

# Visual Contamination: Disgust and the regulation of brothels

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## **Abstract**

*Brothels have been able to operate as legitimate commercial businesses in NSW for over a decade. Despite this, brothels continue to be treated differently from other commercial businesses with similar amenity impacts. The ‘planning principles’ enunciated by the Land and Environment Court in Martyn v Hornsby Shire Council [2004] have been highly influential in the differential treatment of brothels. These planning principles are highly restrictive and go beyond traditional planning concerns. This paper argues that these principles are animated by an aesthetic of disgust. William Miller’s text Anatomy of Disgust, provides insight into why brothels may trigger disgust, due to their association with sex and immorality. The planning principles reflect disgust reactions, particularly in terms of the desire to remove the polluting and contaminating objects from the visual field. Finally, this paper considers strategies for reform in light of the association of brothels with disgust.*

## **Paper**

### **Introduction**

Brothels have been able to operate as legitimate businesses in NSW for over a decade. Despite this, brothels are frequently regulated in way that differs from other legitimate businesses with similar amenity impacts. This paper focuses on the highly influential case of *Martyn v Hornsby Shire Council*,<sup>1</sup> in which the Land and Environment Court articulated the planning principles to be applied to the location of brothels. These planning principles are highly restrictive and go beyond traditional planning concerns. I argue that these planning principles are animated by an aesthetic of disgust. I rely upon William Miller’s meditation on disgust in *An Anatomy of Disgust*, to consider why brothels may be associated with disgust. This analysis provides insight into the restrictive nature of the planning principles. The planning principles reflect disgust reactions, with a desire to remove the polluting, contaminating object. Finally, I consider strategic reforms in light of the influence of disgust upon the regulation of brothels.

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<sup>1</sup> [2004] NSWLEC 614. Henceforth to be referred to as *Martyn v Hornsby*.

***Regulatory context***

With the introduction of the *Disorderly Houses Amendment Act* (1995) NSW, the NSW Government abolished the common law offence of keeping a brothel. As a consequence of these reforms, brothels are now legitimate commercial businesses, regulated primarily by councils under the *Environmental Planning and Assessment Act* 1979 (NSW). This means that councils can regulate brothels through amending Local Environmental Plans (LEPs) and Development Control Plans (DCPs) (Ratcliff, 1999).

Councils have responded to their responsibility for regulating the sex industry in different ways.<sup>2</sup> Approximately half the councils have developed planning principles that are specific to brothels. The majority of these councils do not differentiate between brothel types, and tend to restrict brothels to industrial and/or commercial zones. A small number of councils have developed planning principles regarding the sex industry that differentiate between brothel type. For example, Sydney City Council's Draft DCP distinguishes between brothel types based on differences in amenity impacts, ranging from home occupations (sexual services) to commercial brothels. The remainder of the councils in NSW have not developed any policies with regard to brothels, resulting in the treatment of brothels as ordinary commercial businesses. These councils rely upon general planning principles to respond to brothel development applications.

A person wishing to run a commercial brothel can make a development application to the appropriate local council.<sup>3</sup> Brothel owners are able to appeal refusals or deemed refusals in the Land and Environment Court under the *Environmental Planning and Assessment Act* 1979 (NSW). Section 79C of the *EP&A Act* details the criteria a consent authority must use when determining a development application.<sup>4</sup> The court has a *de novo* hearing, standing in the shoes of the original decision-maker.

The NSW Land and Environment Court has recently begun enunciating 'planning principles' in judgments. This was partly in response to the publishing of LEC judgments on the internet in September 2003. Senior Commissioner Roseth also

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<sup>2</sup> For more detail, please refer to Crofts P, 'Ambiguities in approaches to brothels: disorderly houses or commercial premises?' (2003) EPLJ 445.

<sup>3</sup> In many councils, home occupations (sexual services) are able to operate without consent.

<sup>4</sup> 79C (1) Matters for consideration - general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and
- (iii) any development control plan, and
- (iv) the regulations ...

