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TO:

Select Committee on the Regulation of Brothels

Parliament of NSW

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Touching Base Transcript Corrections and Responses to Questions; and additional individual responses to questions raised during hearings conducted by the Legislative Assembly Select Committee on the Regulation of Brothels

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## Answering the question from Ms Gibbons re: “where appropriate” for SSPs in mixed used and commercial zones.

As is clearly obvious in the transcript of our oral testimony – the abbreviated term “where appropriate’ led to some confusion on the day. Our abbreviated use of this term was not intended to be in any way limiting in regards to the location of sex services premises (SSP); rather to be broadly encompassing. It is entirely consistent with all our other written and oral statements, the evidence we have provided and recommendations in our initial submission; that SSP should be permitted in all Mixed Use and Commercial zones - as that is where they should be appropriately located.

The Sex Services Premises Planning Advisory Guidelines also promoted these zones as being appropriate for SSP and further advised in the introduction to **Part 5: Better Practice Planning Options for Sex Services Premises** (page 47), that:

*“Better practice options reflect planning approaches that achieve the guiding principles set out in Part 1. Such planning approaches should:*

- ***be non-discriminatory***, treating sex services premises in a similar manner to other commercial enterprises
- ***recognise the difference in type and scale*** of sex services premises in planning controls
- ***encourage compliance*** with council controls by ensuring the controls are relevant and not unnecessarily restrictive, and
- ***promote informed opinions*** in councils and in the wider community to avoid the stigmatisation of the sex industry, its workers and clients, which can impact on the planning process.

*Ensuring these principles underpin preparing and enforcing planning provisions potentially enables the following benefits for councils, the community and the sex industry:*

- ***a high rate of voluntary compliance*** with council controls, leading to a reduction in the need for council action and enforcement costs and a reduction in concerns amongst the sex industry for aspects of current compliance regimes of some councils
- ***a low level of complaint*** from surrounding property owners about medium to large scale premises due to an applicant applying for development consent and being subject to its conditions concerning amenity, hours of operation, parking etc.
- ***reduced appeals to the Land and Environment Court*** as a result of DAs being approved at a local level and having controls that are relevant to the real impacts, clear in their intent, and at reasonable cost to an applicant
- ***improved public health outcomes*** by appropriate regulation which recognises the difference in scale and potential impact of premises. This will ensure that premises can comply, resulting in an authorised and legal industry rather than one driven underground and thereby more difficult for health service providers to access
- ***improved safety of sex workers*** by improving locational choices and operating conditions for premises, particularly for private worker home-based sex work, and for commercial sex services premises which are capable of locating in commercial zones, and

- ***minimising opportunities for corruption***, which was one of the key reasons for the 1995 legislative reforms, by removing the illegal status of or the unreasonable restriction on the use of premises that can allow corruption to occur undetected.”

## Part 2 Individual responses to other questions raised during the hearings

### Questions about massage parlours, et al – Rachel Wotton

What's the difference between a therapeutic massage clinic and a "massage parlour"?

A **therapeutic massage clinic** offers ONLY therapeutic massage services. They can include such massage styles as:

- Swedish Massage
  - Remedial massage
  - Pregnancy massage
  - Lymphatic drainage massage
  - Reiki
  - Hot stone massage
  - Lomi-Lomi massage
- 
- The therapists can be of all genders.
  - Generally bookings are made prior to arrival but even when 'walk-ins' occur there is generally no "meet & greet" to choose which therapist you will stay with.
  - Clothing of the therapist will always remain on and whilst massaging their client, towels are always used to drape other parts of the body that are not being massaged at the **time**.
  - The underpants of the client will always remain on.
  - There is definitely no touching of the genitals and no bodyslides given during the massage.
  - There are never any "extra" services provided in the room.
  - Payment is often made at the end of the treatment.
  - Most therapists/ clinics will get their clients to fill out a form outlining their name, address, personal contact details, relevant medical history, and ask about any potential contraindications to having a massage treatment.

A **massage parlour** is a business that always offers some sexual services, which generally include a nude massage, a bodyslide and the 'happy ending' (also known as hand relief or masturbation).

