1 November 2010

Chairperson
Local Government and Environment Committee
PARLIAMENT BUILDINGS

SUBMISSION ON THE MANUKAU CITY COUNCIL (REGULATION OF PROSTITUTION IN SPECIFIED PLACES) BILL 2010

Introduction

1. This submission on the Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010 is made on behalf of New Zealand Police.

2. Police has a number of concerns and suggestions relating to the Bill, which it wishes to place before the Committee. These primarily relate to operational practicalities, law enforcement and the current drafting of the Bill.

General Comments

3. Police considers that while the Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010 addresses some of the concerns raised by its predecessor, the Manukau City Council (Control of Street Prostitution) Bill 2005, there remain a number of concerns for Police with respect to the Bill currently before the House.

4. Police concerns about the Bill currently before the House are focused on the situation in Manukau. However, the implications of the Bill will be broader if it becomes an Auckland Council Bill.

5. The previous Bill of 2005, which sought to regulate street prostitution in Manukau City as a whole, was voted down at its second reading. This was after the Local Government and Environment Committee recommended the Bill not be passed on the grounds it was an implicit amendment of the Prostitution Reform Act 2003 which contradicted the intent of that Act. The Committee considered that having a Local Act different from national law in respect of prostitution was not workable and would set a significant and undesirable precedent.

6. The Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010 allows the Manukau City Council to make bylaws that designate "specified public places" within the boundaries of Manukau City where no person is permitted to conduct the business of prostitution or to supply or receive any commercial sexual services.

7. In contrast to its predecessor, the scope of the 2010 Bill is more limited and seeks to address street prostitution in specific public areas of Manukau City where there is behaviour that is illegal or a nuisance or "incompatible" with the
character or use of the area. Instead of providing for a 'blanket prohibition' on street prostitution within Manukau City as a whole - as provided under the 2005 Bill - the current Bill provides for the Council to make bylaws to designate certain public places, such as a park, a shopping mall, or an intersection, as areas where street prostitution is prohibited.

8. Police considers that although the 2010 Bill does not create a city-wide ban on street prostitution, the likely effect of prohibiting street prostitution in a particular area, is likely to lead to a displacement of the problem, with streetworkers moving to another area. This in turn may result in the Council enacting further bylaws prohibiting prostitution in those additional areas and ultimately could lead to the situation where a 'blanket ban' on street prostitution could be imposed by stealth, contrary to clause 5(5) of the Bill.

Criteria for Making Bylaws

9. Clause 5(4) sets out the criteria that the Council must consider when making a bylaw:

"(4) The Council may make a bylaw under this section only if it is satisfied that the bylaw is reasonably necessary in order to prevent activities or behaviour in a public place that —

(a) are likely to cause a nuisance or serious offence to ordinary members of the public using the area; or

(b) are incompatible with the existing character or use of that area [italics added]."

10. Police notes that there could be some issues for the Council in applying the criterion as drafted in clause 5(4)(a). In order for a bylaw to be made, it is necessary that the conduct in a designated area must "cause a nuisance" or "serious offence" to "ordinary members of the public using that area". It is not clear what level of "nuisance" or "serious offence" must be satisfied before a bylaw can be made. Nor is it clear just who is an "ordinary member of the public" for the purposes of the Bill.

11. The absence of crucial definitions in clause 5(4), together with the "no blanket ban" provision in clause 5(5) could lead to the Council enacting bylaws that could be ruled ultra vires by the High Court. Section 12(1) of the Bylaws Act 1910 allows any person to challenge a bylaw by applying to the High Court. The Court could quash the bylaw or amend it to the extent necessary to make it valid. Although Police would not become liable for enforcing a bylaw subsequently ruled ultra vires, provided that police were carrying out their enforcement of the bylaw in good faith, Police could end up wasting resources on prosecutions that would fail.

