

**WHOSE MORALITY?  
BROTHEL PLANNING POLICY IN SOUTH SYDNEY.**

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**Introduction**

I have a problem with 'morality' - it can be so easily conflated with wowsersism and a narrow concern with female chastity, missionary positions and the procreation versus pleasure arguments which obsess some of our shallower moralists. Sexual morality is a private matter between sexual partners. Digging into individual, private, moral attitudes can be very divisive as, many families know to their cost. In a secular, multicultural society like ours it is unlikely consensus would be reached, beyond the broad intention of protecting children from sexual predation and exploitation and the rest of us from coercion and unwanted sexual advances. Morality deals with abstract matters which are the province of philosophy, religion and conscience whereas planning is to do with the very concrete issues of urban design, amenity and heritage.

Therefore I prefer to use the word 'ethics', also meaning 'morals' but derived from 'ethos'- 'the characteristic spirit of a community or people'.<sup>1</sup> It has a less narrowly religious ring and connotes a democratic and professional system of right conduct which I believe is more appropriate in the context of planning.

The question of the law and consensual private conduct has a long history in New South Wales. Just over 20 years ago the *Seminar on Victimless Crime* inquired into the operation of the *Summary Offences Act 1970* and its criminalisation of consensual behaviours labelled 'Drunkenness and Vagrancy', 'Homosexuality', 'Prostitution' and 'Drug Abuse'. Premier Neville Wran in his opening speech referred to the:

over-reach of the criminal law into the area of private morality [which] is one of its major defects and a major obstacle to the creation of an efficient and humane criminal justice system.<sup>2</sup>

He further claimed that the criminalisation of these kinds of consensual activities overloads the operation of the law resulting in arbitrary and haphazard enforcement, the stimulation of organised crime and criminal sub-cultures, the diversion of resources, and corruption.

The Premier's words echoed an earlier statement in *The Honest Politician's Guide to Crime Control*:

The prime function of the criminal law is to protect our persons and our property... When the criminal law invades the spheres of private morality... it exceeds its proper limits at the cost of neglecting its primary tasks. This unwarranted extension is expensive, ineffective and criminogenic.<sup>3</sup>

If the criminal law has no business with private morality, I'm quite sure that planning law equally has none. This is a view shared by both the makers and the enforcers of the current laws in relation to prostitution. *The Disorderly Houses Amendment Act 1995* does not include objections on the grounds of morality in its list of

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<sup>1</sup> The Little Oxford Dictionary, 3<sup>rd</sup> edition.

<sup>2</sup> *Seminar on Victimless Crime* 1977, vols I, II & III. NSW Department of Attorney General and of Justice, 1977; II: 4.

<sup>3</sup> Morris N, Hawkins G. *The Honest Politician's Guide to Crime Control*: Sun Books, Melbourne, 1970: 1.

considerations for closure of a brothel by the Land and Environment Court and in a recent ruling by the Court, Justice Murrell has stated that:

The capacity of councillors to inquire into and determine a predominant public standard on a matter of morality must be doubted.<sup>4</sup>

As a councillor I would have to agree with her. South Sydney City Council embraces a population with an enormous diversity of cultural and sectarian influences. That is its greatest strength and source of a remarkable degree of tolerance. Attempts to impose a single standard of sexual morality on such a population would be futile and ultimately counterproductive.

### **Whose 'morality' anyway?**

Since 1788 a significant number of Australians have traded sex. During most of the 19<sup>th</sup> century prostitution, sexual bartering, cohabitation, or concubinage remained the most accessible forms of income and support for the majority of non-privileged women and their children.

In the 1820s it is alleged that there were over twenty brothels in Sydney, although the adult male population of the colony was only 14,344. Prostitution was widely regarded and generally tolerated as an inevitable aspect of the convict system.<sup>5</sup>

Even South Australia, which was founded in 1836 by free immigrants, in the hope 'that it would become a place of exemplary social and moral respectability', reported a prostitution problem as early as 1842.<sup>6</sup>

A police crackdown in 1908 in New South Wales, in response to estimates that there were between 2000 to 3000 street prostitutes in Sydney alone, made prostitution less visible but did not reduce its social impact. Prostitutes (in as much demand as ever) came under the 'protection' of gangsters and drug runners. In the 20<sup>th</sup> century, two World Wars, the Great Depression, gang warfare, corrupt administrations, the Vietnam War R & R, 'sexual liberation' and the post industrial society have simply served to change the shape of the sex industry, not to reduce it in any significant way.

