

**Submission
No 145**

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: Sex Workers Outreach Project Inc (SWOP)
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SWOP
YEAR 2014-2015

270,000
SAFE SEX ITEMS

447 Regional & **44**
Rural Areas

SEX SERVICE PREMISES **7** MAJOR EVENTS

Face to Face with **6,700**
SEX WORKERS

19 New **RESOURCES** **15**
SMALL GROUP WORKSHOPS

Sex Workers **157** Attended

20,000 Printed Resources

ORGANISATIONS **1,000,000**

52 TRAINED Social Media **57,500** Reach
Unique Website Visitors

About SWOP

The Sex Workers Outreach Project has a 30 year history of working within the NSW sex industry in peer community outreach and education.

In the last year alone our staff visited 447 brothels in NSW, interacted with over 6,700 NSW sex workers, distributed over 270,000 safe sex items and approximately 20,000 pieces of educational material.

We visited 44 rural and regional areas, held 7 major events and 15 educational workshops for sex workers as well as providing educational and support information via our social media streams and our website.

All SWOP outreach officers are, or have been, sex workers, including myself, the Chief Executive Officer. Amongst our staff there is approximately 200 years of lived sex work experience.

The Current Regulatory Framework in NSW

The move to the current sex industry regulatory framework in NSW was the result of many drivers for reform, which coalesced around the 1995 - 1997 Royal Commission into the NSW Police Service (Wood Royal Commission).

Evidence in the Commission clearly indicated that in a criminalised sex work environment there is a strong incentive for police corruption, and greater potential for links with organised crime. This same incentive does not exist in a decriminalised sex work environment, like the one currently operating in NSW.

In order to address the corruption that resulted from the prohibition of sex work, and to improve health outcomes for sex workers and the broader community, the Disorderly Houses

Amendment Act 1995 was enacted to remove the legal prohibitions on SSPs (brothels).

Decriminalisation significantly improved the ability of SSPs' (SSPs) operators and sex workers to access essential health information and services, by removing the fear of being reported to the police and other barriers to engagement. This included the essential health services provided by the Sex Workers Outreach Project (SWOP).

Health promotion and peer education programs provided to sex workers have proved to be effective in NSW in increasing and maintaining a very high level of condom use to prevent the transmission of HIVⁱ. Indeed, there has been no recorded transmission of HIV from a sex worker to a client in NSWⁱⁱ, which is a very significant public health achievement.

Keeping Decriminalisation is the Only Viable Approach

Decriminalisation of sex work is recommended by the joint United Nations Programme on HIV/AIDS (UNAIDS) to prevent the transmission of HIV. UNAIDS asserts that the key to achieving positive public health outcomes is that the sex industry is not driven underground, ensuring that health services have unfettered access to sex workers in all workplaces. The Global Commission on HIV and the Law, a UN-backed high level commission, undertook a series of Regional Dialogues. This research was also supported by a Technical Advisory Group that helped generate and build consensus around the resulting evidence base. The final report supported the removal of criminalised approaches to sex work to ensure positive public health and human rights outcomes for sex workers.ⁱⁱⁱ

It seems timely that as we write this submission, predominately supporting the continued decriminalisation of sex work, the leading global human rights organisation Amnesty International has created a resolution that “recommends that Amnesty International develop a policy that supports the full decriminalization of all aspects of consensual sex work.”^{iv} Their extensive and evidence-based global consultation arrived at supporting decriminalisation, meaning they agree that sex work in NSW remains an example of world’s best practice.

Amnesty International is only the latest of a litany of key global organisations to support decriminalisation, alongside the World Health Organisation, UNAIDS, and an entire volume of the leading medical journal *The Lancet*^v. As Kay Thi Win, Coordinator for the Asia Pacific Network of Sex Workers, wrote so eloquently: “Amnesty International’s policy seeks to empower sex workers. If sex workers can have enabling environments in which to work, the world will not need to spend millions of dollars to improve our health.”^{vi}

Current Regulation of Brothels in NSW

In 2001 WorkCover NSW and NSW Health jointly published ‘Health and Safety Guidelines for Brothels’^{vii} which outlines responsibilities of brothel proprietors to their employees, contractors, clients and visitors. This information is available in a number of key languages, reflecting the demographics of the sex industry in NSW, and is a world first – made possible by a decriminalised sex work environment.