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

explained that planning principles have always been a part of decisions made by commissioners, but ‘they hovered in the background of most assessments, but usually they were not explicitly stated’ (Roseth, 2005).

Although the planning principles are not law, they are highly influential. The process by which these principles are constructed is of interest. In a talk on planning principles in 2005, Roseth SC described the process involved in creating the principles, where the draft principles are circulated to other commissioners to ‘comment, amend, delete or add’ (2005). No authorities in terms of legislation, judgments, cases or even references to planning or academic experts are provided. Roseth SC states that ‘the existence of a planning principle places a certain constraint on the next commissioner dealing with a similar issue’ (2005). Experts are able to challenge the planning principles, but must provide good reasons (Roseth, 2005).

Roseth SC outlined the planning principles for locating brothels in *Martyn v Hornsby Shire Council*.<sup>5</sup> The planning principles have proven to be very influential. The principles are available on the homepage of the Land and Environment Court website. Although Roseth SC stated the principles were only to be applied in the absence of local planning principles, they have since been applied in a large number of cases, including cases where local councils have sex industry specific policies.<sup>6</sup> Additionally, I have been advised that Hurstville Council has started applying the principles to brothel development applications, despite existing planning controls.

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<sup>5</sup> These are the planning principles in full:

Brothels are a legal land use that benefits some sections of the community but offends others. Most people believe that the exposure of impressionable groups like children and adolescents to the existence of brothels is undesirable. The aim should therefore be to locate brothels where they are least likely to offend. However, criteria for locating brothels should not be so onerous as to exclude them from all areas of a municipality.

Brothels should be located to minimise adverse physical impact, such as noise disturbance and overlooking. In this aspect they are no different from other land uses.

There is no evidence that brothels in general are associated with crime or drug use. Where crime or drugs are in contention in relation to a particular brothel application, this should be supported by evidence.

Brothels should not adjoin areas that are zoned residential, or be clearly visible from them. Visibility is sometimes a function of distance, but not always.

Brothels should not adjoin, or be clearly visible from schools, educational institutions for young people or places where children and adolescents regularly gather. This does not mean, however, that brothels should be excluded from every street on which children may walk.

The relationship of brothels to places of worship (which are likely to attract people who are offended by brothels) is a sensitive one. The existence of a brothel should not be clearly visible from places where worshippers regularly gather.

There is no need to exclude brothels from every stop on a public transport route. However, it would not be appropriate to locate a brothel next to a bus stop regularly used by school buses. Where a brothel is proposed in proximity to several others, it should be considered in the context that a concentration is likely to change the character of the street or area. In some cases this may be consistent with the desired future character, in others not.

The access to brothels should be discreet and discourage clients gathering or waiting on the street. Apart from areas where brothels, sex shop and strip clubs predominate, signage should be restricted to the address and telephone number. *Martyn v Hornsby* [2004] at para 18.

<sup>6</sup> For example, *AJA Trading* [2005] NSWLEC 253; *Boutros v Strathfield Municipal Council* [2005] NSWLEC 605; *Davis* [2005] NSWLEC 474; *First Choice Stress Relief v Inverell Shire Council* [2005] NSWLEC 259; *Mark Makhoul v Sydney City Council* [2005] NSWLEC 331; and *Monteleone v Ryde City Council* [2005] NSWLEC 549.

The broad influence of these planning principles is of concern because they have the potential to be extremely restrictive. The principles go beyond the planning concerns specified in the *EP&A Act 1979*. Section 79C(b) defines relevant issues as including ‘the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.’ The focus of the second planning principle in *Martyn v Hornsby* [2004] upon ‘adverse physical impact, such as noise disturbance and overlooking’ is consistent with general planning concerns. However, many of the additional principles exceed orthodox planning concerns and conflict with the otherwise practical approach of the Land and Environment Court.

