



24. 7. 2003

**PROSTITUTION REFORM ACT SUBCOMMITTEE
14 AND 21 JULY 2003**

**Meetings of the Prostitution Reform Act Subcommittee
were held on 14 and 21 July 2003**

PRESENT: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Alister James, Lesley Keast
and Ingrid Stonhill.

IN ATTENDANCE: Councillor Carole Anderton.

The Subcommittee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. PROSTITUTION REFORM ACT: HOW TO ASSESS THE NEED FOR CONTROL MEASURES AND HOW TO DETERMINE WHAT (IF ANY) THEY SHOULD BE

Officer responsible Director of Policy	Author Jonathan Fletcher, DDI 941-8548
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The purpose of this report is to seek the Council's approval of the process for assessing the need for potential control measures which may arise as a consequence of the passage of the Prostitution Reform Act, and what (if any) they should be.

BACKGROUND

The Prostitution Reform Act which came into force on 28 June 2003 makes a number of activities lawful that were previously unlawful. It is now legal to:

- (a) Keep a Brothel (subject to getting a licence which cannot happen until the repeal of the Massage Parlours Act in December).
- (b) Live on the earnings of prostitution.
- (c) Procure (hire) a person for prostitution.
- (d) Solicit for the purposes of prostitution.

The Act also provides that on 28 December 2003 the provisions for the issuing of operators' certificates comes into force. These are the provisions that require people who wish to operate a business of prostitution to register and be issued with a certificate entitling them to do so. Effectively it is from this date that people may legally set themselves up in the business of owning and operating a brothel. People do not need a licence to just be a prostitute, and can lawfully do that now.

The powers of entry and inspection in relation to health and safety matters are the responsibility of Community and Public Health inspectors and the District Court is responsible for the administration of the operator's certificate regime.

THE COUNCIL'S ROLE UNDER THE ACT

In order to give Councils the opportunity to effectively control any effects which may arise from the Act, it contains two new bylaw-making powers, and additional criteria to be used with resource consents for businesses of prostitution. These bylaw-making powers are over and above those which exist in the Local Government Act, but any bylaw must be made using the process laid down in the Local Government Act.

The new bylaw-making powers are quite specific. They are for:

- regulating the location of brothels; and
- controlling signage advertising commercial sexual services.

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Councils do not have the power to make bylaws which would try to completely ban brothels, soliciting, or prostitution in general (see attachment).

SOLICITING ON ROADS

An issue which is not referred to in the Act but which may well arise for consideration is the activity of sex workers soliciting on the footpath. The Act contains no bylaw-making powers in regard to this activity, but territorial authorities have had for many years the power to control activities on public roads (which includes footpaths). Those powers continue under the Local Government Act 2002.

At the present time the Council's Public Places and Signs Bylaw 1991 provides:

"No person shall sell or hire or expose for sale or hire any goods or services on any road without a licence issued by the Council, only in compliance with conditions proposed in that licence."

Given that soliciting has previously been illegal, this is not an area of enforcement the Council has been involved with. Now that soliciting has been made legal, it is arguable that the activities of sex workers on footpaths falls within the provisions of the Public Places and Signs Bylaw 1991, as sex workers are offering services for sale. At some stage the Council will probably need to consider whether it is necessary, practical or desirable to attempt to control sex workers soliciting on the footpath.

DISCUSSION

As noted above, the Council has powers to control aspects of prostitution in the city over and above those granted to the District Court under the Operator Registration provisions and those of the Police and Community and Public Health. These powers relate to:

1. Controlling the location of brothels by bylaw.
2. Controlling signage associated with brothels by bylaw
3. Its powers under the Resource Management Act (slightly amended by the new Act).
4. Powers under its Public Places and Signs Bylaw 1991 (amended or otherwise) to control soliciting on the footpath.

