



Manukau City Council (Regulation of Prostitution in Specified Places) Bill

197—1

Report of the Local Government and
Environment Committee

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Recommendation

The Local Government and Environment Committee has considered the Manukau City Council (Regulation of Prostitution in Specified Places) Bill and recommends that it not be passed.

Introduction

The Manukau City Council (Regulation of Prostitution in Specified Places) Bill is a local bill. As introduced, the bill sought to authorise Manukau City Council to make bylaws prohibiting the business of prostitution or commercial sexual services in specified public places in Manukau City (other than in brothels). No bylaw could be made that would prohibit the conduct of such business in all public places in the district.

After the bill was referred to the Local Government and Environment Committee of the 49th Parliament, the Manukau City Council was disestablished and the multiple councils covering the Auckland region were replaced by a single authority—the Auckland Council.

The Auckland Council replaced the Manukau City Council as the bill's promoter and released a supplementary order paper with proposed amendments to the bill to make the council the promoter of the bill and change the definition of “district”. Following the preliminary procedures for local bills set out in Standing Orders, Appendix C, the council notified the public of these proposed amendments.

The Local Government and Environment Committee of the 50th Parliament agreed to consider the amendments on the supplementary order paper alongside the main bill, and released an interim report on 10 February 2012.

This report also covers the Briefing on a matter relating to the Manukau City Council (Regulation of Prostitution in Specified Places) Bill initiated by the previous committee.

We note the significant contribution of previous Local Government and Environment Committees on this legislation, as well as the members sponsoring the bill: Hon George Hawkins (49th Parliament), Ross Robertson (50th Parliament), and Su’a William Sio (51st Parliament).

Intent of a local bill

We are aware of the issues some communities face regarding street-based prostitution and understand why the Auckland Council, like the Manukau City Council before it, believes that this bill is the best way of managing these issues. We are also aware that other local authorities have expressed support for the bill.

We consider however that the matters covered by the bill are not appropriate for a local bill because the problem the bill seeks to address is not unique to the area covered by the bill. We are concerned at the reach of the bill; if enacted, it would cover the whole of the Auckland area. It would also affect the rights of the public in that it would impose

constraints on the activities that can occur in specified areas within the Auckland district. Those activities are not specifically prohibited in any other part of the country.

We believe there are other options available to the Auckland Council to address street-based prostitution and we canvass them in this report. We have restricted our examination to the policy intent behind the bill. A number of procedural matters arose during examination of the bill, which are also discussed in this report.

Bylaws

The Manukau City Council believed that it was not possible for the purpose of the bill to be achieved by other means. Its legal advisers suggested that a council-generated bylaw to restrict street prostitution in certain places without specific national legislation authorising this would be open to legal challenge, and that it might be inconsistent with the New Zealand Bill of Rights Act 1990 and the Prostitution Reform Act 2003. The Auckland Council supports this approach, believing that existing enforcement measures are ineffective and that additional powers for the Police are needed.

We are told that it is possible for the Auckland Council to regulate street prostitution using existing bylaws; and that it is possible for the council to do so in a way that would not be inconsistent with the New Zealand Bill of Rights Act or the Prostitution Reform Act.

Using existing bylaws

The Local Government Act 2002 allows local authorities to make bylaws to

- protect the public from nuisance
- protect, promote, and maintain public health and safety
- minimise the potential for offensive behaviour in public
- regulate trading in public places.

Under the Local Government Act local authorities are responsible for determining whether a bylaw is the most appropriate way of addressing a perceived problem, and is consistent with the New Zealand Bill of Rights Act.

Many complaints about street-based prostitution relate to noise, littering, slow-moving motor vehicles (kerb-crawling), and disorderly behaviour. These kinds of behaviour can be dealt with by bylaws already in existence.

The Local Government (Auckland Transitional Provisions) Act 2010 specifies that the bylaws of Auckland's former local authorities remain in force until 31 October 2015, unless they are confirmed, amended, or revoked by the Auckland Council before that date. Five out of seven of Auckland's former local authorities made bylaws controlling signage advertising commercial sexual services and regulating the location of brothels. Only the Rodney District Council's Brothels and Commercial Sex Premises Bylaw specifically mentions street prostitution. The bylaw specifies that street-based sex workers meet the Rodney District Council's definition of "hawkers". Consequently, such sex workers are regulated by its Trading in Public Places Bylaw, and require an operating licence from the council.

While there is no single legal definition of “hawking”, various Auckland bylaws relating to trading in public places include “services” in the relevant definition of “street trading”, “trading”, or “goods”.¹ Prostitutes provide a service, so can be regulated on that basis.

