



## **PROSTITUTION REFORM ACT, 2003**

### **1. Introduction**

The Prostitution Reform Act, 2003 has recently come into force.

The purpose of the Act is to:

decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that —

- (a) safeguards the human rights of sex workers and protects them from exploitation:
- (b) promotes the welfare and occupational health and safety of sex workers:
- (c) is conducive to public health:
- (d) prohibits the use in prostitution of persons under 18 years of age:
- (e) implements certain other related reforms.

The Act not only decriminalises prostitution but legalises it and allows for its regulation and control.

The Act does not allow a territorial authority to ban prostitution and brothels within its district but does allow for the territorial authority to introduce regulations (by-laws) and controls (Resource Management Act).

### **2. Provisions**

The Act extensively regulates the practice of prostitution and the operation of brothels.

It addresses issues of:

- safe sex
- health information
- advertising
- compulsion
- consent
- immigration for the purposes of prostitution
- age
- inspectors
- inspection and licensing of premises
- policing
- annual operating certificates
- penalties and offences
- review of the Act between 3-5 years after it came into force
- review committee (including a nominee from the Minister of Local Government)
- regulations
- by laws

### 3. Regulation and Control

Attached as Appendix 1 is a copy of the regulation and control mechanisms available to a territorial authority under the Act, being Sections 12-15.

#### (i) By-laws

The Council presently has no specific by-laws for addressing any issues that may arise from the practice of prostitution or the operation of brothels.

The Act (Sections 12 – 14) has specific provision only to regulate the location of brothels and signage through by-laws. Any other possible by-law addressing other issues arising from prostitution could only be passed in response to known problems rather than anticipated problems.

In my experience by-laws are not an effective means of controlling such ventures and more robust and defensible controls can be implemented through the District Plan.

The validity of by-laws is challengeable through District Court proceedings and is subject at all times to the test of reasonableness.

They can have only very low levels of financial penalty and no other enforcement action is generally available.

#### (ii) District Plan

Section 15 of the Act adds to the matters that a local authority must consider when a resource consent application has been made for a land use consent relating to the business of prostitution.

The additional considerations are whether the proposed business/activity is:

- likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated.
- incompatible with the existing character or use of the area in which the land is situated.

Section 15 also states that the above considerations may be overridden with respect to provisions of a district plan or proposed district plan for specified areas.

At present the Operative District Plan does not refer to brothels specifically although they could generally be classed as a commercial activity that would have the right to operate either as permitted, controlled or discretionary activities in the appropriate zones.

Prostitutes who work from their homes or in a residential area could qualify to be categorised as a home occupation and this would be a permitted or controlled activity in residential or rural zones provided activity standards relating to noise, signage, traffic effects, employee numbers, etc. were met.

A number of enforcement mechanisms are available to Council under the Resource Management Act if breaches of Standards occur in the permitted or consented operation of brothels.

These range from Abatement and Infringement Notices through to Enforcement Orders and Prosecution.

These enforcement mechanisms can be applied to the operation of an activity but also to any adverse effects of its operation.

Because of the legal strength of the District Plan I recommend that control and regulation of prostitution, brothels and their effects be through that Plan rather than by-laws.

The current provisions of the District Plan would appear to be adequate to address any effects arising from the operation of brothels in the various zones within the District.

#### **4. Current Situation**

At present all information relating to prostitution and the operation of brothels within the Hauraki District is anecdotal.

The anecdotal evidence indicates that no issues or problems have been dealt with by staff or the police and that existing operators are low key and discreet.

The police advise that they are only aware of a few smaller operations within the Hauraki District. These cause the police no difficulties and they maintain good communication with them.

The police also believe that one person operations may also be in existence, but again they have had no difficulties associated with this home occupation type activity.

Recently there has been a small but noticeable increase in the advertising of escort type services in the classified advertising sections of local papers.

#### **5. Signage**

The one issue that could arise from the operation of brothels either as commercial activities or home occupations is signage.

The present District Plan provisions cover issues such as size and location but not the wording of signs or the display of pictorial matters on signs.

It is recommended that a Change to the District Plan be prepared at a time when other Changes are being actioned to address the content of signs issue.

#### **Recommendation:**

That the information be received and that a Change to the Operative District Plan relating to the appropriate content of signage be drafted for the consideration of the Planning and Finance Committee.

## **Advertising Restrictions**

### **11. Restrictions on advertising commercial sexual services-**

- 1) Advertisements for commercial sexual services may not be –
  - a) broadcast on radio or television; or
  - b) published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical; or
  - c) screened at a public cinema.
- 2) A person who does any of the things described in subsection 1), or who authorises any of the things described in that subsection to be done, commits an offence and is liable on summary conviction to, -
  - a) in the case of a body corporate, a fine not exceeding \$50,000; and
  - b) in any other case, a fine not exceeding \$10,000.
- 3) In this section, advertisement means any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.

Territorial authority may make bylaws

### **12. Bylaws controlling signage advertising commercial sexual services-**

- 1) A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
- 2) Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that –
  - a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
  - b) is incompatible with the existing character or use of that area.
- 3) Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.
- 4) Parts 8 and 9 of the Local Government Act 2002 (which are about, among other things, the enforcement of bylaws and penalties for their breach) apply to a bylaw made under this section as if the bylaw had been made under section 145 of that Act.

### **13. Procedure for making bylaws-**

- 1) A bylaw made under section 12 must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.
- 2) Despite subsection 1), a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

#### **14. Bylaws regulating location of brothels-**

Without limiting section 145 of the Local Government Act 2002, a territorial authority may make bylaws for its district under section 146 of that Act for the purpose of regulating the location of brothels.

Resource consents

#### **15. Resource consents in relation to businesses of prostitution-**

- 1) When considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority must have regard to whether the business of prostitution-
  - a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or
  - b) is incompatible with the existing character or use of the area in which the land is situated.
- 2) Having considered the matters in subsection 1) (a) and (b) as well as the matters it is required to consider under the Resource Management Act 1991, the territorial authority may, in accordance with sections 104A to 104D of that Act, grant or refuse to grant a resource consent, or, in accordance with section 108 of that Act, impose conditions on any resource consent granted.
- 3) Subsection 1) does not limit or affect the operation of the Resource Management Act 1991 in any way, and it may be overridden, with respect to particular areas within a district, by the provisions of a district plan or proposed district plan.