The first thing the Council needs to assess is whether there are any actual matters of concern within its power to address which have arisen as a result of the passage of the Prostitution Reform Act. To assess this is no easy matter and should involve consultation with stakeholders in the industry and the wider Christchurch community. The Subcommittee discussed the process for determining what, if anything, the Council should do to gauge that concern and concluded that the recommended way forward began by:

(i) Scoping the Status Quo

- A meeting/s with existing stakeholders (eg Police, Prostitutes' Collective, Massage Parlour Owners, Community and Public Health) designed to educate the Subcommittee on the status quo as regards to the prostitution industry in Christchurch.
- Gauge stakeholder perspective on key issues raised by the new Act.
- Seek ideas on how to communicate with a very hard to reach group (eg prostitutes, existing industry users).

(ii) Seeking Community Views

The Subcommittee needs to consider the information gained in the scoping work described above and information from other sources (including ESU and any relevant work done by Local Government New Zealand) to design a public information and consultation programme. It is vital that the Council's limited role in the area of controlling prostitution is made clear at the outset of any consultation.

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Through a carefully designed questionnaire, the Council will then be able to ascertain what are the public's perceived concerns about those matters over which the Council has the power to act. This should not in the end be a discussion on the merits of the Act, which has been legislated by Parliament.

(iii) **Considering Need for Further Action**

Having received the results of that public information and consultation programme, the Subcommittee would then report direct to a special meeting of the Council with:

- A summary of the issues raised; and
- A (non-binding) recommendation on whether or not it felt there was a need to consider further work on particular issues; and
- Any specific controls (eg new bylaw/s, amending existing bylaw/s, variation/plan change) that are worthy of further analysis.

TIMING

The Subcommittee considered three possible times for the public consultation component of the programme (ie part ii above):

- (i) Having the consultation questionnaire out in August 2003: a timing which would enable new bylaws (if these were considered the best response) to be brought in before 28 December 2003;
- (ii) October 2003: a timing which would enable the Council to consider the of the public consultation before Christmas and therefore before the operator certification regime comes into place.
- (iii) March 2004: this would enable the consultation to begin after nine months' experience under the new Act and three months experience of the effects of the operator certification scheme.

The pros and cons of the options are set out below:

August Option - Consult August 2003

Advantages:

- (i) Public see the Council as leading on this issue.
- (ii) It leaves open the option of having a bylaw in place by 28 December 2003 (although practically that may still not be possible).
- (iii) It satisfies, at the time when public interest is high, the public expectations that the Council will consult.
- (iv) It provides clarity for business owners and those planning on seeking an operator's licence.
- (v) It provides earlier information for the subcommittee.

Disadvantages:

- (i) The consultation would be undertaken before the issues became clear and there is a chance that the wrong questions would be asked.
- (ii) The Council would be the 'first cab off the rank' with all the risks, costs and uncertainties associated with being a prototype..
- (iii) The Council could be perceived as having a knee jerk and hasty reaction to a piece of new and highly emotive legislation.

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- (iv) Because the Council would be consulting before there was anything other than a very short experience in the operation of the Act most of the perceived problems raised would likely be theoretical rather than based on actual experience.
- (v) It would raise expectations that the Council would be able to control the operation of the prostitution industry - expectations that may be beyond its powers.
- (vi) The risk of 're-litigating the Act itself' might be higher given its recent passage.
- (vii) It would require starting immediately which would strain both the administration support for the consultation programme and the thoroughness with which accurate information could be provided for the education programme.
- (viii) Early consultation risks the need for an extra round of consultation at a later date when the impacts of the new legislation are clearer, with all the associated costs that that involves.

March Option- Consult March 2004

Advantages:

- (i) Consultation would occur after nine months' experience of operating the new Act and three months' experience of the operator certification provisions so that both the public and the Council would have had some experience of the impacts of the Act.
- (ii) The emotive heat caused by the public debate surrounding the passing of the Bill may have considerably dissipated leading to greater rationality and more quality feedback in the consultation programme.
- (iii) The Council would be able to take advantage of the experience with the early adopters and the working party work undertaken by Local Government New Zealand.
- (iv) Experience might be that market forces and the existing controls mean that brothels and brothel signage is less controversial.

