

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: ACON
Name: Mr Dean Price
Position: CEO
Date Received: 19/08/2015

HERE FOR HEALTH

SUBMISSION TO:

The NSW Legislative Assembly Select Committee on the
Regulation of Brothels Inquiry into the Regulation of
Brothels

August 2015



About ACON

ACON is New South Wales' leading health promotion organisation specialising in HIV prevention, HIV support and lesbian, gay, bisexual, transgender and intersex (LGBTI) health. Established in 1985 as the AIDS Council of NSW, our mission is to enhance the health and wellbeing of our communities by ending HIV transmission among gay and homosexually active men, and promoting the lifelong health of LGBTI people and people with HIV.

General Comments

Until 1 July 2014, ACON auspiced the Sex Workers Outreach Project (SWOP). SWOP is now an independent NGO that we continue to work closely with on issues of interest to both organisations.

In the past we have worked with SWOP to respond to the NSW Department of Premier and Cabinet's Better Regulation Office (BRO) 2012 review of the regulation of brothels in NSW. The review, and the resultant issues paper, looked at many of the same issues that this committee is reviewing. That work has informed and is referred to throughout our submission.

Prior to the BRO review, we worked with SWOP to address some of the inaccuracies that were being raised by people, journalists and organisations campaigning against sex work in NSW. We have attached that document, and it forms part of our submission.

ACON's concern is for the health, safety and wellbeing of sex workers and their clients, specifically including public health matters. The response to HIV in NSW has been on the basis of partnership between affected communities, researchers, clinicians and government. This partnership has worked hard to achieve world leading public health outcomes when it comes to HIV. The decriminalised framework that was implemented in 1995 is essential to allow organisations like SWOP and ACON to undertake the work that protects and improves public health and safety outcomes. Maintaining these outcomes requires perseverance and an enabling environment. We are concerned that moral judgements are leading to actions that have the potential to cause real harm to sex workers and their clients.

We have addressed a number of the terms of reference below, based on our experience and expertise.

Responses to the Terms of Reference

(a) The current extent and nature of the brothel industry in New South Wales;

There are various estimates of the number of sex workers in NSW. These estimates range from 1,500 sex workers working at any one time in NSW, to 10,000 across the state. The Kirby Institute's significant report *The Sex Industry in New South Wales*¹ suggests that there are fewer than 8,000 male, female and gender diverse sex workers in NSW.

Additionally, the Kirby Institute report estimates the larger parts of the sex work industry are brothel based workers and private workers, with of 40% of all sex workers working privately, and 5% being street based sex workers.

These numbers tend to show the make-up of the female sex working populations, who make up the vast majority of the industry. The male sex worker population is almost exclusively made up of private workers, with few male brothels operating. Male street based sex work has diminished over recent years as online tools become more widespread.

The Kirby Institute report is the most significant report that explores the current extent and nature of the sex work industry in NSW and should be consulted for further details as required by the committee.

(b) Current regulation of brothels in New South Wales and other states;

ACON believes that decriminalisation of sex work in 1995 has largely served the interests of sex workers and the wider NSW population well, resulting in very low rates of HIV and 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, to look after their health and welfare.

In addition, 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.

The decriminalisation of sex work in NSW is an example of world's best practice, and efforts must continue to ensure this is maintained. This framework for regulation is evidence based and backed by the World Health Organisation, the United Nations AIDS programme (UNAIDS), the literature cited in the leading medical journal *The Lancet*, and most recently Amnesty International. New Zealand also has a decriminalisation framework in place for the regulation of their sex work industry.

As a result of this inquiry, we are primarily concerned to see that the current frameworks that service NSW well are not eroded and that no retrograde steps are taken. A second priority is to suggest that attention if given to improving some specific regulations that have been problematic for sex workers. They include state wide policies and local government regulations regarding home based sex

¹ Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., (2012). *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales.

workers, zoning, anti-clustering requirements and the attempt by many local councils to ban brothels.

While lack of compliance with local planning requirements by some operators has been identified as a driving concern of this inquiry, we maintain 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 sex services premises are as much a cause of the problems currently perceived to beset the issue of sex services premises regulation.

We believe the current system can be made to work better through increased collaboration and dialogue between regulatory authorities and those working in the sex industry, specifically by refocusing efforts on supporting local councils to develop and implement regulations that support the objectives of reducing the potential for corruption, improving compliance and protecting public health.

