



25 September 2015

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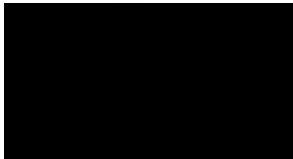
Mr Alister Henskens SC MP
Member for Ku-ring-gai
Chair
Legislative Assembly
Select Committee on the Regulation of Brothels
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Chair

Please find attached my response to the questions taken on notice when I appeared before the Legislative Assembly Select Committee on the Regulation of Brothels on 11 September 2015.

I have no amendments to the transcript of evidence provided.

Yours sincerely



Peter Dunphy PSM
Executive Director
SafeWork NSW
Encl:

Select Committee on the Regulation of Brothels

(Questions the Committee are primarily interested in)

[Collated answered below from SIRA/OPS/DPP/PPD/Executive Director:](#)

1. Q: Does a brothel have WHS obligations for sex workers operating as contractors?

A: Yes. Brothels and a self-employed person are considered a person conducting a business or undertaking (PCBU) under the WHS Act and they have WHS obligations to workers which also include contractors. PCBUs have a duty of care to ensure, so far as reasonably practicable, the health and safety of workers while the workers are at work. This includes, but is not limited to:

- A safe work environment.
- Safe systems of work.
- Adequate facilities for the welfare at work of workers.
- Information, training, instruction or supervision that is necessary to protect all persons.
- Provide for workplace consultation.
- The health of workers and the conditions at the workplace are monitored.

The SafeWork NSW 'Health and Safety Guidelines for Brothels' provides brothel specific information to assist PCBUs comply with their WHS obligations.

2. Q: Has WorkCover/SafeWork NSW ever prosecuted a sex business i.e. brothel? (Question on Notice)

A: No

3. Q: Number of compliance visits made each year to brothels? (Question on Notice)

The number of visits to this industry since the implementation of the WHS Regulation on 01/01/2015:

Date Received (Year)	Requests for service/ Complaints
2012	14
2013	9
2014	6
2015	1
Total	30

In addition to the figures above, over the same period of time, there were a further 44 complaints where an inspection/visit was not required.

4. Q: How often are compliance visits made? (Question on Notice)

A: Visits are made on the basis of issues being raised with the WHS regulator that require intervention.

5. Q: Do we compile stats by calendar or financial year?

A: Both, it depends on the circumstances. Industry specific data is compiled and analysed as needed. This data can cover a single calendar year or financial year but often covers multiple years. When an industry-specific project or research is undertaken by SafeWork NSW we extract and analyse the data that is most relevant to the issue. We use the most recent available data and generally analyse data covering a period of 3-5 years.

Some industry-specific information is reported in the SafeWork NSW Annual report (previously published as WorkCover Authority of NSW Annual Report, available at www.safework.nsw.gov.au). Industry-specific data is also published nation by SafeWork Australia, in reports such as the Comparative Performance Monitoring Report (available at www.safeworkaustralia.gov.au). Both of these reports cover a single financial year period but can refer to previous financial year results as well.

6. Q: Are there any plans to update WorkCover/SafeWork NSW sex worker material/fact sheets?

A: Yes, all fact sheets are reviewed for currency as required.

7. Q: How are high-risk industries assessed?

A: The data used for determining SafeWork NSW high risk industries is a combination of:

- historical data on Workers Compensation claim numbers, costs and fatalities data;
- qualitative/emerging data from consultation with industry; and
- SafeWork NSW experience and public interest.

8. Q: Is the operator of a brothel obliged to take out workers compensation for all sex workers on the premises?

A: Most likely. All employers in NSW (except exempt employers) must have a workers compensation policy. An employer is any person or business entity that employs or hires workers on a full time, part time or casual basis, under an oral or written contract of service or training contract. Working directors of a corporation are considered employees of the corporation. Even if a brothel is exempt they still have the same obligations to provide assistance with injury management and return to work.

9. Q: Is it difficult for workers compensation claims to be made for sex workers? (Question on Notice)

A: A sex worker has no more or less difficulties making a claim for workers compensation and receiving workers compensation payments than any other worker. Should an injury occur at work, a claim should be lodged with the employer or if no policy held the claim should be lodged against the Uninsured Liabilities Indemnity Scheme.

10. Q: Do you only focus on workers compensation data in assessing high-risk industries?

A: No, SafeWork NSW applies a targeted risk based planning approach to work health and safety interventions. This risk based planning approach enables the prioritisation of business around risk, and

the strategic allocation of resources to the areas of greatest need in order to deliver on our corporate key result areas. Risks are identified through consultation with businesses, workers and the community - and targeting the biggest barriers to success, a risk-based approach ensures that we utilise resources to provide maximum effect.

11. Q: How does WorkCover/SafeWork NSW enforce compliance?

A: SafeWork NSW has adopted the 'National Compliance and Enforcement Policy' (NCEP) as a New South Wales Work Health and Safety Compliance Policy as part of the implementation of the nationally harmonised Work Health and Safety laws. SafeWork NSW also adheres to its 'Compliance Policy and Prosecution Guidelines' which supplements the NCEP in respect of the application of the Work Health and Safety legislation in New South Wales. The policies are published on the regulator's website.

