

**Submission
No 166**

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: The Greens
Name: Dr Mehreen Faruqi and David Shoebridge
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Committee to on the Regulation of Brothels Submission Greens NSW Dr Mehreen Faruqi and David Shoebridge



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

21 August 2015

Dear Committee Manager,

Re: Submission to the Committee on the Regulation of Brothels

Thank you for the opportunity to make a submission to the Select Committee conducting the inquiry into the current state of brothel regulation in NSW. We provide this submission in our capacities as Greens NSW spokespeople for the Status of Women, Local Government and Industrial Relations.

This submission has been developed based on the Greens' NSW party policies, as well as extensive reports and evidence from organisations that are committed to maintaining high standards of health and low rates of crime in the sex services industry, such as the Scarlet Alliance, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP), and The Lancet medical journal.

NSW paved the way in 1995 when the sex services industry was decriminalised. Decriminalising sex work, and regarding it as legitimate work, has resulted in positive health and safety outcomes for sex workers, as well as for the general public.

At the outset the Greens wish to note our serious concerns that this Parliamentary Inquiry has been established with a pre-determined political agenda to push for legal change that will move NSW away from the current decriminalisation model and towards a licensing or re-criminalisation model. The current laws in respect of the sex industry in NSW largely reflect best international practice. The Greens, along with reputable organisations in the field, believe that licensing laws would be a step backwards from our evidence-based state policy of decriminalisation.

We offer the following research and comments on various aspects of brothel regulation.

1. Subjecting Brothels to Licensing Laws

The Greens NSW reject the notion that licensing laws will be of any benefit to NSW, and support the current decriminalisation model. According to UNAIDS, UNFPA (UN Population Fund), and UNDP, the decriminalisation of sex work in places such as NSW has resulted in low STI prevalence, and benefits associated with legitimised labour, such as access to unions and a right to a safe and healthy workplace.¹ This same report concludes that licensing and regulation laws present in other Australian states have resulted in discrimination against, and marginalisation of, sex workers.

¹ UNAIDS, UNFPA, UNDP 2012, *Sex Work and the Law in Asia and the Pacific*, UNDP Thailand. <http://www.snap-undp.org/elibrary/Publications/HIV-2012-SexWorkAndLaw.pdf>

The NSW Government has stated that many brothels in NSW are operating “illegally”. This would appear to be a reference to the premises not having appropriate development consent under planning laws. We believe that creating more arbitrary licensing barriers to legal, licensed brothel premises will only push brothels outside of legal parameters due to the burdens of mandatory testing and registration, which only serves to undermine health and safety regulations. This has proven to be the case in Queensland and Victoria, which have strict regulation laws around sex work. For example, 2009 research on the licensing system in Queensland showed that 90% of brothels and sex work remained either unregulated or illegal.²

Furthermore, evidence from Victoria and Queensland proves that licensing models are ineffective at creating a transparent, safe and accountable industry. Instead, they result in a two-tiered industry where a minority can comply with onerous regulations and the majority who can’t are considered ‘illegal’.³

2. Ensuring good health outcomes for sex workers, their clients, and the general public

The Greens accept the international research that shows that “the decriminalisation of sex work is an essential component of an effective HIV response”, which lends support to NSW’s present low levels of STI infections in sex workers.⁴ According to *The Lancet* on sex work and HIV, decriminalisation has the largest potential to reduce HIV infections across the globe from 33-46% over the span of a decade.⁵

In 2010, Harcourt published a paper that evaluated the availability of health promotion services for sex workers under different “prostitution” laws in three Australian states (Victoria, NSW and Western Australia). The study found that in Sydney’s decriminalised and unlicensed sector, availability of health promotion was significantly higher than in the licensed environment of Victoria and criminalised one in WA. It concluded that “brothel licensing and police controlled illegal brothels can result in the unlicensed sector being isolated from peer education and support.”⁶ Therefore, we can conclude that retaining our current model of decriminalisation is most beneficial to the maintenance of a high level of health outcomes for sex workers and the public, as opposed to moving to a licensing model.

3. Distinguishing the regulation of sex work and tackling human trafficking

The regulation of sex work must be approached from an evidence-based, not morally outraged, position. Sex work is a legitimate form of employment, and should not be treated as inherently harmful to sex workers themselves or society more broadly. Dr Deanna Kerrigan pertinently notes that “Globally, the most salient challenges included regressive discourses emphasizing the rescue and rehabilitation of sex workers and the conflation of sex work and the issue of human trafficking”.⁷ The regulation of sex work and our

² ‘Queensland sex industry still largely illegitimate’ *Brisbane Times*, Aug 16 2009, accessed 4/08/15. <http://www.brisbanetimes.com.au/queensland/queensland-sex-industry-still-largely-illegitimate-20090816-embf.html>

³ Harcourt, C., O’Connor, J., Egger, S., et al. (2010). The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers’, *Australian and New Zealand Journal of Public Health*, 34(5), 482–6

⁴ ‘Sex Work and HIV’, *The Lancet* July 2014, as cited in ‘Stepping up to the evidence on HIV and sex work: Decriminalise sex work now!’, *Sex Workers at AIDS 2014*. <http://www.scarletalliance.org.au/library/aids2014report>

⁵ Ibid.