- It is a term that is used ONLY within the sex industry.
- Generally the majority of clients are male and all of the 'hands-on' staff are female (receptionists/ managers have occasionally been male).
- The clothing worn by the sex workers can be suggestive and sexy. Sometimes it consists only of lingerie.
- The client can either make a booking ahead of time but they welcome walk-ins who can arrive and do a "meet & greet" with all available massage workers and choose who he would like to spend time with straight away.

- Payment is made at the start.
- Additional “extras” may be offered in the room and are paid for in the room directly to the worker providing such services.
- There are never any personal forms to fill out pertaining to name, address, contact details or medical history.

This is a basic overview of the differences between service delivery between a therapeutic massage clinic and a massage parlour. There is absolutely no difference in amenity impact between the two different businesses. In order to access the business a client needs to walk through a door after ringing a doorbell or knocking. Both types of businesses often use soft music in the rooms. Both have laundry and bathroom facilities – all of which are housed within the walls of the business.

The location of advertisements and the choice of wording used within the ads are different for each business so to attract the most appropriate clients for the type of services they are offering.

The only difference in many LGAs is the LEP which gives authorisation for the therapeutic massage clinics to operate in mixed use / commercial zones while banning outright Sex Services Premises (which include all the massage parlours).

Essentially the difference, from a purely planning perspective, boils down to a piece of paper giving council authorisation about saying what services go on behind closed doors.

### Why do some sex workers identify as “massage parlour workers”?

Some women who work in massage parlours choose to only EVER provide a nude massage, a body slide and hand relief (masturbation of the client).

Some sex workers do not realise that masturbation is legally defined as “sex” nor do they realise that it would be considered “prostitution”.

Remember - you don't know what you don't know! People need education and resources available to them in appropriate languages.

The general population and councils did not receive any workplace or media education to inform them that decriminalisation came into effect in 1995. Therefore a lot of clients and sex workers still may not realise that it's a legally recognised occupation and that it's not necessary any more to 'hide' behind massage clinics or hairdressing salons or saunas etc.

For others, as they choose to only provide a nude massage with “hand relief” service, they are quite right in identifying as working in a “massage parlour”.

Working in a massage parlour actually allows a sex worker to choose when they may want to offer “extra” sexual services to clients. You can pick and choose when you would like to offer “extras” based on how much extra money the client may offer, what the client may ask you for or you can just say no if you just don't feel like offering that “extra” at the time.

Offering only sexual massage services is a great way to continue earning your rent or mortgage repayments or supplement your travel funds.

Identifying as a massage parlour worker is completely fine as it is still clear that the worker is consenting to certain activities that occur within the business.

## Do all clients who go to massage parlours think they are paying a sex worker / paying for 'sex'?

Clients who go to massage parlours know that they are requesting and paying for a nude massage and hand relief. Once again, some may not know that this is deemed a "sex act" according to the law or that the woman providing the service/s is also classified in law as a "sex worker".

Clients generally do not go to a therapeutic massage clinic and ask for hand relief and if they do then the masseuse has every right to be annoyed at them and just clearly state that that type of service is not provided there.

For some clients they feel that, while it is a mutually consenting, adult activity, that it isn't "seeing a sex worker" in their minds, or that "it isn't cheating" if they have a partner. Some see it as being "just a little bit naughty". It is their right to choose where they would like to go and their responsibility still to be respectful and courteous.

Clients of massage parlours are still generally incredibly discreet due to the nature of the services they are seeking.

## What services do massage parlours generally offer?

Massage parlours generally offer a nude massage, a nude body-slide/ body rub and hand relief (masturbation of the penis by the sex worker's hand).

There are a multitude of "extras" that are sometimes offered within such an establishment. Sometimes they are openly on offer when they walk in to the establishment, sometimes the sex workers will just offer extras in the room and sometimes the clients themselves will ask if there are any extras available. The most common "extra" requested is oral sex though of course there are many other sexual services people enjoy that do not include actual intercourse. Other "extras" could include mutual masturbation, role plays, "tie & tease", "Spanish" (masturbation of penis between the breasts), anal play/ G-spot stimulation on the client and spanking.

Any "extra" services are negotiated between the sex worker and client and are, of course mutually consenting activities.

