

**Submission  
No 151**

## **INQUIRY INTO THE REGULATION OF BROTHELS**

**Name:** Ms Emma Arvo

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# **SUBMISSION TO THE SELECT COMMITTEE ON THE REGULATION OF BROTHELS**

**To:** The Committee Manager

Select Committee on the Regulation of Brothels

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## **Executive Summary**

Having reviewed the research and noted the personal accounts of how criminalising sex work has exposed sex workers to a myriad of harms, successive Government inquiries, peer reviewed research, UN bodies and Amnesty International have all upheld or called for decriminalisation of sex work. The primary focus of decriminalisation being the health and safety of sex workers while limiting opportunities for corruption and coercion. While our submission reflects the personal experiences of the signatories, we each know that decriminalisation has delivered many positive outcomes. Decriminalisation, while not perfect in a regulatory sense (at the local government level), has delivered:

- Extremely low rates of STIs and HIV (recognised by Australia's National Strategies and the Kirby Institute Annual Surveillance Report);
- Better access to health promotion (findings of the Law and Sex Worker Health Study, which compared the health impacts of legislative frameworks across Victoria, NSW and WA)
- No evidence of organised crime (recognised by the Land and Environment Court in *Martyn v Hornsby Council*) and
- Better access to Occupational Health and Safety (WorkCover and SWOP Occupational Health & Safety Guidelines for Brothels in NSW)

The intention of decriminalisation of the NSW sex industry was to regulate the sex industry like other businesses – allowing numerous regulators from taxation, immigration, Ministry of Health, WorkCover, Councils and Police to access our work places. There is no other model which achieves this 'open door' access for all regulators and compliance sectors. This legislative model is working well, with high levels of compliance across most of these areas – except where local councils have enacted unreasonably restrictive policies.

We have the best health outcomes in the world from this model, and sex workers rights are protected.

## **We Ask that this Inquiry be Fair and Unbiased**

We have concerns for the fairness of this Inquiry given the remarks made by the Chair of the Select Committee in connection with a proposed expansion of a brothel in Pymble published in the Daily Telegraph yesterday. <sup>i</sup>

We believe that Alister Henskens should disqualify himself from sitting as Chair of the Select Committee as his media comments have shown a firm bias and we doubt he can give a fair hearing to sex workers and other industry operators. His comments to the ABC's PM program on 18 August 2015<sup>ii</sup> "that whatever regulatory environment is put in place" plainly says that he is only considering one option and that is the removal of the current regulatory regime based firmly in the decriminalisation of sex work and sex work workplaces, and replacing it with a licensing regime as operates in Victoria and Queensland.

Such a move would take NSW sex workers back twenty years and negate the achievements in sexual health and sex worker safety achieved since 1995. From our experiences, Council regulation of sex industry premises is largely about elimination not regulation with many councillors holding the same views as the Chair of this Select Committee.

## **Who We Are**

We make this submission as of a group of senior sex workers with over 100 years of lived experience of sex work between us both pre and post decriminalisation in NSW.

We believe there is no greater evidence that can be presented to an Inquiry such as this than the voices and lived experiences of sex workers in NSW. Regimes that aim to license, register or criminalise stigmatise us and our work and endanger the lives of all sex workers.

Our collective experiences are testimony to the positive difference decriminalisation has made to our lives having worked both before and after the 1995 reforms.

Some of the undersigned can recall the first steps the NSW government took in sex worker related reforms in 1979 which effectively decriminalised street based sex work. Some of our group gave evidence before the last Select Committee in 1985, and all of us can relay stories of the 'bad old days' before the reforms culminating in the Disorderly House Amendment Act 1995.

Days of police corruption and brutality, entrapment, fear where sex workers were unable to protect their own or their client's sexual health. The days in which we could not enforce condom use and safe practices as we were forced by the law to masquerade our work places as "massage parlours" or "health clinics" rather than brothels; of brown paper bags of money being exchanged by brothel owners to crooked cops as protection against legal action; nights in lock ups and being brought before the court in the morning to face legal proceedings. Fines and charges for 'prostitution' often followed which perpetuated a 'revolving door' syndrome where you had to go back to work to pay off the fines and risk being charged again. However, if you were lucky you would get a humiliating lecture (in front of a packed court room) from the Magistrate. No one considered your work as work and no one considered your human rights.

