1. PROSTITUTION REFORM BILL

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The purpose of this report is to inform the Council on the Prostitution Reform Bill as recently reported back to Parliament by the Justice and Electoral Committee. The Council also needs to consider steps to be taken in the event the Bill is approved by Parliament.

The Bill was expected to receive its second reading on Wednesday 19 February 2003. Since there were time constraints placed on the Council in this respect, the Regulatory and Consents Committee approved the distribution of a letter and the Council's submission to the Select Committee to all Members of Parliament on Friday 14 February 2003. The Council's approval for this action by the Committee is sought retrospectively.

BACKGROUND

The Bill's stated purpose is to:

> *"…decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that-*
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> *(a) safeguards the human rights of sex workers and protects them from exploitation;*
> *(b) promotes the welfare and occupational health and safety of sex workers;*
> *(c) is conducive to public health;*
> *(d) prohibits the use of prostitution of persons under 18 years of age;*
> *(e) implements certain other related reforms."*

At the present time the legal framework regarding prostitution which will be affected by this Bill is:

(a) The Crimes Act makes it a criminal offence to:

(i) keep or manage a brothel, or be the landlord for a brothel and breach is punishable by five years' imprisonment;
(ii) live wholly or in part on the earnings of the prostitution of another person punishable by five years' imprisonment;
(iii) procure any persons for the purpose of prostitution for gain or reward; punishable by five years' imprisonment.

(b) It is an offence, in a public place, for a person to offer their body, or any other person's body, for the purpose of prostitution and this is punishable by a fine not exceeding $200. This offence is generally referred to as soliciting in a public place.

(c) The Massage Parlours Act 1978 provides for the supervision and regulation of massage parlours.

The Prostitution Reform Bill, if enacted by Parliament, will mean that the offences set out in (a) and (b) above will no longer be criminal offences in New Zealand and there will no longer be any legal prohibitions against the activities described in (a) and (b). The Bill will also repeal the Massage Parlours Act 1978 so that the current licensing system for massage parlours and supervision by the Police will no longer continue.

In effect, the keeping of a brothel and soliciting in a public place will become lawful activities subject only to the general laws which regulate any other business in the community.

The Bill does contain provisions which deal with the health and safety requirements of prostitutes and also protection for persons under 18 years. A copy of the Table of Contents of the Bill is attached.

CITY COUNCIL SUBMISSIONS

When the Bill was open for public submissions last year the Christchurch City Council filed a submission and appeared before the Select Committee in support of that submission (attached).

The key issue raised in the Council's submission was that if Parliament chose to reform the law relating to brothels in New Zealand, then it should first seek the views of the New Zealand public as to the appropriate controls to be put in place to control brothels. The Council was concerned that the Bill, if enacted, would decriminalise brothels without any real consideration by the New Zealand public as to the implications on communities of such a change.

The submission stated that the Council believed the community it represents would not accept the establishment of brothels within Christchurch City without any public debate as to the merits of such a change, and that the Christchurch community would wish to see controls on the legislation, if there was to be change, on the location and operating conditions of brothels.

The Council noted that while there had been media comment about the Bill in relation to the proposed repeal of the law concerning soliciting in a public place, there was very little, if any, media comment in relation to the proposed decriminalisation of brothels. The effect of this is that they could be established lawfully within a community.

The Council stated that it took the view that certain types of activities needed to be specifically regulated by Parliament in addition to the more general controls that exist in other legislation. Examples at the present time are the sale of liquor and the operation of casinos.

The Council was concerned that the proposal to deregulate the operation of brothels did not reflect public opinion within New Zealand at this time and that if decriminalisation was to occur, then specific legislation dealing exclusively with brothels was needed to ensure their control.

There would be social effects from the decriminalisation which needed to be controlled by way of specific legislation rather than through more generic legislation such as the Resource Management Act.

The Council noted that in Australia two states had created specific legislation dealing with the control of brothels. Typically legislation would contain restrictions on persons with criminal convictions being involved in brothels, control of the location of brothels within a specified distance of primary schools, residential areas, places of worship and kindergartens, and a prohibition on the advertising of brothels.

SELECT COMMITTEE REPORT

The Select Committee has now reported back to Parliament and recommended that the Bill proceed with a number of amendments. In practical terms the Select Committee has not made any real change in relation to the Council's submission that there should be informed public debate on such a proposed change, nor on the Council's submission that there should be specific controls regarding the location and operation of brothels.