Disadvantages:

- (i) Timing of delaying consultation risks turning the debate into a highly politicised election issue.
- (ii) If bylaws are made which would seek to ban brothels in specific locations, enforcement of the provision is much more difficult once they have already established. **Note: Legally there are no existing user rights under bylaws, so the bylaw requirements could legally be enforced. Bylaws have retrospective effect.**
- (iii) If brothels become controversial it could be perceived that the Council did nothing when it had a window of opportunity to act early before the operator's certification scheme came into place.
- (iv) The Council loses the educational opportunity occasioned by the new Act being controversial.
- (v) Many other local authorities are likely to be well ahead of us. The Council may end up being seen as a 'soft option' for newcomers to the industry.
- (vi) If a Community Board is dissatisfied it may decide to start consulting with the local industry or local stakeholders in an ad hoc fashion, and the Council loses the chance for a sensible planned approach.
- (vii) Controversy associated with the establishment of brothels might create public expectations and pressures for bylaws when they may not be the best way to manage the industry.

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October Option - Consult October 2003

Advantages:

- (i) Gives much more time than the August 2003 option for a considered approach to the public education and consultation.
- (ii) Still enables the Council to signal its intention in December before the operator certification scheme comes into place.
- (iii) Provides an opportunity to take advantage of the work that Local Government New Zealand is undertaking.
- (iv) Lessens the risk associated with most of the disadvantages of the August 2003 or March 2004 options.

Disadvantages:

- (i) It does not enable the Council to have in place a bylaw by 28 December 2003. The August 2003 option does enable this provided there is no slippage at all in the time line.
- (ii) The Council would still be consulting before there has been any experience of the operator certification provisions - that is before operators are legally able to establish brothels.

THE PREFERRED OPTION

After careful consideration of the above options the Subcommittee agreed to recommend to the Council that it consult with the community in line with the October 2003 option. The time line is approximately:

August 2003	The Subcommittee identifies stakeholders and meets with them to hear their views on the operation of the prostitution industry and the issues that it is within the Council's power to address.
Mid August	The Subcommittee considers this stakeholder information and information from other sources and frames up the key issues and questions that will form a part of the public consultation programme.
Late August	A seminar for all Councillors and interested Community Board members explains the status quo and the proposed questions to be put to the public.
September	The consultation questionnaire is designed, the web site developed, and the associated communication plan put in place.
Early October	The Subcommittee signs off the questionnaire and associated consultation information and communication plan.
Mid October to Mid November	(provisional dates are 13 October to 13 November) the issue is open for public submission.
1 and 2 December	The Subcommittee hears those people who have asked to make oral submissions and considers them alongside the written and electronic responses.
9 December	The Subcommittee confirms its report and recommendations to the Council.
19 December	Special Council meeting to receive the report and to decide what if any regulatory controls the Council wishes to further explore.

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Any further action that the Council may decide to take as a result of the above process (either new bylaws or amendments to existing bylaws or variations to the City Plan) would occur in the new year and would be subject to further public consultation once specific measures were proposed.

Staff

Recommendation: That the Council agree to the approach and timetable as described above.

Chair's Comments:

It is important that this process is robust, sensible and fair. I believe that consulting based on the above timeline (ie going to the public during October 2003) is neither hasty nor tardy. We need to make sure we ask the right questions, and unless we have sufficient information of good quality at the beginning of the process, we will end up with poor information at the end. I wholeheartedly endorse the staff recommendation.

Chair's

Recommendation:

1. That the staff recommendation be adopted.
2. That the Council hold a special meeting on 19 December 2003 for the purpose outlined in the report.

CONSIDERED THIS 24TH DAY OF JULY 2003

MAYOR