## What does "no sex" mean in the massage parlour world?

As clearly outlined in the SWAM Resource (Wotton, 2001) on pages 16 and 17, *while many massage parlours have "no sex" in their ads, this is only industry slang for "no full service (intercourse)*.

The legal definition of what "sex" is, is far removed from the common understanding of what "sex" is in our society, which is generally thought of as intercourse or "coitus".

As previously stated – clients are not wanting sex (intercourse), but just a sexy, nude massage with hand relief. Sex workers working in these establishments (or privately) will often say "I don't offer sex" which means "I don't provide sexual intercourse".

## Why are condoms and lube sometimes hidden in massage parlours?

Condoms, lube, gloves and other Personal Protective equipment (PPE) are sometimes hidden away for a number of reasons (see page 29 of the *Getting on top of health and safety in the NSW sex industry* resource (WorkCover, 2000))

- Some establishments and all their staff only offer masturbation so there is no need for PPE to be present
- Sex workers choose who they may and may not offer “extras” to, so they will keep PPE hidden and only access them for particular clients after they have negotiated such activities and been paid the extra money.

## Why do some clients just want to pay for an “Adult massage”

Decriminalisation in NSW has allowed for the adult massage sector of the sex industry to become well established and embraced by many clients who are not seeking intercourse but are still wishing to pay for some sexual services and touch.

It is well documented about how our society has embraced technology so much so that a lot of people are actually more isolated now and have less human to human contact, as more conversations and interactions are being done online and via other communication platforms.

Rachel Wotton was interviewed by Richard Fidler on his Conversations program on ABC Radio and mentioned a condition called “skin hunger”:

<http://www.abc.net.au/local/stories/2012/01/31/3419557.htm>

Carly Findlay – a woman with disability and avid writer/ blogger interviewed Rachel further about what “skin hunger” was:

<http://carlyfindlay.blogspot.com.au/2012/05/interview-with-sex-worker-rachel-wotton.html>

It is quite common for some clients who seek sexual massage services to be lacking any other meaningful physical human contact.

Clients may also seek these services because they are not able to maintain or gain an erection but still enjoy the sensuality of the experience and can still enjoy orgasm via masturbation. This loss of erection can occur in a man’s life due to a number of factors. These can include:

- depression
- anxiety
- disability or accident/ injury
- medications (including anti-depression and anxiety medications)
- prostate cancer & recovery from radical prostatectomy

There are many clients who seek out the services of sex workers as they recognise that we are professional and supportive of the individual needs of our clients and won’t laugh at them if they are inexperienced or nervous. Many virgins pay for sex workers’ services to learn more about their bodies, learn about sex and increase their confidence by learning social skills to be able to one day move on to dating in the “real world”. For many they are too shy to experience anything more than an adult massage service for many months or even years.

There are many clients who also do not want to pay for “full service” (intercourse) as they are still in rehabilitating from accident and injury. While the Committee may not wish to read such details we feel that it is important to bring the very human experience to the forefront of your minds. Rachel has previously offered sexual massage services to a gentleman who experienced an extremely traumatic accident which included “de-gloving”. This is where he had a forced adult circumcision where his foreskin was ripped off during his accident. Adult massage allowed the man to slowly re- sensitise his penis to touch again before he felt comfortable to re-join the singles world and commence dating again.

The Touching Base Referral List has received many inquiries from clients with disability (and third parties inquiring on behalf of someone with disability) who are wanting referrals to sex workers who are happy to provide services of this nature for all of these reasons. Each year we are receiving an ever-increasing amount of inquiries and many do not seek intercourse.

### What are some of the unique terms massage parlours use in advertising?

Just like with every other industry, the sex industry in NSW has terms and acronyms that are only understood by those working within the sex industry and the clients who access such services.

In advertisements you will see terms like:

- bodyslide
- bodyrub
- reverse bodyslide
- body to body (B2B)
- nude massage
- Spanish bodyslide
- Hot sexy rub
- Erotic massage
- sensual massage
- adult massage
- “no sex”
- Happy ending
- Hand relief
- Hand jobs
- Massage for men

These terms clearly demarcate between therapeutic massage treatments and the sexual, adult massage industry in NSW.