Other Australian Jurisdictions

Other jurisdictions have implemented a variety of frameworks for the regulation of sex work. Victoria and Queensland have divergent licensing schemes, while most other states maintain the criminalisation of sex work.

Both licensing and criminalisation frameworks are problematic, from the perspective of public health, sex workers and law enforcement. The NSW model is evidence based and largely meets health and safety goals. These schemes are addressed later in this submission, in particular when addressing term of reference (d).

(c) Penalties and enforcement powers required to close illegal brothels;

The implementation of the decriminalised framework in 1995 was, in part, driven by the desire to remove police as the regulators of the sex industry. This was to reduce the corruption that came to light during the Woods Royal Commission. Licensing models reintroduce police as the regulators on the non-compliant sector, and therefore reintroduce the potential for police corruption.

Decriminalisation also allowed sex workers to go to the police with complaints or allegations without fear of being punished for being a sex worker. This separation of regulatory roles, while not always smooth, must be maintained for the safety and protection of sex workers.

Councils in NSW have significant powers available to them to close brothels and to address non-compliant brothels. These powers are greater for the closure of brothels than other non-compliant businesses operating in their area. Councils were recently given additional sweeping powers to cut off utilities to premises to stop brothels operating. These powers are not available for other business types.

The failure of councils to appropriately consider Development Applications from sex industry businesses, and make their decisions on the basis of planning and amenity impact, has led many in the sex work industry to take action in the Land and Environment Court.

When these cases are heard by the Land and Environment Court, they are most often found to have met the local requirements for approval. This process is unnecessarily costly for both businesses and councils. It also seems to be a strategy implemented by some councils to act as a disincentive to the industry.

It is worth noting that there are minimal, and often nil, amenity impacts of sex industry businesses. Research from 2008 demonstrates that after 13 years of decriminalisation in NSW, only one brothel owner had been ordered to cease operation due to amenity impacts, and there had been no complaints relating to amenity impacts for private sex work.² These issues are discussed in more detail later in this submission.

While many councils undoubtedly perceive that a requirement to permit sex service premises 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 costs – both financial, political and in terms of human resources – are effectively 'self-imposed'.

This situation arises as a consequence of council attempts to impose a de facto 'ban' on sex services premises through complex and stringent requirements which many operators find onerous to comply with, or through expensive and – in many cases – futile attempts to block legitimate development through the Land and Environment Court.

In any case, permitting councils to *not* allow sex services premises would create yet more problems with uncontrolled or 'illegal' premises, to the detriment of sex workers and the local community.

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 sex services premises in their local area, consistent with their LEPs, on a fair and equitable basis.

(d) Options for reform including a scheme of registration or licencing system for authorised brothels;

The BRO review of the regulation of sex work canvassed a number of options for reform of the regulation of the sex industry in NSW. Of the options presented in the BRO issues paper, we are strongly in support of Option 1, to improve the current regulatory system.

Our primary reason is that, despite ongoing challenges in implementation, the current system has manifestly produced excellent outcomes in terms of sex worker health and safety and the broader public health.

A recent study comparing the decriminalised framework in NSW with the licensing framework in Victoria and the criminalised framework in WA showed that the NSW decriminalised framework enabled the widest reach of health services targeting sex workers.³

² Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Hatcher on Sex Industry Regulation in NSW*, September 2010, 10.

³ C Harcourt, J O'Connor, S Egger, *et. al.*, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers', *Australian and New Zealand Journal of Public Health*, vol 35 (5), (2010).

We believe a licensing system would be a dangerous and retrograde step, as experience elsewhere shows it to almost inevitably produce a second tier (often larger than the official licensed tier) of sex industry premises which are difficult for outreach programs to access, increase the potential for crime and corruption and do little to increase public health outcomes or improve sex worker health and safety.

It is notable that recent reports of alleged trafficking in Victoria arise from licensed, rather than unlicensed brothels in that state. This does not suggest that trafficking is inevitably a feature of the sex industry – any more than it is a feature of other industries – but rather that licensing is not a solution to this issue.

Licensing is also likely – again based on the experience of Queensland and Victoria – to result in a net cost to the state. The experiences of other states reveal significant cost outlays associated with a licensing regulatory system.

