986, p 272.

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- brothels should not be permitted in any areas zoned residential;
  - a brothel not be permitted at street level in commercial shopping centres;
  - a brothel not be permitted in any premises which are situated next to, adjoining or opposite a school, church or hospital;
  - a brothel should not be permitted immediately next to the building on the boundary of a residential zone and that this be prevented by the creation of a smaller buffer zone of either one building or 40 metres;
  - ownership or operation of brothels be limited to three separate premises or parts of premises which operate as a brothel by any individual or by any group of individuals or by any directly-related individuals; and
  - any person lodging a development application for consent as an owner or operator of a brothel be of good fame and character.

Concerns were raised in 1986 by the Local Government Association which made these recommendations as to the role of councils in the vetting of the character of applicants:

The Association's committee has pointed out that checking the credentials of an applicant is not a traditional council role. This question becomes particularly significant when considered in the light of the links between prostitution and crime. The Association was therefore critical of the inadequacy of the Rogan report in this respect, and suggested that a mechanism for the vetting of applicants was necessary. They have argued that a system of licensing of prospective brothel owners, along the lines of liquor licensing, would solve this problem. The licensing board would assess the 'fame and character' of the applicant, and investigate whether he or she already owns the maximum number of three brothels.<sup>36</sup>

With the legalisation of brothels in 1995, the recommendations of the Rogan Committee were largely incorporated, with the exception of the checking of a brothel applicant being of good fame and character. The Local Government Association has accepted that councils should be involved with the planning issues associated with brothels, but argues that the Health and Police Departments should also be involved in policing the industry. This is particularly in regard to assessing the 'good fame and character' of an applicant, which is currently not assessed.<sup>37</sup> As indicated in the previous section, councils have been finding it

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<sup>36</sup> 'Planning for prostitution? Rogan report leaves local government holding the baby', July 1986, *Local Government Bulletin*, 2 at 10.

<sup>37</sup> "Behind the closed doors" in *The Sydney Morning Herald* 31 August 1999.

difficult to devote adequate resources to curbing the burgeoning legal and illegal sex industry.

#### 4.0 The Victorian Legislation

Much has been written in the Sydney press comparing the quite strictly regulated operation of brothels in Victoria with the relative lack of regulation in NSW.<sup>38</sup> For instance, in an attempt to prevent organised crime, Victorian brothel owners must be licensed and are permitted to operate one brothel venue only. Even some Sydney brothel operators consider the Victorian legislation to be better than that currently operating in NSW, mainly due to the restrictions on illegal establishments advertising their services.<sup>39</sup> However, some Victorian brothel owners have complained about the restrictive legislation, commenting: “There are so many rules and regulations we are thinking of packing up and going to Queensland.”<sup>40</sup> A Victorian police spokesperson commented about the legalised industry: “Legalised prostitution seems to be orderly, regulated and relatively well controlled, with a majority of operators playing by the rules.” However, he recognised that illegal establishments had proliferated over the last 12 months.<sup>41</sup>

As noted above, the Local Government Association has called for a police presence in the regulation of the industry. With this in mind, it may be pertinent to describe the operation of the Victorian *Prostitution Control Act 1994*, which included the police in the regulation of their brothel industry.

The objects of the Act are-

- (a) to seek to protect children from sexual exploitation and coercion;
- (b) to lessen the impact on the community and community amenities of the carrying on of prostitution-related activities;
- (c) to seek to ensure that criminals are not involved in the prostitution industry;
- (d) to seek to ensure that brothels are not located in residential areas or in areas frequented by children;

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<sup>38</sup> For example, the *Sydney Morning Herald* has suggested that NSW should look closely at the Victorian legislation as a model for reform. See “Behind the closed doors” *The Sydney Morning Herald* 31 August 1999.

<sup>39</sup> “Law and disorder in a booming industry” in *The Sydney Morning Herald* 30 August 1999.

<sup>40</sup> “Sex city” in *The Age*, 1 March 1999.