### Summary Offence Acts 16, 17, 18 & 18A - tabled documents.

These laws are outdated and are not enforced by police. They should have been repealed in 1995 when Decriminalisation occurred.

In addition, the EP&A Act and the Brothels Closure Act override the SOAs in relation to premises used for “prostitution”. As we know, the evidentiary requirements set out in the Brothel Closures Act 2007 include the premises’ advertising, layout of equipment and furniture in the work rooms, condoms and all other PPE, literature pertaining to sex work & the number of men versus women entering and leaving the premises. The onus of



responsibility is firmly placed upon the owners and operators of a premises to adhere to correct DA requirements NOT individual workers or clients.

A quick scan of all data Rachel tabled from BOSCAR in relation to SOA 16, 17, 18 & 18A between 1995 to 2015 clearly shows that have been next to no arrests made by police. Furthermore, even those few charges that were successful only resulted in small penalty notices of a fine.

Additionally, all relevant print advertising have developed their own guidelines to ensure all advertising for adult services in print media meets acceptable community standards. There are mechanisms in place to address any complaints a person may have about an advertisement.

[REDACTED]

[REDACTED]

The sex industry is a legally recognised occupation and is deemed a legitimate land use within NSW. The sex industry has a legal right to be able to advertise openly and honestly, like any other industry. The SWAM resource referenced the Fair Trading Act 1987 but that has since been replaced by the Australian Consumer

Law: [http://www.consumerlaw.gov.au/content/Content.aspx?doc=current\\_laws/nsw.htm](http://www.consumerlaw.gov.au/content/Content.aspx?doc=current_laws/nsw.htm)

Advertising requirements for business in NSW can be found on the Department of Fair Trading website and state

*Truthful advertising is good for your business reputation but there are also laws against making false or misleading representations. Some may think that truth and advertising is a contradiction in terms, but a well-informed customer is a satisfied customer and your best advertisement*

[http://www.fairtrading.nsw.gov.au/ftw/Businesses/Advertising\\_and\\_marketing/Advertising.page](http://www.fairtrading.nsw.gov.au/ftw/Businesses/Advertising_and_marketing/Advertising.page)

### Are massage parlours only staffed by “Asian” women?

Massage parlour workers are as diverse as any other sector of the sex industry or indeed any other industry. The Australian Consumer Laws that replace the Fair Trading Act 1987 of NSW deem that all businesses must advertise openly and honestly. This should also include specifications about the staff that the consumers deem necessary to consider in determining if they would like to spend time and money at that establishment.

As Commander McEwen of the AFP stated in his oral testimony on Friday 11<sup>th</sup> September “there’s a broad appetite in society for different things”. This obviously included sexual desires and preferences. It makes good business sense to advertise openly and honestly in order to attract the attention of clients who are looking for particular attributes.

The focus of this inquiry appears to be only upon “Asian massage parlours” but the reality of the NSW sex industry is that it is quite diverse. Even the sex workers who have testified in front of you are of all ages, genders, body shapes and sizes and we all offer a full range of diverse services. Some of us only work during the daytime while others will work evenings.

A quick google search or advertisement scan will offer you a snapshot of some of the criteria clients are seeking but they include: BBW (Big, Beautiful Woman – someone who is a size 18+) , ‘small, pretty feet’, ‘blonde’, ‘big bottomed girl’, ‘tall and slender’, ‘transgender’, men who advertise “cut or uncut”, ‘pert breasts’, ‘large breasts’ & ‘mature ladies’.

Most people are surprised to know that decriminalisation has allowed numerous “speciality establishments to form and operate since 1995. We are envied by sex workers around the world as we can openly advertise and run SSPs that cater specifically for:

- Big Beautiful Women (BBWs)
- Mature ladies (those who are over 55 years old)
- BDSM dungeons
- Massage parlours
- Ethnicity specific establishments (Thai, Korean, Chinese, and also general Caucasian women)

There are many massage parlours that operate with “non- Asian” identifying sex workers and private sex workers who work from home and on outcalls to clients’ homes and hotels.

