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Elsbeth Dyer  
Inquiry Manager  
Select Committee on the  
Regulation of Brothels  
Parliament of New South Wales  
SYDNEY NSW 2000

Your Ref: LAC15/250  
Our Ref: A533416  
File No: 15/002917

Dear Ms Dyer

### **Inquiry into the Regulation of Brothels**

Thank you for your letter dated 8 September 2015 concerning questions taken on notice by the Department of Justice at the Committee hearing on Tuesday 1 September 2015.

I am also responding on behalf of Mr Daniel Noll.

I have reviewed the transcript of evidence and have no amendments to make.

I can provide the following information in relation to the questions taken on notice:

#### **1. BOCSAR stats for last 5 years for ss.15-20 Summary Offences Act**

I attach the following statistics obtained from the Bureau of Crime Statistics and Research (BOCSAR):

- Number of finalised charges for selected prostitution offences under the *Summary Offences Act 1988* by outcome – April 2010 to March 2015
- Number of finalised charges for selected brothel regulation offences by jurisdiction and outcome – April 2010 to March 2015.
- Number of finalised charges for selected slavery and human trafficking offences under s.270 and s.271 of the *Criminal Code Act 1995* (Cth) by jurisdiction and outcome.

#### **2. Can Department Planning and Local Government Officers issue CANs? More specifically can Local Government Enforcement Officers issue CANs for offences under s.16 and s.17 of the *Summary Offences Act 1988*.**

Under s.48 of the *Criminal Procedure Act 1986* (CPA), 'public officers' can issue Court Attendance Notices (CANs) to commence proceedings for criminal offence.

Section 4 of the CPA defines 'public officer' as:

**public officer** means any of the following persons, if acting in an official capacity:

- (a) an employee in the Public Service or the NSW Police Force,
- (b) an officer or employee of a statutory body representing the Crown,
- (c) an employee of a council within the meaning of the Local Government Act 1993,
- (d) a member of staff of Local Land Services,
- (e) the Director of Public Prosecutions, Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions,
- (f) an officer or employee of a body declared by the regulations to be a public body for the purposes of this definition.

The NSW Police Force has primary responsibility for investigating and prosecuting offences under the *Summary Offences Act 1988*. The Committee might ask the NSW Police Force and NSW Local Government what division of responsibility is in place to investigate and prosecute offences under the *Environmental Planning and Assessment Act 1979* (EPA Act).

### **3. Local Government prosecutions for planning offences relating to prostitution.**

Prosecutions for illegal massage parlours would most likely fall under the following provisions of the EPA:

s.76A(1)(a) – development carried out without development consent

s.76A(1)(b) – development carried out not in accordance with development consent

s.76B – development carried out that is prohibited

s.121B – failure to comply with an order issued by a consent authority

BOCSAR keeps statistics for prosecutions under the above offence provisions of the EPA Act but the prosecutions specifically relating to brothels cannot be differentiated from other general planning prosecutions.

Under s.121ZS of the EPA Act courts can make enforcement orders to cut utilities where there has been a failure to comply with a brothel closure order. Section 121ZS orders have been assigned a law part code and statistics are gathered in relation to their use.

The Office of the Director of Court Services has provided the following statistics about applications made in the Local Court for s.121ZS orders:

Year	Granted	Dismissed	Total
2007	3		3
2008	3	8	11
2010		2	2
2011	1		1
Total	7	10	17

(LPC 62848 and 86140).

There is no record of any applications being made since 2011.

#### **4. Can BOCSAR start recording this particular statistical item?**

In order for BOCSAR to collect statistics for planning prosecutions relating specifically to brothels, new law part codes would need to be created and future prosecutions charged under those codes.

As discussed above, law part codes already exist for s.121ZS orders.

Yours faithfully



Paul McKnight  
Executive Director  
Justice Strategy and Policy Branch  
Department of Justice

NSW District Criminal Court Statistics April 2010 to March 2015

Number of finalised charges for selected slavery and human trafficking offences under sections 270 and 271 of the Criminal Code Act 1995 by jurisdiction and outcome

Jurisdiction Act	Section	Description and Lawpart	Outcome	Apr 2010 -	Apr 2011 -	Apr 2012 -	Apr 2013 -	Apr 2014 -
				Mar 2011	Mar 2012	Mar 2013	Mar 2014	Mar 2015
District Court	270.3(1)(a)	Possess/exercise ownership over slave - Lawpart 41556	Guilty	20	0	0	0	0
			Total	20	0	0	0	0
	270.6(2)	Conduct business involving sexual servitude of person >= 18 - Lawpart 41567	Guilty	1	0	0	1	0
			Total	1	0	0	1	0
	271.2(1B)	Organise entry reckless as to exploitation - Lawpart 56903	Guilty	0	0	1	0	0
			Other*	0	0	0	5	0
			Total	0	0	1	5	0