Whilst the broad regulatory framework of decriminalisation is effective, some specific regulations are problematic for sex workers and SSPs. They include state-wide policies and local government regulations regarding home based sex workers, inappropriate zoning, anti-clustering requirements and the attempts by many local councils to unfairly restrict or de facto ‘ban’ brothels utilizing combinations of these practices.

Whilst lack of compliance with local planning requirements by some operators has been identified as a driving concern of this review, SWOP maintains that the lack of compliance of many local government authorities with the spirit and intent of the 1995 reforms and attempts to de facto ‘ban’ SSPs are a leading cause of the problems currently perceived around sex industry regulation.

Decriminalisation Defined

SWOP wishes to stress that a decriminalised framework of sex work regulation does not mean an unregulated industry. It simply means the removal of sex work-specific criminal laws and the removal of the police force as industry regulators. Under decriminalisation any illegal activity, including organised crime and sex trafficking, is already addressed by current laws.

Decriminalisation facilitates sex workers and SSPs having equitable access to the same protections of civil and criminal laws. They are also able to access the existing regulators of work, health and safety such as WorkCover and Fair Work Australia, the Department of Health and education and information services such as SWOP. Decriminalisation also facilitates the access of these regulators to the entire industry and to its workers, which is often unavailable or severely compromised by regulated, licensed or criminalised frameworks.

SWOP believes that the current regulatory system of decriminalisation of sex work has largely served the interests of sex workers and the wider NSW population, resulting in very low rates of STI prevalence and incidence, high rates of access to health promotion and support services by sex workers, and increased capacity of sex workers, including those from Asian and other non-English speaking backgrounds^{viii}, to look after their health and welfare. The process of decriminalisation has succeeded in addressing the issue of police corruption and helped to reduce criminality associated with the industry prior to 1995.

Protection of residential amenity

The majority of SSPs have limited and often no residential or commercial amenity impacts. Owners, clients and workers all share a desire for discretion and thus act to limit the impact of their business activities on the local community. Empirical evidence such as the research of Crofts and Prior (2012) shows that the majority of residents near SSPs are unaware of the presence of these businesses, or regard their impact as neutral or positive. Crofts and Prior also note that the nature and volume of negative responses to development applications for SSPs differs markedly from the actual experiences of residents living in close proximity to such premises. They note that there are a range of verifiable amenity impacts identified, including parking, noise and traffic, and that these may be amenable to a mutually satisfactory resolution should they be identified in the development submission process.

We strongly support the use by councils of only evidence-based approaches relying on verifiable criteria to assess possible amenity impacts.

SWOP has long advocated that the principles outlined in the SSPs Planning Guidelines (2004) be adopted and incorporated into Government policy, as we believe these would help to improve regulation and increase compliance with planning and OH&S requirements across the sex industry. However, these are now some years old and it may be preferable to revise them, especially in light of the recent review and overhaul of the NSW Planning Act. SWOP would be happy to support and participate in a reconvened SSPs working group should this be an outcome of the current review process.

Councils attempt to impose a de facto 'ban' on SSPs through complex and stringent requirements or through expensive and often futile attempts to block legitimate development in the Land and Environment Court. Whilst many councils undoubtedly perceive that a requirement to permit SSPs in their local area (on the same basis as other businesses are permitted to be established) results in undue costs and compliance activities on their part, many of these are effectively self-imposed.

Councils have a responsibility to support and service the business and social needs of their communities, which includes enabling a safe environment for a sex services industry and its local clientele and should therefore be required to permit SSPs in their local area, consistent with their LEPs, on a fair and equitable basis. SSPs are market-driven businesses and only exist to fulfil an identified need where one exists in the area.