## **The Decriminalisation of Sex Work**

Decriminalisation on the other hand has allowed us to improve our health and safety, our client's health and safety, allows us the protection of the law and access to justice which was previously denied us.

The over-arching objectives of protecting residential amenity, protection of sex workers, safeguarding public health and corruption prevention have largely been realised in NSW through decriminalisation. However this happened in spite of local government reluctance to embrace the spirit of the 1995 reforms, along with the previous Labor Government's poorly thought-out planning

directives to councils and failure to implement community and local government education. These failures on the part of State and Local Government have resulted in poor and discriminatory decision making in many local council areas, restrictive and onerous location controls. Disturbingly, it has also led to the abuse of sex workers by Councils paying private investigators to engage in sexual acts with sex workers in pursuit of evidence that the premises provides for sexual services without appropriate consent.

Until the sex industry and its people are treated as human beings and sex industry land use is treated like any other equivalent commercial or home based land use, so that the premises in which we work can comply to realistic and fair planning controls, many in our industry are being denied the benefits of the reforms.

## **Recognising Decriminalisation as Best Practice**

Significantly, we write this letter on the very day Amnesty International passed a resolution calling for the full decriminalisation of sex work worldwide to protect sex worker health and safety and allow sex workers full access to their human rights. Amnesty International is now in line with other international agencies, including UNAIDS, WHO, Human Rights Watch, the Lancet, UNDP and GAATW (Global Alliance against traffic in women) in calling for the full decriminalisation of sex work.

Closer to home, findings of various reports and research including the evidence based research headed by Professor Basil Donovan of the Kirby Institute<sup>iii</sup> found decriminalisation as best practice for sex worker health and well-being and in fact, found that licensing is a threat to public health and should not be regarded as a viable legislative model.

The UNAIDS, UNFPA, & UNDP Report<sup>iv</sup> also recognises the value of decriminalisation and the failure of licensing models in effectively regulating the sex industry.

Yesterday, (Tues 11 Aug 2015) the NSW Government released IPART's Final Report on *Reforming Licensing in NSW*<sup>v</sup> which did not offer any support to licensing as a model that would address the NSW governments policy and noted that "any proposed licensing scheme for the sex services industry should be assessed using the Licensing Framework to determine whether it is an appropriate government response to address the policy objectives".

We also draw your attention to the inquiry of the NSW Better Regulation Office in 2012<sup>vi</sup> which appears to have also rejected licensing or any move away from decriminalisation.

## **We Ask that Our Employers also Be Listened to and Treated Fairly**

As important as it is for sex workers to have a voice, it is also important to give a voice to owner/operators of commercial premises for they are often our employers. It is crucial that they be able to establish their businesses in locales where we, as sex workers, can be safe and the conditions provided can meet work health and safety standards.

This is largely impossible in industrial zones and in industrial warehouse type buildings, but is the only location most councils will allow our workplaces. These locales are deserted at night; provide no opportunities for passive surveillance by neighbours and generally, a very dangerous environment for a mostly female workforce.

## **All Sex Work Workplaces Should be Treated in the Same Way as Other Workplaces; and Not Discriminated Against**

The uneven playing field was further entrenched when private worker's home occupations were separately defined under the Standard LEP. This situation has seen the majority of Councils prohibiting home occupation sex services without any justification.

### **The Problem Isn't 'Bad' Brothels or “Bad Brothel Owners”; Councils behaving badly** **its**

The problem isn't 'bad' brothels or “bad brothel owners” but Councils deliberately framing planning controls in an attempt to prohibit or severely limit the possibility of brothels gaining planning consent.

From our experience over the past 20 years, Councillor determination of development proposals for sex services premises are rarely considered on their merits and emotion and moral argument is allowed to guide the decision making process. While these attitudes and processes are allowed to continue, there can never be a level playing field for sex industry land uses with many operators and sex workers unable to gain the broader benefit of decriminalisation.

