



New South Wales

Brothels Legislation Amendment Act 2007 No 29

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New South Wales

Brothels Legislation Amendment Act 2007 No 29

Act No 29, 2007

An Act 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 the closure of disorderly or unlawful brothels; and for other purposes.
[Assented to 4 July 2007]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Brothels Legislation Amendment Act 2007*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

4 Amendment of Restricted Premises Act 1943 No 6

The *Restricted Premises Act 1943* is amended as set out in Schedule 2.

5 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 3.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 4 Definitions

Insert in appropriate order in section 4 (1):

brothel means a brothel within the meaning of the *Restricted Premises Act 1943*, other than premises used or likely to be used for the purposes of prostitution by no more than one prostitute.

[2] Sections 121ZR and 121ZS

Insert after section 121ZQ:

121ZR Special provisions relating to brothel closure orders

(1) Definitions

In this section and section 121ZS:

brothel closure order means an order No 1 or No 15 under the Table to section 121B (1) to cease using premises as a brothel or in respect of the use of premises as a brothel, whether or not the order also prohibits the premises from being used for, or relates to the use of the premises for, any related sex uses.

related sex uses means the following:

- (a) the use of premises for the provision of sexual acts or sexual services in exchange for payment,
- (b) the use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment,
- (c) the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services.

(2) Natural justice requirements not applicable

A person who gives a brothel closure order is not required to comply with sections 121G–121K.

Note. Sections 121G–121K provide, among other things, for notice of proposed orders. Sections 121L and 121N apply to brothel closure orders and provide for reasons for an order to be given to the person to whom an order is given as well as information about appeal rights.

(3) **Additional prohibitions may be included**

A brothel closure order may also prohibit the use of the premises for specified related sex uses, if the use of the premises for the specified uses is a prohibited development or a development for which development consent is required but has not been obtained.

(4) **Additional persons to whom order may be given**

In addition to any other person to whom a brothel closure order may be given, a brothel closure order may be given to any person apparently in control of or managing, or assisting in the control or management of, the brothel.

(5) **Period for compliance**

A brothel closure order must specify a period of not less than 5 working days within which the order must be complied with.

Note. An appeal against a brothel closure order may be made under section 121ZK.

(6) **Additional persons or bodies that may make brothel closure orders**

In addition to the persons specified by section 121B, a brothel closure order may be made by a person or body exercising planning or regulatory functions in respect of the area in which the premises are situated and authorised by the Minister to make brothel closure orders.

(7) **Defences**

It is a sufficient defence to a prosecution for an offence that arises from a failure to comply with a brothel closure order if the defendant satisfies the court that:

- (a) if the defendant is the owner of the premises, the defendant has taken all reasonable steps to evict the persons operating the brothel or using the premises for the specified related sex uses, or
- (b) in all cases, the defendant has taken all reasonable steps to prevent the use of the premises as a brothel or for the specified related sex uses.

(8) **Appeals**

Regulations may be made for or with respect to the following matters:

- (a) the conferral of jurisdiction on Local Courts with respect to appeals against brothel closure orders,

- (b) removing the right to appeal under section 121ZK if an appeal is made to a Local Court against a brothel closure order under the regulations,
- (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of a Local Court on appeals against brothel closure orders,
- (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to in paragraph (c).

(9) **Section prevails over Division**

This section has effect despite any other provision of this Division.

Note. Failure to comply with a brothel closure order is an offence (see section 125).

121ZS Enforcement of brothel closure orders by cessation of utilities

- (1) If a person fails to comply with a brothel closure order, a Local Court or the Land and Environment Court may, on the application of the person who gave the order, make an order (a ***utilities order***) directing that a provider of water, electricity or gas to the premises concerned cease to provide those services.
- (2) An order may apply to the whole or part of premises.
- (3) A utilities order ceases to have effect on the date specified in the order, or 3 months after the order is made, whichever occurs first.
- (4) An application for a utilities order must not be made unless not less than 7 days notice of the proposed application is given to the following persons:
 - (a) any person to whom the brothel closure order was given,
 - (b) any provider of water, electricity or gas to the premises who is affected by the application,
 - (c) any owner or occupier of the premises.
- (5) An owner or occupier of premises, or a provider of water, electricity or gas to premises, who is affected by an application for a utilities order is entitled to be heard and represented in proceedings for the order.
- (6) In determining whether to make a utilities order, the court is to take into consideration the following matters:
 - (a) the effects of the failure to comply with the brothel closure order,

- (b) the uses of the premises,
 - (c) the impact of the order on the owner, occupier or other users of the premises,
 - (d) whether the health or safety of any person, or of the public, will be detrimentally affected by the order,
 - (e) any other matter the court thinks appropriate.
- (7) A utilities order must not be made for premises, or any part of premises, used for residential purposes.
 - (8) A provider of water, electricity or gas must comply with a utilities order, despite any other law or agreement or arrangement applying to the provision of water, electricity or gas to the premises, or part of premises, concerned.
 - (9) No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of a utilities order or this section.
 - (10) A provider of water, electricity or gas must not, during a period that a utilities order is in force in relation to premises, or part of premises, require payment for the provision of water, electricity or gas services to the premises or part of premises (other than services related to the implementation of the order).
 - (11) The Land and Environment Court or a Local Court may make a utilities order when it determines an appeal against a brothel closure order, if subsections (4) and (5) have been complied with.

