



PLANNING SYSTEM

Act and regulation changes

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Related	

Commencement of Brothels Act 2007

This circular is to advise local councils, relevant State agencies and the community of the commencement of the *Brothels Legislation Amendment Act 2007* (Brothels Act).

Introduction

In 1995 the *Restricted Premises Act 1943* (RP Act) was amended to abolish the common law offence of keeping a brothel. Since then brothels (or sex service premises) have been regulated as a land use under the *Environmental Planning and Assessment Act 1979* (EP&A Act). The RP Act also regulates the operation of brothels.

The regulation of brothels through the planning system depends on effective enforcement measures. It is crucial that councils are able to take swift and effective action against brothels that operate without development consent, in contravention of their conditions of consent, or where there is an adverse impact on the community.

Over a long period local councils have expressed concern about the effectiveness of statutory provisions dealing with illegal brothels. The *Brothels Legislation Amendment Act 2007* (Brothels Act) includes increased enforcement powers for councils and other regulatory authorities to take action against brothels that are operating unlawfully or in a manner resulting in adverse impacts on the community.

The purpose of this circular is to provide a brief summary of the main provisions in the Brothels Act. The Brothels Act was passed by both houses of Parliament on 28 June 2007, received assent on 4 July 2007 and commenced on 1 October 2007.

Amendments to the EP&A Act

The Brothels Act amends the EP&A Act by:

- inserting a definition of 'brothel' in section 4 of the EP&A Act
- introducing new enforcement provisions, including brothel closure orders and utilities orders

- introducing new provisions applying to proceedings related to use of premises as a brothel.

The new enforcement provisions in the EP&A Act do not apply to brothels operating lawfully or to single sex workers.

Orders provisions

Brothel closure orders

The Brothels Act introduces new enforcement powers against unlawful brothels. Councils and certain other bodies exercising planning or regulatory functions will be able to issue orders to close unlawful brothels (brothel closure orders).

Such orders may also prohibit premises from being used for 'related sex uses' which means the use of the premises for the provision of:

- sexual acts or sexual services in exchange for payment
- massage services (other than genuine remedial or therapeutic massage services) in exchange for payment, or
- adult entertainment involving nudity, indecent acts or sexual activity either in exchange for payment or ancillary to the provision of other goods or services.

Brothel closure orders will be able to be issued to any person involved in the management of the premises (i.e. rather than just the owner or occupier). Orders will specify a period of not less than five working days within which the order must be complied with. Non-compliance with an order will be an offence (with higher penalties applying to repeat offenders). There will be a right of appeal in relation to the issue of a brothel closure order.

Utilities orders

If a brothel closure order is not complied with, the Local Court or the Land and Environment Court (L&E Court) may make an order directing a provider of water, electricity or gas to cease providing those services to the relevant premises. Such orders are known as utilities orders. The Court may make such an order on application from the body that issued the brothel closure order.

A utilities order:

- can only apply for a maximum of three months
- can only be issued by the Court if notice of not less than seven days has been provided to affected parties (with owners and occupiers being entitled to be heard in and represented in proceedings related to the order)
- may not be made for premises, or part of premises, used for residential purposes.

In deciding whether to make a utilities order, the Court is to take into consideration the effects of any failure to comply with the brothel closure order, the use 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.

Proceedings relating to use of premises as a brothel

The Brothels Act also introduces new provisions related to legal proceedings to remedy or restrain a breach of the EP&A Act concerning use of premises as a brothel.

These new provisions include:

- limiting the circumstances in which adjournment of proceedings may be granted (for example, adjournments will only be available in exceptional circumstances which will not include the fact that a development application is, or has been, made)
- the Court being able to rely on circumstantial evidence to find that particular premises are being used as a brothel.

Amendments to the Restricted Premises Act

The Brothels Act also amends the RP Act. It strengthens the powers available to councils seeking an order from the L&E Court to close down brothels which have been the subject of community complaint. These provisions complement the enforcement provisions under the EP&A Act and additionally apply to brothels that may be operating lawfully (i.e. pursuant to a development consent).

The definition of brothel in the RP Act has been amended so that a brothel is now defined as premises that:

- are habitually used for the purposes of prostitution
- have been used for prostitution in the past and are likely to be used again for that purpose, or
- have been expressly or implicitly advertised or represented as being used for the purposes of prostitution and that are likely to be used for that purpose.

Application to Land and Environment Court for premises not to be used as a brothel

Section 17 of the RP Act allows councils to make application to the L&E Court for an order directing the owner or occupier of premises not to use premises for the purposes of a brothel. Currently, such an application may only be made by a council where it has received multiple complaints that would warrant such an application being made.

Amendments have been made to strengthen these provisions including:

- orders issued by the Court for the closure of a brothel may provide that the owner or occupier of premises not allow those premises to be used for 'related sex services' (which is defined in the same terms as provided for in the EP&A Act)
- orders may additionally suspend or vary (for a period of up to six months) the operation of any development consent applying to the use of the premises as a brothel or for related sex uses
- applications for orders may be made by a council where one or more complaints have been made in respect of a brothel used by two or more prostitutes (previously sufficient complaints would have to have been received to warrant an application being made)
- the range of persons who may make a complaint has been extended to include persons who work in the vicinity of a brothel or persons who regularly use, or whose children use, facilities in the vicinity of a brothel
- the power to apply for a section 17 order has been extended to include, in addition to councils, persons or bodies exercising planning or regulatory functions in respect of the relevant area who have been authorised by the Minister for Planning
- minor amendments to the provisions of the RP Act which allow for the Court to rely on circumstantial evidence.

The amendments to the RP Act ensure that single sex workers are protected from vexatious complaints. This is because section 17(2) remains unaltered in respect of premises used by single sex workers i.e. a council must receive more than one complaint before seeking an order from the Court that those premises cease to be used for the purposes of a brothel.

Amendments to the Land and Environment Court Act

The Brothels Act amends the *Land and Environment Court Act 1979* to give the Court jurisdiction in respect of utilities orders.

Further information

A copy of the Brothels Legislation Amendment Act 2007 No. 29 is available on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'Browse A to Z As Made').

Copies of the *Environmental Planning and Assessment Act 1979*, the *Restricted Premises Act 1943* and the *Land and Environment Court Act 1979* can also be accessed from the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'Browse A to Z In Force').

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp

Authorised by:

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Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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