<sup>41</sup> “Sex city” in *The Age*, 1 March 1999.

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- (e) to maximise the protection of prostitutes and their clients from health risks;
  - (f) to maximise the protection of prostitutes from violence and exploitation;
  - (g) to ensure that brothels are accessible to law enforcement officers, health workers and other social service providers;
  - (h) to promote the welfare and occupational health and safety of prostitutes.

It is an offence to sell, supply or consume alcohol in a brothel.

As explained in detail below, prostitutes and brothels in Victoria need to have a variety of permits or licences. Section 15 of the Act states that simply being in, entering or leaving an unlicensed brothel without a lawful excuse is an offence. In any advertisements that the brothel may publish, the licence number must be clearly displayed. The Act prohibits brothel advertisements being broadcast or televised. Under amendments to the Act in 1999, a so-called 'swingers club' also comes under the control of the Act.

To operate, a prostitute, or, as described in the Act, a Prostitution Service Provider, needs to have a licence from the Business Licensing Authority (the Authority). In general, the functions of the Authority are to administer the licensing and registration provisions of several Acts, including the: *Consumer Credit (Victoria) Act 1995*; *Estate Agents Act 1980*; *Introduction Agents Act 1997*; *Motor Car Traders Act 1986*; *Second-Hand Dealers and Pawnbrokers Act 1989*; and the *Travel Agents Act 1986*.<sup>42</sup> In regard to the *Prostitution Control Act*, the functions of the Licensing Authority are:

- (a) to determine licence applications;
- (b) to determine manager approval applications;
- (c) to liaise with the police force so as to assist the police force in carrying out its functions in relation to prostitution;
- (d) to refer relevant matters for investigation by the WorkCover Authority, the Australian Taxation Office or the Commonwealth Department of Immigration and Ethnic Affairs or any other body;
- (e) to inform the Advisory Committee about issues and trends relevant to its functions.

To carry on the business of prostitution without a licence is an offence, with a penalty up to five years imprisonment. However, under s.23, if one or a maximum of two people

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See section 6 of the *Business Licensing Authority Act 1998*.



operate a brothel with a permit from the local council, then no Prostitution Service Provider licence is required. This exemption only occurs if no other person directs clients to the business, or the business is part of or associated with other prostitution service providers. A person who intends to rely on exemption under s.23 of the Act must first register their particulars with the Authority.

An applicant for a Prostitution Service Provider licence must be over 18 years of age. The application must state all the details of where the service provider intends to carry on the business, and if there are any other persons involved in the business. In addition, the applicant must consent to having their fingerprints taken. The Business Licensing Authority must give notice of an application to the relevant local council, as well as advertise in a newspaper inviting public submissions. In determining the application the Authority must take into account any submissions received. In addition, a copy of the application must be sent to the Director of Fair Trading and the Chief Commissioner of Police. The Director may and the Chief Commissioner must report back to the Authority.

The legislation provides two mechanisms for the Authority to determine applications for a Prostitution Service Provider. Firstly, it prescribes the conditions in which a licence application must be refused, and once this test is passed, secondly by outlining the factors that must be considered in assessing the suitability of an applicant. Section 37 of the Act prescribes the circumstances in which the Authority must refuse a licence application. These grounds are:

- (1) The Authority must refuse to grant a licence to a person whom it is satisfied:
  - (a) is not a suitable person to carry on business as a prostitution service provider; or
  - (b) has, within the preceding 5 years, been convicted or found guilty of a disqualifying offence; or
  - (c) has, within the preceding 5 years, had a licence granted to him or her cancelled under Division 4; or
  - (d) is an associate of a person who has, within the preceding 5 years, been convicted or found guilty of a disqualifying offence; or
  - (e) is an associate of a body corporate a director or secretary of which has, within the preceding 5 years, been convicted or found guilty of a disqualifying offence; or
  - (f) is an insolvent under administration; or
  - (g) is a represented person within the meaning of the Guardianship and Administration Act 1986.

