



New South Wales

Community Protection (Closure of Illegal Brothels) Bill 2003

Explanatory note

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

Overview of Bill

The underlying principle of this Bill is to recognise the danger to public health and safety that is caused by the operation of illegal brothels in inappropriate locations within the community.

Accordingly, the objects of this Bill are as follows:

- (a) to protect the community from the operation of illegal brothels,
- (b) to encourage the restriction and regulation of brothels under instruments and policies made or adopted by local councils,
- (c) to facilitate the prompt closure of illegal brothels by local councils.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

At present under section 121B of the *Environmental Planning and Assessment Act 1979* (*the principal Act*), local councils may give a person an order to do or refrain from doing specified things in certain circumstances. **Schedule 1 [3]** amends the Table to section 121B to specifically provide for the giving of an order under that section to cease using premises for the purposes of an illegal brothel (ie in circumstances where the use of the premises as a brothel is prohibited under an environmental planning instrument or where development consent is required but has not been obtained). The order may be given to the owner of the premises or the person by whom the premises are being used as a brothel.

Schedule 1 [1] provides that the term *brothel* in the principal Act has the same meaning as in the *Restricted Premises Act 1943* (namely, premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose).

Schedule 1 [2] excludes development for the purposes of a brothel from the operation of *State Environmental Planning Policy No 1—Development Standards*.

Schedule 1 [4] entrenches the underlying principles and objects of the proposed amendments in the principal Act.

Schedule 1 [5] provides that certain requirements under the principal Act relating to the giving of orders under section 121B will not apply to an order to cease using premises as an illegal brothel (eg it will not be necessary for a council to give advance notice of the proposed order or to allow representations to be made concerning the proposed order).

Schedule 1 [6] provides that if a council gives a person an order to cease using premises as an illegal brothel, then the order must require compliance with its terms within 48 hours.

Schedule 1 [7] authorises a council, if the council is satisfied that an order referred to above is not being complied with, to take action to prevent persons from entering the premises to which the order relates. The council will be able to recover any reasonable costs that it incurs in taking that action. Also, a council will be able to recover from the person required to comply with the order certain other costs incurred by the council in making the order.



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New South Wales

Community Protection (Closure of Illegal Brothels) Bill 2003

No. _____, 2003

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to make provision with respect to the protection of the community from the operation of illegal brothels; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Community Protection (Closure of Illegal Brothels) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	7 8
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

brothel has the same meaning as in the *Restricted Premises Act 1943*.

[2] Section 39A

Insert after section 39:

39A Application of SEPP No 1 in relation to brothels

State Environmental Planning Policy No 1—Development Standards does not apply to or in respect of development for the purposes of a brothel.

[3] Section 121B What orders may be given by a consent authority?

Insert after order No 17 in the Table to section 121B (1):

18	To cease using premises, or causing premises to be used, for the purposes of an illegal brothel	(a)	Premises are being used for the purposes of a brothel and that use is prohibited	Owner of premises or person by whom premises are being used for the purposes of a brothel
		(b)	Premises are being used for the purposes of a brothel and development consent is required but has not been obtained	

[4] Section 121BA	1
Insert after section 121B:	2
121BA Community protection from the operation of illegal brothels	3
(1) In enacting the <i>Community Protection (Closure of Illegal Brothels) Act 2003</i> , Parliament endorses the underlying principle behind the amendments made by that Act, namely, the recognition of the danger to public health and safety caused by the operation of illegal brothels in inappropriate locations within the community.	4 5 6 7 8 9
(2) Accordingly, the objects of the amendments made by the <i>Community Protection (Closure of Illegal Brothels) Act 2003</i> are taken for all purposes to be as follows:	10 11 12
(a) to protect the community from the operation of illegal brothels,	13 14
(b) to encourage the restriction and regulation of brothels under instruments and policies made or adopted by councils,	15 16 17
(c) to facilitate the prompt closure of illegal brothels by councils.	18 19
[5] Section 121D Circumstances in which compliance with secs 121F–121K is required	20 21
Insert “or No 18” after “No 8” in section 121D (a).	22
[6] Section 121M Period for compliance with order	23
Insert after section 121M (2):	24
(3) An order in the terms of order No 18 in the Table to section 121B must require compliance with its terms within 48 hours after the order is given.	25 26 27
[7] Sections 121ZJA and 121ZJB	28
Insert after section 121ZJ:	29
121ZJA Failure to comply with order No 18—council authorised to prevent access to illegal brothels	30 31
(1) If:	32
(a) a council gives an order in the terms of order No 18 in the Table to section 121B, and	33 34

(b) the council is satisfied that the order is not being complied with,	1 2
the council may, at any time while the order is in force, take such action as the council considers necessary or appropriate in order to prevent persons from entering the premises to which the order relates.	3 4 5 6
(2) Without limiting the action that may be taken by a council under subsection (1), the council, or any person acting on behalf of the council, may:	7 8 9
(a) enter the premises and secure any door, window or gate in or on the premises, and	10 11
(b) erect hoardings on or over any such door or window, and	12 13
(c) change the locks on any such door, window or gate.	14
(3) In taking any action under this section, the council, or any person acting on behalf of the council:	15 16
(a) may be assisted or accompanied by a police officer, and	17
(b) is not liable for any damage to any property caused as a consequence of the action being taken (so long as the action taken was reasonable in the circumstances).	18 19 20
(4) Any reasonable costs incurred by a council in taking any action under this section may be recovered by the council from the person required to comply with the order.	21 22 23
(5) A council may take action under this section irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.	24 25 26
(6) This section does not limit the operation of section 121ZJ.	27
121ZJB Recovery of certain costs	28
If a council gives an order in the terms of order No 18 in the Table to section 121B, any reasonable costs incurred by the council in connection with making the order (including the costs of any investigatory services) may be recovered by the council from the person required to comply with the order.	29 30 31 32 33