[3] Section 124AB

Insert after section 124AA:

124AB Proceedings relating to use of premises as brothel

(1) Application

This section applies to proceedings before the Court to remedy or restrain a breach of this Act in relation to the use of premises as a brothel. Subsections (5) and (6) extend to any such proceedings in relation to all brothels within the meaning of the *Restricted Premises Act 1943*.

(2) Adjournments to obtain consent only in exceptional circumstances

The Court may not adjourn the proceedings under section 124 (3) unless it is of the opinion that the adjournment is justified because of the exceptional circumstances of the case. The fact that it is intended to lodge a development application, or that a

development application has been made, is not by itself an exceptional circumstance.

(3) **Time for making development application limited to 10 days**

If the Court adjourns the proceedings under section 124 (3), the proceedings must be brought back before the Court if a development application is not made within 10 working days of the adjournment.

(4) **Only one adjournment**

The Court may make only one adjournment under section 124 (3) of particular proceedings.

(5) **Finding may be made on circumstantial evidence**

In any proceedings:

- (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
- (b) the Court may make such a finding without any direct evidence that the particular premises are used as a brothel.

(6) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

Note. Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (c) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (d) evidence of the arrangement of, or other matters relating to, the premises, or the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

[4] Section 126 Penalties

Insert after section 126 (3):

- (4) In determining the sentence for a person who has previously been found guilty of an offence that arises from a failure to comply with a brothel closure order within the meaning of section 121ZR or the unlawful use of premises for the purposes of a brothel, a

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Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

court must take into account the fact of the previous offence as an aggravating factor and is, accordingly, to impose a higher sentence than it would otherwise impose.

[5] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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Schedule 2 Amendment of Restricted Premises Act 1943

(Section 4)

[1] Section 2 Definitions

Omit the definition of *brothel*. Insert instead:

brothel means premises:

- (a) habitually used for the purposes of prostitution, or
- (b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or
- (c) that have been expressly or implicitly:
 - (i) advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means), or
 - (ii) represented,as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.

Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

[2] Section 2

Insert in alphabetical order:

related sex uses means the following:

- (a) the use of premises for the provision of sexual acts or sexual services in exchange for payment,
- (b) the use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment,
- (c) the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services.

[3] Section 17 Application to Land and Environment Court for premises not to be used as brothel

Insert after section 17 (1):

- (1A) An order under subsection (1) may also provide that the owner or occupier of the premises is not to use or allow the use of the premises for specified related sex uses.
- (1B) The Land and Environment Court may, if it makes an order under subsection (1), also make an order suspending or varying the operation, for a period not exceeding 6 months, of any development consent relating to the use of the premises for the purpose of a brothel or the use of the premises for specified related sex uses.
- (1C) An order under subsection (1B) has effect despite any provision of the *Environmental Planning and Assessment Act 1979* or any instrument made under that Act.

[4] Section 17 (2A)

Insert after section 17 (2):

- (2A) For the purposes of subsection (2), one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used for the purposes of prostitution by 2 or more prostitutes.

[5] Section 17 (3)

Omit “complaints”. Insert instead “complaint or complaints”.

[6] Section 17 (3) (d)

Insert at the end of section 17 (3) (c):

, or

- (d) persons who work in the vicinity of the brothel or persons who regularly use, or whose children regularly use, facilities in the vicinity of the brothel.

[7] Section 17 (5)

Omit “this section”. Insert instead “subsection (1)”.

[8] Section 17 (5A)

Insert after section 17 (5):

- (5A) In making an order under subsection (1B), the Land and Environment Court is to take into consideration only the following:
- (a) the likelihood that the premises will continue to be used for a brothel or will be used for related sex uses (whether or not by a person who is subject to the order under subsection (1)),
 - (b) having regard to the kinds of matters considered before granting the order under subsection (1), the effect on the amenity of the neighbourhood of any such use or uses,
 - (c) the permitted uses for the land on which the premises are situated under any applicable environmental planning instruments or approval under the *Environmental Planning and Assessment Act 1979*,
 - (d) any other matter that the Land and Environment Court considers is relevant.

[9] Section 17 (7)

Omit the subsection. Insert instead:

- (7) In this section:
- church*, *hospital* and *school* have the same meanings as in the *Summary Offences Act 1988*.
- development consent* has the same meaning as it has in Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979*.
- local council* includes a person or body that:
- (a) exercises planning or regulatory functions in respect of the area in which premises are situated, and
 - (b) is authorised by the Minister administering the *Environmental Planning and Assessment Act 1979* to exercise the functions of a local council under this section.

[10] Section 17A Evidence of use of premises as brothel

Omit section 17A (1) and (2). Insert instead:

- (1) This section applies to proceedings before the Land and Environment Court on an application under section 17 for premises not to be used as a brothel.

- (2) In any proceedings to which this section applies:
- (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
 - (b) the Court may make such a finding without any direct evidence that the particular premises are used as a brothel.

[11] Section 17A, note

Omit paragraph (b).

[12] Section 17A, note

Omit “arrangement of the premises, or of the furniture” from paragraph (e).

Insert instead “arrangement of, or other matters relating to, the premises or the furniture”.

[13] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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**Schedule 3 Amendment of Land and Environment
Court Act 1979**

(Section 5)

Section 17 Class 1—environmental planning and protection appeals

Insert “, 121ZS” after “121ZM” in section 17 (d).

[Agreement in principle speech made in Legislative Assembly on 20 June 2007
Second reading speech made in Legislative Council on 28 June 2007]

BY AUTHORITY