We note that the Hamilton City Council regulates prostitution through its Prostitution Bylaw 2009, which was made under the Prostitution Reform Act and the Local Government Act. The bylaw specifies an area of Hamilton in which brothels are permitted, prohibits brothels within 100 metres of sensitive sites, and sets out signage requirements for brothels. The bylaw also prohibits soliciting in public places, and within view of public places, in the entire Hamilton City Council area. It defines soliciting as offering “any commercial sexual service not in pursuance to any invitation”.

Legal challenge

The Auckland Council believes that a council-generated bylaw without specific national legislation authorising it would be open to legal challenge on the grounds of repugnancy. We are not persuaded by this argument. A bylaw made under an Act of Parliament is open to challenge through judicial review. For example, it could be challenged on the grounds of defects in the process of making a bylaw or on the grounds that a bylaw was inconsistent with the New Zealand Bill of Rights Act or the Prostitution Reform Act.

Power to stop, search, and arrest

Clause 13 of the bill would give “a constable” the power to arrest, without a warrant, a person who they had good cause to suspect had committed an offence under the bill; while clause 14 would allow a constable to stop and search a vehicle, without a warrant, in order to exercise the power of arrest proposed in clause 13.

The powers provided for in clauses 13 and 14 of the bill are already available in other legislation. For example, the Police have a wide range of powers in relation to offences under the Summary Offences Act 1981, including the power to arrest, without a warrant, any person they have good cause to suspect has committed an offence under the Act. Examples of conduct to which this power could be applied include disorderly behaviour, indecent exposure, threatening or indecent language, and wilful damage of property.

There are also alternative powers of enforcement, which allow

- council enforcement officers to require a person’s particulars if they believe them to be committing an offence against a bylaw
- the Police to issue a warning in relation to potential offences against a bylaw
- council enforcement officers or the Police to issue infringement notices (if specifically provided for in a bylaw)
- council enforcement officers or the Police to prosecute offences against a bylaw.

Enforcement measures

The Auckland Council believes that existing enforcement measures are ineffective. The council’s report *The Commercial Sex Industry Programme: Issues and Options for*

¹ Auckland City: Bylaw No 20: Public Places 2008; Franklin District: Trading in Public Places Bylaw 2008; Manukau City: Manukau City Consolidated Bylaw 2008: Events and Trading in Parks and Public Places (2008); North Shore City: North Shore City Bylaw 2000 Part 3: Trading in Public Places; Papakura District: Trading in Public Places Bylaw 2008; Rodney District: Trading in Public Places Bylaw; Waitakere City: Public Places Bylaw 2010.

Regulation was received by the council's Regulatory and Bylaws Committee on 9 December 2011. In the report, council officers and the Police indicate that enforcing bylaws dealing with public nuisance and hawking can be resource intensive, and proving an offence can be difficult. We note that it was uncertain whether regulating street-based prostitution through powers like those provided for regulating trading in public places would be practicable, appropriate, or enforceable.

We acknowledge that for a local authority or the Police to bring prosecutions for breaches of bylaws, it is resource intensive and that the cost of prosecuting is a disincentive to enforcement. We are however not persuaded that this proposed legislation would alleviate these adverse effects.

Infringement offences

Under section 259 of the Local Government Act the Governor-General may, by Order in Council and on the recommendation of the Minister of Local Government, make regulations prescribing breaches of bylaws that are infringement offences under the Act. The considerable resources and effort required to establish and maintain infringement regulations for all local authorities have impeded the development of regulations under section 259.

The issue of amending the regulation-making powers of the Local Government Act is wider than that of creating a mechanism to regulate street prostitution in one particular locality. We believe it should be considered in the wider context of local government regulations, and do not therefore favour recommending piecemeal legislation.

Non-legislative measures

A number of non-legislative measures can be employed to limit, reduce, or mitigate the behavioural issues associated with street-based prostitution—some of which can be attributed to drug and alcohol abuse. Such measures include increasing the number of public rubbish bins, keeping public toilets open for 24 hours, adequate lighting, and making available disposal units for needles.

We note that the Auckland Council is currently developing a commercial sex industry framework and policy for the region. This involves a broad review of the seven former councils' relevant bylaws and policies. The review incorporates a public consultation process, and is due to be completed prior to 31 October 2015.²

In developing its Commercial Sex Industry programme, we encourage the council to investigate or implement non-legislative measures, and to work with other interested parties.

Prostitution Reform Act

The Prostitution Reform Act decriminalised prostitution in New Zealand. It is intended to create a framework that, among other things, safeguards the human rights of sex workers and protects them from exploitation, promotes their welfare and occupational health and safety, and is conducive to public health.