In other cases where the Land and Environment Court has focused specifically on amenity impacts, the Court has required hard and fast evidence of the (potential) detrimental impact of the specific brothel development in a particular area (Crofts, 2003). Vague intimations of offensiveness and immorality have not been sufficient to justify rejecting development applications. The case of *Davis v Parramatta City Council* provides an excellent example of this practical approach.<sup>7</sup> In that case, the Court compared the amenity impacts of the proposed brothel with other businesses already operating in the area. The Court noted that the nearby restaurant had not had to satisfy the same parking requirements as the brothel. Hoffman C accepted that the public transport in the area was excellent and that brothel patrons tended to park away from brothels for the purposes of discretion. Accordingly, a failure to meet parking requirements would not justify refusing the development application. Additionally, Hoffman C also took into account the opening hours of nearby businesses, recognising that restaurant patrons were more likely to generate noise than brothel patrons, particularly given the location of the restaurant in relation to the nearby residential area. It was also noted that the brothel had been operating illegally for several years without any complaints to council or police. Hoffman C held that the brothel development application should be approved. If *Martyn v Hornsby* had been applied, the application would have been rejected on the grounds that the proposed brothel was visible from a residential zone.

The principle that brothels should not ‘adjoin areas that are zoned residential, or be clearly visible from them’ is very restrictive. This is because the principle effectively precludes home occupations (sexual services) from operating legally, as by definition, home occupations operate in residential areas. This principle is of concern, given that it is estimated that 40% of the sex industry is home based (Taskforce, 2001). Moreover, the emphasis upon *visibility* has the potential to be very broadly interpreted and applied. Thus in *Martyn v Hornsby*, Roseth SC accepted the objection of a neighbour as reasonable, because even though ‘there would be no overlooking and the brothel is screened... the brothel’s existence would be known’ (para 19). In other words, it is enough for a brothel’s existence to be known about, for the brothel to be offensive. There is no need to see or hear what is going on inside. This would raise particular problems for brothels seeking to operate in high-rise buildings.

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<sup>7</sup> [2005] NSWLEC 474.

### *Aesthetics of disgust*

In this section, I explore the idea that the planning principles enunciated in *Martyn v Hornsby* [2004] can be explained by an aesthetic of disgust. William Miller's text, *An Anatomy of Disgust* (1997), is a sustained meditation upon disgust. Miller outlines some of the causes of disgust, which gives insight into why brothels may trigger disgust. Miller's ideas about how we respond to disgust provide an explanation for the restrictive nature of the planning principles, particularly the desire to exclude brothels from our visual field. In the following section I go on to consider the implications of disgust in terms of strategies for reform.

The planning principles in *Martyn v Hornsby* commence with the overt statement that brothels are offensive:

Brothels are a legal land use that benefits some sections of the community but offends others. Most people believe that the exposure of impressionable groups like children and adolescents to the existence of brothels is undesirable. The aim should therefore be to locate brothels where they are least likely to offend.<sup>8</sup>

Rather than focus on specific amenity impacts of particular developments, the planning principles are based on the assumption that brothels are inherently offensive to some members of the community. The idea that brothels are offensive immediately links brothels with a discourse of disgust. Miller asserts that disgust is a moral and social sentiment that conveys a 'strong sense of aversion to something perceived as dangerous because of its powers to contaminate, infect, or pollute by proximity, contact, or ingestion.' Disgust has a feeling of 'panic, of varying intensity, that attends the awareness of being defiled' (Miller, 1997). Disgust is offensive, repulsive, repugnant, revolting. Brothels are offensive, and therefore, disgusting.

Miller explores the various reasons why we may feel disgust. He notes a relationship between disgust and things that are out of place. We feel disgust when things don't fit within ordering structures. Things that may be attractive when in their proper place, can be disgusting when out of place. For example, the beauty of hair depends on its location. A woman's hair may be her 'crowning glory', but finding a piece of hair in one's soup is disgusting. Brothels have long been associated with being outside ordering structures, with being disorderly. Colloquially, brothels are connected with lack of cleanliness.<sup>9</sup> The expression 'my house is like a brothel' is meant to convey a sense of disorderliness and dirt. This connection was explicit in the name of the legislation governing brothels until 2002 – the *Disorderly Houses Act 1943* (NSW).<sup>10</sup> In *Sibuse v Shaw Pty Ltd*, when the NSW Court of Appeal held that a brothel was a disorderly house, notwithstanding the fact that it 'clean, neat and tidy'.<sup>11</sup>

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<sup>8</sup> *Martyn v Hornsby* [2004] para 18.

