

**Submission  
No 33**

## INQUIRY INTO THE REGULATION OF BROTHELS

Name: Mr Philip Ho  
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*Partially Confidential*

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

**A submission to the Inquiry into the Regulation of Brothels, 2015**

To whom it may concern,

I am writing as a private citizen to lodge a submission to the Committee in relation to the Inquiry into the regulation of brothels in NSW.

At the present time, sex workers in NSW, along with those in New Zealand, work under a decriminalised system.

Decriminalisation has been recognised by the World Health Organisation, UNAIDS, UNDP (United Nations Development Programme), the British medical journal The Lancet, the Global Alliance Against Trafficking in Women (GAATW) and recently, Amnesty International, as being essential for the upholding of human rights for sex workers.

From: **NSW HIV Strategy 2012–2015 A NEW ERA**

*Sex workers in NSW have been very successful at protecting their own and their clients health, as evidenced by the extremely low prevalence of HIV and STIs among sex workers. Peer education and outreach by the Sex Worker Outreach Project (SWOP) based at ACON, have played a central role in achieving these health outcomes.*

***Decriminalisation of sex work in NSW has proven to have beneficial health impacts, with sex workers in NSW having better access to sexual health information and services.***<sup>i</sup>

This has been achieved through the high incidence of voluntary condom use by sex workers in NSW and awareness of safe sex practices. (Acknowledging that condom use is mandatory under sex work legislation in Victoria, Queensland and the ACT)

Under decriminalisation:

- Sex workers have more opportunity to safely screen their clients, because neither party is doing anything illegal.
- Sex workers are better able to maintain a high level of sexual health
- Sex workers are more likely to seek assistance from the police if they feel threatened or are victims of crime.
- Sex workers and clients are more likely to report cases of abuse, coercion, exploitation, sexual servitude and trafficking if encountered
- Sex workers are treated the same as other workers and are supported by OH&S guidelines<sup>ii</sup>

## Sex Work Regulation In Other States

### Victoria:

Victoria implemented a system of legalisation and regulation in 1994 with the passing of the (then) **Prostitution Control Act 1994** (currently **Sex Work Act 1994**) and the supporting **Prostitution Control Regulations 1995** (repealed and superseded by **Sex Work Regulations 2006**)

This legislation introduced a multi-tiered system where brothels, escort agencies and combined brothels and escort agencies are required to be licenced. Additionally, private workers, in the form of a “small business” comprising up to two sex workers can also operate a brothel, escort agency or both without licencing, but requiring the business to be registered with the Business Licencing Authority, with a licence exemption number.

The licensing system makes a clear distinction between brothels (offering incall<sup>iii</sup> services only) and escort agencies (offering outcall<sup>iv</sup> services only) and this also applies to the “small business” operators. Only those businesses which hold an appropriate licence or exemption to provide both brothel and escort services may do so.

In addition to the brothel or escort agency itself, the owner must be licenced and any person acting as a manager of the brothel/escort agency must also be licenced.

In theory, it is possible for a “small business” operator to obtain a “brothel” exemption to provide incalls at their own premises, but this is the exception rather than the rule. To do so, one must provide written permission from the property owner/lessor and planning permission from the local council. This is often all but impossible. “Brothel” exemptions are in the minority and many private workers will apply for an “escort” exemption instead. This means that whilst they are able to offer outcalls legally, they are liable to prosecution if they offer incall services.

This is an unwieldy system and is difficult to regulate effectively, nor has it prevented the establishment of unlicensed brothels.

### Queensland:

Sex work in Queensland is regulated under the **Prostitution Act 1999** and partially by the **Criminal Code Act 1899**

The Prostitution Act 1999 regulates brothels in Queensland via a system of licensing. Regulation and licensing of brothels is administered by the Prostitution Licensing Authority. Unlike NSW and Victoria, commercial escort agencies are prohibited in Queensland. However, private escorts, who may provide incall and outcall services may operate legally.

At the last count (30/6/2015) there are 24 licensed brothels<sup>v</sup> in Queensland. In the 15 years since the legalisation of brothels in Queensland this number has remained relatively steady.

