

Disorderly Houses Act 1943 No 6

[1943-6]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
 - [Disorderly Houses Amendment \(Commercial Supply of Prohibited Drugs\) Act 2002 No 131](#) (not commenced)

Authorisation

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Disorderly Houses Act 1943 No 6



New South Wales

An Act to make provision for the closing of disorderly houses; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Disorderly Houses Act 1943*.

2 Definitions

In this Act unless the context or subject matter otherwise indicates or requires:

area, in relation to a local council, means the area of the council within the meaning of the *Local Government Act 1993*.

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

Licensed premises has the meaning ascribed to it in the *Liquor Act 1982*.

Liquor has the meaning ascribed to it in the *Liquor Act 1982*.

local council means a council within the meaning of the *Local Government Act 1993*.

Occupier of premises includes the lessee or sub-lessee who is not the owner as defined in this section.

Owner of premises includes every person who is, whether by law or in equity:

- (a) entitled to the same for any estate of freehold in possession, or
- (b) in actual receipt of, or entitled to receive, or if the premises were let to a tenant, would be entitled to receive the rents and profits of the same.

In the case of premises sub-leased **owner** includes any lessee or sub-lessee from whom a sub-lessee holds.

Premises includes any building and any part of any building but does not include licensed premises or the premises of any registered club.

2A Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

Part 2 Disorderly houses

3 Disorderly house—declaration by Supreme Court

- (1) Upon a Superintendent or Inspector of Police showing reasonable grounds for suspecting that all or any of the following conditions obtain with respect to any premises, that is to say:
- (a) that drunkenness or disorderly or indecent conduct or any entertainment of a demoralising character takes place on the premises, or has taken place and is likely to take place again on the premises, or
 - (b) that liquor or a drug is unlawfully sold or supplied on or from the premises or has been so sold or supplied on or from the premises and is likely to be so sold again on or from the premises, or
 - (c) that reputed criminals or associates of reputed criminals are to be found on or resort to the premises or have resorted and are likely to resort again to the premises, or
 - (d) that any of the persons having control of or managing or taking part or assisting in the control or management of the premises:
 - (i) is a reputed criminal or an associate of reputed criminals, or
 - (ii) has been concerned in the control or management of other premises which have been declared to be a disorderly house under this Act, or
 - (iii) is or has been concerned in the control or management of premises which are or have been frequented by persons of notoriously bad character or of premises on or from which liquor or a drug is or has been unlawfully sold or supplied,
 - (e) (Repealed)

the Supreme Court may declare such premises to be a disorderly house.

- (2) Such declaration shall be in force until rescinded.

4 Rescission of declaration

- (1) Any such declaration may be rescinded by the Supreme Court subject to such terms

as the Court thinks fit, on application being made to it:

- (a) by the owner or occupier of the premises, the subject of the declaration, on proof that the owner or occupier has not at any time allowed any of the conditions referred to in subsection (1) of section 3 to obtain in relation to such premises, or
- (b) by a Superintendent or Inspector of Police on proof that there is no reasonable ground for suspecting that any of the conditions referred to in subsection (1) of section 3 obtain in relation to such premises.

- (2) Where an application under this section is made by the owner or occupier of the premises notice in writing of intention to make the same shall be served on a Superintendent or Inspector of Police two days at least before the hearing of such application.

5 Publication of notice of declaration and rescission

- (1) Notice of any such declaration or any rescission of the same shall be published in the Gazette.
- (2) In any proceedings under this Act the production of a copy of the Gazette containing such notice shall be evidence that the declaration or rescission therein notified was duly made.

6 Notice given of declaration

- (1) The Commissioner of Police or a Superintendent or Inspector of Police, on such declaration being made with respect to any premises:
 - (a) shall cause to be published on two days in a newspaper circulating in the neighbourhood of the premises a notice of the making of such declaration,
 - (b) shall cause such notice to be served on the owner and occupier of the premises. Such service shall be personal except where it cannot be promptly effected, in which case the notice may be served on the owner and occupier aforesaid by causing a copy thereof to be affixed at or near to the entrance of the premises.
- (2) In any proceedings under this Act the production of a copy of a newspaper containing any such notice shall be evidence that such notice was duly published in such newspaper on the date appearing thereon.

7 Person found in premises declared a disorderly house

If after publication in pursuance of paragraph (a) of subsection (1) of section 6 of notice of the making of such declaration with respect to any premises, and during the time that such declaration is in force, any person is found:

- (a) in, or on, or entering, or leaving such premises, or

- (b) in, or on, or entering, or leaving any land or building used as a means of access to or to exit or escape from the same,

such person, unless the person proves that he or she was in, or on, or entering, or leaving as aforesaid for a lawful purpose, shall be guilty of an offence against this Act and shall on summary conviction be liable to imprisonment for a term not exceeding six months.