### What about the children who are often found in commercial and mixed use zones, where massage parlours are found?

Let’s break it down:

- To get a regular massage you strip down to just your underwear and get someone to touch your body to relieve stress and tension. The children walking by the shopfront do not see this occurring.
- To get an adult, sexual massage you strip down and take off all your clothes and get someone to touch your body to relieve stress and tension. The children walking by the shopfront do not see this occurring.

A child will never actually see what occurs in either a therapeutic massage centre OR an actual massage parlour because both treatments are private and behind closed doors.

A child will never even know a massage parlour is operating in a certain place unless the adults start talking about the place and point it out and then actually explain what is going on behind closed doors. A child will never be allowed access to a massage parlour because no one would ever let them in even if they knocked on the door or rang the doorbell.

The City of Sydney is a wonderful example of how ludicrous these kind of irrational fear statements are. It is a high density area with the largest amount of authorised SSP’s in all of NSW. To our knowledge there has never been even one example of a child being harmed or ‘put out’/ damaged by living or visiting this council area. In fact there are numerous schools, daycare centres and children’s playgrounds, parks and activities organised for children in all areas of this LGA.

Supporting Councils to work with massage parlours to gain authorisation and amending their LEPs to cater for where their natural environments are to set up and operate from will allow for councils to manage the only overt aspect of a massage parlour that the children would see – their advertising.



The reality is that most massage parlours are very discreet in their “shopfront signage” and there are more flashing lights and overt advertising at the front of the true therapeutic massage centres.

Finally, it needs to be said - sex workers ARE parents too!!! We are also aunties and uncles and friends who babysit and hang out with other friends’ kids. We sit on the bus next to school children and catch the train with them. We shop at the same shops that children ‘frequent’ and go to the same movie theatres and restaurants. We walk our dogs at the same parks that children run around in. Sex workers volunteer at the tuckshops and are on the P&Cs at schools across NSW.

In addition, anyone with more than one child will have had sex with their partner under the same roof as their eldest child/ren in order to procreate again (or to just maintain a healthy and happy relationship!). Adults are very good at shielding children from adult activities. It is the same with the sex industry. Even those of us living and working in authorised residential areas are extremely quiet, discreet and respectful of our neighbours and make our clients adhere to strict confidentiality protocols when entering and leaving our premises.

Children do not have X-ray vision and will never be affected by walking past a building that may house a massage parlour (or any type of Sex Service Premises). The amenity impact of a massage parlour is exactly the same as that of a therapeutic massage clinic. If it’s good enough for councils to give a DA for a therapeutic massage clinic to operate in a mixed use / commercial zone where children may frequent, then utilising the Department of Planning’s own evidence-based approach to policy making – Massage Parlours should be catered for in all councils’ LEPs.

### Why are massage parlours not submitting a DA for a SSP?

Loaded words such as 'brothel' and 'prostitution' are historically negatively framed. That's why the Sex Services Premises Planning Advisory Panel changed their name (from the poorly thought out “Brothels Panel”) and also why the Planning Department implemented the terms 'Sex Services Premises ' (SSPs) and ‘sex worker’ and ‘sex industry’ into their Planning Instruments and policies.

The council staff, the politicians in local councils, the owners & operators of massage parlours all need clearly written resources and education to increase their understanding about the differences in definitions between ‘massage parlour’ and ‘therapeutic massage clinics’. This is essentially where councils have ‘fallen down’.

There has never been an open media alert to inform anyone about decriminalisation within NSW or to update people in regards to changes to the laws over the years. A lot of people still believe that the sex industry needs to operate ‘underground’ and under the cloak of a different umbrella business such as massage or hairdressing or a sauna/ spa place.

You don’t know what you don’t know and it is the Councils’ responsibility to concisely inform owners of potential or current businesses of their rights and responsibilities in regards to obtaining a DA and the correct one. If an owner/ operator is approached and asked what their business is, it appears that many council officers, after hearing “we are a massage parlour. We do not offer sex” have indicated that they can apply for a “Massage DA”. Businesses are being penalised years later for now having the wrong DA.

In addition, it is only since the Standard Instrument LEP was forced upon all 152 councils in NSW that SSPs have HAD to be categorically labelled and forced to apply for a DA. Before

2007 49% of LGAs had not separately defined 'brothels' and permitted commercial businesses like massage parlours (and full service brothels) to legally operate in their natural environments. We must refer back to the key intentions of decriminalisation and note that it was originally a complaints based regulatory system. In 1995, there was definitely no State-wide law requiring a DA for any sex services premises and at that time no means by which councils could force a DA to be submitted.

