

DISORDERLY HOUSES AMENDMENT (BROTHELS) BILL 2001: Ian Cohen Speech:

DRAFT

The Greens support this Bill but do have concerns about how the amendments will impact on private home based sex- workers.

From the outset, I would like to point out the Greens support appropriate language when referring to sex-workers and the services they provide. This counters prejudice and contempt, and reduces stigmatisation of sex workers. The appropriate term to describe providers of sexual services is "sex worker" not "prostitute".

Private home based sex-workers work in a very different environment to the larger brothels.

Local councils have adopted a range of planning controls for private worker home based businesses. In the South Sydney Council area, home occupation private workers have operated as "exempt development" without complaints since 1997.

Prohibiting private workers in home based businesses in residential areas does not result in private sex workers moving from their homes and relocating to areas where brothels are permissible. Instead, workers are forced underground.

Sex workers in private worker home based businesses do not seek development consent because it reveals their identity and location, with the result that they can be subject to various forms of abuse, violence, and the vilification of the individuals conducting the business.

The identification of individual sex workers through the development application process is contrary to the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS, the policies of the Australian Federation of AIDS Organisations (AFAO) and the AIDS Council of NSW. Such requirements are also counter to the UN Declaration of Commitment on HIV/AIDS, 2001 (UNGASS).

Requiring development consent for private worker home based businesses also reduces access to health and safety programs.

Most other low-amenity-impact-causing home based businesses, located in residential, mixed use and other zones, currently operate without a requirement for development consent, state-wide.

In the interest of sex workers their clients and families health, the Greens support ensuring private home based workers are appropriately regulated in order to achieve a supportive environment which enables individual sex workers to achieve optimum health and safety standards in the provision of their services.

Street work, the other independent option for workers in this industry, must not be the only option for women who want to work legitimately, independently, away from a big brothel and without a middleperson.

Facts supplied by the Private Worker Alliance (PWA) and the Sex Workers Outreach Project (SWOP) specify the following about these sex-workers:

- Most have worked previously in brothels and other jobs prior to becoming independent sex workers
- Most are older workers in their thirties, forties and fifties
- Most are highly skilled and experienced
- The majority of male sex workers operate as private workers

- Intravenous Drug Use in the private worker sector is low
- Private sex workers' anonymity, and their ability to control all aspects of their business and services delivered are key components of their security and health strategies
- Clients are seen on an "appointment only" basis
- All services are negotiated directly – there is no third party involved
- Both the client and the worker are on an equal footing in regard to requiring confidentiality
- Home based workers may not disclose their occupation to anyone
- For safety reasons some home based workers choose to team up with another worker
- Condom use is very high
- STD rate is low
- The premises is NOT know as a sex industry location in ORDER TO BE SUCCESSFUL
- They operate with no or low amenity impact for residents and neighbouring businesses
- Unlike brothels which rely on high turnover and volume, private workers offer more personal attention and often have a high proportion of regular clients
- Business may be conducted on a part-time, occasional or full-time basis
- They represent up to 40% of sex industry business

Currently, the Disorderly Houses Act specifies in the definition section that a "premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution".

Therefore, the amendments to the Act will include home-based operations.

Brothels are not only regulated by the Disorderly Houses Act, but also the planning system, in particular the Environmental Planning and Assessment Act.

Those that want to operate a brothel have to put in a development application to their Local Council to obtain development consent to operate such a brothel.

The question is, should home-based industries be exempt from the planning system?

The Greens believe that there is an arguable case that a maximum of 2 workers operating from home should be exempt from the need to obtain development consent.

South Sydney Council has gone part the way down this path. In a letter dated 31st October, 2001 to the Private Worker Alliance from the Council, the policy is explained in detail:

"I refer to your query concerning South Sydney City Council's Sex Industry Policy and its provisions for Private Worker Home Based Businesses (PWHBBs). The policy was drafted to ensure that such premises do not require the consent of the Council, as is the case for all other home businesses".