With regard to the Council's concern regarding the location and operation of brothels in particular, the Select Committee stated (at pages 14-15):

> *"The bill is silent on planning matters relating to the sex industry. Therefore, all planning issues are governed by the Resource Management Act 1991 (RMA) and district plans made under that Act. The explanatory note to the bill states "the provisions of the Resource Management Act 1991 remain to address any potential nuisance caused by the siting of a sex work venue".*
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> *The definition of environment in the RMA includes those social, economic and cultural conditions that affect people and their communities, and it also includes amenity values. Some submitters state the advantages in controlling land use through the RMA are that it is democratic and allows for differences in perception and priorities between communities. These submitters argue that, if required, rules regulating prostitution could be made on the grounds that it is affecting social conditions, or it is affecting the amenity values in a particular place.*
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> *Others do not agree. These submitters note the focus of the RMA is the environment and not social issues or moral values. Its purpose is "to promote the sustainable management of natural and physical resources". The Act is not about controlling people and activities, but the effect of the activities on the environment. This gives rise to questions regarding the adequacy of this Act to deal with issues surrounding the conduct and location of prostitution. Their conclusion is that this Act is not well suited to address social impact concerns raised by certain aspects of prostitution.*

A majority of us consider the RMA, along with the District Plan of a local or territorial authority, is sufficient to control undesirable prostitution activity and planning matters relating to the sex industry. We do not support amendments aimed at creating "red light" zones or areas prohibiting soliciting. The bill will repeal the offence of soliciting and, under a decriminalised model, it would be inconsistent and risk-creating to create new offences relating to where this can take place. Overt street soliciting in New Zealand is largely confined to four or five relatively small areas in Auckland, Wellington and Christchurch. We do not agree decriminalisation will see such an increase in soliciting that it warrants imposing zoning restrictions or prohibitions. We would suggest that if soliciting activities reach a level of constant and ongoing harassment, the offences of offensive and disorderly behaviour in the Summary Offences Act 1981 could be widened or those of intimidation, obstructing a public way, or indecent exposure currently in that Act could be used. B (Sections 3, 4, 21, 22 and 27 refer)

In addition to these offences there are offence provisions in both the Harassment Act 1997 and the Crimes Act 1961 that could be used in this context. Sections 125 and 126 of the Crimes Act make it an offence to do an indecent act in a public place, and to do an indecent act with the intent to insult or offend any person.

Other members of the committee, however, disagree. These members support amendments that will allow communities to have the ability to limit the conduct and location of prostitution. These members believe the RMA will not be able to control the location of brothels, soliciting or nuisance activities such as discarded used condoms in gardens. These members note that all the Australian states that have decriminalised prostitution have retained some control over street soliciting.

By a majority, we recommend there be no provisions in the bill that limit the conduct and location of prostitution. However, as we discussed at length the type of regulations (by-laws) that might be used to limit or control this activity, we agree this material should be included in our report. We think the House should have this information so that a member who wishes to propose an amendment enabling local authorities to have this power has the benefit of our consideration. This discussion appears later in the report."

Regarding the issue of signage, the Committee stated (at pages 13-14):

"Local authorities currently have the ability under the Local Government Act 1974 to make bylaws concerning signs. Section 684(1)(15) of that Act provides for the regulation, control, or prohibition of the display of advertising. However, the Act does not explicitly consider the content of signage and we do not expect the local government reform currently underway to alter this position. In a decriminalised environment, it is possible that signs advertising businesses of prostitution may become more prolific and more explicit about the services provided by that business. In considering the issue of whether local authorities ought to have the power to regulate signage for prostitution, we discussed the fact that businesses other than those offering commercial sexual services might include offensive content on their signs and that it was possibly out of step with the purpose of the bill to target prostitution in that way.

However, we all want to go some way towards addressing the concerns of some submitters and conclude local authorities ought to have the ability to regulate or prohibit offensive signage advertising commercial sexual services. The bylaw-making power may apply throughout a district or part of a district and councils may make different provisions for different parts of a district. However, local authorities must take into account the interests of businesses of prostitution, because a business that is not illegal has a right to advertise its services, and it would be contrary to the spirit of the bill to prohibit signage altogether."