The focus within this inquiry has been on the "Asian massage parlours". It is no secret that a percentage of the sex industry identify as non-Caucasian. It is a legally recognised occupation and people of all genders and nationalities in NSW have the right to choose to work in the sex industry.

The Health Department appreciated this diversity and embraced their role in education and to uphold the health and wellbeing of sex workers, our clients and therefore the general population. They did this by creating meaningful written resources published in multiple languages. These languages were clearly identified by full and thorough consultation with peer educators within the sex industry. The resources included *Health and safety guidelines for brothels in NSW* and numerous STI information sheets. The continuation and expansion of the Sexual Health clinics in NSW – with language specific sessions advertised for sex workers only – have furthered NSW Health's commitment to the NSW sex industry. Peer educators employed with SWOP NSW who are bilingual and clearly identify as belonging from specific "asian" communities have increased the knowledge and support for this sector of the sex industry.

Work Cover NSW (now SafeWork NSW) also recognised and embraced the language diversity within the sex industry and proceeded to produce *Getting on top of health and safety in the NSW sex industry* in multiple languages, and creating and delivering training workshops for the sex industry.

Councils in NSW have not yet created a level playing field. There have been no clear Guidelines, endorsed by the Government, for the sex industry to follow, nor for Councils. There's no planning information or resources in any other language other than English. The requirements for who needs to submit a DA has changed over the years within different councils. Since the Standard Instrument LEP was rolled out throughout all 152 councils, forcing all councils to eventually separately define this land use, there has never been an open and systematic information drive for business owners to work with councils. As previously mentioned – some businesses, overnight, went from operating lawfully to becoming completely banned from operating in their locations, due to new LEPs. No consultation mechanisms were put in place to ensure that businesses who were operating discreetly, with no amenity impact in LGAs were not adversely affected by the new LEPs. Due to having no awareness of the new laws or the new LEPs, some businesses would just continue to operate until council staff approached them.

There has been no training for Council staff to learn how to interact with the sex industry or what the correct terminology actually is. The sex industry needs assistance with how to clearly and openly engage and interact with council planners but councils need to embrace the lingo of the sex industry. For example, even many Caucasian sex workers don't realise that many Asian run SSPs call their establishment a "shop", instead of a brothel or parlour.

It is only after non-amenity based complaints have been made about the massage business that some councils have started expensive legal proceedings. Sometimes this is against some businesses that have operated completely discreetly before then, often with what they thought was the correct DA.

It has been well established via the testimonies and submissions from many councils in NSW that many vexatious complaints about unauthorised - or wrongly authorised - premises are ONLY being made by competitors within the sex industry. In addition, it appears that some councils are not following the intentions of 2007 Brothels Closure Act where it's clearly stated who can – and cannot – make a complaint about a premises. North Sydney Council openly admitted that all 14 complaints were generated from one man from Brothel Busters and even though he certainly did not satisfy the eligibility requirements of a genuine complainant under the Restricted Premises Act (1943), they proceeded with investigating the complaints and closing down businesses that had never made any amenity impact at all and had never come to the attention of Council before then. Marrickville Council, on the other hand, ignored all anonymous complaints and only followed up on genuine complaints.

The issue about the unauthorised uses is NOT a problem of one of amenity impact, bad business practices or unhappy workers - it is MERELY that council hasn't given approval to operate that type of business.

One needs to question that if councils are happy to provide authorisation for therapeutic massage businesses in mixed use and commercial areas WHY CANT THEY APPROVE A SSP?

Once again, we need to remember that in regards to a lot of massage parlours in commercial areas that they were, in fact, authorised commercial premises. It was only the Standard Instrument LEP in 2007 that actually forced a lot of these premises back into the shadows. It doesn't mean that they are not running a discreet, viable business just that they have the wrong piece of paper. The amenity impact is exactly the same though.