Under the Act "disqualifying offence", in relation to an application for a licence, means-

- (a) an indictable offence; or
- (b) an offence which, if committed in Victoria, would have been an indictable offence that, in the opinion of the Authority, is of a kind that renders the applicant ineligible to hold a licence.

The definition of a disqualifying offence, and hence grounds for refusal of a licence, is therefore wide-ranging. It provides the opportunity to vet applicants who may have committed an indictable offence inter-State, and helps ensure that the crime element is removed from brothel and prostitution operations.

If an applicant for a Prostitution Service Provider Licence satisfies the above conditions, in determining the suitability of an application the Authority must also consider the following:

- (1) In determining whether an applicant for a licence is a suitable person to carry on business as a prostitution service provider, the Authority must consider:
  - (a) whether the applicant is of good repute, having regard to character, honesty and integrity;
  - (b) whether the applicant has, or is or will be able to obtain, financial resources that are adequate to ensure the financial viability of the business;
  - (c) whether the applicant has sufficient business ability to establish and maintain a successful business;
  - (d) whether the applicant will have in place arrangements to ensure the safety of persons working in the business that are adequate and comply with the prescribed requirements or the conditions or restrictions that might be set out in a licence;
  - (e) whether the proposed business structure is sufficiently transparent to enable all associates of the applicant (whether natural persons or bodies corporate) to be readily identified for the purposes of section 37 (ie, grounds for immediate refusal of a licence);
  - (f) any other matters that are prescribed.

The Authority must not class a person as not being a suitable person to carry on business as a prostitution service provider only because he or she has worked as a prostitute.

It is also illegal for a licensee to carry on business as a prostitution service provider in partnership with, or otherwise in association with, a person who is not also licensed to carry

on that business. A fine of 120 penalty units or imprisonment for 12 months or both is applicable. The Act also establishes a mechanism (the Victorian Civil and Administrative Tribunal) to cancel a licence. Section 47 of the Act includes seven factors that automatically cancel a licence, including such things as drug offences, any indictable offence punishable by imprisonment for 12 months or more, or becomes insolvent. The tribunal may conduct an inquiry into a licensee to determine if any of these seven factors have been contravened, or lesser offences also would be cause for disciplinary action.

When open, a licensed brothel must also be personally supervised either by the licensee or an approved manager. A person must apply to the Authority to be a manager of a prostitution service providing business, and the application process, grounds for refusal, and matters to consider are all the same as for a licensee application as described above.

To help clients determine whether a prostitute service provider is licensed or not, a copy of the licence must be displayed in a conspicuous place near the front entrance to his or her place of business (section 60).

Under section 63 of the Act, a member of the police force of or above the rank of inspector may apply to a magistrate for a search warrant in relation to particular premises if the police officer believes on reasonable grounds that a person is carrying on business at those premises as a prostitution service provider without a licence. If the magistrate is satisfied by evidence that there are reasonable grounds for suspecting an offence, he or she may issue a search warrant. However, outside office hours, police may also enter such premises without a warrant if they think that relevant evidence is likely to be lost if entry to the premises is delayed until a warrant is obtained. The police officer must first facsimile to the Registrar of the Magistrate's Court and the Authority: the grounds for belief that an offence is occurring and that relevant evidence is likely to be lost; a description of premises that are to be searched; and the names of the police officers being authorised to enter the premises.

To help defray the costs of administering the prostitution industry, the Act also established the Prostitution Control Board Fund. All fees paid under the Act and all fines and penalties paid in respect of an offence against the Act are paid into the Trust Fund. The Act also established an Advisory Committee to advise the Minister on the operation of the Act and the prostitution industry.

Part 4 of the Act deals with planning controls on brothels. Once a person has a licence from the Authority to be a Prostitution Service Provider, he or she must then apply for a permit from the relevant authority - usually the local council, to use or develop land for the purposes of the operation of a brothel. To operate a brothel, for which there is not a permit granted under the *Planning and Environment Act 1987* (Vic), is an indictable offence with up to three years imprisonment.