<sup>9</sup> For this reason, many (but not all) activists in the area prefer to refer to sex services premises. I am using the term 'brothel' in this paper because until the recent Standard LEP NSW (2005), this was the term used by institutions when referring to the sex industry. I also believe that the term 'brothel' can be reclaimed and used in a positive way.

<sup>10</sup> The *Disorderly Houses Act 1943* was renamed the *Restricted Premises Act 1943* by the *Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002*.

<sup>11</sup> (1988) 13 NSWLR 98 at 121 per McHugh JA.

Untidiness, in and of itself, is not sufficient to trigger disgust. An untidy house may be unpleasant, but it is not necessarily disgusting. The judgment in *Sibuse v Shaw Pty Ltd*, indicates that the association of brothels with disorderliness goes beyond the management practices of the brothel. The judgment in *Sibuse v Shaw* appeared to accept that there was something inherently disorderly about brothels, and this is why brothels are characterized as offensive and disgusting. To state the obvious, the association of brothels with disorderliness and disgust can be explained by the fact that brothels sell sex.

Miller points out that sex attracts the close attention of disgust. Disgust helps mark the boundaries of culture and boundaries of the self. Sex involves a crossing of boundaries. The closer another becomes, without consent or justification or excuse, the more alarming, dangerous, disgusting they become (Miller, 1997). Consider another's unwanted tongue in your mouth or your ear. Miller argues that disgust is frequently stimulated by sex, describing sex as 'dirty, bestial, smelly, messy, sticky, oozy' (Miller, 1997). It should be noted, however, that sex has a complex relationship with disgust:

First it tries to prevent coupling, but in so doing constitutes almost a dare to try. Once overcome it joins in the fun and enhances it both by having been conquered and by having itself become a participant in the proceedings by providing the muck and goo which makes the sexual process so momentarily liberating. And then it comes stumbling in afterward accompanied by shame to punish for such surfeiting indulgence. Disgust has a busy life in the sexual world (Miller, 1997).

Sex does not quite suspend disgust, but indulges it (Miller, 1997). This highlights the alluring nature of disgust. Even whilst we are disgusted by something, we must still peek between our fingers to see it. Brothels are thus selling something which has a complex relationship with disgust.

Miller argues that love can change the whole economy of disgust. We might endure or pardon things that still disgust (such as the bad breath of a lover), or things may lose their disgusting aspect because of love (such as changing nappies), or love may mean a suspension of disgust rules (the relaxation of certain civilities we accord to strangers) (Miller, 1997). Love can suspend disgust rules when we have sex. But sex work revolves around sex without love. Accordingly, the association of disgust with sex remains. This association is exacerbated by the sale of sex for money, the exchange of 'filthy lucre'.

Sex without love can also spark off reminders of our animal origins, arguably another trigger of disgust. The experimental psychologist Paul Rozin has written numerous articles on various aspects of disgust. All these are gathered around the basic theory that disgust is stimulated by a basic need to avoid reminders of our animal origins (Rozin et al., 1993). Although this theory of disgust has had a great deal of support (Nussbaum, 1999), Miller points out that it is too simplistic (1997). Not all animal traits are disgusting (such as loyalty, love and hair in the right places). Only some animal traits are repulsive, and Miller argues that these usually revolve around the status of the animal. Nevertheless, the idea that we are disgusted by reminders of our animal origins can provide insight into our reaction to brothels. According to this theory, sex can excite disgust because it is unhygienic, can violate the socio-moral code and the bodily envelope and reminds us of our animal origins. This is

particularly the case with prostitution, as it can be characterized as being based upon bodily needs, upon lust, whilst excluding the human emotion of love. Prostitution undoes our self-deceptions about the transcendence of the sex act, reminding us of our close relationship to animals.

