

INQUIRY INTO THE REGULATION OF BROTHELS

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18th August 2015

The Committee Manager
Select Committee on the Regulation of Brothels
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Sir / Madam

Inquiry into the Regulation of Brothels in NSW

I would like to make the attached submission to the Regulation of Brothels Committee's *Inquiry into the Regulation of Brothels*.

This submission is made in my capacity as Acting President of the Police Association of New South Wales on behalf of this Association's members.

If the Committee has any questions in relation to this Submission or seeks the response of this Association to any matter related to the Inquiry, please do not hesitate to contact Ms Julie Carroll, Assistant Secretary Legal Services, on (02) [REDACTED]

Yours sincerely

[REDACTED]
PAT GOOLEY
Acting President

PANSW Submission

NSW Parliament Inquiry into the Regulation of Brothels in NSW



The Police Association of New South Wales (PANSW) represents the professional and industrial interests of approximately 16,500 members, covering all ranks of NSW Police Officers in New South Wales.

This submission is written on behalf of our members and does not seek to represent the position of the NSW Police Force.

August 2015

Introduction

Since its establishment in 1862, members of the NSW Police Force have been tasked with enforcing the laws surrounding the sale of sexual services, including in brothels and residential premises as well as street prostitution.

Over the past 150 years, evolving societal views and the approach of legislators has changed the legal framework within which Police Officers go about policing the sex industry.

At the same time, the illegality until relatively recently of prostitution and brothels has not surprisingly attracted criminal elements who have sought to profit from a sexual interaction of which they are not a party.

All of this combined has presented challenges to the NSW Police Force in fulfilling their part in meeting the expectations of the community that the sex industry will be properly regulated and as safe as possible.

The Police Association of NSW (PANSW) recognises the importance of ensuring the regulation of the sex industry including brothels continues to operate to protect involved parties and the general community as well as minimising all forms of crimes.

The PANSW on behalf of our members is keen to ensure this Inquiry carefully considers where the limitations on the interaction of Police Officers with the regulated and unregulated sex industry, in particular brothels, should remain.

In doing so, we submit it is not in the interests of our members for their role in the regulation of the sex industry to be materially widened beyond its current parameters to areas outside of the criminal justice system.

The Current System

As Members of the Inquiry would be aware currently brothels are subject to a number of regulatory provisions including:

- *Public Health Act 2010;*
- *Environmental Planning and Assessment Act 1979;*
- *Restricted Premises Act 1943; and*
- *Work Health and Safety Act 2011.*

Members of the NSW Police Force have legislated and policy-based obligations, including in the following areas:

- Conduct investigations, and where evidentiary standards are met, lay charges with respect to crimes which occur within the sex industry. Crimes may include assault, sexual assault, sexual servitude, kidnapping, drug possession or administration, drug trafficking, procuring for the purposes of prostitution and child prostitution;
- Undertake overt patrols and where appropriate covert surveillance of locations where street prostitution is or may be occurring;
- Assist the Australian Federal Police (AFP) where appropriate as the AFP undertakes investigations into possible human trafficking offences; and
- Cooperate where appropriate with Local, State and Federal Government agencies in compliance operations.

The *Environmental Planning and Assessment Act 1979* provides Local Government with a number of powers to assist in its regulatory functions with respect to sex industry premises in their area as well as imposing upon Local Government compliance responsibilities. The functions include the approval of development applications, the preparation of planning controls such as Development Control Plans and environmental health compliance.

The *Work Health and Safety Act 2011* and the *Public Health Act 2010* confer on WorkCover and the NSW Ministry for Health a number of areas of responsibility for ensuring the sex industry is as safe as possible from a workplace and health perspective.

The NSW Police Force has been tasked with working to address crime and in doing so Police Officers are required to interact with brothel owners, workers and clients whenever an allegation or complaint is made about crime or illegality.

In such circumstances the utmost professionalism is expected of every Police Officer by both the NSW Police Force and the general community.

NSW Police Officers are not trained in many areas of government regulation affecting the sex industry outside of the administration of justice. It is not within the current parameters of their profession to be aware of and enforce the intricacies of council bylaws, public health provisions as well as work health and safety requirements of brothels.

As indicated above, NSW Police Officers continue to be well trained and resourced to investigate and lay charges in relation to allegations of assault, sexual assault, sexual servitude, kidnapping, drug possession or administration, drug trafficking, procuring for the purposes of prostitution and child prostitution.

Unfortunately these are crimes that can and do occur in both the regulated and non-regulated sex industry including brothels, residential premises and amongst street prostitution. Too many of these crimes go unreported and as a result unpunished.

