



New South Wales

Brothels Legislation Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979*, the *Restricted Premises Act 1943* and the *Land and Environment Court Act 1979* with respect to disorderly or unlawful brothels as follows:

- (a) to enable orders under the *Environmental Planning and Assessment Act 1979* (the *EPA Act*) in relation to the use of premises for brothels (**brothel closure orders**) to also prohibit their use for other specified related sex uses and to extend the categories of persons who may give such orders and to whom such orders may be given,
- (b) to enable brothel closure orders to commence after 5 working days,
- (c) to make additional provision in respect of the enforcement of brothel closure orders and other breaches relating to brothels, including limiting adjournments, making it clear that the Land and Environment Court may rely on circumstantial evidence rather than direct evidence of the use of premises when determining whether there is a breach of a requirement relating to brothels, enabling utilities orders to be made prohibiting the supply of water, electricity or gas to brothel premises and increasing penalties for repeat offenders,

* Amended in committee—see table at end of volume.

- (d) to expand the definition of a brothel that may be subject to an order under the *Restricted Premises Act 1943* (the **RP Act**) to include premises that have been advertised or represented to be used for prostitution and are likely to be so used for that purpose,
- (e) to widen the basis on which an application for such an order may be made and to extend the persons or bodies who may apply for an order,
- (f) to make additional provision relating to orders under the RP Act that prohibit premises from being used as brothels, including enabling such orders to also prohibit the use of premises for specified related sex uses and making it clear that the Land and Environment Court may rely on circumstantial evidence rather than direct evidence of the use of premises when determining whether to make an order,
- (g) to include utilities orders in the relevant class of matters dealt with by the Land and Environment Court,
- (h) to make other minor consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the EPA Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the RP Act set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendment to the *Land and Environment Court Act 1979* set out in Schedule 3.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979**

Schedule 1 [1] amends section 4 of the EPA Act to insert a definition of *brothel*.

Schedule 1 [2] inserts proposed sections 121ZR and 121ZS. Proposed section 121ZR contains the following additional provisions relating to brothel closure orders:

- (a) definitions of *brothel closure order* and *related sex uses* are inserted. A *brothel closure order* is an order made by a council or other consent authority to cease using premises as a brothel or in respect of the use of premises as a brothel. *Related sex uses* include the use, in exchange for payment, of

- premises to provide sexual acts or services or for massage services (other than genuine remedial or therapeutic massage services) or for adult entertainment involving nudity, indecent acts or sexual activity either in exchange for payment or ancillary to the provision of other goods or services,
- (b) natural justice provisions of the EPA Act relating to other orders do not apply,
 - (c) a brothel closure order may also prohibit the use of premises for specified related sex uses,
 - (d) a brothel closure order may be made against a person apparently in control of or managing, or assisting in the control or management of, a brothel,
 - (e) a brothel closure order is to specify a period of not less than 5 working days for compliance,
 - (f) a person or body exercising planning or regulatory functions in the area in which the premises are situated, and authorised by the Minister, may make a brothel closure order (currently, this is limited to consent authorities),
 - (g) there is to be a defence to a prosecution for an offence arising from a failure to comply with a brothel closure order if the defendant satisfies the court that (in the case of an owner) all reasonable steps were taken to evict from the premises the persons operating the brothel or using the premises for the specified related sex uses or (in any case) to prevent the use of the premises for the relevant purposes,
 - (h) regulations may be made conferring jurisdiction on Local Courts to hear appeals against brothel closure orders and on the Land and Environment Court to hear an appeal against an appeal decision by a Local Court.

Proposed section 121ZS enables a Local Court or the Land and Environment Court to make an order (a *utilities order*) directing that a provider of water, electricity or gas to premises cease to provide those services to the premises or part of the premises (other than residential premises) if a brothel closure order is not complied with. Such an order may only have effect for a maximum of 3 months. Notice of the proceedings is to be given to affected persons who will also have a right to be heard and represented in the proceedings. In deciding whether to make a utilities order, a court is to take into consideration the effects of any failure to comply with the brothel closure order, the uses of the premises, the impact on affected persons and whether the health or safety of any person, or of the public, will be detrimentally affected.

Schedule 1 [3] inserts proposed section 124AB into the EPA Act. Proposed section 124AB contains the following additional provisions relating to proceedings in the Land and Environment Court to remedy or restrain a breach of the EPA Act in relation to the use of premises as a brothel:

- (a) an adjournment to obtain a development consent for such a use may only be given in exceptional circumstances,
- (b) after any such adjournment, a matter must come back before the Court, if a development application is not lodged within 10 working days and only one such adjournment may be given,

- (c) the Court may rely on circumstantial evidence that premises are used as a brothel and need not rely on direct evidence.

Schedule 1 [4] amends section 126 of the EPA Act to provide that the fact that a previous offence relating to a brothel closure order or the unlawful use of premises as a brothel has been committed by a person is, in proceedings in relation to the use of premises as a brothel, to be an aggravating factor that a court must consider when sentencing the person.

Schedule 1 [5] amends Schedule 6 to the EPA Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Restricted Premises Act 1943

Schedule 2 [1] amends section 2 of the RP Act to substitute the definition of *brothel*. The new definition includes as brothels premises that have been advertised or represented to be brothels and that are likely to be used for the purposes of prostitution. **Schedule 2 [11]** makes a consequential amendment.

Schedule 2 [2] amends section 2 of the RP Act to insert a definition of *related sex uses*.

Schedule 2 [3] amends section 17 of the RP Act to enable the Land and Environment Court to also prohibit the use of premises for specified related sex uses when making an order prohibiting the use of the premises as a brothel. The section is also amended to enable the Land and Environment Court, when it makes an order prohibiting the use of premises for a brothel, to suspend or vary, for a period not exceeding 6 months, a development consent relating to the use of the premises for such purposes. A development consent is defined to include an approval under Part 3A of the EPA Act (see **Schedule 2 [9]**). **Schedule 2 [7]** makes a consequential amendment.

Schedule 2 [4] amends section 17 of the RP Act to enable a local council to make an application for an order under that section if one or more complaints have been made that the council reasonably believes warrant the making of the application. Currently, a council must have received sufficient complaints to warrant the making of the order. **Schedule 2 [5]** makes a consequential amendment.

Schedule 2 [6] amends section 17 of the RP Act to enable a local council to make an application for an order under that section on the basis of a complaint made by persons who work in the vicinity of the premises concerned or persons who regularly use, or whose children regularly use, facilities in the vicinity of the brothel.

Schedule 2 [8] amends section 17 of the RP Act to provide for the matters that the Land and Environment Court is to take into account when it makes an order under that section to suspend or vary, for a period not exceeding 6 months, a development consent.

Schedule 2 [9] amends section 17 of the RP Act to insert a definition of *development consent*, and a definition of *local council* so as to enable planning or regulatory authorities authorised by the Minister for Planning to apply for orders under that section and makes other consequential amendments.

Schedule 2 [10] amends section 17A of the RP Act to make a consequential amendment and to make it clear that the Land and Environment Court may rely on circumstantial evidence, and is not required to rely on direct evidence, to make a finding that particular premises are used as a brothel.

Schedule 2 [12] amends the examples of circumstantial evidence that premises are used as a brothel set out in the note to section 17A of the RP Act to include other matters relating to furniture, equipment or articles in the premises, in addition to the arrangement of such things.

Schedule 2 [13] amends Schedule 1 to the RP Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 3 Amendment of Land and Environment Court Act 1979

The Schedule amends the *Land and Environment Court Act 1979* to include applications for utility orders in Class 1 of the matters dealt with by the Land and Environment Court.