SWOP does not believe that the State should be involved in placing restrictions on the location of SSPs. This

would in effect put in place a non-evidence-based approach, which would pre-determine ‘amenity impact’ based upon a series of presumptions rather than upon verifiable impacts.

We also believe that the current advertising restrictions on advertising of sex work and SSPs should be removed as no useful purpose is served by these restrictions for legal businesses. There is little public concern at the current level of sex services’ advertising, and it is a useful way for SWOP’s outreach programs to reach sex workers, especially those new to the industry whom might benefit most from sexual health information. The existing legislation around sex services’ advertising has also led to the exploitation of sex workers and SSPs through charging inflated fees for placing comparative adverts to other legal businesses.

Protection of Sex Workers

We believe that the health and safety of NSW sex workers is best served by the current system of regulation based on decriminalisation and treating sex work in the same way as other legitimate occupations. A decriminalised framework is one most likely to produce high levels of compliance with occupational health and safety requirements as:

- there is a high level of access to sex premises by outreach programs and by standard regulators
- and sex workers are empowered to insist on their rights to health and safety.

Further, the more ‘open’ and not burdened with onerous regulation the system is, the easier it is for the sex industry to comply with regulations. A decriminalised system is the most open system.

Issues around Organised Crime

In relation to organised crime, we are aware of regular and frequent allegations of criminality in the sex industry, but apart from unsubstantiated media reports, there is little hard data to support these claims or any evidence of the rates of criminal involvement in the sex industry at all, let alone above other industries. Many see sex work and sex industry work places as criminogenic. For example, one widely held and oft-repeated belief is that the sex industry is strongly associated with criminal gangs involved in money laundering or worse. However, the experience of SWOP’s outreach workers is that the perceptions of criminal involvement are not matched by the reality of the sex industry, with the majority of SSPs being run by business people in a business-like manner. The home based industry, in particular, sees no criminal involvement and it is unlikely that many smaller sized brothels (often run by former workers) offer any value to criminals or criminal networks.

Safeguarding public health

Equally, the decriminalised framework has provided the conditions to allow for effective peer education amongst sex workers, health promotion by sex worker organisations and resulted in sex workers achieving and maintaining low rates of sexually transmissible infections.

Condoms are utilised in over 99% of anal and vaginal sex undertaken in the NSW sex industry^{ix}. The rates of STIs amongst female sex workers in NSW are lower than that of other sexually active females in NSW^x. These achievements have only been possible through concerted peer outreach programs, especially peer based education undertaken by people with targeted language skills and the consistent and enthusiastic uptake of these education programs by sex workers themselves. This level of engagement has arisen as a result of the decriminalised environment created in NSW, in which there has been no creation of a ‘second tier’ unlicensed sex industry, as has occurred in Victoria and Queensland under their licensing regimes.

Proposed Legislative Changes to License Brothels

The Independent Pricing and Regulatory Tribunal (IPART) recently conducted an extensive, three year long series of reviews focused on reforming licensing in NSW, which uncovered that there were already about 22 million licenses in force on 30 June 2012. Licensing the NSW sex industry was not even listed in the ‘Top 40’ areas identified as priorities for license reform in the Final Report on Reforming Licensing in NSW set out in Table 5.1 on pages 85-87. SWOP advocates that adding an additional licensing burden onto the NSW sex industry would be contrary to the goals of this extensive, and thorough, inquiry, impeding the NSW Government’s goal of “\$750 million in reduced ‘red tape’ for business and the community”.

SWOP’s evidence-based viewpoint stems from close examination of neighbouring states, including Queensland. The Queensland Prostitution Licensing Authority’s Annual Report (2010-2011) shows that after over a decade of brothel licensing in place, only 23 brothels were registered. A conservative estimate from the 2012 Report to the NSW Ministry of Health^{xi} is that this represents about 10% of the brothels in Queensland. Less conservative numbers estimate the real number of Queensland brothels might be closer to 400. With only 23 licenses issued, it is also clear that the cost of administering this licensing system far outweighs the income generated by it.

