

Restricted Premises Act 1943 No 6

[1943-6]



New South Wales

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

Notes—

- **Previously named**
Disorderly Houses Act 1943
- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) (not commenced — to commence on 8.1.2010)

Authorisation

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Definitions	4
2A Notes	5
Part 2 Disorderly houses	5
3 Declaration by Supreme Court or District Court in relation to premises	5
4 Rescission of declaration	6
5 Publication of notice of declaration and rescission	6
6 Notice given of declaration	7
7 (Repealed)	7
8 Offence by owner of premises	7
9 Offence by occupier of premises	7
10 Entry by police	8
11 Obstructing police	8
12 Evidence of premises being a disorderly house	8
13 Suspected premises—issue of search warrant	8
13A Forfeiture or disposal of liquor, drug etc seized in disorderly houses and suspected premises	9
14 Existing declarations and savings	10
15 Rules of the Supreme Court	11
15A Rules of the District Court	11

Part 2A Special provisions relating to closure of premises	11
15B Definition.....	11
15C Order by Magistrate for temporary closure of premises.....	11
15D Revocation of closure order.....	12
Part 3 Brothels	12
16 Disorderly house declaration not to be made solely on grounds that premises are a brothel	12
17 Application to Land and Environment Court for premises not to be used as brothel	12
17A Evidence of use of premises as brothel	15
18 Rules of the Land and Environment Court	15
Part 4 Miscellaneous	15
18A Proceedings for offences	16
19 Regulations.....	16
20 Objects of Disorderly Houses Amendment Act 1995	16
21 Savings, transitional and other provisions.....	16
Schedule 1 Savings, transitional and other provisions	16

Restricted Premises Act 1943 No 6



New South Wales

An Act to make provision for the declaration of premises and the closure of premises on which certain illegal activities are suspected of being carried on; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Restricted Premises Act 1943*.

2 Definitions

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

appropriate Court, in relation to a declaration under Part 2, means the Court that made the declaration.

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:

- (a) habitually used for the purposes of prostitution, or
- (b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or
- (c) that have been expressly or implicitly:
 - (i) advertised (whether by advertisements in or on the premises, newspapers, directories or the internet or by other means), or
 - (ii) represented,

as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.

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.

related sex uses means the following:

- (a) the use of premises for the provision of sexual acts or sexual services in exchange for payment,
- (b) the use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment,
- (c) the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services.

senior police officer means a police officer of or above the rank of sergeant.

2A Notes

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

Part 2 Disorderly houses

3 Declaration by Supreme Court or District Court in relation to premises

- (1) On a senior police officer 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 the subject of a declaration under this Part, 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 or the District Court may declare such premises to be premises to which this Part applies.

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

4 Rescission of declaration

- (1) Any such declaration may be rescinded by the appropriate 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 senior police officer 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 senior police officer 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) A senior police officer is to cause notice of the making of a declaration under this Part to be served on the owner or occupier of the premises to which the declaration relates:

(a) personally, or

(b) if personal service cannot be effected promptly, by causing a copy of the notice to be fixed at or near to the entrance of the premises.

- (2) A person must not deface, destroy, cover or remove a copy of a notice fixed under this section at or near the entrance to premises unless the person is a police officer or the owner or occupier of the premises.

Maximum penalty (subsection (2)): 20 penalty units.

7 (Repealed)

8 Offence by owner of premises

- (1) After the service of a notice under section 6 on the owner of premises of the making of a declaration, the owner is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) An owner of premises is not guilty of an offence under this section if the owner proves that he or she has taken all reasonable steps to prevent the conditions referred to in section 3 (1) applying to the premises.

- (3) An owner of premises that are occupied by a person other than the owner is not guilty of an offence under this section if the owner proves that he or she has taken all reasonable steps to evict the occupier from the premises.

9 Offence by occupier of premises

- (1) After the service of a notice under section 6 on the occupier of premises of the making of a declaration, the occupier is guilty of an offence if any of the conditions referred to in section 3 (1) apply to the premises while the declaration is in force.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) An occupier of premises is not guilty of an offence under this section if the occupier proves that he or she has taken all reasonable steps to prevent the conditions referred

to in section 3 (1) applying to the premises.

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 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 is liable to a penalty not exceeding 50 penalty units or imprisonment for 6 months, or both.

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 officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

- (2) A member of the Police Force may apply to an authorised officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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*.

15A Rules of the District Court

- (1) Rules may be made under the *District Court Act 1973* 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 *District Court Act 1973*.