"In respect of PWHBBs not requiring development consent, the policy reiterates the provisions of South Sydney LEP 1998 and indeed this exemption has been the case since the City of Sydney Planning Scheme Ordinance of 1971"

"However, Council's Exempt and Complying Development LEP and DCP...further restricts such premises to only one resident sex worker, and the working room or area must not occupy more than 10% of the floor area of that part of the storey containing the dwelling...Where the home business changes the classification of the building, a DA is required"

"There exist many PWHBBs operating in South Sydney, and this has indeed been the case for many years. Intuitively, the great majority of these businesses are intentionally discreet by nature, with anonymity being one necessary part of their continuation"

"It is considered that those that cause disturbance or amenity impacts will quickly come to the attention of neighbours and soon thereafter, Council. If upon investigation it is

determined that there are tangible amenity impacts, the premises will fall outside the definition of a home business, and would require development consent. By definition, such premises may not interrupt resident's amenity. Where Council verifies such complaints upon inspection, then the matter may be pursued legally.

“The alternative of prohibiting home business private sex workers is likely to result in the further marginalisation, intimidation and coercion of this minority group in our community (as has been the case in the past).”.

The Greens would like to go one step further than South Sydney Council and allow a maximum of 2 sex workers to operate from a residential premises at any one time. This is due to health and safety reasons.

Two workers operating together are in a much better position to circumvent any difficult situations that may arise from violent or intoxicated clients. A worker operating alone, particularly a woman, would be hard pressed to take on a violent or intoxicated client. Two workers together can also guide each other on occupational health and safety issues.

Recent comments made by the Attorney General in Parliament on 29th November, 2001 on advice from the Health Department that “prostitutes working in brothels are more strictly supervised with medical checks and condom use than street prostitutes” erroneously lead the public into believing that the excellent health and safety record of NSW sex workers is based on enforcement by brothel owners. It also patronises sex-workers.

Assumptions that brothel owners have a greater interest in protecting sex workers and the public health than sex workers themselves is erroneous and patronises sex-workers.

In a paper published by M Neave entitled “The Failure of Prostitution Law Reform” in the ***Australian and New Zealand Journal of Criminology*** 1988 the following is pointed out:

“Women who work in a co-operative situation with another women, or in small brothels, have greater ability to control the conditions under which they provide sexual services’. They are more likely to be able to refuse drunken or diseased clients’, refuse particular kinds of sexual services, or insist on the use of condoms, than woman working in very large brothels, controlled by business men seeking to maximise their profits. A policy which discourages or even prohibits the establishment of large brothels and moves the industry towards small-scale or ‘cottage industry’ prostitution would give those who work as prostitutes a greater degree of practical ability to protect themselves against abuse and corruption.”¹

The Woman's Electoral Lobby also argues that prostitutes have a clear incentive to protect their sexual health and are not major transmitters of diseases. But they are at risk. There is evidence that, in some houses, the client's refusal to use a condom is backed by management.

The Greens point out that the NSW HIV/AIDS prevention strategy has been uniquely successful because it is based entirely on voluntary compliance and peer based education.

The Greens believe that the South Sydney Council policy with the Green amendment of allowing a maximum of 2 workers should be enshrined in a SEPP. This would ensure that all councils allow this kind of low impact operation to occur without development consent.

The Bill proposes to enable the Land and Environment Court to rely on circumstantial evidence to establish that premises are being used as a brothel. The Bill lists examples of the type of circumstantial evidence that may be consistent with the use of premises as a brothel, such as advertising the premises for the purposes of prostitution.

However, with regard to home based sex workers, the use of circumstantial evidence under the Disorderly Houses Amendment Act will discourage best practice in occupational health and safety standards, safe sex practices, safe and enabling work environments, sound business practices including book-keeping practices and the desire to pay tax. In short, this move undermines the present high compliance of sex industry businesses with occupational health and safety standards and sound business practices.

Workers will remove anything in their home which may be used in court against them as circumstantial evidence. This could include information on safe-sex practices, STDs, appointment books and tax and accounting records.