

8. PROSTITUTION REFORM ACT 2003

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The purpose of this report is to outline the provisions of this new Act and to recommend the establishment of a Subcommittee to consider the implications of the Act for the Council.

BACKGROUND

As Councillors will be aware, the Bill passed through all its parliamentary stages after a close vote at the Third Reading stage. It has received the Royal Assent and it came into force on Saturday 28 June 2003.

The Act makes, as from 28 June 2003, a number of activities lawful that were previously unlawful.

These activities are:

- (a) keeping a brothel,
- (b) living on the earnings of prostitution,
- (c) procuring a person for prostitution,
- (d) soliciting for the purpose of prostitution.

The Act will also repeal the Massage Parlours Act in December 2003.

PROSTITUTION REFORM ACT

- (a) Purposes of the Act

The Act's stated purpose is:

"...to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- (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 in prostitution of persons under 18 years of age;*
- (e) implements certain other related reforms."*

- (b) New provisions

The new provisions in the Act relating to prostitution can be summarised as follows:

- (i) The operators of business of prostitution must adopt and promote safer sex practices;
- (ii) Sex workers and clients must adopt safer sex practices;
- (iii) The Health and Safety in Employment Act 1992 applies to a sex worker while providing commercial sexual services;
- (iv) There are protections for sex workers in relation to inducing or compelling persons to provide commercial sexual services or earnings from prostitution;
- (v) There is a right for a person to refuse to provide commercial sexual services;
- (vi) There are prohibitions on the use in prostitution of persons under 18 years;
- (vii) Advertisements for commercial sexual services cannot be broadcast on radio or television, or published in a newspaper (except in the classifieds) or in public cinemas;

- (viii) There are powers of entry and inspection by Crown Public Health inspectors for compliance with health and safety standards;
- (ix) The Act establishes a Prostitution Law Review Committee to review, between 2006 and 2008, the operation of the Act and to consider whether any amendments to the law are necessary or desirable.

(c) Operator licences

Parliament has adopted a limited licensing regime in the Act to restrict who may operate a prostitution business. It appears that the intention of this regime is to ensure that those who own brothels and manage or control sex workers are suitable for the role, and to help keep organised crime groups, and other criminals out of the commercial sex industry.

The Act requires that any person who owns, operates, controls or manages a business of prostitution must hold a certificate from the District Court.

The Act sets out grounds upon which a person would be disqualified from holding a certificate and these include convictions for matters such as participation in an organised criminal group, sexual crimes, murder, manslaughter, assault, abduction, robbery, extortion, burglary, money laundering, and arms and drug offences.

The District Court has the power to order a waiver of the disqualification notwithstanding previous convictions and grant a certificate in particular circumstances. Operators are required to produce certificates on request to the Police. This operator licensing regime does not commence until December 2003.

The Act also provides that a sex worker who works at a "small owner-operated brothel" is not an operator of a business of prostitution and so does not need to have an operator's licence.

A "small owner-operator brothel" is defined in the Act as meaning a brothel-

- (a) at which not more than four sex workers work; and
- (b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel.

The Act is drawing a distinction between sex workers working by themselves or in a collective with other workers (where none of those workers has control over the other workers) by them not being required to have an operator's certificate; and brothels where the sex workers are controlled or managed by another person, and where the sex workers do not retain their individual earnings. In that latter situation the owner, operator or manager of the brothel must hold an operator's certificate.

ROLE OF TERRITORIAL AUTHORITIES UNDER THE ACT

As noted above, the powers of entry and inspection in relation to health and safety matters are the responsibility of Crown Public Health inspectors and the District Court is responsible for the administration of the operator's certificate regime. With regard to territorial authorities, the Act contains two new bylaw-making powers and new criteria to be used with resource consents in relation to businesses of prostitution. The new bylaw-making powers are for regulating location of brothels and controlling signage advertising commercial sexual services.

(a) Regulating location of brothels

The Act provides that the Council may make bylaws "*...for the purpose of regulating the location of brothels.*"

It is well established law that with bylaw-making powers in statutes the use of the word "regulating" means that the Council can prohibit an activity in part of its district, but not in the whole of its district. The Act does not contain any criteria to guide the Council in exercising this bylaw-making power.

I note that the power to make a bylaw is in relation to “brothels” and in my opinion the bylaw-making power applies to all brothels, including small owner-operated brothels. A council, in making a bylaw, could write the bylaw so that it did not apply to small owner-operated brothels if it wished to do so.

The legal process for making bylaws involves the use of the special consultative procedure so there is an opportunity for public submission as to the content of any proposed bylaw. With bylaws there is not the concept of existing use rights that there is in the resource management area so a bylaw can apply to brothels existing before the bylaw came into force.

(b) Signage Bylaws

The Act also provides that the Council may make bylaws that “...*prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.*”

The Council can only make such bylaws if the Council is satisfied-

“...that the bylaw is necessary to prevent the public display of signage that-

- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or*
- (b) is incompatible with the existing character or use of that area.”*

Such bylaws can prohibit or regulate signage in any terms, including by imposing restrictions on the content, form or amount of signage on display. City Plan rules already place restriction on advertising signs generally and if the Council was to make a bylaw under the Act, the bylaw would need to link with the City Plan rules.

(c) Resource consents

The Act also provides that when considering an application for a resource consent for a land use relating to a business of prostitution, the Council must have regard to whether the business of prostitution-

- “(a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or*
- (b) is incompatible with the existing character or use of the area in which the land is situated.”*

SOLICITING ON ROADS

An issue which is not referred to in the Act but which will arise for consideration is the activity of sex workers soliciting on footpaths. The Act contains no bylaw-making powers in regard to this activity, but territorial authorities have had for many years powers to control activities on public roads (which include footpaths) and 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 and only in compliance with conditions imposed from that licence.”

Given that soliciting has previously been illegal this is not an area the council has previously been involved with. It is arguable that now that soliciting has been decriminalised, the activity of sex workers on footpaths falls within that provision of the Public Places and Signs Bylaw 1991, in that sex workers are offering services for sale. Consideration will need to be given to whether, and how, the Public Places and Signs Bylaw is to apply to sex workers soliciting on the footpath.

ISSUES FOR THE COUNCIL

In my view there are three primary issues for the Council to consider arising out of the Prostitution Reform Act:

1. Does the Council wish to have a bylaw to control the location of brothels within the City?
2. Does the Council wish to have a bylaw to control signage advertising commercial sexual services?
3. Does the Council wish to have a bylaw, a policy and conditions (incorporating a Council licensing regime) regarding soliciting on roads?

NEXT STEPS

I recommend that the Regulatory and Consents Committee establish a subcommittee to work through the policy issues arising out of the Prostitution Reform Act with respect to the three issues above (Issues for the Council) and report back to the Committee with recommendations for consideration by the Council.

I believe that it will be appropriate for the work of that subcommittee to involve representatives from the Police, Crown Public Health, the Prostitutes Collective and brothel owners and other relevant agencies.

It may be appropriate for membership of the Subcommittee to extend outside the Committee to other elected members.

Staff

- Recommendation:**
1. That the Regulatory and Consents Committee establish a Prostitution Reform Subcommittee to consider the three issues referred to above and any other matters that come to the Subcommittee's attention with regard to the Act.
 2. That the members of the Subcommittee be appointed by the Committee.
 3. That the Subcommittee report back to the Regulatory and Consents Committee and then to the Council with recommendations regarding the Prostitution Reform Act.

Chairman's

- Recommendation:** That the above recommendation be adopted.