8 Penalty on owner

If, after service on an owner in pursuance of paragraph (b) of subsection (1) of section 6 of notice of the making of a declaration with respect to any premises and during the time that such declaration is in force, any of the conditions referred to in subsection (1) of section 3 obtain in relation to such premises such owner shall, unless the owner proves that he or she has taken all reasonable steps to evict the occupier from the same, be guilty of an offence against this Act and be liable on summary conviction to a penalty not exceeding 10 penalty units.

9 Penalty on occupier

If, after service on an occupier in pursuance of paragraph (b) of subsection (1) of section 6 of notice of the making of a declaration with respect to any premises and during the time that such declaration is in force, any of the conditions referred to in subsection (1) of section 3 obtain in relation to such premises such occupier shall, unless the occupier proves that he or she has taken reasonable steps to prevent such conditions from obtaining in relation to such premises, be guilty of an offence against this Act and shall on summary conviction be liable to imprisonment for a term not exceeding six months.

10 Entry by police

While any such declaration is in force with respect to any premises any member of the Police Force may, without warrant:

- (a) enter the said premises,
- (b) enter any land or building which the member has reasonable grounds to suspect is used as a means of access to or of exit or escape from the same,
- (c) pass through, from, over and along any other land or building for the purpose of entering in pursuance of paragraph (a) or paragraph (b),
- (d) for any of the purposes aforesaid break open doors, windows, and partitions, and do such other acts as may be necessary,
- (e) search such premises for, and seize, any liquor and any drug in such premises and any drinking glass, vessel, container or device in such premises which is used or is capable of being used for or in connection with the storage, supply or consumption of any liquor or drug or the user or taking of any drug.

11 Obstructing the police

Any person who wilfully obstructs or aids in obstructing or solicits any other person to obstruct or aid in obstructing a member of the Police Force in the exercise of any power conferred on the member by this Act shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding 0.5 penalty unit.

12 Evidence of premises being a disorderly house

Where any member of the Police Force authorised under this Act to enter any premises, land or building is wilfully prevented from or is obstructed or delayed in entering the same or any part thereof, or where any external or internal door of, or means of access to any such premises, land or building authorised to be entered, is found to be fitted or provided with any bolt, bar, chain or any means or contrivance for the purpose of preventing, delaying or obstructing the entry into the same or any part thereof, of any member of the Police Force authorised as aforesaid, or for giving an alarm in case of such entry, or if such premises are found to be fitted or provided with any means or contrivance for concealing, removing or destroying any liquor or drug or any such glass, vessel, container or device as is referred to in paragraph (e) of section 10, it shall be evidence until the contrary is made to appear that the conditions referred to in subsection (1) of section 3 obtain in relation to such premises.

13 Suspected premises—issue of search warrant

- (1) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).
- (2) A member of the Police Force may apply to an authorised justice for a search warrant if the member of the Police Force has reasonable grounds for believing that any of the conditions referred to in section 3 (1) obtain, and are commonly reported to obtain, in respect of any premises.
- (3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force:
 - (a) to enter the premises, and
 - (b) to search the premises for, and to seize, any liquor or drug or any drinking glass, vessel, container or device referred to in section 10 (e).
- (4) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.

13A Forfeiture or disposal of liquor, drug etc seized in disorderly houses and suspected premises

- (1) Any liquor, drug, drinking glass, vessel, container or device seized either before or

after the commencement of the *Disorderly Houses (Amendment) Act 1943* in any disorderly house by a member of the Police Force in pursuance of powers conferred on the member by section 10 shall be forfeited to the Crown.

- (2) Any person claiming to be the owner of any liquor, drug, drinking glass, vessel, container or device seized by a member of the Police Force so authorised by a search warrant under section 13 may:
 - (a) if such seizure was made before the commencement of the *Disorderly Houses (Amendment) Act 1943*, within twenty-one days after such commencement, or
 - (b) if such seizure was made after such commencement, within twenty-one days of such seizure,

make application to a Magistrate for the return to the person of such liquor, drug, drinking glass, vessel, container or device.

Such Magistrate shall inquire into the matter and if it appears to the Magistrate that at the time of the seizure any of the conditions mentioned in section 3 obtained on the premises where the seizure was made, the Magistrate shall order the forfeiture of such liquor, drug, drinking glass, vessel, container or device, to the Crown.

If it appears to such Magistrate that at the time of the seizure any of the conditions mentioned in section 3 did not obtain on such premises, the Magistrate may order that the liquor, drug, drinking glass, vessel, container or device so seized be handed over to the owner or occupier of such premises or to such other person as may appear to the Magistrate to be the rightful owner.

- (3) Any person who makes application to a Magistrate under subsection (2) shall, at least seven days prior to the hearing of such application, serve on a Superintendent or Inspector of Police a notice in writing of such application.
- (4) Where, in respect of any liquor, drug, drinking glass, vessel, container or device seized by a member of the Police Force so authorised by a search warrant under section 13, no application is made under subsection (2) within the time prescribed by that subsection such liquor, drug, drinking glass, vessel, container or device shall be forfeited to the Crown.

