



Ms Elspeth Dyer
Inquiry Manager
Select Committee on the Regulation of Brothels
Parliament House
Macquarie Street
Sydney NSW 2000

15/13880

Dear Ms Dyer

Thank you for providing a copy of the draft transcript and consolidated questions on notice from the Department's appearance at hearings for the Parliamentary Inquiry into the Regulation of Brothels.

Minor corrections to the transcript are marked up on pages three and eight of the copy of the draft transcript attached to this letter. Responses to the Committee's questions on notice, prepared in consultation with the Department of Justice, are also attached.

I wish to correct an error of fact in the Department's evidence in relation to the powers available to Hornsby Council in its recent action against a massage parlour where unauthorised sex services were alleged to be taking place (refer to the Chair's question at the bottom of page three of the draft transcript, and the Department's response at the top of page four).

The *Environmental Planning and Assessment Amendment Act 2014*, passed by the Parliament in November 2014, includes increased investigation powers for councils, including the ability to enter non-residential premises without first giving written notice to the owner or occupier, require information or records for the purposes of an investigation, whether or not the officer is also entering premises, and seize items that an investigation officer suspects are connected with an offence.

These provisions were not commenced until 31 July 2015, and would not have been available to Hornsby Council in its actions prior to this date. From this date onwards, councils may apply the new investigative powers to all existing and new investigations.

Should you have any further enquiries, please contact [REDACTED]
Team Leader, Operational Policy, at the Department on [REDACTED].

Yours sincerely

[REDACTED]

Elizabeth Kinkade 18.9.14
Acting Deputy Secretary, Policy and Strategy

Parliamentary Inquiry into the Regulation of Brothels

Responses to questions on notice to Alison Frame and Elizabeth Kinkade representing the Department of Planning and Environment

1. *Is there any data or statistics on the number of prosecutions, successful or otherwise, by councils for illegal massage parlours across the State?*

There are no reported prosecutions or convictions of massage parlours where unauthorised sex services are occurring in the Land and Environment Court.

There is no consolidated data on prosecutions or convictions of massage parlours where unauthorised sex services are occurring by the Local Court. It is likely that more brothel closure orders have been issued in the Local Court than in the Land and Environment Court given lower costs of undertaking the court action.

2. *Local councils can issue a simple penalty notice and that would not be recorded in any of those jurisdictions. Do you have reports of that or could you collate that information?*

Data collected by the Office of State Revenue classifies penalty notices issued for planning offences by the legislative section the offence is committed against. As a result, any penalty notices issued in relation to brothels or massage parlours are included as part of broader offences classifications, such as:

- S. 76A(1)(a) – Development without development consent;
- S. 76A(1)(b) – Development not in accordance with development consent; or
- S. 121B(1) – Failure to comply with an order issued by a consent authority.

It is not possible to disaggregate this information in specific relation to brothels or massage parlours.

Councils may maintain individual registers of penalty notices issued in relation to brothels or massage parlours where sex services are occurring, however this information would need to be sourced directly from councils.

3. *Can you tell us how many brothel closure orders have actually been given?*

There are two reported instances of the Land and Environment Court issuing brothel closure orders under s. 121ZR of the EP&A Act:

- *Willoughby City Council v Spa & Beauty Relaxation Centre Pty Ltd* [2011] NSWLEC 101
- *Ryde City Council v Chen* [2012] NSWLEC 63

There is no consolidated data on the number of brothel closure orders issued by the Local Court. It is likely that more brothel closure orders have been issued in the Local Court than in the Land and Environment Court given lower costs of undertaking the court action.

The number of brothel closure orders issued by councils would need to be sourced directly from councils.

4. *Further information regarding the origins of the Sex Services Premises Planning Guidelines, December 2004, and whether the guidelines have been applied and/or reviewed, and what would be necessary for the guidelines to be updated and implemented across New South Wales.*

The Sex Services Premises Planning Advisory Panel was established by the NSW Cabinet office in 2002. It comprised of an independent chairperson and single representatives from the Department of Planning, NSW Health, State Chamber of Commerce, Local Government Association of NSW and Shires Association of NSW, one metropolitan and one non-metropolitan council, the Sex Workers Outreach Project (SWOP), Private Worker Alliance (PWA) and a legal representative with expertise in sex services planning.

In 2004, the Sex Services Premises Planning Advisory Panel published the *Sex Services Premises Planning Guidelines* "to assist local government in decisions they make in regard to sex services premises in their areas and to outline what constitutes best practice". The Panel analysed current practice and concluded that "in the majority of cases, effective regulation has not been realised". Planning controls did not distinguish between different types and scale of brothels, and they were overly restrictive. The Panel noted that this impacts on the level of compliance with council controls, and the delivery of health and outreach services to the industry.

The Guidelines were never formally endorsed or adopted. They have not been reviewed since their initial draft release.

A review of the Guidelines would need to take account of a range of changes that would influence their content and advice since initially prepared in 2004, including:

- The reforms of the *Brothel Legislation Amendment Act 2007*, which expanded the powers of councils and the Land and Environment Court to take enforcement action (including issuing brothel closure orders);
- The *Environmental Planning and Assessment Amendment Act 2014*, (commenced 31 July 2015) which strengthens powers of entry for council investigation officers and increases penalty amounts;
- The Standard Instrument program, which has provided a standard template for councils to develop their LEPs and could allow for comprehensive and standard direction to councils on planning for brothels across NSW;
- Updating contextual information to reflect changes to the sex work industry since 2004.