Brothels may also trigger disgust because of their perceived immorality. Miller notes the close relationship of disgust with the moral economy. He argues that disgust is central to moral discourse and the construction of our moral sensibility. Disgust gives voice to our strongest moral sentiments of moral disapprobation. We express many basic moral judgments in the idiom of disgust. *That is disgusting, repulsive, offensive, indecent. You are gross, horrible, vile.* The lexicon of disgust signals seriousness, currency and reality. The Christian language of sin latched onto the language of disgust (Miller, 1997). Sinfulness is the opposite of purity and spiritual cleanliness. Sinfulness is disgusting, dirty, impure, unclean. Disgust 'defends against the impure and it punishes our failure to be pure' (Miller, 1997). Brothels are perceived as immoral because they offer sex outside of marriage. Not only this, brothels sell sex.

Brothels may excite disgust because of their association with sex and immorality. Brothels are perceived as disorderly and offensive because they break the rules of morality that are closely entwined with sex. We can use Miller's ideas about disgust to consider how disgust impacts upon the regulation of brothels.

Disgust is strongly associated with the fear of contamination and pollution. Miller comments on the 'magical' aspect of disgust:

The aspect of disgust that makes the disgusting contaminating and infectious means that disgust behaves somewhat magically in having extraordinary powers of invasiveness and duration. The disgusting can possess us, fill us with creepy, almost eerie feelings of not being quite in control, of being haunted. (Miller, 1997)

Once something has been in contact with something disgusting, then it remains disgusting. When something has a taste we don't like, we will not feel contaminated by it, unless it also disgusts us. However, if it disgusts us, we will feel tainted by it, burdened by the belief that anything that comes into contact with the disgusting thing will become disgusting as a consequence of that contact (Miller, 1997). For example, we will not eat off a plate that has had dog faeces on it, even if the food has not come in contact with the faeces. We won't even eat something that has been shaped to look like dog faeces. This idea that people who have come into contact with something disgusting become disgusting is expressed in the planning principles. The planning principles seek to discourage 'clients gathering or waiting on the street'. Clients who enter the brothel are corrupted and thus, corrupting.<sup>12</sup>

This concern with the contaminating aspect of brothels is most clearly expressed with the need to keep brothels away from children. The planning principles note that children and adolescents are 'impressionable', and accordingly it is 'undesirable' that they be exposed to brothels. Accordingly, 'brothels should not adjoin, or be clearly visible from schools, educational institutions for young people or places where children and adolescents regularly gather.' In *Martyn v Hornsby*, Roseth SC held that

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<sup>12</sup> In another case, objectors to a brothel argued that clients were likely to park illegally. Presumably this was based on the idea that people who visit brothels are immoral, and immoral people are likely to break parking laws.

the main weakness of the location of the brothel was its closeness to the College of Skin Care. All the students of the college were young women, some of them 16 years old. Roseth SC stated:

The entrances are adjacent and it is likely that the students of the college would frequently encounter the brothel's clients on their way to and from classes. I do not want to judge whether this in itself would have a corrupting effect on them. However, it is likely, that some of the parents would not like the proximity of the brothel and would look for other colleges for their daughters (para 20).

This would provide grounds for rejecting the development application for the brothel. The principles appear to be based on the idea that the building itself is contaminating. In comparison with street sex-work, all manifestations of sex-work are inside the brothel. In other cases, the Land and Environment Court has focused on structural means to ensure that neighbours do not see or hear what goes on inside a brothel. However, *Martyn v Hornsby* revolves around the idea that simply knowing a brothel exists, even if you cannot see what goes on inside it, is contaminating.