There is no denying the continued level of demand for prostitution in our society. The Sex Workers Outreach Project (SWOP)<sup>7</sup> currently has contact with approximately 513 sex-on-premises venues (with female staff) in the metropolitan area. These include approximately 94 private situations, probably a considerable underestimate because of the very discreet mode of operation favoured by private sex workers. There are also usually four or five male brothels and an unknown number of 'private' male sex workers in business at any given time. This does not include approximately 200 street workers and an unknown number of escorts, club and bar hostesses etc. SWOP has estimated that up to 3000 women are working as prostitutes in NSW in any week. Given that sex workers report an average of 20 clients each per week we must assume there may be 60,000 men seeking their services in any seven day period.

The demand for commercial sexual services is not confined to the inner suburbs but spread throughout greater Sydney and its satellite towns and in rural and regional centres. The total size of the industry does not appear to have changed much over the last ten years although sex workers frequently complain that the number of clients has decreased since AIDS and the widespread insistence on condom use in brothels. It is possible that the number of women working in the sex industry has increased while the number of clients has remained fairly static thus reducing the income of most sex workers. It is certainly true that prices in the industry have not changed for

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<sup>4</sup> *Daily Telegraph*, 24/12/96.

<sup>5</sup> Parliament of NSW. *Report of the Select Committee of the Legislative Assembly upon Prostitution*. (Chair, P Rogan MP). 1986: 242.

<sup>6</sup> Horan S. 'More sinned against than sinning?' In: Daniels K (ed) *So Much Hard Work. Women and Prostitution in Australian History*. Fontana/Collins, Sydney, 1984: 87.

<sup>7</sup> SWOP was established in 1990 as an information and support service for sex industry workers in NSW. It is funded by the Department of Health.

many years and therefore sex workers' relative income level has decreased markedly.

Clearly, however, this is not an activity which will simply go away. For many women prostitution is an acceptable way of earning a good income under conditions which suit their circumstances. For a much larger and probably much more diverse number of men, commercial sex offers affordable gratification without commitment. Some of us may deplore their choice but as a community we appear unwilling to support the pro-active and interventionist social policies which might change their behaviour. Consequently we must ensure that consensual commercial sex can take place with minimal risk to sex workers, clients and the broader community.

### **Planning issues**

So what is ethical planning in relation to sex on premises venues (brothels, gay clubs/bath houses, swingers clubs etc)? I think it is the same as good planning for any purpose. That is, it must deliver good outcomes in terms of urban design, public amenity, heritage issues and future planning. Of these, clearly amenity is the issue most likely to be invoked by the public in response to a brothel application. But as all good planners learn, all four principles are interconnected.

Good urban design responds to the public and private domain. It should meet and support its users needs, be accessible and identifiable to those requiring entry, and meet privacy and amenity requirements both within and without while minimising opportunities for crime. These outcomes should be achieved within a design which is visually and functionally appropriate to its setting. Additional amenity issues such as noise attenuation, traffic regulation, lighting etc., are more easily achieved within the context of good design. Addressing these issues appropriately for a particular use such as brothels, provides the framework for a Brothels Policy and Guidelines for future applications. The key to success in all of this lies in good research, accessible public presentation of information gathered, and community consultation.

With only one or two exceptions (South Sydney Council being one) community and council debate in respect of brothels and the sex industry generally, has been ill-informed and based on scant factual knowledge. Few Councils have undertaken the research necessary to present accurate and well-documented information to their communities. Consequently they have been unable to counter community responses generated by sensational and selective reporting, relying heavily on anecdotal and emotionally charged 'evidence'. There is no lack of accurate information available. In the past decade more research has been undertaken into the history, sociology, legal and public health aspects of the Australian sex industry than in the preceding two hundred years. Much of this scientific information formed the background to the recent changes in legislation in New South Wales which informed policy makers recognised as necessary to consolidate the health and organisational reforms already established in the industry.

Having said this it is undeniable that brothel applications present councils and communities with particular issues which need to be addressed. Most of these have an ethical dimension - ie they arise out of need to protect vulnerable sections of the community and/or to prevent indirect harm through a breakdown in public health measures or threats to law and order. They can be successfully dealt with through the application of sound planning principles (including the gathering and communication of accurate information) without reference to any particular abstract concept of sexual morality.