14 Existing declarations and savings

- (1) Any declaration of premises as a disorderly house made or purporting to have been made by a Stipendiary or Police Magistrate before the commencement of this Act under the Order Number Ten of the State of New South Wales made by the Premier of the said State and published in the Gazette of the tenth day of March one thousand nine hundred and forty-two shall, if such declaration has not before the commencement of this Act been rescinded by a Court of Petty Sessions in accordance with the provisions of the said Order Number Ten, be deemed to have the same force

and effect as if it had been made under section 3 and this Act shall apply accordingly; and any act, matter or thing done or commenced or purporting to have been done or commenced in pursuance of the said Order Number Ten before the commencement of this Act shall be deemed to have been duly done or commenced:

Provided that nothing in this subsection shall affect the operation of any judgment, order or conviction obtained or made before the commencement of this Act.

- (2) No claim shall be made and no action, suit or other proceeding shall be maintainable in any court against any person in respect of anything done or purporting to have been done under the said Order Number Ten before the commencement of this Act.
- (3) The Supreme Court is, on application by the owner or occupier of premises, to rescind a declaration under section 3 in respect of the premises (subject to such terms as the Court thinks fit) if:
 - (a) the declaration was made before the commencement of the *Disorderly Houses Amendment Act 1995*, and
 - (b) the Court is satisfied that the declaration could not be made now because of section 16.
- (4) An owner or occupier of premises who makes an application under subsection (3) must give notice in writing to a Superintendent or Inspector of Police of the intention to make the application at least 2 days before the hearing of the application.

15 Rules of the Supreme Court

- (1) Rules may be made under the *Supreme Court Act 1970* for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

Part 3 Brothels

16 Disorderly house declaration not to be made solely on grounds that premises are a brothel

A declaration under section 3 may not be made in respect of premises solely because of either or both of the following:

- (a) the premises are a brothel,
- (b) a person having control of or managing, or taking part or assisting in the control or management of, the premises has been concerned in the control or management of other premises which have been declared to be a disorderly house under this Act

solely because those other premises were a brothel.

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

- (1) The Land and Environment Court may, on application by a local council, make an order that an owner or occupier of premises that are a brothel and that are situated within the area of the council is not to use or allow the use of the premises for the purpose of a brothel.
- (2) The local council must not make an application in relation to a brothel unless it is satisfied that it has received sufficient complaints about the brothel to warrant the making of the application.
- (3) The complaints must have been made by:
 - (a) residents of the area in which the brothel is situated who live in the vicinity of the brothel, or
 - (b) residents of the area in which the brothel is situated who use, or whose children use, facilities in the vicinity of the brothel, or
 - (c) occupiers of premises that are situated in the area in which the brothel is situated and in the vicinity of the brothel.
- (4) The application must state the reasons why the local council is of the opinion that the operation of the brothel should cease based on one or more of the considerations referred to in subsection (5) (a), (b), (c), (d), (e) or (f).
- (5) In making an order under this section the Land and Environment Court is to take into consideration only the following:
 - (a) whether the brothel is operating near or within view from a church, hospital, school or any place regularly frequented by children for recreational or cultural activities,
 - (b) whether the operation of the brothel causes a disturbance in the neighbourhood when taking into account other brothels operating in the neighbourhood or other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise and vehicular and pedestrian traffic,
 - (c) whether sufficient off-street parking has been provided if appropriate in the circumstances,
 - (d) whether suitable access has been provided to the brothel,
 - (e) whether the operation of the brothel causes a disturbance in the neighbourhood because of its size and the number of people working in it,
 - (f) whether the operation of the brothel interferes with the amenity of the

neighbourhood,

(g) any other matter that the Land and Environment Court considers is relevant.

- (6) This section extends to premises within an area that is not a local government area and in that case a reference to a local council is to be read as a reference to the prescribed authority for the area.
- (7) In this section, **church**, **hospital** and **school** have the same meanings as in the [Summary Offences Act 1988](#).

17A Evidence of use of premises as brothel

- (1) This section applies to proceedings before the Land and Environment Court:
- (a) on an application under section 17 for premises not to be used as a brothel, or
 - (b) under the [Environmental Planning and Assessment Act 1979](#) to remedy or restrain a breach of that Act in relation to the use of premises as a brothel.
- (2) In any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a brothel.
- (3) 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 the premises being advertised expressly or implicitly for the purposes of prostitution (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) 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,
- (d) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (e) evidence of the arrangement of the premises, or of the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

18 Rules of the Land and Environment Court

- (1) Rules may be made under the [Land and Environment Court Act 1979](#) for or with respect to any matters that by or under the provisions of this Part are required or permitted to be prescribed for carrying out or giving effect to those provisions.

(2) Subsection (1) does not limit the rule-making powers conferred by the *Land and Environment Court Act 1979*.

Part 4 Miscellaneous

19 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

20 Objects of *Disorderly Houses Amendment Act 1995*

The enactment of the *Disorderly Houses Amendment Act 1995* should not be taken to indicate that Parliament endorses or encourages the practice of prostitution, which often involves the exploitation and sexual abuse of vulnerable women in our society.