This notion of contamination is further expressed in the impact that the feeling of disgust has upon us. Unlike the experience of anger or indignation, we do not feel purified by disgust. Rather, 'disgust signals that we need to undertake further labours of purification' (Miller, 1997). This idea of the polluting impact of disgust, of the need for purification, is reflected in planning principles exclusion of brothels from the vicinity of places of worship:

The relationship of brothels to places of worship (which are likely to attract people who are offended by brothels) is a sensitive one. The existence of a brothel should not be clearly visible from places where worshippers regularly gather (para 18).

The fear is that merely seeing a brothel is contaminating. 'Disgust never allows us to escape clean. It underpins the sense of despair that impurity and evil are contagious and endure, and take everything down with them' (Miller, 1997). In some ways, brothels and churches would make ideal neighbours, as their usage hours are so different that their amenity impact upon each other would be minimal. However, the fear of moral tainting or contamination has ensured that brothels and churches are kept apart.

This focus on the visual in the planning principles can be pushed slightly further, by considering the metaphor of visual containers. When talking about sight, we tend to metaphorically construct a visual container (Lakoff and Johnson, 1980). Thus things are *within* sight, *in* the visual field, or they are *out* of sight. Things come *into* view, or they are *in my field* of vision. We conceptualise our visual field as a container and what we see as being inside it. When combining this with the notion of the polluting or tainting aspects of disgust, if something disgusting is within our visual container, then it has the potential to pollute the entire container. Thus two drops of sewerage in a cask of wine will render the wine undrinkable, whereas two drops of wine in the sewerage will have no impact whatsoever (Miller, 1997). Accordingly, if we perceive brothels as disgusting and they are within our visual field, then they will taint everything within our vision.

### *Strategic responses to disgust*

Although I do not think that brothels are disgusting, I think that we must take the association of brothels with disgust into account when considering strategies for reforming the regulation of the sex industry. There are different options available if we wish to recognise the impact of disgust upon brothels.

One possible strategy is simply to argue that disgust should not be relevant to the regulation of brothels. Nussbaum argues very strongly that disgust should not ever be taken into account in the legal system:

Because disgust embodies a shrinking from contamination that is associated with the human desire to be non-animal, it is more than likely to be hooked up with various forms of shady social practice, in which the discomfort people feel over the fact of having an animal body is projected outwards onto vulnerable people and groups. These reactions are irrational, in the normative sense, both because they embody an aspiration to be a kind of being that one is not, and because, in the process of pursuing that aspiration, they target others for gross harms (Nussbaum, 1999).

Disgust is wrong in principle because it is anti-social. Nussbaum argues that it is based on magical thinking rather than real danger, and accordingly, it cannot be justified or explained.

The exclusion of disgust and immorality is in accordance with planning principles. The LEC has previously stated that offensiveness and morality were not relevant planning considerations. The issue of the relevance of offensiveness was considered in *New Century Developments* [2003].<sup>13</sup> This case concerned the proposal for a mosque that attracted widespread community opposition. Lloyd J held that the consent authority must not blindly accept the subjective fears and concerns expressed in public submissions. Rather, there must be evidence that can be objectively assessed.<sup>14</sup> The stated objective of the planning principles enunciated in *Martyn v Hornsby* is thus flawed, as it is based upon irrelevant planning issues. This is particularly the case, given that presumably the offensiveness of sex services premises is based upon their perceived immorality. The LEC has been very clear that the morality or otherwise of a sex services premise is not a relevant consideration under the *EP&A Act* (1979).<sup>15</sup>

The problem with stating that disgust should not be relevant at law, is that unfortunately, the planning principles in *Martyn v Hornsby* are based on the idea that brothels are offensive and disgusting. Whilst Nussbaum may have very good theoretical reasons for excluding disgust, in practice, disgust has continued to influence the regulation of brothels despite statements of law that offensiveness and perceptions of immorality are not relevant planning issues. Thus, blanket statements excluding disgust as an emotion from law, have not yet achieved the intention of treating brothels like other legitimate businesses.

An alternative strategy is to utilise characteristics of disgust to reform the regulation of the sex industry. For example, it is possible to capitalise on the idea that we are

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<sup>13</sup> NSWLEC 2003.