IMPLICATIONS FOR THE CHRISTCHURCH CITY COUNCIL

Practical implications of this change for the Council are:

(a) Brothels would be able to operate within any zones within the city (including Living Zones) subject only to existing planning controls.

Regarding any proposal to control brothels through the City Plan, the Team Leader, City Plan comments as follows:

There are two issues that the community may wish to see controlled through the City Plan.

(i) ***Sex work premises (brothels)***

These sites would raise the usual physical land-use issues of any commercial activity, including traffic, parking, noise and visual appearance. These could be controlled to an extent by the normal process of rules and standards. The greatest effects would be in the Living Zones. Effects could be greater because much of the activity is likely to be at night. As the City Plan stands the activity would require resource consent because of various rules, notably hours of operation and rules restricting employment of non-residents. Some controversial consent applications can be anticipated.

Possibly of equal concern could be effects on moral values of neighbouring residents or occupiers, especially the moral reluctance of some people to live beside or close to a brothel. There may be fears about children being resident nearby and developing awareness and possibly acceptance of the sex industry. Fears of molesting and so on are likely also to be raised.

It is not possible to say whether or not attempts to restrict brothels on purely moral grounds would be successful. There is a plausible logic trail available in the RMA, relying on concepts such as "people and communities", "social well-being" and "amenities". However there is very little history of the RMA being used successfully to deal with purely social issues, as opposed to more physical environmental effects. There can be no confidence that attempts to restrict the location of brothels would be successful. The Select Committee may have brushed this aside rather glibly.

(ii) ***Soliciting***

As with brothels, it is unclear if the RMA gives a clear mandate for controlling locations where people may solicit in public places. Regardless of that it would be an extremely difficult area of enforcement.

(b) Prostitutes will be able to solicit in public places without any restriction and this could include areas such as Cathedral Square and Victoria Square, and other high profile public areas in Christchurch City.

One restriction that would apply to prostitutes soliciting in public places is that currently the Council's Public Places and Signs Bylaw 1992 provides that no person shall *"…sell or hire, or expose for sale or hire, any goods, wares, merchandise or services, or sell or expose for sale any food, on any road or public place without a licence issued by the Council and only in compliance with conditions imposed for that licence."*

Breach of that bylaw is currently punishable by a fine not exceeding $500. Under the Local Government Act 2002 the penalty increases to $20,000. As the Bill is currently drafted, persons who wished to engaged in *'commercial sexual services'* (as that term is defined in the Bill) in a public place, would require a licence from the Council. There will be administration and enforcement implications for the Council arising from the Bill in this regard. An issue which could become relevant if the Council wished is whether the Council has the legal power to prohibit persons from soliciting in certain public places within Christchurch, similar to mobile shop operators not being able to operate in the central business district.

Certainly the Council would not have the power to make a bylaw effectively reinstating the current prohibition on soliciting in a public place throughout the whole city.

(c) As noted in the comments of the Select Committee referred to above, the Select Committee has recommended that there be a new bylaw-making power (Clause 6C) prohibiting and regulating offensive signage advertising commercial sexual services.

The proposed power provides:

"(1) A territorial authority may make bylaws for the purpose of prohibiting or regulating signage that-

(a) is visible to a person in a public place (other than only in a brothel or other premises in which a business of prostitution is carried on); and
(b) advertises commercial sexual services in a way that the territorial authority is satisfied would unreasonably cause offence to the community generally.

(2) The territorial authority must, before making the bylaw, have regard to the interests of businesses of prostitution in its district.

(3) The bylaw may-

(a) apply throughout a district or part of a district; and

(b) make different provision for different parts of a district."

Clearly, making bylaws of this type will involve the Council in having to consult with the prostitution industry before making the bylaw (as required by Clause 6C(2)). Once having made such a bylaw, the Council would need a system to be able to judge whether a particular sign advertises services in a way that the Council is satisfied would unreasonably cause offence to the community generally.

Recommendation:

1. That the Council reiterate the concerns it expressed to the Justice and Electoral Select Committee by retrospectively approving the release of the attached letter and a copy of its submission on the Prostitution Reform Bill to all Members of Parliament.

2. That it be noted that should the Prostitution Reform Bill become law that the Council will need to urgently make a policy dealing with the regulatory issues arising as a result of this legislation.