Source: NSW Bureau of Crime Statistics and Research

Reference: sr15-13212

*Please retain this reference number for future correspondence*

**NOTE:** Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data. The acknowledgement should take the form of **Source: NSW Bureau of Crime Statistics and Research**

Note: These figures are the number of charges brought, rather than the number of persons charged. A charge refers to an instance of a particular type of offence being charged against a person

\* Other includes: Withdrawn by prosecution



NSW Criminal Court Statistics April 2010 to March 2015

Number of finalised charges for selected prostitution offences under the Summary Offences Act 1988 by outcome

Act	Section	Description and Lawpart	Outcome	Apr 2010 - Mar 2011	Apr 2011 - Mar 2012	Apr 2012 - Mar 2013	Apr 2013 - Mar 2014	Apr 2014 - Mar 2015
Summary Offences Act 1988	15A(1)	Coerce or by undue influence cause another to prostitution - Lawpart 1263	Other*	0	0	0	3	3
			Total	0	0	0	3	3
	19(1)	Prostitute solicit client w/i view prescribed premises - Lawpart 1270	Guilty	12	0	13	1	1
			Total	12	0	13	1	1
	19(3)	Prostitute solicit & harass client w/i view prescribed premises - Lawpart 1272	Guilty	1	0	0	0	0
			Total	1	0	0	0	0
	19A(1)	Client solicit prostitute w/i view prescribed premises - Lawpart 35282	Guilty	18	0	47	0	1
			Other*	1	0	1	1	0
			Total	19	0	48	1	1
	19A(3)	Client solicit & harass prostitute w/i view prescribed premises - Lawpart 35284	Other*	0	0	1	0	0
			Total	0	0	1	0	0
	20(1)(a)	Participate in prostitution in/near proscribed premises - Lawpart 1273	Guilty	0	0	0	1	0
			Other*	0	0	1	0	0
			Total	0	0	1	1	0
	20(1)(b)	Participate in prostitution within view of dwelling - Lawpart 1274	Guilty	0	0	0	0	1
			Total	0	0	0	0	1
	20(2)(a)	Take part in prostitution in veh in/near proscribed premises - Lawpart 1275	Guilty	0	0	1	0	2
			Total	0	0	1	0	2
	20(2)(b)	Within view from dwelling participate in prostitution in veh - Lawpart 1276	Guilty	0	0	0	0	4
			Other*	0	0	0	1	0
			Total	0	0	0	1	4

Source: NSW Bureau of Crime Statistics and Research

Reference: sr15-13284

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Note: These figures are the number of charges brought, rather than the number of persons charged. A charge refers to an instance of a particular type of offence being charged against a person.

\* Other includes: withdrawn by the prosecution and mental health dismissal.

# NSW Criminal Court Statistics April 2010 to March 2015

## Number of finalised charges for selected brothel regulation offences by jurisdiction and outcome

Jurisdiction	Act	Section	Description and Lawpart	Outcome	Apr 2010 - Apr 2011 - Apr 2012 - Apr 2013 - Apr 2014 -				
					Mar 2011	Mar 2012	Mar 2013	Mar 2014	Mar 2015
Local Court	Summary Offences Act 1988	15A(1)	Coerce or by undue influence cause another to prostitution - Lawpart 1263	Other*	0	0	0	3	3
				Total	0	0	0	3	3
District Court	Crimes Act 1900	80D(1)	Cause person to enter/remain in sexual servitude (DV)-SI - Lawpart 64854	Not guilty finding	0	1	0	0	0
				Other*	0	0	1	0	0
			Cause person to enter/remain in sexual servitude-SI - Lawpart 45292	Total	0	1	1	0	0
				Other*	0	1	0	0	0
				Total	0	1	0	0	0

Source: NSW Bureau of Crime Statistics and Research

Reference: sr15-13193

Please retain this reference number for future correspondence

**NOTE:** Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data. The acknowledgement should take the form of Source: NSW Bureau of Crime Statistics and Research

Note: These figures are the number of charges brought, rather than the number of persons charged. A charge refers to an instance of a particular type of offence being charged against a person

Between April 2010 and March 2015 there were no recorded finalised charges under section 80E of the Crimes Act 1900 or 121ZS of the Environmental Planning and Assessment Act 1979.

\* Other includes: withdrawn by prosecution and otherwise disposed of