The PANSW would encourage all victims of crime to report these matters to Police so they can be appropriately investigated.

Some of the most heinous crimes investigated by law enforcement officers, including NSW Police Officers, each year involve the unwilling participation of both adults and children in the sex industry.

When NSW Police Officers form the belief a human trafficking offence has occurred in most circumstances these matters are referred to the Australian Federal Police for investigation. The AFP possesses a higher level of expertise in investigating human trafficking as they deal with such allegations on a more regular basis than NSW Police.

However, crimes relating to sexual servitude and child prostitution are investigated by the NSW Police Force where the circumstances warrant this.

According to figures provided to the PANSW by the Bureau of Crime Statistics and Research between 1 January 2005 and 31 March 2015 the following numbers of charges were laid with respect to the indicated offences:

NSW Criminal Court Statistics January 2005 to March 2015		
Act	Section Description	Finalised Charges
<i>Crimes Act 1900</i>	80D(1) Cause person to enter/remain in sexual servitude (DV)	2
	Cause person to enter/remain in sexual servitude	5
	80E(1) Conduct business involving sexual servitude	3
	91D(1)(a) Cause child ≥ 14 & < 18 to do act of child prostitution	21
	Cause child under 14 to participate in child prostitution	7
	91D(1)(b) Act as client with child ≥ 14 & < 18 in prostitution	11
	Participate as client with child under 14 in prostitution	4
	91E(1) Obtain benefit from child prostitution	2
<i>Criminal Code Act 1995</i>	91F(1) Operate premises where child participates in prostitution	5
	270.6(1) Cause person 18 or over to enter/remain in sexual servitude	4
	270.6(2) Conduct business involving sexual servitude of person ≥ 18	4

Source: NSW Bureau of Crime Statistics and Research Reference: sr15-13148

Any occurrence of these offences is deeply disturbing. Every person, particularly a child, deserves to go about their life without becoming a victim of crime and exploitation.

It is therefore incumbent on those in authority, including the Legislature, members of law enforcement and the judiciary to ensure those who seek to exploit others and commit crimes are detected, investigated and prosecuted.

Complicating the work of government authorities in building resilience to exploitation within the sex industry is the highly transient nature of workers within the industry.

In the Kirby Institute report, *The Sex Industry in New South Wales: a report to the NSW Ministry of Health* (2012), it was found the median time sex workers spend in the industry was between 1.6 and 2 years¹.

This transiency presents significant challenges to government agencies, including law enforcement, in seeking to ensure the industry operates within regulatory boundaries.

Additional Responsibilities for NSW Police Officers

NSW Police Officers undertake their core duties with professionalism and consistently deliver significant success in tackling crime across New South Wales.

As a consequence it is understandable legislators look to the NSW Police Force to take the lead on emerging social issues which have a varying component of illegality.

Over the past four years the NSW Parliament has passed laws which have placed additional powers and responsibilities with the NSW Police Force including:

- consorting laws;
- alcohol lockout laws and banning orders;
- tattoo parlour licensing assessments;
- public transport security;
- Firearm Prohibition Orders; and
- vehicle number-plate confiscation scheme.

¹ The Kirby Institute, Faculty of Medicine, University of New South Wales, *The Sex Industry in New South Wales: a report to the NSW Ministry of Health*. Page 18. Report available at: <https://kirby.unsw.edu.au/sites/default/files/hiv/attachment/NSWSexIndustryReportV4.pdf>

During the course of this Inquiry Members may consider if regulatory models such as those applicable to the liquor industry or tattoo parlours should be considered suitable to address issues with brothels.

The PANSW would urge Members to carefully consider the implications of such models on the resourcing of NSW Government agencies, in particular the NSW Police Force.

It is important Members remain conscious of the frequent tendency of both federal and state governments of all persuasions to additionally fund government agencies only in the year of implementation of new resource-intensive policies with such additional capital or recurrent funding far too often not extending into any further years before Treasury deems the new responsibilities as 'core business'.

Of all the additional powers placed with the NSW Police Force over the past four years, only the creation of the Police Transport Command resulted in additional Authorised Strength police numbers being allocated to the Police Force. All other responsibilities have been required to be undertaken with no additional numbers, resulting in Police Officers being redirected in some way from other law enforcement activities.

Considerations for any proposal for a Brothel Licensing System

In September 2012 the NSW Government's Better Regulation Office released an Issues Paper entitled "*Regulation of Brothels in NSW*"². The Issues Paper canvassed three broad options to reform "*the regulation of sex services premises in NSW: (1) improve the current regulatory system; (2) introduce a registration system; and (3) introduce a licensing system.*"³

The option to introduce a licensing system would have seen an offence created around owning or operating a commercial sex services premises without a licence.

