

**Submission
No 104**

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: Warringah Council
Name: Mr Neil Williamson
Position: Health and Building Certification Manager
Date Received: 19/08/2015



19 August 2015

Alister Henskens SC, MP
Chair Select Committee on the regulation of Brothels

Our Ref: 2015/213882

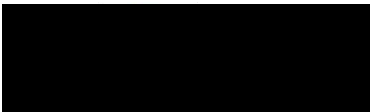
Dear Sirs,

Inquiry into Regulation of Brothels

Further to your recent letter to the General Manager, please find attached Warringah Council's submission to the above inquiry.

Should you have any questions please do not hesitate to contact me on 9942 2111 or email Council@warringah.nsw.gov.au

Yours faithfully



Neil Williamson
Health and Building Certification Manager





Inquiry into Regulation of Brothels

Submission by Warringah Council.

- (a) Appropriate local and state government regulatory and compliance functions for brothels &
- (b) Demarcation in local and state government roles and responsibilities

The existing provisions for regulation and compliance provide for unnecessary overlap and inefficiency. For example when considering public health and safety of sex workers and customers WorkCover, Local Councils and NSW Health all have regulatory powers. The level of regulation by each agency is a matter of individual priority, with little planned coordination. Many Councils for example do not have a proactive inspection programme to regulate public health concerns as this is not a mandated function. Typically Council investigations are reactive in nature, following complaint or referral from another agency, such as the Police seeking assistance to support their criminal investigations and initiatives, or from the public concerning illegal operations.

Warringah Council would support reform which removes duplication of effort, for example we believe regulation of public health could be covered by WorkCover under existing provisions of the Work, Health and Safety Act 2011, which place duties on Persons Conducting a Business of Undertaking to manage risks to employees and non-employees, e.g. customers, equally as well as under Environmental Planning and Assessment Act 1979 (EPAA) or Public Health Act 2010. In practice guidelines clarifying demarcation of roles and establishing better coordination and memorandum of understanding for joint working may be sufficient.

- (c) Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.

As well as public health functions Local Councils also regulate development and use of sex premises under their Local Environment Plans (LEPs) and Development Control Plans (DCP) and we believe that Councils should retain a key regulatory role, both in relation to public health and safety but also managing related amenity and environmental impacts, under EP&A Act and Protection of the Environment Operations Act 1997.

In pursuit of improved regulation of legal and illegal brothels Warringah Council would advocate a licensing scheme, which is in two parts; whereby the premises and the operator must both hold a licence, with significant penalties applicable to premises or persons operating without a licence.

A similar scheme operates in the UK around entertainment licensing, under the Licensing Act 2003, and we would recommend that the inquiry review these provisions. This gives wider ranging powers to Councils to issue personal and premises licenses and to regulate the conduct of operators and venues, including calling licensees before a licensing hearing, and the ability to place restrictions and conditions on operations. Assessment and review of licenses



are against the key objectives of *prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm*, which similarly could be applied to regulation of sex premises. Personal licence holders are also subject to Police and other checks, prior to being issued with their licence.

Whilst Section 124AB(5) of the EP&A Act provides that findings in court may be based on circumstantial evidence, in practice prior to issuing Orders or instigating court actions for sex/brothel operations occurring without an approved use many Councils require evidence of actual sex acts and engage private investigators to collect this evidence first hand. This is a time consuming and expensive undertaking and we would welcome specific lower burden 'tests' being enshrined in new or revised legislation. These should include that it is sufficient to prove an offence of operating as a sex premises for any sex service to be offered for sale or advertised for sale, or offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, without the need to witness the activity. Sex activity and sex premises would need to be defined and to include all premises offering services and not solely limited to brothels.

We would also advocate powers within a Licensing Act that enable Council to immediately prohibit operations, whereby licensable activities are undertaken without a licence, with significant penalties for non-compliance, for example \$5000 per day via a Penalty Infringement Notice and significant penalties upon conviction in Court. Penalties to apply to both the company (premises) and licensed person.

Reviews of licenses, including the ability to revoke a personal and/or premises licence should rest with Council via a licensing panel, with subsequent appeals to the courts. This would provide for efficient resolution of concerns. Ability for the Police and third-party rights to call in a licence for review on certain grounds, e.g. crime and disorder, harm to children and public amenity is advised. Legislation should establish the formation and members of such panels, for example to include police and/or community representation.

We believe centrally produced guidelines and/or standards are essential to ensure consistency of approach across Councils, including standard licensing conditions in favour of plans of management.

Furthermore we would support mandatory inspection by Councils, as is in place for other public health premises including boarding houses and food shops, with a standard tool based on risk, for determining frequency of inspection. To facilitate this work, provision must be made for full cost recovery by Councils, such as via an annual licensing fee.

We would also advocate that any such licensing scheme or other regulatory reform is not singularly focus on brothels, but considers the range of sex services and premises.