In Queensland, the Prostitution Licensing Authority (PLA) for the financial year 2009-2010 levied around \$735,000 in fees and charges; however it had costs of \$1.3 million.⁴ Over time, this represents a significant cost to the government, brothel operators and sex workers. Total costs for the period 2000 – 2011, based on a reading of the PLA's annual reports, would appear to be as follows:

- \$4.5 million revenue from licensing fees
- \$7.5 million expenses to run the PLA (not including the dedicated police branch)
- \$6.9 million income from government grants and contributions

Given the rate of compliance seen in practice with licensing systems elsewhere, it appears unlikely a fee could be set which would recover costs borne by the state. As noted in the BRO issues paper, a licence fee may also have the effect of favouring larger commercial operators over small private worker co-operatives and other similar establishments, with a subsequent impact on industry diversity and – potentially – amenity impacts.

On this note, we would argue that any system of registration or licensing – inadvisable as both seem to be – should exempt home based workers and private workers, including those working in small co-operatives, in the manner of the differential treatment afforded Small Owner Operated Brothels (SOOBs) in the New Zealand model referred to in the BRO issues paper.

However, given the limited measurable benefits of licensing and the risk of undermining public health and safety programs, such as SWOP, and level of access across the industry, we feel any licensing system- or any process that produces a two tier system with subsequent issues of illegality and corruption – is a step in the wrong direction.

We note that the 2007 changes which gave councils greater powers over non-compliant sex services premises led to a higher incidence of reports of corruption. We would therefore argue that a system which is more open and transparent, where councils are aware of and responsibly use their significant powers to properly regulate sex premises, and possibly with the more active role of an independent body such as Work Cover to inspect premises for compliance, would be an ideal recipe for ensuring

⁴ Prostitution Licensing Authority, *Annual Report 2009-2010*, (2010).

fuller compliance with planning regulations and high levels of health and safety across the NSW sex industry.

We also see no benefit in a registration system for brothel operators, such as that which was outlined in the BRO issues paper. This option appears to add another burden of administration for no specific advantage in terms of meeting the objectives of the regulatory system, and is likely to meet with limited or minimal compliance, especially where a 'broader focus', requiring 'an active role for Police alongside the Ministry of Health and community-based peer programs' is taken.

The level of information required – as best as can be ascertained – is no different to that provided under a DA, yet produces no outcomes for the operator in terms of planning permission, health and safety issues or access to outreach services.

It is equally difficult to see what a registration system for sex workers could offer in terms of improved health and safety outcomes. Some have argued that the registration system in ACT 'works well' – although this is arguable – it is acknowledged that this is due to the small population of the Territory and its sex services workforce. NSW enjoys no such advantage. Given the substantial population of sex workers and the transient nature of the workforce, a system of registration would come at a high administrative cost.

If the goal of such a system is to ensure regular testing of the majority of sex workers, with a view to reducing prevalence of HIV and STIs, the evidence would suggest that this has already been achieved in NSW.

In our view, Option 1 outlined in the BRO issues paper, involving a reconvening of the Sex Services Premises Working Group – perhaps on an ongoing basis – to review and update the 2004 report and recommendations and oversee council and operator compliance with the guidelines issued, would be an ideal solution.

The role of such a group could be augmented on an ongoing basis to include community and council education and awareness raising, in the interests of supporting easier compliance and reduced amenity impacts in the longer term; and the option of an independent inspection team overseen by Work Cover, in order to reduce the possibility of corruption where non-compliant premises are found to be operating, could also be examined.

Finally, we believe it is well overdue to afford home based and private workers the same rights to gainful employment and quiet enjoyment as other small home based businesses, and to ensure that they are exempt or complying development on all LEPs.

(e) The protection of sex workers, including issues around organised crime and sex trafficking;

We agree that sex workers, as with all other workers, should be protected from physical and mental harm and from injury in the course of their occupation. However, the examples provided in the terms of reference appears to promulgate a perception of excessive criminality associated with the sex industry, a perception which in itself exposes sex workers to risks resulting from the physical marginalisation of their workplaces and the social marginalisation arising from the resultant stigma associated with the profession.

Aside from furthering these unhelpful stereotypes, the addition of trafficking and organised crime to the list of presumed sources of potential workplace harms seems both presumptive and appears to extend the reach of the regulatory system beyond its remit and to usurp the role of the police – both state and federal – whose role it is to ensure the protection of the entire community from the harms of such activities.

It is ACON's view that health and safety of sex workers is best served by a system of regulation which minimises the potential for de facto 'criminalisation' through the imposition of unnecessary restrictions and requirements with which workers and operators will struggle to comply.