The Issues Paper outlined that "*Applicants would be vetted for suitability based on their criminal history and any relevant criminal intelligence or criminal information held by Police (that is, a 'fit and proper person' test).*"

It also indicated any licensing authority should consider whether the granting of a licence would meet a public interest test and if the needs of work health and safety and the welfare needs of workers, clients and visitors to a brothel were going to be met by the license applicant.

² NSW Government, Better Regulation Office, *Regulation of Brothels in NSW: Issues Paper*. September 2012. Available at: http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0006/145077/Issues_Paper_Regulation_of_Brothels.pdf

³ NSW Government, Better Regulation Office, *Regulation of Brothels in NSW: Issues Paper*. September 2012. Page 41.

As Members will come to appreciate, a number of interested parties who are likely to lodge a submission with the Inquiry will be critical of any proposal to introduce licensing into the industry.

For example, recommendations of The Kirby Institute report, *The Sex Industry in New South Wales: a report to the NSW Ministry of Health* (2012), were highly critical of licensing sex work. In part it states: “For over a century systems that require licensing of sex workers or brothels have consistently failed – most jurisdictions that once had licensing systems have abandoned them.”⁴ The Report goes on to strongly assert: “Thus, licensing is a threat to public health.”

After careful assessment of the available options, Members of this Inquiry may determine a full or partial licensing scheme for the sex industry, in particular brothels, should form the basis of recommendation in its final report.

Should owners and managers of brothels be subject to licensing provisions, the PANSW would submit identification and certification requirements need to be implemented for every applicant including:

- Consenting to a National Police Check;
- Providing Police with their finger and palm prints;
- Not have a serious indictable offence conviction;
- Not have an indictable offence conviction in the previous 5 years;
- Not being a controlled member of a declared organisation;
- Being at least 18 years old and an Australian citizen or resident;
- Producing three forms of recognised identification; and
- Providing a declaration detailing all close associates.

Some or all of these requirements need to be met in relation to other areas of licensing and regulation where community safety is an element of the reasons for licensing the industry. Such areas include the licensing of body art tattoo parlours and tattooists, liquor licensing, firearms licences, as well as the security industry.

In May 2012 the *Tattoo Parlours Bill 2012* passed the NSW Parliament. The Bill created “a licensing and regulatory scheme for the carrying on of body art tattooing businesses and the performing of body art tattooing procedures.”⁵

⁴ The Kirby Institute, Faculty of Medicine, University of New South Wales, *The Sex Industry in New South Wales: a report to the NSW Ministry of Health*. Page 7.

⁵ Tattoo Parlours Act 2012 Explanatory Note Overview of Bill. Available at: [http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/258d8f14bd917601ca2579f20018798e/\\$FILE/Tattoo%20Parlours%20Ex%20Note.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/258d8f14bd917601ca2579f20018798e/$FILE/Tattoo%20Parlours%20Ex%20Note.pdf)

As opposed to the considerably larger sex industry, there were thought to be only somewhere between 150 and 300 tattoo parlours in NSW towards the end of 2013 according to the NSW Government.⁶

This relatively small market made introducing a licensing system comparatively easier than it would be if the NSW Legislature sought to do so within the sex industry.

Even still despite the Tattoo Parlour legislation passing in May 2012, it was not until 1 February 2013 when the Department of Fair Trading opened the licence application process. Offences for breaching the provisions of the licensing system did not commence until 1 October 2013.

The Department of Fair Trading has been charged with undertaking a considerable amount of the day to day regulatory processes with respect to the Tattoo Industry. In doing so, they have developed a considerable level of expertise in the regulation of a challenging industry which the Inquiry may wish to draw upon.

One power that is of particular importance to law enforcement in ensuring compliance within any licensing system is the ability to inspect licensed premises and inspect business records.

The PANSW is keen to ensure in any industry only legitimate businesses are operating. There should be no place of criminal elements to use businesses, particularly in high risk industries, as a front for criminal activities.

Conclusion

The PANSW thanks the Members of the Inquiry for their time in considering this Submission. We again urge careful consideration of the implications of any changes to the regulatory system relating to the sex industry that would place additional responsibilities on members of the NSW Police Force without a commensurate increase in their resourcing.

⁶ NSW Parliament, Legislative Assembly, Answer to Question on Notice 4535, answer received 17 October 2013.