<sup>14</sup> *Ibid* [61].

<sup>15</sup> For example, *Jim Marinos* [2005] NSWLEC 2 at [32]; *Sun* [2005] NSWLEC 518 at [5]; *Pont* [2005] NSWLEC 33.

only disgusted by things if we are aware of their disgusting characteristics, whilst if things look acceptable on the surface we may prefer to accept them as they appear to be. Accordingly, rather than require notification and advertisement of home occupations (sex services), these businesses should operate without consent. Research in this area shows that most people are unaware that they have been living next to a home occupation (sex services) that has been operating for many years. Home occupations (sex services) tend to rely on discretion for safety purposes and also in order to keep clients (Project, 2005). Rather than drawing attention to the home occupation (sex services), they should be allowed to operate quietly and discreetly without need to apply for council consent.

Additionally, Miller argues very strongly that ideas about what is disgusting will change over time. This occurs on an individual and a societal level. On an individual level, our ideas about disgust will vary greatly with age. Babies show no disgust over excrement and bodily emissions and can remain blissfully immune to the disgust their parents are so eager to instil in them. Studies suggest that disgust does not break off from mere distaste in children until somewhere between the ages of 4 and 8 (Miller, 1997). Miller labels childhood the age of disgust, with children becoming purists about food, clothing and ablutions. Teenage years are associated with shame, embarrassment and sensitivity to disgust. As we grow older we start to relax our self-monitoring about things that would have sickened us as teenagers. Middle and old-age involve an even greater easing, due mainly to a loss of affect (Miller, 1997).

Ideas about what is disgusting can also change on a social level. Miller describes arguments about what is disgusting as revolving around the moral economy. For example, we may be disgusted by the poor unwashed, or we may be disgusted by the people who are disgusted by the poor unwashed. Whilst disgust is recognised as a basic emotion, it is also socially constructed, with a strong ideational feature. Thus, Rozin conducted experiments where subjects sniffed decay odour from two different vials, both of which contained the same substance. They were told that one vial contained cheese and the other contained faeces. Those who thought they were smelling cheese usually liked the smell, whilst those who thought they were smelling faeces found it repellent and unpleasant. 'It is the subject's conception of the object, rather than the sensory properties of the object, that primarily determines the hedonic value' (Rozin and Fallon, 1987).

This suggests that it is possible to change feelings of disgust by changing conceptions of brothels. In other words, feelings about disgust can be shifted on the cognitive level. Educational campaigns about brothels would assist in shifting the cultural association of the sex industry with the offensive. Unpacking ideas associated with brothels that trigger disgust could lead to a diffusion of the idea that brothels are inherently offensive. Accordingly, providing information about good management practices and the cleanliness and tidiness of brothels would undermine the overt association of brothels with disorderliness. Brothels could be compared with other legitimate businesses in terms of amenity impacts. Long term treatment of brothels as legitimate businesses will also assist in overcoming the historical characterisation of brothels disorderly. Assumptions about the immorality of proffering of sex could also be challenged, especially in light of changes in social norms regarding sex outside marriage.

### ***Conclusion***

Although brothels have been able to operate as legitimate businesses in NSW for over a decade, they continue to be treated differently from other businesses with similar amenity impacts. In this paper, I have argued that this differential treatment can be explained by the association of brothels with disgust. Brothels may trigger disgust because of their historical association with disorderliness. Additionally, sex has a complex relationship with disgust, tempting and indulging our feelings of disgust. Moreover, immorality and disgust are closely entwined, with the sale of sex characterized as immoral and indecent. These feelings of disgust underlie the planning principles enunciated in *Martyn v Hornsby*. The restrictive nature of the principles, in particular the desire to remove brothels from the visual field, reflect disgust reactions relating to fear of pollution, tainting and contamination. Recognition that disgust animates the restrictive regulation of brothels fosters reform strategies that directly engage with fears of contamination and pollution. Culture draws the line between the impure and the pure, the clean and the filthy. The association of brothels with disgust can be transformed.

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