An 'open' system in which there is a high level of access to sex premises by our outreach programs and by regulators and in which sex workers are empowered to insist on their rights to health and safety is one most likely to produce high levels of compliance with occupational health and safety requirements.

Further, the easier it is for services and workers to comply with regulations, and the more 'open' the system, the less opportunity arises for corrupt conduct or criminal involvement and activities such as extortion or trafficking. This has been demonstrated through 20 years of decriminalisation, which has seen the gradual but steady improvement of sex workers health, capacity and working conditions.

A key contributor to this outcome is safe sex practice, and access to appropriate, peer-led health promotion and outreach services and professional clinical services.

In relation to trafficking and organised crime, we are aware of regular and frequent allegations of criminality in the sex industry, but have seen little data to support many of the claims or any evidence of the rates of criminal involvement in the sex industry relative to other industries. As Crofts and others note, there is a tendency, perhaps as a consequence of the industry's pre 1995 criminal status, to see the sex industry as criminogenic.

One widely held and oft repeated belief is that the sex industry is strongly associated with criminal gangs involved in money laundering. In fact, the Australian Government report 'Money laundering in Australia 2011' (Australian Transaction Reports and Analysis Centre 2011) lists a number of other legal industries – such as the banking and gaming sectors, taxi services, and money transfer services – as the focus of money laundering activities, but makes no mention of the sex industry. The perceptions of criminal involvement are not matched by the reality of the sex industry, with the majority of sex services premises being run by business people in a business-like manner. The home based industry, in particular, sees no criminal involvement – and the many smaller sized brothels often run by former workers offer little of value to criminals or criminal networks.

The United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children, Ms Joy Ngozi Ezeilo, noted in her report at the conclusion of her 2011 visit to Australia that the 'issue of trafficking in persons in Australia is sexualised and often conflated with prostitution' leading to an under recognition and lack of action against trafficking in other sectors, such as the agricultural, food processing and other sectors, to the detriment of trafficking victims in those industries (and, we would add, to the reputation of well-run sex service premises). She notes there remains 'a need to move away from over sexualising the discourse on trafficking, which invariably contributes to

common stereotype of victims of trafficking as being women and girls forced into prostitution or other forms of sexual exploitation'.⁵

We note also the public discussion of the 'Swedish model' in the media and we refer the committee to the comments of the UN Special Rapporteur on Trafficking in Persons that 'there remains no conclusive link between the legalization or criminalization of prostitution and the existence of trafficking for sexual exploitation'.

We also draw the committee's attention to the recent issues paper produced by the Program on Human Trafficking and Forced Labour at the Center for Human Rights and Humanitarian Law of the American University Washington College of Law in which the authors point out that early claims of success of the Swedish model were based on readings of a limited English language summary of the Swedish government's findings and that the government, in fact, 'had no evidence that fewer men are purchasing sex, that fewer women are selling sex and that fewer people are being trafficked into prostitution'.⁶

(f) Options to maintain the high level of public health outcomes;

Evidence presented by the Lancet at AIDS 2014 found the decriminalisation of sex work would have the greatest impact on the HIV epidemic globally, reducing HIV by up to 46% in the next decade and resulting on cost saving thresholds of tens of millions of dollars.⁷

Local research shows us that in NSW female workers of Asian background, generally perceived as most vulnerable to a range of health and safety concerns, have since 1992 seen an increase in their English language skills, testing rates and service engagement, and a concomitant decline in STI prevalence rates such that it equals those of non-Asian workers.⁸

Condoms are utilised in over 99% of anal and vaginal sex undertaken in the NSW sex industry,⁹ with equivalent rates of use amongst the general population and workers with an Asian background. The rates of STI's amongst female sex workers in NSW are lower than that of other sexually active females in NSW. Demand and pressure to perform unsafe sex has also fallen.¹⁰

There has not been one recorded case of HIV transmission due to commercial sex work in NSW. This along with the rates of STI's have only been achievable since decriminalisation⁵ and represents a positive public health outcome that is acknowledged internationally as being world leading.

These achievements have only been possible through concerted peer outreach programs, especially peer based education undertaken by people with targeted language skills¹¹ and the consistent and enthusiastic uptake of these education programs by sex workers themselves.