Section 73 of the Act defines the matters that must be considered by the local council in determining a brothel application. These are:

- (a) any other brothel in the neighbourhood;
- (b) the effect of the operation of a brothel on children in the neighbourhood;
- (c) except in the case of land within the area of the City of Melbourne, bounded by Spring, Flinders, Spencer and LaTrobe Streets, whether the land is within 200 metres of a place of worship, hospital, school, kindergarten, children's services centre or of any other facility or place regularly frequented by children for recreational or cultural activities and, if so, the effect on the community of a brothel being located within that distance of that facility or place;
- (d) other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise or traffic (including pedestrian traffic);
- (e) any guidelines about the size or location of brothels issued by the Minister administering the Planning and Environment Act 1987;
- (f) the amenity of the neighbourhood;
- (g) the provision of off-street parking;
- (h) landscaping of the site;
- (i) access to the site;
- (j) the proposed size of the brothel and the number of people that it is proposed will be working in it;
- (k) the proposed method and hours of operation of the brothel.

In addition, section 74 of the Act also specifies where the local council must refuse to grant a permit to use or develop land for a brothel. These grounds are:

- (a) the land is within an area that is zoned by a planning scheme as being primarily for residential use; or
- (b) the land is within 100 metres or, in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, 50 metres of a dwelling other than a caretaker's house; or
- (c) except in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, the land is within 200 metres of a place of worship, hospital, school, kindergarten, children's services centre or of any other facility or place regularly frequented by

children for recreational or cultural activities; or

- (d) unless there exists special circumstances as set out in guidelines issued by the Minister administering the Planning and Environment Act 1987, more than 6 rooms in the proposed brothel are to be used for prostitution.

For this section, distances are to be measured according to any route which reasonably may be used in travelling.

The Act restricts persons to only having one brothel permit, so the same person cannot establish a chain of brothels.

As noted in this Briefing Paper, one of the problems experienced by local councils in NSW is closing down illegal brothels. Part 5 of the Victorian *Prostitution Control Act* provides the mechanism to close down an illegal brothel. The Act relies on the Magistrates Court to declare premises to be a proscribed brothel.

The Magistrates' Court may declare premises to be a proscribed brothel if it is satisfied on the balance of probabilities:

- (a) on the application of an authorised police officer, that a person is carrying on business as a prostitution service provider without a licence, or without a permit from the relevant local council; or
- (b) on the application of an authorised officer of the local council, that the premises are being used as a brothel without a permit from the council.

Before the Magistrates' Court can make a declaration on the premises, at least 72 hours before the hearing a notice must be served on the owner or occupier of the premises, or published in a newspaper circulating in the area, that an application to declare the premises a proscribed brothel has been made.

Once a premises has been declared a proscribed brothel, a notice of the making of the declaration must be: published in a newspaper circulating in the area; served personally on the owner or mortgagee of the premises; and posted up at or near the entrance to the premises to be visible and legible to any person entering them. It is an offence to be found in or entering or leaving a declared proscribed brothel premises unless it was for some lawful purpose. The Magistrate's Court may rescind a declaration of a proscribed brothel. In doing so, it may impose conditions, including the giving of security, guaranteeing that the premises will not again be used for the purposes of a brothel without a relevant licence or permit from the local council.

## 5.0 Conclusion

The commercial sex industry in NSW is once again attracting media attention as communities throughout the State grapple with the vexed issue of where to locate legal brothels. The rapid growth of the sex industry and the difficulty of closing illegal brothels are major issues. There is increasing pressure for a review of the *Disorderly Houses Amendment Act 1995* which legalised brothels. To this end, comparisons with the Victorian *Prostitution Control Act 1994* may provide some clues as to means of tightening up the regulation of the sex industry. In particular, vetting brothel applicants as to their 'fame and character' and licensing prostitutes and brothels have been advanced as ways of helping to reduce the undesirable side effects of legalising the industry.