Reform options the Select Committee should be focussing on are a need for better understanding of why so many sex services premises are forced to operate and remain outside of the current regulatory framework.

If the current regulatory system as administered cannot accommodate already existing sex industry businesses, any attempt to strengthen these controls will lead to a vastly greater number of premises with deficiencies in their planning approval. This will lead to an increase in the number of premises that operate “underground” and a greater burden on health and social outcomes for sex workers.

### **Our Clients do not Seek to Cause Us Harm**

Just like us, our clients are diverse. They come in all shapes and sizes and abilities, in all age groups, socio-economic, trade and profession and cultural backgrounds. They are butchers, bakers, candlestick makers, doctors, lawyers, judges, politicians and government bureaucrats.

Clients can be male, female and transgender and their reasons for seeking our services are as varied as their demographic makeup - they may have no partner, have recently lost a partner, have a partner with disability, have a disability themselves that precludes them from social and sexual interactions we all take for granted, are lonely or simply curious, enjoy the company of a sex worker without the possible strings attached of a one night stand and others may have a desire for sexual and related activities they cannot ask of their regular partners<sup>vii</sup>.

Male sex workers report similar attributes in their clients. Our clients do not exploit us but the planning system does. Our clients do not seek to cause us harm. Crimes committed against us are perpetrated by criminals, not clients and should be judged as such and are often attributed to the structural and legislative impediments under which a sex worker must operate.

## Conclusion

### Please Examine 20 Years of Evidence

Overall decriminalisation without the imposition of a licence (with or without registration) has achieved better regulatory outcomes in terms of sex worker health and well-being, preventing large scale corruption and protecting neighbourhood amenity than has occurred in other jurisdictions that have adopted a licensing approach. It has also been cost effective for the regulators and required little red tape. We implore you to address the primary issues of how the rights and safety of sex workers, the public health and corruption prevention can be best served through evidence based policy development and implementation. Licensing will not support these important outcomes nor benefit the wider community in any way.

Based on all of the evidence available only full decriminalisation can promote safe working conditions and labour rights, increase access to health and other support services, reduce risk of HIV and STIs, increase sex worker agency and access to justice, reduce police abuse and violence and help combat exploitation and coercion if and when it does occur.

Each of us would be able to give verbal evidence to the inquiry which would give you the opportunity to hear directly from sex workers with such a wealth of experience of working under both a criminalised and decriminalised system. Please note due to privacy issues and the discrimination that remains, despite decriminalisation, we have used our 'working' names in this submission.

Only rights can stop the wrongs.

12 August, 2015

### Signed

Emma Arvo  
Sam Man Handle  
Ms Divine  
Gary Anderson

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### Endnotes

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<http://www.dailytelegraph.com.au/newslocal/north-shore/lib-mp-slams-sydney-brothel-expansion-plan/story-fnqr8h9d-1227479949318>

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- ii <http://www.abc.net.au/pm/content/2015/s4295743.htm>
- iii <http://www.acon.org.au/wp-content/uploads/2015/04/NSW-Sex-Industry-Report-CSRH-2012.pdf>
- iv *Sex Work and the Law in Asia and the Pacific 2012* <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/sex-work-and-the-law-in-asia-and-the-pacific.html>
- v *IPART's Final Report on Reforming Licensing in NSW*  
[http://www.ipart.nsw.gov.au/Home/Industries/Regulation\\_Review/Reviews/Licence\\_Design/Licence\\_Rationale\\_and\\_Design/HYSNews/Final\\_Report\\_on\\_Reforming\\_licensing\\_in\\_NSW](http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_Design/Licence_Rationale_and_Design/HYSNews/Final_Report_on_Reforming_licensing_in_NSW)
- vi *Inquiry of the NSW Better Regulation Office 2012* <http://www.swop.org.au/content/better-regulation-office-issues-paper-regulation-of-brothels-in-nsw-october-2012>
- vii *Parliament of NSW 1986: 74-91; Lovejoy 1991*