⁵ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664>

⁶ Jordan, Ann 'The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering' (Issue Paper #4 April 2012) American University Washington College of Law

⁷ *The Lancet. HIV and Sex Work*, <http://www.thelancet.com/series/HIV-and-sex-workers>, July 2014

⁸ Pell, C et al Demographic, migration status, and work related changes in Asian female sex workers surveyed in Sydney 1993 and 2003 Australian and New Zealand Journal of Public Health, Vol 30 No 2, 2006

⁹ Donovan, B et al Improving the health of sex workers in NSW: Maintaining Success NSW Public Health Bulletin Vol. 21, 2010

¹⁰ Pell, C et al, 2006

¹¹ Donovan, B et al 2010.

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.

These results are not only outstanding in themselves, but compare favourably to those data that can be obtained for other states – bearing in mind that researchers have found obtaining comparable samples of sex workers from a range of types of premises to be severely hampered by the unlicensed, illegal nature of a large part of the Victorian and Queensland sex industries. Nonetheless, there are some comparable data points. While comparisons with other jurisdictions are hampered by the large proportion of unlicensed, 'illegal' premises limiting access to a truly representative cross section of workers, a comparison of STI rates among NSW sex workers and Victorian workers (from licensed premises only) for the period 2004 – 2006 shows a similar rate of STIs except for Chlamydia, which was present at an incident rate of 7.4 per 100 person years among clients of Melbourne Sexual Health Clinic,¹² compared to 2.3 per 100 person years at Sydney SHC over the same period.¹³

This was achieved at much greater cost in Victoria due to compulsory monthly testing. In NSW, approximately 83% of sex workers report being tested at regular intervals, of their own volition.

Thus, a system involving enforced and frequent testing and the extra administrative burdens associated with this appeared unable to produce a better health outcome than NSW's system of decriminalisation coupled with effective outreach, education and network of publicly funded sexual health clinics. It is significant to note that the Victorian authorities have recently reduced the frequency of testing required of registered sex workers, from monthly to three monthly.

(g) Residential amenity and the location of sex services premises;

Our experience is that the majority of sex service premises have limited residential – and commercial - amenity impacts. Owners, clients and workers all share a desire for discretion and thus act to limit the visible impact of their business activities. This experience is supported by recent empirical research which shows that the majority of residents near sex services premises are unaware of the presence of these businesses or regard their impact as neutral or positive.¹⁴

Prior and Crofts also note that the nature and volume of negative responses to DA submissions for sex services premises 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.

As such, we would strongly support the use by councils of only evidence based approaches relying on verifiable criteria to assess possible amenity impacts.

In the case of home based workers, the amenity impact is even less discernible. We know that SWOP regularly receives complaints from home based workers about the impact of anonymous 'resident

¹² Lee DM, Binger A, Hocking J, *et al* The incidence of sexually transmitted infections among frequently screened sex workers in a decriminalized and regulated system in Melbourne. *Sex Transm Infect* 2005;81:434–6.

¹³ Donovan, B *et al*, 'Sex Work in a decriminalised and unlicensed environment – a 15 year study in Sydney' presentation at 2011 ASHM Conference

¹⁴ Prior, J. and Crofts, P. (2012), Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use. *New Zealand Geographer*, 68: 130–140.

complaints' to councils regarding their activities, which they believe to have originated from other local sex service premises which perceive their activities to be commercially competitive. The vast majority of home based workers work discreetly, safely and largely unnoticed in their neighbourhoods.

Unfortunately, few are offered the same treatment from councils as is offered to other home based occupations, with only a tiny proportion of councils offering 'exempt' or 'complying' development status to home based workers in residential areas.

This results in home based workers either working 'without consent' or in areas that are unsuitable or unsafe. There is no justification for this ongoing discrimination of home based sex workers relative to other home based occupations.

ACON has long advocated that the principles outlined in the Sex Services Premises 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, as discussed earlier in this submission, these are now some years old and it may be preferable to revise them, especially in light of proposals regarding the reform of the Environment Planning and Assessment Act (1979).

We do not believe the State should be involved in placing restrictions on the location of sex services premises. This is, in effect, a non-evidence based approach which pre determines 'amenity impact' based on a series of presumptions rather than on local community values or verifiable impacts.

Similarly, the exclusion of home based services from the LEP has been detrimental to the health and safety of home based operators, and the advice to councils regarding the restrictions of brothels to industrial areas has produced safety issues for sex workers and other employees, in terms of increased vulnerability to assault or other personal crimes whilst travelling to and from their workplaces.