Implications for Frontline Policing

12. Police has concerns that as more and more areas are designated a 'specified place' where street prostitution is prohibited, sex workers may be forced to relocate to inherently more dangerous areas, placing additional strain on Police resources. Counties-Manukau Police note that Police patrols are currently under pressure to patrol known trouble areas.
13. The displacement of street prostitution may lead to enforcement implications for Police patrols. It is considered that Police resources may be better used by further concentrating resources on known problem areas, with the aim of diffusing any associated antisocial behaviour. Police considers that rather than legislating to prohibit street prostitution in 'specified places', the use of 'problem oriented policing' may better address the issue. This approach seeks to identify any patterns of incidents in the community and address any underlying problems by working closely with the community and external agencies.

14. Many of the community concerns regarding street prostitution are focused on the associated antisocial and illegal behaviour of streetworkers and their associates. However, other legislation, including the Summary Offences Act 1981 and the Litter Act 1979 may be more appropriately used to address these problems.

Clause by Clause Analysis of Bill

15. Police considers that clause 12(1) could be amended to better reflect the full range of activities the Bill is seeking to prevent. Clause 12(1) states that, except within the confines of a brothel or small owner-operated brother, no person may "conduct the business of prostitution" or supply or receive any commercial sexual service" at any time in a specified place in the district.

16. It is submitted that clause 12(1) should read "offer or conduct the business of prostitution" and "supply or receive, or offer to supply or receive any commercial sexual service" so that the Bill could capture a much wider scope of activity regarding street prostitution.

Enforcement Aspects

17. Clause 13 'Powers of Arrest' gives a Constable the power to arrest, without warrant, any person who the Constable has good cause to suspect has engaged in conduct contrary to clause 12(1). However, we note that those who engage in street prostitution are likely to be wary of a uniformed Police presence in a public area. Therefore, the bylaw is likely to be difficult to enforce without the deployment of undercover officers.

18. In some cases, it may be difficult for Police to determine the motives of people who are loitering in a specified public area where a bylaw is in force. In order to determine the motives of a suspected sex worker, there is a risk that an undercover officer might be seen to at least partially conduct, receive or engage in "the business of prostitution" as per clause 12(1) to determine the true nature of that person's business. Thus, the undercover officer will have committed an offence under clause 12(1). To give efficacy to the Bill, consideration should be given to inserting in clause 12 a subsection stating that Police officers in the execution of their duty are not liable under the Bill – similar to section 154(1) of the Sale of Liquor Act 1989 regarding persons found on unlicensed premises.
Police Powers- Clauses 13 and 14

19. Police powers are limited to the power to arrest without warrant and the power to stop a vehicle without warrant to exercise the power of arrest (clause 14). It would be useful for Police if there was also the power to require names and addresses from suspects, as in the Manukau (Control of Street Prostitution) Bill 2005.

Review of Bylaws- Clauses 8 and 9

20. Police supports the provisions for statutory review provided for in clauses 8 and 9. This power of review of any bylaw made under the Bill no later than 5 years after the date on which the bylaw was made, and every ten years thereafter, was absent from the 2005 Bill.

Non-Legislative Measures to Address Issue

21. Counties-Manukau Police currently works with the New Zealand Prostitutes Collective (NZPC) and other community groups to increase the safety of conditions for streetworkers. This includes an unwritten agreement between NZPC and Police that streetworkers observe a curfew with regard to the hours they are engaged in street prostitution.

22. Further initiatives could be explored to reduce the negative impacts of street prostitution on the local community. These initiatives, either on their own or together with the proposed Bill, may be more likely to achieve the desired outcomes of reducing or diffusing any antisocial behaviour associated with street-based prostitution in Manukau City.

23. Police considers that working alongside other agencies, including the New Zealand Prostitutes Collective, to address health and safety needs of streetworkers may be more effective in addressing problems associated with street prostitution.

Conclusion

24. Police is of the view that the Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010 addresses some of the concerns raised by its 2005 predecessor in terms of scope and intent. However, concerns remain for Police that the criteria for declaring certain public areas as "designated areas" where street prostitution is prohibited could create a number of practical difficulties for the local Council.

25. Police is also concerned that the enforcement of this Bill could be difficult, without police officers putting themselves in a position where they would also have to contravene the provisions of the Bill.

26. Police is of the view that there are other measures, either on their own or together with the proposed Bill, which may better address the effects of street prostitution on the Manukau City community. These measures include
working closely with community groups and non-governmental organisations to reduce the impact of street prostitution in the Manukau City area.

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