

**Submission
No 138**

INQUIRY INTO THE REGULATION OF BROTHELS

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

**Re: Leichhardt Council Submission for the Parliamentary Inquiry
into the Regulation of Brothels in NSW**

I refer to the NSW Parliament's recent letter to Council seeking comments and submissions regarding the regulation of brothels in NSW.

In this regard, Council's submission to the inquiry, in relation to its regulatory and community service roles and experiences is detailed as follows:

Background:

In NSW, local Councils have diverse communities with high demands for land uses. This is evident throughout the Leichhardt Municipality where there is varying types of housing stock, extensive commercial centres with pockets of industrial development. Furthermore, Council records show that there are currently three (3) lawfully approved sex service premises that are regularly inspected by Council's Public Health Officers.

In relation to the operation of brothels in NSW, for clarity, Council's role extends to the following:

1. Setting the local planning controls to determine land zoning locations (with approval of the NSW Department of Planning and Environment) which would make a brothel prohibited or permissible development; where permissible setting relevant assessment criteria that would be applied when an application is lodged for assessment;
2. The lodgement, assessment and subsequent granting or refusal of Development Consent for brothels (sex service premises) under the provisions of the *Environmental Planning and Assessment Act 1979*;
3. Where lawfully approved brothels exist, Council becomes the regulator in terms of monitoring onsite health practices and compliance with Development Consent conditions; and

4. Where unlawful brothels are detected, Council becomes the regulator in relation to unauthorised development (i.e. operation of a land use without consent). Regulatory action is able to be taken directly by Council's through the methods as follows:
 - i. Orders or court prosecution under the *Environmental Planning and Assessment Act 1979*; or
 - ii. Court application for a brothel closure order under the *Restricted Premises Act 1943*

When brothels were included as part of the planning system in order to be regulated, a number of practical outcomes occurred, these include the ability to:

- a) Control the location and size of businesses to minimise or eliminate adverse amenity impact;
- b) Monitor the operations of business through public health standards to improve work place health and safety for workers; and
- c) Address issues associated with unlawful activities.

Where brothels have followed the Development Application process and are regularly inspected, these premises appear to have met the intended outcomes. However, it is the unauthorised premises that regulation is difficult. The difficulty arises as an impact, public health and fire safety assessment has not occurred and the premises are not actively monitored as they are unknown until picked up through audit or community submission. When an allegation is made investigations are often long and costly due to the burdens of proof required to establish non-compliance.

Requirement for evidence based research

In order to aid in education, regulatory change or resource provision to the sector, it is considered necessary that evidence based research be undertaken. This research should be undertaken in order to understand the full extent of how the sex industry operates and where the sector is heading from a workplace health and safety, community expectation and commercial demand perspective. Furthermore, the evidence based research approach would further inform commonly raised issues associated with the industries social and economic impact on a community.

From evidence based research, it would also be hoped that information and education would help to address prejudice against sex workers; furthermore, increasing acceptance of the legality and value of sex work and / or the contribution sex work provides to the general community.

It is from discussions with the community through reports of unauthorised premises that there is still a public stigma attached to the land use. This stigma can adversely impact on workers socially, economically and emotionally. There is a concern, that through a stigma associated with this lawful land use, that operators may continue to establish premises without following the regulatory framework (ultimately resulting in the business operating outside independent regulator checks) and workers may fail to report unsatisfactory / unsafe working conditions including violence against workers in the industry.

This research should require statistically valid data regarding:

- a) employers of the sector;
- b) level of understanding of the regulatory framework by the community, operators, workers and regulators;
- c) current level of community services and facilities;
- d) the extent of lawful versus unlawful premises operating within each Local Government Area;
- e) the actual versus the perceived amenity and community impact of brothel facilities before and after establishment;
- f) impact of prejudice/social stigma that creates e.g., barriers to the best practice, health and wellbeing of workers and achievement of equality in planning controls and decision-making processes for sex services compared to other land uses;
- g) qualitative discussions with industry workers against crime statistics associated with reports of violence / unlawful activity;
- h) income generation; and
- i) demographic profile data of operators, workers and customers including transiency.