Private escorts are regulated under **Chapter 22A** of the Criminal Code Act 1899<sup>vi</sup>

This means that sex work in Queensland is regulated under two separate sets of laws, some of which cross over (eg. mandatory condom use, advertising regulations) but most of which do not.

Laws which exist ostensibly to prevent exploitation, for example, **229H Knowingly participating in the provision of prostitution**<sup>vii</sup>

Under Sect. 229H, one may not participate in the provision of prostitution by another person. This means one cannot arrange appointments for another, or take messages. One cannot act as a driver for a sex worker unless one holds a valid licence to act as a crowd controller under the **Security Providers Act 1993**. It is also permissible to hire a security provider under the previously described terms, to provide security at one's premises (as long as they do not participate any more than is necessary to perform their duty as a driver or security provider).

229H does not allow more than one service provider to be present at any time. It also prohibits the sharing of premises, even if only one provider is present at any one time, to minimise costs, and it prohibits two workers to share premises for mutual safety.

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Regulation of Victorian and Queensland brothels, through licensing by dedicated agencies in each of those states, has not prevented unlicensed brothels from operating.

If it is legal to be a sex worker in Victoria or Queensland, why is it that the measures described above, which ostensibly seek to regulate and protect sex workers, can have such a negative impact? In NSW, under decriminalisation, sex workers do not suffer such impediments.

I realise that this is a controversial issue and that many have moral objections to sex work. However, the NSW Government recognises as a legal activity and any considerations must treat it as such. It is futile to take the view that it is an activity which can be legislated out of existence. All that will happen is that it will be driven underground and will continue. This will diminish the safety and rights of sex workers and their clients.

Full criminalisation, such as that in force in the United States (except for a number of regions in the state of Nevada) has not ended and will not end sex work.

Measures such as the much publicised "Swedish Model" have not ended sex work. This claims to decriminalise the worker whilst making it illegal to purchase their services. However, there are many background criminalisations, with the cumulative intent being to make it untenable for the worker to remain in sex work. In Sweden, there has been a claimed drop in the number of sex workers, but this is unverified. There are no reliable statistics showing the actual number of sex workers prior to the implementation to show that there has in fact been a reduction.<sup>viii</sup> Implementation of the "Sex Purchase Act" in Sweden, and adaptations of it in other countries has had a detrimental effect on sex workers who wish to remain in sex work. Despite these measures, sex work continues in Sweden and other countries which have implemented adaptations of the "Swedish Model".

In closing, I consider that NSW and New Zealand currently lead the world in progressive thinking in regard to the regulation of sex work through decriminalisation. First and foremost, decriminalisation recognises the human rights of the individual worker. This must never be ignored or forgotten. It is imperative that any inquiry into potential changes to how sex work is regulated in NSW must be held in consultation with those who will be the most affected, the sex workers themselves.

Thank you for your time in reading and considering this submission.

Yours sincerely,  
Philip Ho

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<sup>i</sup> <http://www.health.nsw.gov.au/publications/Publications/nsw-hiv-strategy-2012-15.pdf>

<sup>ii</sup>

[http://www.workcover.nsw.gov.au/\\_data/assets/pdf\\_file/0014/15134/brothels\\_health\\_safety\\_guidelines\\_English\\_0120.pdf](http://www.workcover.nsw.gov.au/_data/assets/pdf_file/0014/15134/brothels_health_safety_guidelines_English_0120.pdf)

<sup>iii</sup> An *incall* service is where a sex work provider provides the premises where the service takes place

<sup>iv</sup> An *outcall* service is where the sex work provider goes to the client, typically in a hotel/motel or private residence

<sup>v</sup> <http://www.pla.qld.gov.au/brothels/licensedBrothels.htm>

<sup>vi</sup> [http://www.austlii.edu.au/au/legis/qld/consol\\_act/cc189994/](http://www.austlii.edu.au/au/legis/qld/consol_act/cc189994/)

<sup>vii</sup> [http://www.austlii.edu.au/au/legis/qld/consol\\_act/cc189994/s229h.html](http://www.austlii.edu.au/au/legis/qld/consol_act/cc189994/s229h.html)

<sup>viii</sup> The Swedish Sex Purchase Act: Claimed Success and Documented Effects

<http://gup.ub.gu.se/records/fulltext/140671.pdf>