² Auckland Council, Proposed policy for Auckland's commercial sex industry, <http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/councilpolicies/commercialsexindustrypolicy/Pages/home.aspx>, (accessed 28 November 2014).

While the bill as introduced would not textually amend or repeal the Act, we believe that it could change the legal meaning of the Act as it would apply in a particular locality.

The explanatory note of the Auckland Council's 2011 supplementary order paper states that it seeks to amend the bill "to reflect the change in governance in the Auckland region that occurred on 1 November 2010". No indication of street prostitution being a region-wide problem is mentioned, however the supplementary order paper supports being able to regulate this activity "where it is necessary".³ This note does not indicate a growth in the problem of street prostitution in other parts of the Auckland region and suggests that, in the view of the council, the locality covered by the bill, and the problem the bill seeks to resolve, are not closely connected.

The Prostitution Reform Act allows local authorities to make bylaws for their districts controlling signage advertising commercial sexual services, and regulating the location of brothels. It is silent on the question of street prostitution. We note that it would be possible to amend the Act to allow local authorities to make bylaws regulating street prostitution. While we are not persuaded this is necessary, the appropriate mechanism would be a Government or Member's bill.

Procedural matters

In addition to substantive issues, a number of procedural matters arose during the consideration of this bill by the Local Government and Environment Committees of the 49th and 50th Parliaments. We discuss these below.

Amending the bill to include other local authorities

We are aware that there have been expressions of interest in amending the bill to include other local authorities. Speaker's Ruling 100/2 states that "A bill which deals with ... several localities is a public, not a local bill". The Manukau City Council (Regulation of Prostitution in Specified Places) Bill has been classified as a local bill. Therefore, any proposal to add to its provisions relating to other local authorities would be out of order.

Converting a local bill to a national bill

It also would not be possible to convert the bill into a Government bill. Standing Order 253(1)(c) states that a local bill is "a bill promoted by a local authority, which affects a particular locality only". The bill meets this criterion.

Briefing on a matter relating to the Manukau City Council (Regulation of Prostitution in Specified Places) Bill

The previous committee considered non-legislative measures to limit, reduce, or mitigate the behavioural issues associated with street-based prostitution. It met with the New Zealand Police, the New Zealand Prostitutes Collective, and the Otara-Papatoetoe Local Board and enquired into establishing "go-to" zones, introducing a hawker's licence regime, providing sustainable public facilities, and increasing pastoral care for street workers.

We understand that the parties have agreed on a way forward, which includes:

- a collaborative inter-agency response from central Government, district health boards, and non-government organisations
- a specified zone for street-based prostitution, that is discreet, safe, and accessible

³ Submission from the Auckland Council, Auckland Council (proposed amendments), p.15.

- a managed group of street workers to encourage appropriate behaviour
- strengthening the bylaw approach to allow more intervention (along the lines of street trading bylaws but with greater powers), which would require legislative change.

We support this general approach, and support collective and collegial initiatives, with give and take on all sides, as the best way to achieve a workable and enduring solution.

We again note council has the power to create relevant bylaws without legislative change, and encourage council to work constructively with the Police to develop a practical enforcement plan.

We are aware that there are some unresolved issues. For example, whilst progress has been made towards finding suitable designated “safe zones,” no timetable has been drawn up for consent and construction. We look forward to these matters being resolved.

Conclusion

We understand the issues some communities face regarding street-based prostitution, and acknowledge that the Auckland Council, like the Manukau City Council before it, is of the opinion that this bill is the best way of managing these issues. Although we do not support the bill progressing, having come to the conclusion that it is possible for the Auckland Council to regulate street prostitution using existing bylaws, we have considered the issue carefully and believe there are other options available.

Appendix

Committee procedure

The Manukau City Council (Regulation of Prostitution in Specified Places) Bill was referred to the Local Government and Environment Committee of the 49th Parliament on 8 September 2010. The closing date for submissions was 5 November 2010. The committee received and considered 73 submissions from interested groups and individuals.

The bill was reinstated as business before the 50th and 51st Parliaments on 21 December 2011, and 21 October 2014 respectively. The Local Government and Environment Committee of the 50th Parliament called for further submissions on the bill, with a closing date of 29 February 2012, and 209 submissions were received and considered.

Advice was received from the Department of Internal Affairs, the Ministry of Justice, the Parliamentary Counsel Office, and the Crown Law Office.

Committee members

Scott Simpson (Chairperson)
Matt Doocey
Paul Foster-Bell
Julie Anne Genter
Joanne Hayes
Tutehounuku Korako
Ron Mark
Todd Muller
Eugenie Sage
Su'a William Sio
Dr Megan Woods

Jan Logie replaced Julie Anne Genter for this item of business, and Hon Annette King participated in the consideration of this bill.