### **Consultation.**

South Sydney' s Draft Brothels Policy was put on public exhibition in March 1996 for one month. The broader community was advised of the exhibition through notices in all local newspapers. At the same time approximately 150 copies of the Policy were distributed to organisations which were assumed to have a special interest such as sex worker organisations (including SWOP) health, welfare (including non government organisations) police and government instrumentalities. 18 submissions were received in direct response to this publicity and a small number (3 or 4) were received later. Generally the response was positive. SWOP made a lengthy submission and was closely involved in ongoing discussions over the development of the Policy as were officers of the State Health Department (Infectious Diseases Branch).

Issues which were of most concern and tended to divide the responses, revolved around the zones and locations appropriate for brothels and the concept of home occupation/home business brothels. Because they were contentious special attention was paid to these issues during review of the exhibition of the South Sydney Plan (a city wide local environment plan [LEP]) which was also in progress during 1996. Council's Brothels Policy was adopted in September 1996 and is currently being evaluated to see if further modifications are necessary.

The policy permits home occupation (one or two workers in their own home) and commercial brothels. To date we have approved 10 brothels and refused 4. One has been approved in the Land and Environment Court. Some applicants have withdrawn their applications and several others are currently under consideration by Council. There have been no development applications for home occupation brothels. However, this is because in many parts of South Sydney the Council is able to allow home occupations without the need for an application. In those areas, consent is generally not required provided the business is conducted in a separate house (but not a flat), workers are permanent residents, and they do not cause a nuisance to neighbours. The council's new LEP will allow consistent application of these home occupation provisions across South Sydney.

Local community response has been sought in relation to each application and in most cases primary concern has been expressed about issues such as noise, traffic generation and proximity to residences.

### **Location of Brothels**

In developing a brothel policy for South Sydney we were fortunate in being able to acknowledge that we have a long history of association with such premises! Many Local Governments have only a limited awareness of the brothels in their area and therefore each application strikes them as something new and potentially threatening. We were well aware that many brothels already existed (some in the heart of residential areas), - that most had been around for several years (in a few cases, over 30 years) and that the majority caused very little anxiety or loss of amenity to their neighbours. This awareness enabled a rational discussion to take place within the community and acceptance of a policy which took into account the need for good outcomes in terms of the requirements of a legitimate sex industry as well as safeguarding the interests of the broader community.

Given that we know there are a large number of brothels already in the inner suburbs a major concern is to avoid the establishment of a 'red light' area by permitting brothels to cluster in close proximity to each other. Both Council and SWOP broadly support the arguments of the Select Committee upon Prostitution that 'the siting of any red-light area would present major problems' and 'a single or a few zones would be inadequate and inappropriate to the existing level and nature of demand in New South Wales'.<sup>8</sup> We are mindful of the probability that a large, clandestine industry would continue outside any designated zone (this has been the experience in Europe) and we are particularly anxious not to attract an even greater concentration of sex industry venues into our area. The problems identified by the Wood Royal Commission in Kings Cross (which many have identified as a defacto red light area) are now well-known. A red light area can not and should not be set up adjacent to residential housing nor is it appropriate in an isolated and unpopulated area such as the industrial zones favoured by some other councils.

Industrial zones generally are not appropriate sites for brothels, whether single or in clusters, because they are poorly serviced at night with little if any public transport, poor lighting and no public surveillance. As work places they pose major safety hazards for both sex workers and their clients and have the potential to provide a focus for illegal activities and the development of 'no-go' areas. Additionally buildings on industrial sites are unlikely to be suitable for use as a brothel, even when space is available for lease for such a 'commercial' purpose. They would require considerable financial outlay to meet occupational health and safety, access and health requirements.

To reduce the risk of associated crime or disturbance, brothels should be located in commercial areas (they are after all commercial premises) in places which are well lit and have good public surveillance through high levels of street activity and high levels of occupation in surrounding premises. They also require easy but discreet access to meet the needs of their clients and protect the sensibilities of vulnerable members of the public. These requirements are most likely to be met by siting brothels above or below street level with unobtrusive access to the street in the manner adopted for other restricted premises such as adult shops and night clubs. In suburban areas many unapproved brothels are already located above shops in commercial strips. In South Sydney however, the majority of brothels approved so far operate from terrace houses with direct access from the street. All but one were in operation before the change of legislation.