As IPART Chairman Dr Peter Boxall points out: “Inefficiencies, inconsistencies and duplication in both the design and administration of licences required by the State Government and local government compliance and enforcement activities are costing NSW residents and businesses hundreds of millions of dollars each year” . By their own accounting, during this decade of brothel licensing in Queensland, the scheme recouped \$4.58 million dollars, yet required \$6.96 million of Government contributions in order to do so. It also did not prevent unlicensed brothels.

In the course of their inquiry into licensing in NSW, IPART also commissioned an independent consultant, PricewaterhouseCoopers (PWC) to design “A Best Practice Approach To Designing And Reviewing Licensing Schemes” to help regulators to ensure existing or new licensing schemes are justified and well-designed. These guidelines highlight the necessity of exploring alternatives to any proposed licensing scheme that will not recover full costs. SWOP would argue that the proposed licensing of NSW brothels does not meet many of the framework’s guidelines for effective new licensing. SWOP would argue that there is no evidence to suggest NSW would be any more successful than Victoria or Queensland at recouping costs for bringing in licensing of SSPs, which fails one of the framework’s key questions: “Does a cost benefit analysis show licensing is the optimal option?”

In line with the aforementioned best practice framework, SWOP believes that there are other alternative options that would better deliver the policy objectives of this inquiry. The first and foremost would include creating a legislative environment where all sex industry businesses in NSW have a fair chance to succeed, by the implementation of fair and reasonable, amenity-based, enforceable planning policies across the state, that are easier for NSW sex industry businesses to comply with.

For SWOP, NSW’s leading sex worker health organisation, the definitive word on sex industry licensing comes from The Kirby Institute’s 2012 Report to the NSW Ministry of Health^{xii}, which states that licensing is a “threat to public health” and should not be regarded as a viable legislative model.

Recommendations

Sex Workers Outreach Project (SWOP) recommends:

1. The continuation of the decriminalisation of sex work, sex workers' workplaces and sex workers' clients.

We believe the outcomes of decriminalisation in NSW are highly significant and essential for sex worker health and safety, and cannot be maintained under an alternative model.

These outcomes include:

- a. Exceptional public health outcomes with low rates of STIs and HIV amongst NSW sex workers
- b. Significantly lowered barriers to access to health promotion (finding of the Law and Sex Worker Health Study, which compared the health impacts of legal frameworks across Victoria, NSW and WA);
- c. Little to no amenity impacts of sex work or of sex work premises on local amenity (recognised by Crofts and Prior);
- d. No evidence of organised crime (recognised by the Land and Environment Court);
- e. Better access to Occupational Health and Safety (WorkCover and NSW Health worked with sex workers to create Health and Safety Guidelines for Brothels, which have been translated to Thai, Chinese and Korean); and
- f. No increase in the size of the sex industry has been seen due to decriminalisation (Kirby Institute report to Ministry of Health)

Maintaining decriminalisation is essential to maintaining the current public health outcomes.

This is supported by current evidence from The Lancet that states that the decriminalisation of sex work would have the greatest impact on the HIV epidemic, reducing HIV by up to 46% in the next decade and result in cost saving thresholds of tens of millions of dollars globally.^{xiii}

2. Local councils need further support to effectively undertake their role in regulating appropriate zoning, planning and location controls, and the environmental health of sex industry businesses

SWOP recommends that this could be achieved by:

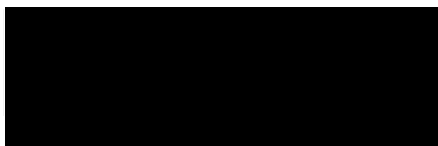
- a. The update, adoption and implementation of the SSPs Planning Guidelines, a tool to promote consistency and continuity in local planning decisions.
 - b. Education and training to support council staff and councillors to understand the role of council and to promote uptake and implementation of the guidelines.
 - c. A moratorium on compliance actions against sex industry businesses, other than amenity impact complaints, until the guidelines are in place and implementation has been achieved.
- 3. The requirement that local councils cease the resourcing of private investigators paid to engage in sex with sex workers as an obviously flawed method of detection of non-compliant businesses**