### Will massage parlours bring in 'undesirables' into the neighbourhood?

No – clients are part of society. They are: the parents who dropped their kids off 15 minutes ago; the lawyer taking a well-deserved break; the cab driver after their shift has finished. Or: the teacher after school; the police officer on their day off; the IT specialist who has just finished a massive project and rewarding themselves; the lonely person in the office who never has a date. The person who makes your coffee every morning. The person in a wheelchair who has just gone to the movies. The politician, the journalist, the florist. Pick an age, an occupation, hair colour, religious belief, height, socio-economic background: this is the broad demographics of sex industry clients. They are the sons, the fathers, the grandfathers, the daughters, the mothers, the grandmothers, the brothers & sisters, the co-workers; the friends of yours. Just like most people do not know the specifics of their friends and family's sexual desires, same too with knowing who may be a client of a sex worker. That is because everyone involved in the mutually-consenting adult transaction is so discreet.

### Can a sex worker negotiate to use a condom without the sex worker and the client speaking the same language?

YES! So much of our communication between people is non-verbal. Sex workers are very good at setting our own boundaries and negotiating what we will and won't do. Just like travellers from all around the world can still order food, book accommodation, catch public transport and ask for directions in foreign countries without knowing the language, sex workers can negotiate safer sex practices and services without speaking the same language.

In addition, some clients with disability are non-verbal. Their parents, friends, cares and support staff all communicate with them through different communication methods. This can include sign language, utilising communication boards, hand signals & gestures, nods of the head, eye movements and using closed questioning systems. These communication options are relayed to the sex workers to use during their interactions with their clients too.

Modern technology also allows for sex workers to use email and translation apps to communicate with others who speak a different language. As they say – the language of sex is universal and people in paid – and unpaid – sexual encounters always find a way of getting their requests across.

Finally, NO means NO in every language and there are many ways to express this. Decriminalisation allows sex workers to gain the confidence to set our own boundaries and seek out appropriate help and assistance if needed without the fear of arrest or punishment.

### Trafficking concerns

First and foremost, we refer to our colleagues at Scarlet Alliance, who have provided oral testimony addressing the issue of trafficking in the Australian context. We encourage the committee to raise any further questions or clarifications with Scarlet Alliance.

### Workers Compensation

The issue of Workers Compensation was raised by the Chair on 11<sup>th</sup> September oral testimonies. Please look to page 11 of the *Getting on top of health and safety in the NSW sex industry* resource (WorkCover, 2000) for information that has been previously distributed to the sex industry.

Obviously there have been legislative changes in the last 15 years and it's good to know that this valuable resource is in the process of being updated. We recommend that the final resource has an ongoing print run and is also freely available online. In addition, it needs to be translated into a number of languages that reflect participation in the sex industry in NSW in order to best equip owners, managers and sex workers with their rights and responsibilities.

## Additional SSP Case Study Information – Julie Bates

Following a question from Mr. Greenwich to Ms. Bates asking her to elaborate on her opening statement regarding the safety risks with locating sex work premises in industrial zones, Ms. Bates offered to respond in the form of a case study. The information Ms. Bates provided was an abridged version of the experience of her clients who were proponents in a development application before a Western Sydney council. After giving evidence on Friday 11 September as part of the Touching Base delegation, Ms. Bates sought and was granted permission to expand on the subject case study.

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Due to time constraints I was unable to provide adequate background information to this particular case study. Also, I believe it is important that the Committee have the opportunity to understand the broader experiences of current or potential sex industry operators in attempting to establish or legitimise their business in complying with planning laws for sex industry land uses. This story is far from unique, as other case studies I have provided to the Committee can testify.

In taking instructions from potential sex industry operators, my advice is to select a site that meets the principle objectives of the relevant planning controls. I also provide them with other relevant information on the regulation of brothels. Once a local government area (LGA) has been selected, and after researching the relative permissibility of sex services premises (SSP) within the selected LGA my clients, armed with this information, set about trying to find a site that might attract favourable consideration from Council. In most cases, the controls in place will limit this possibility to industrial zones as location requirements under DCPs, if SSP are technically permissible in commercial or mixed use zones, will limit location and ultimately, illicit refusal from the consent authority.