Part 2A Special provisions relating to closure of premises

15B Definition

In this Part, **prohibited drug** has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

15C Order by Magistrate for temporary closure of premises

- (1) A Magistrate may, on application made by a senior police officer, order the owner or occupier of any premises to close the premises from a time specified in the order until a later specified time.
- (2) An order may only be made under subsection (1) if the senior police officer provides reasonable grounds for suspecting that the premises are being used by the owner or occupier (or with the knowledge of the owner or occupier) for a commercial purpose in order:
 - (a) to supply prohibited drugs unlawfully to persons, or
 - (b) to keep prohibited drugs to enable their unlawful supply to persons, or
 - (c) to make arrangements for the unlawful supply of prohibited drugs to persons at another place.
- (3) An order must not require the closure of premises for a period longer than 72 hours.
- (4) An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than 72 hours.

- (5) An order under this section must be served on the owner or occupier of the premises concerned or on the person apparently in charge of the premises.
- (6) A person must not fail to comply with an order under this section.
Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- (7) Two or more orders closing the same premises may not be made under this section in any period of one week.

15D Revocation of closure order

- (1) The owner or occupier of premises the subject of an order under section 15C may apply to a Magistrate for the revocation of the order.
- (2) A Magistrate may revoke an order under section 15C if the Magistrate is satisfied that:
 - (a) the premises concerned are not being used for a purpose referred to in section 15C (2), or
 - (b) the applicant for revocation of the order has no knowledge that the premises are being used for a purpose referred to in section 15C (2).

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 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.
- (1A) An order under subsection (1) may also provide that the owner or occupier of the premises is not to use or allow the use of the premises for specified related sex uses.
- (1B) The Land and Environment Court may, if it makes an order under subsection (1), also

make an order suspending or varying the operation, for a period not exceeding 6 months, of any development consent relating to the use of the premises for the purpose of a brothel or the use of the premises for specified related sex uses.

- (1C) An order under subsection (1B) has effect despite any provision of the *Environmental Planning and Assessment Act 1979* or any instrument made under that Act.
- (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.
- (2A) For the purposes of subsection (2), one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used for the purposes of prostitution by 2 or more prostitutes.
- (3) The complaint or 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, or
 - (d) persons who work in the vicinity of the brothel or persons who regularly use, or whose children regularly use, facilities 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 subsection (1) 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.
- (5A) In making an order under subsection (1B), the Land and Environment Court is to take into consideration only the following:
- (a) the likelihood that the premises will continue to be used for a brothel or will be used for related sex uses (whether or not by a person who is subject to the order under subsection (1)),
 - (b) having regard to the kinds of matters considered before granting the order under subsection (1), the effect on the amenity of the neighbourhood of any such use or uses,
 - (c) the permitted uses for the land on which the premises are situated under any applicable environmental planning instruments or approval under the [Environmental Planning and Assessment Act 1979](#),
 - (d) 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:
- (a) in relation to Lord Howe Island—as a reference to the Lord Howe Island Board, and
 - (b) in relation to such part of the land in the Western Division of the State as is not in a local government area—as a reference to the Western Lands Commissioner, and
 - (c) in relation to any other area that is not a local government area—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](#).
- development consent** has the same meaning as it has in Division 2A of Part 6 of the [Environmental Planning and Assessment Act 1979](#).
- local council** includes a person or body that:
- (a) exercises planning or regulatory functions in respect of the area in which premises

are situated, and

- (b) is authorised by the Minister administering the *Environmental Planning and Assessment Act 1979* to exercise the functions of a local council under this section.

17A Evidence of use of premises as brothel

- (1) This section applies to proceedings before the Land and Environment Court on an application under section 17 for premises not to be used as a brothel.
- (2) In any proceedings to which this section applies:
 - (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
 - (b) the Court may make such a finding without any direct evidence that the 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) (Repealed)
- (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, or other matters relating to, the premises or 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

18A Proceedings for offences

Proceedings for offences against this Act are to be dealt with summarily before the Local Court.

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.

21 Savings, transitional and other provisions

Schedule 1 has effect.

Schedule 1 Savings, transitional and other provisions

(Section 21)

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

[Disorderly Houses Amendment \(Commercial Supply of Prohibited Drugs\) Act 2002](#)

[Brothels Legislation Amendment Act 2007](#)

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Existing declarations

A declaration under this Act of premises as a disorderly house in force at the commencement of this clause is taken to be a declaration under Part 2 of the premises as premises to which that Part applies.