We also point to the dubious morality and legality of this practice which in the eyes of many sex workers amounts to sex obtained from them by deception and/or fraud. The Supreme Court of the ACT recently held that sexual services obtained from a sex worker by fraud or deception was rape and imposed a custodial sentence. This practice also incurs a considerable cost to the taxpayer with dubious benefit, as demonstrated by the recent legal case of Hornsby Council.

4. SWOP strongly recommends that occupation-based anti-discrimination coverage be legislated for all sex workers in NSW
5. SWOP recommends specifically AGAINST:
 - a. Licensing - licensing is not supported for the regulation of brothels in New South Wales. This recommendation is based on:
 - a. significant compliance problems and a high cost to manage the system in other jurisdictions in Australia
 - b. the experiences of sex workers working within a licensing system
 - c. poorer public health outcomes within licensed systems in other Australian states
 - b. review of the suitability of licensing using the Licensing Framework Assessment tool developed as part of the Independent pricing and regulatory tribunal review of licensing rationale and design in NSW
 - c. Swedish or 'Nordic' laws which significantly undermine sex workers' autonomy, independence and control over workplaces, contribute to poorer public health outcomes, isolation and social exclusion.
 - d. Registration of individual sex workers, including systems that require registration for the purpose of advertising, as unnecessary, stigmatising and dangerous for sex workers' safety
 - e. An increase to council powers, which are already significant within the Brothel Legislation Amendment Act 2007

Thank you for the opportunity to make a submission to this Inquiry into the Regulation of Brothels in NSW. I would be happy to expand upon the contents of this submission in person in front of the Committee. Should you require further clarification I can be contacted on [REDACTED].

Regards,



Cameron Cox,
Chief Executive Officer
SWOP

- ⁱ Donovan, B et al *Improving the health of sex workers in NSW: Maintaining Success* NSW Public Health Bulletin Vol. 21, 2010.
- ⁱⁱ Harcourt, c et al *The decriminalisation of prostitutions is associated with better coverage of health promotion programs for sex workers* Australian and New Zealand Journal of Public Health, Vol 34 No 5, 2010.
- ⁱⁱⁱ Donovan, B et al *Improving the health of sex workers in NSW: Maintaining Success* NSW Public Health Bulletin Vol. 21, 2010.
- ^{iv} Amnesty International, Global movement votes to adopt policy to protect human rights of sex workers, August 17, 2015, <https://www.amnesty.org/latest/news/2015/08/global-movement-votes-to-adopt-policy-to-protect-human-rights-of-sex-workers/> accessed 18/08/15.
- ^v The Lancet. HIV and Sex Work, <http://www.thelancet.com/series/HIV-and-sex-workers>, July 2014.
- ^{vi} Kay Thi Win, As sex workers we welcome Amnesty's policy – it will help empower us, The Guardian <http://www.theguardian.com/global-development/2015/aug/18/sex-workers-welcome-amnesty-international-policy-help-empower-us> accessed 18/08/15.
- ^{vii} Workcover, Guidelines For Brothels, 2001 http://swop.org.au/sites/default/files/OH%26S_guidelinesForBrothels.pdf accessed 18/08/15.
- ^{viii} Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012). *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*.
- ^{ix} Donovan, B et al *Improving the health of sex workers in NSW: Maintaining Success* NSW Public Health Bulletin Vol. 21, 2010.
- ^x Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012). *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*.
- ^{xi} Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012). *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*.
- ^{xii} Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012). *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*.
- ^{xiii} Facts about sex workers and the myths that help to spread HIV. The Lancet. <http://thelancet.com/infographics/HIV-and-sex-workers> accessed 12/08/15.