In some instances, I am instructed by massage business owners who are expecting or have had a visit from Council in respect to a complaint that the premises are purported to be operating as a brothel. In some situations, the council has issued a number of infringement notices and in other cases, the council has issued a letter of intention to issue an Order. In the majority of cases, my clients are quite clueless as to why, not understanding that masturbation constitutes sex and thus the premises are deemed a brothel.

Often I am the first person to explain that these kinds of services are defined under the law as "prostitution" and as such, they require development consent for a sex services premises aka brothel. It is a shock for most of my clients in these circumstances to come to terms with that description and they are genuinely horrified by the prospect of running a brothel or of their family thinking that's what they are doing. It is a similar response from women who work in these massage businesses who do not generally think of themselves as a sex worker and again, would be horrified if friends and family knew they were working in a brothel.

My clients in this case had formerly operated a massage business in a shopping precinct in the same LGA and offered, on request, hand relief (masturbation) otherwise known in the industry as 'happy endings'. This part of the service my clients had from time to time been

providing eventually came to the attention of Council; the existing consent being for a therapeutic massage business. Notably, the issues raised with council were not based on amenity impact. Once armed with the information, my clients in this case instructed me to intervene with council on an intention to give an order. They also instructed me to see if they could get approval to operate a SSP from their current site even though they stated they would continue to provide massage with happy endings on occasion over 'full service' (intercourse).

In reviewing the LEP, the zone in which the shop top premises from which they were operating, prohibited SSP. My clients had been there for a number of years and while I have no proof, I am led to believe that they had from time to time paid certain people to allow them to keep operating at that site. The mission then was to get them out of there and to get them time (from the Council) while they found a suitable site in a permissible location within a permissible zone in the LGA. The relevant Council permitted SSP only within small pockets of land within the industrial zones.

While relocating their business to an industrial estate was far from optimum, they wanted to remain in the LGA as they had a long and established client base and wanted to be remain as close to the neighbourhood as possible. Council did give them time to relocate provided they operated in accordance with their consent (i.e. no 'happy endings'). And, so commenced the long and arduous process of finding a vacant property that met the various controls.

My clients eventually found a site. The next hurdle is seeking consent from the land owner to support and consent to an application for a sex services premises DA. That in itself is difficult, getting landlords to accept their premises will be used for a 'brothel' and their name, in giving consent, will then be on the public record as owner of land upon which a brothel exists. Then one has to sign a lease and pay 'dead' rent money while a DA is in train.

On an assessment of the relative merits of the site when compared against the planning controls, I lodged a DA, It received favourable treatment from planning and environmental health officers. Our proposal had provided for all requisite work health and safety standards and disability access in parking, general access and sanitary facilities. After much delay, the DA finally went before Council with a recommendation for approval. I believed it met the principle objectives of the planning controls (and so did Commissioner Moore in upholding the appeal after council refusal). It was given a trial period of 12 months and a fresh DA was required to give final approval, more expenses. Even though they had received a trial only, it was essential, in order to conduct business, that they fitted out the aeroplane size hanger in an industrial warehouse building - more money borrowed from banks, mortgaging their homes etc and take their chances that they would receive favourable ongoing consent after the 12 month trial.

Following the fit out, and with an occupation certificate in hand, they opened for business. First up, they noticed many of their regulars did not follow them, not feeling comfortable coming to an industrial estate. The same applied to the women who had previously worked for them, it being too difficult to get there in terms of public transport and like the clients,



feeling scared to work in such an isolated location and in a business that was openly declared a 'brothel'. After a robbery, maybe two, my clients were too afraid to stay open after 7 at night even with an Alsatian dog on the premises, like guard dogs in a car yard at night when no one is around. They couldn't keep staff, and with a diminishing client base and their mounting fears for their safety, they eventually had to sell the business at a loss. So much for trying to comply with planning controls that puts peoples' lives and particularly women's lives and livelihoods at risk.

In conclusion, this experience is far from unique. I believe it provides a good example of the failures of local government to adequately explain and provide for SSP in commercial and mixed use zones, which can lead to continuing opportunities for misunderstandings, abuse and corruption. It also highlights the inappropriateness and dangers associated with locating SSP in industrial zones and the further discrimination against SSP by further limiting the location within industrial zones.