Monitoring and Regulation of the land use

As previously detailed, where brothels have followed the Development Application process and are regularly inspected these operations are easy to monitor and areas of inconsistencies with an approval can be quickly and easily addressed.

However, the difficulty associated with the investigation of alleged unlawful premises is due to the burden of proof required to establish non-compliance and getting operators to lodge Development Applications in order to be regulated. Often, community members will make a report of an unauthorised brothel and expect Council be able to close the premises based solely on anecdotal evidence.

It is exceptionally difficult for Councils to prove illegal activity, especially due to the burden of proof required to prove the offence. As recently reported by in the Sydney Morning Herald (9 March 2015) Hornsby Council lost a legal battle as 'the court ruled the council failed to prove there was enough sex being provided on the premises' effectively, a Council would need to prove that more than one worker was providing sex services onsite without Development Consent.

Even with use of private investigators working undercover (which is extremely costly) establishing the required burdens of proof is extremely difficult. Furthermore, this process may not yield the necessary public benefit of having the premises regulated and undertaking periodic inspections to determine compliance.

Some other barriers to successful detection of premises include:

- a) Unregulated premises are regularly alleged to be causing adverse amenity impacts however this is generally difficult to verify or not the case;
- b) Certain sectors of the sex industry are unable to comply with generic and overly restrictive planning controls, driving that particular sector 'underground';
- c) There is not a single overarching regulatory body (similar to the NSW Food Authority and the NSW Office of Liquor Gaming and Racing) to provide funding, guidelines, reporting and consistency in enforcement across Council's areas for monitoring and action; and
- d) Lack of communication or systems to enable cross jurisdiction information sharing between various agencies (e.g. Councils, Public Health, Police, Immigration, ATO etc.). This leads to separate evidence silos and a hesitation in relation to taking regulatory action as it is unknown if one agency could impact work being undertaken by another regulatory authority.

From the above, it is considered that continuing to regulate the premises through land use is an appropriate method. It is however considered necessary for additional research into the industry be undertaken. The burdens of proof on regulators need to be eased and the operators needs to be encouraged to legitimise operations.

Recommendations

1. Establish a state wide information advisory service to assist brothel operators find appropriately located premises and aid in the preparation of supporting documentation for the lodgement of development applications;
2. Engage research providers (e.g. universities) to undertake research into the industry to provide evidence based research in order to better understand how the sex industry operates in order to inform education programs, reduce stigma and aid in the development future regulation;

3. This research should require statistically valid data regarding:
 - a) employers of the sector;
 - b) level of understanding of the regulatory framework by the community, operators, workers and regulators;
 - c) current level of community services and facilities;
 - d) the extent of lawful versus unlawful premises operating within each Local Government Area;
 - e) the actual versus the perceived amenity and community impact of brothel facilities before and after establishment;
 - f) impact of prejudice/social stigma that creates e.g., barriers to the best practice, health and wellbeing of workers and achievement of equality in planning controls and decision-making processes for sex services compared to other land uses;
 - g) qualitative discussions with industry workers against crime statistics associated with reports of violence / unlawful activity;
 - h) income generation; and
 - i) demographic profile data of operators, workers and customers including transiency.
4. Create a specialist authority to oversee the regulation of the sex industry (similar to the Food Authority and the Office of Liquor, Gaming and Racing) to ensure consistency and establish clear terms of reference. This authority would also be responsible for ongoing research and reporting on data drawing upon health, market research, crime statistics and relevant data;
5. Prepare educational and outreach programs to ensure general understating that sex premises have and will continue to exist focusing on operators due to transient nature of sex workers;
6. Establish clear, acceptable legally binding criteria along with guidelines which may be utilised by regulatory authorities to adequately identify sex premises; and
7. That any proposed research, education or regulatory changes proposed should be consulted with relevant industry groups (e.g. The Scarlet Alliance).

Thank you for providing Council an opportunity to make comment on this issue. Should you require any further information or assistance, please contact Ryan Cole Council's Manager, Compliance & Enforcement, Monday to Friday on Ph: [REDACTED] or by email [REDACTED]

Regards,

[REDACTED]

Peter Head
General Manager
Leichhardt Municipal Council