Location guidelines obviously need to take account of sensitive areas adjacent to schools and kindergartens,

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<sup>8</sup> Parliament of NSW. *Report of the Select Committee of the Legislative Assembly upon Prostitution*. (Chairman, P Rogan MP). 1986: 239-240.

places of worship and hospitals etc. It is also important to be aware of the proximity of other premises such as games parlours which attract young people, and hostels and emergency accommodation which may have a number of particularly vulnerable residents. I have already commented on the need to avoid clustering brothels and creating a de facto red-light area. Obviously it can become difficult to achieve these objectives in closely settled areas such as the inner suburbs where there is little spare room for the separation of uses. Flexibility is essential. Successful outcomes can be negotiated as long as the conditions are clear and understood by all parties through full consultation.

### **Public health issues.**

A sensible brothel policy has a great deal to do with acknowledging the public health issues associated with commercial sexual activity. Australia's current reputation in this area is among the best in the world because of a number of enlightened policies adopted at federal and state government level during the 1980s, and because of the mature and effective response of sex worker organisations (particularly the Australian Prostitutes Collective [APC] - a community-based precursor of SWOP) to the threat of HIV/AIDS. The outcome has been an impressive improvement in the sexual health of Australian sex workers in the past decade. Sydney Sexual Health Centre figures show that Australian sex workers currently have a negligible incidence of acute sexually transmissible diseases. The prevalence of STDs in this group of women is well below the average of all other female clients of the Centre and there is still no documented case of HIV cross-infection occurring within the Australian sex industry

South Sydney Council worked in co-operation with SWOP and the AIDS Bureau to develop health guidelines which are supportive of sex workers in looking after their own health through the encouragement of safer sex practices and the provision of appropriate information and resources. Management are required to provide condoms and dams, sexually transmissible diseases information in appropriate languages and to permit the entry of SWOP outreach workers and health professionals on request. WorkCover guidelines are also issued to alert sex workers to the requirements for a safe working environment. Personal facilities for sex workers (such as rest and refreshment areas) are often neglected by management in even the most glamorous brothels.

Sex workers are encouraged to seek regular sexual health checks at a clinic or private doctor of their choice and are advised on appropriate immunisation against hepatitis B. They are also advised of the law against working while infected with a sexually transmissible disease.

The policy also contains general environmental health guidelines relating to lighting, ventilation, laundry, toilet facilities, baths, pools and spas. Provisions for dealing with contaminated waste, for the safe storage of condoms and the cleansing of sex toys are also required.

Scientific literature on the public health outcomes of prostitution indicates that the best results are achieved within a non-coercive environment in which sex workers have a large measure of control over their own work conditions and are not pressured by the demands of pimps, corrupt officials or heavy handed management. In Australia there is a good deal of evidence to support the belief that smaller brothels which encourage a good, cooperative relationship between management and sex workers, provide the safest working environment in terms of sexual health and physical risk. The policies of some councils which place unnecessary restrictions on the location and operating conditions of brothels will tend to concentrate brothel ownership in few hands and thus undermine some of the harm minimisation objectives of legislative reform. This is also an argument against the introduction of licensing, registration and other heavy handed methods of regulation for the industry. In Victoria where the cumbersome licensing requirements have resulted in most legal brothels being large scale, big business enterprises it is estimated that nearly 70% of the industry operates illegally, without any regulation. International comparisons show that overall STD rates in Sydney's sex industry are significantly lower than those where State regulation or suppression occurs. It is also notable that pimping very rarely occurs within the Australian sex industry.

### **Conclusion**

Reform to prostitution law in New South Wales has been piecemeal and very slow, over the past eighteen years. However the trend has been consistently toward a 'laissez-faire' model which permits consensual sexual activity between adults while preserving the amenity of the community at large. From a public health perspective the decriminalisation of brothel prostitution was an essential step in the process of harm minimisation and the maintenance of health improvements within the sex industry. Good design, good information and inclusive

consultation permits us to accommodate many needs and preferences within each local area. It also allows us to experience the very many positive, social benefits of a modern urban lifestyle, without sacrificing our right to privacy and to uphold our own personal moral code. Ethical planning allows us to 'live and let live' and on balance that is a good thing.