(h) Any legislative changes that may be required; and

We believe it would be advantageous to repeal the current advertising restrictions on the sex industry as these serve no useful purpose in terms of the objectives of this review. As noted in the report, there is little public concern at the current level of advertising, and it is a useful way for our outreach programs to reach sex workers, especially those new to the industry who might benefit most from our outreach services.

However, current restrictions and regulations have led to market distortions, with the field dominated by a few players who charge a premium for placing adverts relating to the sex industry, resulting in sex workers, industry operators and agencies such as SWOP having to pay well above the rates paid by other legitimate businesses.

The NSW Sex Industry: A World's Best Practice Model

Recently there has been discussion of some of the issues faced by sex workers in NSW. This has been discussed in the context of the proposal by the NSW Government to establish a Brothel Licensing Authority. This document outlines a number of claims that have been publicly aired, and what research tells us about these claims.

Claim: Licensing sex work will fix the many problems that exist in NSW.

Facts: The result of licensing in Queensland and Victoria has been to produce a marginalised second tier of the industry. This unlicensed or illegal sector is harder to reach for health workers and police, resulting in poorer outcomes for sex workers and their clients.¹

The NSW decriminalised model is seen as best practice and as a world leader in its approach to its regulation of commercial sex work. It is upheld as the model for other jurisdictions to work towards². The introduction of a licensing system is likely to create new problems without any guarantee of addressing perceived problems. Decriminalisation of the sex industry is the best way to ensure that positive human rights outcomes are realised. Any changes to this system will put the remarkable public health gains for NSW sex workers and their clients at risk.

There has not been one recorded case of HIV transmission due to commercial sex work in NSW.

Claim: There's lots of 'natural' unsafe sex happening with sex workers in NSW.

Facts: Condoms are utilised in over 99% of anal and vaginal sex undertaken in the NSW sex industry³, with equivalent rates of use by sex workers of non-Asian and Asian background. The rates of STI amongst female sex workers in NSW are comparable to other sexually active women in NSW. Pressure by clients to perform unsafe sex has also fallen.⁴

There has not been one recorded case of HIV transmission due to commercial sex work in NSW. This positive public health outcome is acknowledged internationally as being world leading and has been achieved in the absence of licensing.⁵

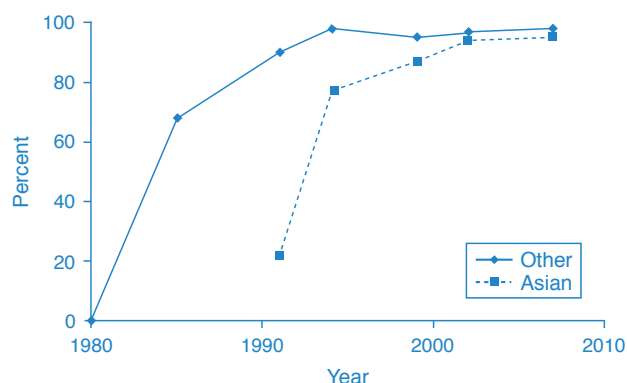


Figure 1. The proportions of Asian and non-Asian brothel-based sex workers in Sydney NSW that reported condom use for vaginal or anal sex with all clients, 1980-2007. Source: Donovan B, Harcourt C, Egger S, Fairley CK (2010). Improving the health of sex workers in NSW: maintaining success. *NSW Public Health Bulletin*; 21: 74-77

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.^{6,7}

Over the past few years there have been increasing reports of unprotected oral sex in some parts of the NSW industry, though over 90% of such encounters remain protected. While the risk of HIV transmission is negligible, unprotected oral sex can transmit other STI. SWOP is actively working with the industry and health services to address this situation.

There have been suggestions to mandate condom use. With rates of condom use at 99% for anal and vaginal sex it would seem that the only result of this would be an unnecessary use of resources, a burden on police, and raise the potential for corruption.

Claim: Problems have exploded in NSW since the decriminalisation of sex work.

Facts: Decriminalisation has led to a more open industry across the breadth of the sector, with less fear of police and other authorities. The openness of the sex industry in NSW facilitates the policing of crime, including trafficking.

The voluntary establishment of Sex Work Liaison Officers within a number of Local Area Commands of the NSW Police has improved the relationship between the industry and the Police. This not only helps improve the safety of sex workers, but also helps the policing of other crimes. Criminalising an industry has never stopped criminal involvement in that industry, it just drives that activity further underground.