⁶ Harcourt, C., O’Connor, J., Egger, S., et al. (2010). The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers’, *Australian and New Zealand Journal of Public Health*, 34(5), 482–6

⁷ Kerrigan, D et al. January 2014, ‘Community empowerment-based HIV prevention among sex workers: effectiveness, challenges, and considerations for implementation and scale up’, *The Lancet Special Theme Issue on HIV and Sex Workers*, vol. 385, p. 178 [http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(14\)60973-9.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(14)60973-9.pdf)

collective response to victims of sex trafficking should be dealt with as two separate issues. In fact, in 2013 a NSW Community Relations Commission (CRC) inquiry found that while media portrayals of sexual exploitation focus on the sex industry, exploitation more frequently occurs in family homes and businesses.⁸ The report did not make recommendations to regulate the sex industry.⁹ The protection and health of sex workers is markedly better in decriminalised models.

The Greens NSW absolutely condemn sex trafficking and all forms of violence against women and others. However, we believe that, based on the evidence, sex trafficking will not be eradicated by implementing a licensing system for brothels, and that it must be pursued by laws directly relating to exploitation and sex trafficking. In fact with either a licensing or re-criminalisation model, it is likely that an illegal sex work industry will be significantly more open to sex trafficking than the current decriminalised model. We support the recommendation from the CRC report for more research into the issue.

4. Treating sex work as a legitimate profession

The Greens support current regulation which recognises sex work as legitimate work and ensures that sex work is “subject to the same kinds of controls and regulations”¹⁰ as any other business. From an industrial relations perspective the Greens believe that sex work is real work and that the decriminalisation model is an important aspect of ensuring that those in the industry have full rights and protections.

Moves to re-criminalise the sector would not only be a disaster for the health and safety of sex workers and their clients, but also would also remove labour rights that are vital to improving and upholding workplace related rights and conditions. Sex industry specific legislation or state based regulation that criminalises the industry removes these protections and “creates barriers for access to justice, including civil, criminal and industrial justice “¹¹

Recognising sex work as a legitimate profession and business means recognising that sex-industry specific legislation is not needed to deal with non-compliant brothels differently to other non-compliant businesses.

5. Improving local government resourcing and processes

The Greens support local councils, not the NSW police, as the appropriate regulators of sex work premises. Local councils are currently responsible for the planning approvals of brothels under the Environmental Planning and Assessment Act 1979 and through their council’s Local Environmental Plans (LEPs) and Development Control Plans (DCPs), made in accordance with the Act. This means that local councils are responsible for zoning, planning and location controls, and environmental health in relation to sex-work premises.

In regulating sex work premises and developing local planning controls, councils are often asked to consider the amenity impact of these premises. It is worth noting that research indicates there is an exaggerated

⁸ Macdonald, P, 11 Dec 2013, “Inquiry reveals hidden problem of human trafficking and slavery in NSW” ABC News, Accessed 11/08/2015
<http://www.abc.net.au/news/2013-12-11/inquiry-reveals-hidden-problem-of-slavery-in-nsw/5148536>

⁹ Inquiry into the exploitation of people through trafficking, in all its forms in NSW, *Community Relations Commission* 2013, pp 33-34. Accessed 11 August 2015
http://www.crc.nsw.gov.au/_data/assets/pdf_file/0015/22434/Inquiry_into_the_exploitation_of_people_throu_gh_trafficking_in_all_its_forms_in_NSW.pdf

¹⁰ NSW Better Regulation Office, *Regulation of Brothels in NSW* 2012, p. 9

¹¹ ‘Submission to Independent Inquiry into Insecure Work in Australia’, Scarlet Alliance 2011

stigma and discrimination that underpin an exaggerated perception of the amenity impact of sex work.¹² This can lead to individual poor planning decisions by local councils in relation to sex work premises.

A quantitative study from the University of Technology Sydney demonstrated that an overwhelming majority of residents were unaware of sex work premises in their immediate neighbourhood, indicating a very minimal amenity impact. The survey also found that “the presence of such workers appeared to have no impact on the resident’s perception of crime. This is not however to suggest that amenity concerns do not validly arise from time to time and are appropriate to be considered by councils.

The Greens firmly support the right of local councils to make autonomous, evidence-based and non-discriminatory decisions when developing planning provisions for sex-work premises in their local government areas.

We believe that increased resources, better education of councils and improved communication between local councils and the sex work industry would lead to improved planning outcomes as well as greater consistency in local planning decisions.

Conclusion

The current approach of decriminalisation of sex work in NSW is a best practice model in legitimising and protecting the rights of those in the sex industry, and in maintaining high levels of health outcomes of sex workers and by extension of the public. A comparison with jurisdictions that subject brothels to licensing laws show that a decriminalised model is superior in maintaining transparency, accountability, safety and health within the sex industry.

We finally note that a number of previous inquiries and reports produced in NSW relating to the sex industry over the years have consistently either rejected or failed to recommend licensing as an appropriate way forward; the most recent being the NSW Independent Pricing and Regulatory Tribunal (IPART) report into “Reforming Licensing in NSW”, released only earlier this month (August 2015).

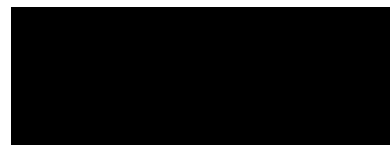
Thank you for the opportunity to comment and please do not hesitate to contact our offices for further information.

Kind Regards,



Dr Mehreen Faruqi MLC

Greens NSW Spokesperson for the
Status of Women



David Shoebridge MLC

Greens NSW Spokesperson for Local Government
and Industrial Relations

¹² UTS Students’ Research on Home Occupations, ‘UTS Student Project Under Supervision of Eva Cox’, 2003 http://www.scarletalliance.org.au/library/cox_03