

**Submission
No 147**

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: Australian Lawyers for Human Rights
Name: Ms Natalie Wade
Position: Chairperson
Disability Rights Subcommittee
Date Received: 19/08/2015



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19 August 2015

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

Via email: ROBInquiry@parliament.nsw.gov.au

Dear Committee Manager,

Submission to the New South Wales Legislative Assembly Select Committee on the Regulation of Brothels (2015)

1. Australian Lawyers for Human Rights (ALHR) thanks the Select Committee for the opportunity to make a submission on the Inquiry into the regulation of brothels in New South Wales.
2. ALHR was established in 1993 and is a national network of over 2600 Australian solicitors, barristers, academics, judicial officers and law students and lawyers who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practises and protects universally accepted standards of human rights throughout Australia and overseas.

Summary

3. ALHR addresses items 3 (b), (e), (g) and (h) of the Terms of Reference, in the context of the rights of persons with disabilities to have equal choice about how to manage their own lives including equal access to sex workers. The regulation of brothels in NSW raises a number of human rights concerns for sex workers, including the rights of women which should be

considered by the Select Committee. However, due to the time constraints, in this submission only concerns relating to persons with disabilities are addressed.

4. ALHR submits that the amendments for the regulation of the brothels must be consistent with Australia's international obligations to ensure that sex workers and their clients are afforded full protection of their human rights. Specifically, in accordance with the *Convention on the Rights of Persons with Disabilities* ('CRPD'), ALHR believes that people with disabilities have the right to dignity and sexual expression, including accessing sex workers without discrimination.
5. In order to implement a consistent regulatory environment for brothels in NSW, the location of brothels and access needs of people with disabilities to secure those services must be a fundamental consideration when developing a best practice regulatory regime. Pursuant to paragraph 3(g) of the Terms of Reference, the Select Committee should consider the residential amenity and location of brothels to ensure that they are compliant with the human rights of clients with disabilities.
6. This submission assumes the need and right for people with disabilities to access brothels, noting that the right to sexual expression and experience is fundamental to human life and that for some people with significant mobility and/or dexterity impairments sex workers may be their only way to express their sexuality.¹
7. Best practice regulation of brothels must not impede the ability of sex workers to assist people with disabilities pursuant to article 9 of the CRPD.

Compliance with international human rights

8. The Universal Declaration on Human Rights ('UDHR'), International Covenant Civil Political Rights ('ICCPR') and International Covenant on Economic Cultural and Social Rights ('ICESCR') state that all people are born free and equal in dignity and rights.²
9. Article 9 of the CRPD states that "[t]o enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment ... and to other facilities and services open or provided to the public, both in urban and in rural areas."³
10. Pursuant to paragraph 3(g) of the Terms of Reference, ALHR submits that in considering the location and availability of brothels and sex services, it is important to recognise the right to access services of people with disabilities in accordance with Article 9 of the CRPD. Any proposed regulation must address the question of the location of services for people with disabilities.
11. The current regulatory regime applied by many NSW councils restricts the location of sex worker services to designated industrial zones, which are often isolated, difficult to access

¹ Sanders, Teela, 'The politics of sexual citizenship: commercial sex and disability' (2007) 22(5) *Disability & Society* 439; Isbister, S and Dearing C Human Rights Law Working Group Newsletter. September 2014, Part II p 25.

² UDHR art 1, ICCPR art 1.1 and ICESCR arts 6, 12, 13 and 15.

³ UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml> [accessed 17 August 2015]

and poorly lit. This makes it difficult and potentially dangerous to access services for people with disabilities and also exposes home-based sex workers to unnecessary risk.

Conclusion

12. The regulation of brothels in NSW must consider the international human rights of people with disabilities.
13. Often, the current regulations of brothels impose restrictions on facilities and sex workers in a way that makes it an inaccessible service to people with disabilities. That may be by way of brothels not being available on ground level and accessible from the street or the prohibition on home-based sex workers. These regulations breach the right of people with disabilities to access services and facilities which are open to the public. The purpose of this human right is to ensure that people with disabilities may still participate fully in life.⁴
14. People with disabilities have the right to make personal choices about their own lives⁵ including the right to engage sex workers to fulfil their right to sexual expression. In establishing best practice regulation in NSW, ALHR believes that both the human rights of sex workers and the human rights of people with disabilities must be a fundamental consideration for the Select Committee in order to establish appropriate local and State government rules and achieve best practice public health and privacy outcomes in accordance with Federal and State laws and Australia's international human rights obligations.
15. If you would like to discuss any aspect of this submission, please contact Nathan Kennedy, President, Australian Lawyers for Human Rights at president@alhr.org.au

Yours faithfully,

Nathan Kennedy
President
Australian Lawyers for Human Rights

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⁴ UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml> [accessed 17 August 2015].

⁵ Ageing, Disability and Home Care, Department of Family and Community Services NSW, 'Client Risk Policy and Procedures' (2012), p 4, www.adhc.nsw.gov.au/__data/assets/file/0009/228078/Client_Risk_Policy_and_Procedures_Apr_2012.pdf, accessed 19 June 2015