Human trafficking is abhorrent. The UN Special Rapporteur on trafficking in persons, especially women and children, recently concluded a visit to Australia by making a series of recommendations. The Rapporteur specifically acknowledged that one problem with the debate on trafficking in Australia is that it incorrectly conflates sex work with trafficking⁸. This report, along with consultation with migrant sex workers, should be the basis of any changes to anti-trafficking activities in NSW (and Australia). As for sex workers generally, the improvement of the experiences of Asian migrant sex workers has been well documented since the reforms in the mid-nineties.^{9,10}

The openness of the sex industry in NSW facilitates the policing of crime.

SWOP Level 4, 414 Elizabeth St
Surry Hills, NSW 2010
P: 02 9206 2166 | F: 02 9206 2133

swop
SEX WORKERS OUTREACH PROJECT

Claim: There are enormous numbers of illegal brothels and more street workers in NSW since decriminalisation.

Facts: Decriminalisation, criminalisation or licensing frameworks haven't affected the size of the sex industry in Australia¹¹. Despite the changes made to laws governing sex work, Australians access commercial sex services in small numbers when compared internationally.¹²

Sex work is not illegal in NSW and therefore there is no such thing as an "illegal" brothel in NSW. However, there are many brothels that are operating without local government consent because many councils routinely refuse development applications for brothels.

Street work is more visible than brothel or home based work. That being said there are less street based sex workers these days than ever before. The cost of licensing is only likely to close smaller or less profitable brothels with workers seeking employment in other parts of the industry.

The councils with the more restrictive practices and policies in place end up with the most problems.

Claim: Illegal brothels are a huge problem across NSW and local councils currently have no power to refuse brothel applications, even if opposed strongly in the local community.

Facts: The changes to legislation in 2007, via the Brothels Legislation Amendment Act 2007, gave greater powers to local councils to close businesses that operate outside of planning approvals, including powers not available to close other businesses.

The councils with the more restrictive practices and policies in place end up with the most problems. This has included the involvement of the Independent Commission Against Corruption or costly court cases. Councils with more open and transparent policies have resulted in greater cooperation between the sex industry, police and council across any issues that may arise in the local community.

NSW should not replace a world's best practice model with one that has been proven to be ineffective, costly, and has worse public health outcomes.

References

- ¹ 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, vol 34: 482-486.
- ² Donovan B, Harcourt C, Egger S, Fairley CK (2010). *Improving the health of sex workers in NSW: maintaining success*. NSW Public Health Bulletin; 21: 74-77.
- ³ Donovan B, Harcourt C, Egger S, Fairley CK (2010). *Improving the health of sex workers in NSW: maintaining success*. NSW Public Health Bulletin; 21: 74-77.
- ⁴ Pell C, Dabhadatta J, Harcourt C, Tribe K, O'Connor C (2006). *Demographic, migration status and work related changes in Asian sex workers surveyed in Sydney: 1993 and 2003*. Australian and New Zealand Journal of Public Health; 30: 157-162.
- ⁵ 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, vol 34: 482-486.
- ⁶ Donovan B, Harcourt C, Egger S, Fairley CK (2010). *Improving the health of sex workers in NSW: maintaining success*. NSW Public Health Bulletin; 21: 74-77.
- ⁷ 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, vol 34: 482-486.
- ⁸ Ezeilo, J N (United Nations Special Rapporteur on trafficking in persons, especially in women and children) (2011). *End-of-Mission Statement (Australia), Office of the United Nations High Commissioner for Human Rights*. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11668&LangID=E>.
- ⁹ Donovan B, Harcourt C, Egger S, Fairley CK (2010). *Improving the health of sex workers in NSW: maintaining success*. NSW Public Health Bulletin; 21: 74-77.
- ¹⁰ Pell C, Dabhadatta J, Harcourt C, Tribe K, O'Connor C (2006). *Demographic, migration status and work related changes in Asian sex workers surveyed in Sydney: 1993 and 2003*. Australian and New Zealand Journal of Public Health; 30: 157-162.
- ¹¹ 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, vol 34: 482-486.
- ¹² Donovan B, Harcourt C, Egger S, Fairley CK (2010). *Improving the health of sex workers in NSW: maintaining success*. NSW Public Health Bulletin; 21: 74-77.

NSW should not replace a world's best practice model with one that has been proven to be ineffective, costly, and has worse public health outcomes.