SafeWork NSW uses a mix of positive motivators, compliance monitoring and deterrents to encourage and secure the highest possible levels of compliance with work health and safety laws. For example:

- Communicating with, engaging and supporting stakeholders.
- Providing practical and constructive advice, information, and education about rights, duties and responsibilities.
- Providing support to health and safety representatives and entry permit holders to assist them in performing their functions and exercise their legislative powers.
- Detecting and dealing with alleged breaches of the work health and safety laws.
- Undertaking inspections, audits and investigations of alleged breaches of work health and safety laws.
- Taking appropriate enforcement action in response to breaches.

SafeWork NSW Inspectors may issue Improvement Notices (requiring a person to remedy a contravention of the Act), Prohibition Notices (prohibiting the carrying out of an activity), Issue Penalty Notices for prescribed offences; or undertake prosecution under WHS law if the nature of the offence is warranted.

12. Q: What interaction does WorkCover/SafeWork NSW have with the Sex Workers outreach program (SWOP)?

A: Interaction occurs as and when necessary, depending on the issue.

In the late 1990s, the SWOP obtained a grant from WorkCover NSW (now known as SafeWork NSW) to develop guidance material that aimed to increase health and safety awareness for PCBUs, workers and customers in the brothel industry. They produced a booklet and DVD called 'Getting on top of health and safety in the NSW sex industry', as well as training modules to promote health and safety (and workers compensation) to the sex industry.

Around the same time, WorkCover/SafeWork NSW was collaborating with NSW Health to develop the joint publication, "Health and safety guidelines for brothels" (2001) and SWOP was part of the working party.

This guide is currently being reviewed for currency and will be updated where necessary in conjunction with NSW Health.

13. Q: What do your inspectors look for when undertaking compliance visits?

A: Inspectors exercise their powers and functions provided for in the WHS legislation. The inspectors assess if the WHS, workers compensation and injury management legislation are being complied with.

This may include inspecting:

- the cleanliness, housekeeping, sanitary and laundry services within the workplace
- the storage and handling of waste
- the provision and use of appropriate PPE
- emergency planning, etc.

Inspectors utilise the information in the 'Health and Safety Guidelines for Brothels' to assist with in this process.

Inspectors also have compliance powers under workers compensation legislation.

14. Q: Do they talk to workers separately (to management etc)?

A: Yes, where possible.

'Sex industry workers' include sex workers or support staff (such as front-of-house staff or receptionists, managers, security staff, cleaners or anyone else working for a sex industry business). The Inspectors use their discretion to determine the best methods of engaging workers depending on the situation at hand – whether it be face-to-face discussions onsite; via phone and/or email; before and/or after the visit.

15. Q: Has a sex worker ever sought assistance from WorkCover/SafeWork NSW? (Question on Notice)

A: Yes. It is difficult to quantify how many sex workers sought assistance from SafeWork since many customer enquires wish to remain anonymous.

16. Q: Are brothels/sex work a difficult area to achieve compliance?

A: The brothel and sex work industry is no more or less capable of achieving compliance with the WHS legislation than any other industry.

In addition to WHS, this industry sector also can involve numerous responsibilities prescribed under other legislation, including immigration; tax; public liability; etc.

17. Q: Is WorkCover/SafeWork NSW involved in offering direct advice to brothels/sex workers?

A: Yes. Our customer service centre services calls from a wide variety of industry sectors and customers. SafeWork NSW offers direct advice to any persons conducting a business or undertaking (PCBUs); any workers (which includes brothels and sex workers) as well as any member of the public in NSW.

Regional North has had the very occasional Request For Service regarding issues at brothels – these can be raised by the local Environmental Health Officer (Dept of Health) who is dealing with health issues raised by sex workers. The Environmental Health Officer may seek the assistance of an Inspector to gain access and deal with WHS issues.

18. Q: Difference in OHS and WHS Acts...

A: New work health and safety (WHS) laws commenced on 1 January 2012 in many states and territories to harmonise OHS laws across Australia. New South Wales has adopted the nationally harmonised work health and safety legislation instead of previous OHS laws. The three key differences in the WHS Act compared to the OHS Act are:

1. It removes the reverse onus of proof in work health and safety prosecutions by requiring the prosecution to prove what "reasonably practicable" steps a defendant could have taken to avoid breaching the general duties to maintain a safe and healthy workplace.
2. It replaces the existing provision that deems directors and managers of a corporation to be guilty of offences committed by the corporation with a positive duty that officers of the corporation should exercise due diligence to ensure compliance by the corporation with health, safety and welfare duties.
3. The right of unions to bring proceedings for an OHS/WHS offence is more limited under the WHS Act than under the Occupational Health and Safety Act.

There are also broader definitions of "person conducting a business or undertaking" (instead of "employer") and "worker", extending the application of the legislation to a broader range of working relationships. In addition it is also now easier for businesses and workers to comply with their requirements across different states and territories.

