Submission No 119

INQUIRY INTO THE REGULATION OF BROTHELS

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TO: The Committee Manager
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SUBMISSION
TO
THE SELECT COMMITTEE ON THE REGULATION OF BROTHELS

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Background

We understand the Select Committee has been established to examine the following issues relating to the regulation of brothels in NSW and will report early in November,

(a) The current extent and nature of the brothel industry in New South Wales;
(b) Current regulation of brothels in New South Wales and other states;
(c) Penalties and enforcement powers required to close illegal brothels;
(d) Options for reform including a scheme of registration or licensing systems for authorised brothels;

About Us

Each of us have professional careers in the HIV, sex work and human rights field. We identify as both sex workers and sex worker advocates. Through our respective consultancies we provide a range of training and advisory services. These include town planning, health and safety advice and related information to the NSW sex industry, State & Local Government, research institutions and other stakeholders on various aspects of sex industry related legislation and local government regulation, work health and safety and disability and research needs. Our work has included the presentation of papers at national and international conferences on sex work, HIV and the law.

Executive Summary

This submission focuses on the benefits to the community, public health, safety, crime prevention and reduced red tape experienced over the 20 years of the decriminalised model of regulating sex work currently used in NSW.

The intention of the “NSW Model” is to regulate the sex industry like other businesses - allowing for regulators to access these businesses, including:

Taxation

Immigration

Health Department

Work Cover NSW

Councils and

Police

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.

There is no other model which achieves this open door access for all regulators and compliance sectors.

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

Listening to the voices of sex workers - International Support for human rights

As sex workers and advocates, we respond on the basis of our considerable collective knowledge and experience of both the Australian and New Zealand sex industry and the varying legislative frameworks under which they exist. In so doing we take into account the views and experiences of the various sectors of the sex industry and its representative bodies, research findings, National and State HIV and STI Strategies and international bodies such as the UN and the WHO all of whom support decriminalisation as best practice in protecting the human and legal rights and health and wellbeing of sex workers.

Just days ago, after listening to the voices of sex workers and their representative bodies, analysing peer reviewed research and the reports of UN bodies, Amnesty International joined this growing body of informed opinion in voting for a policy calling for the "full decriminalisation of all aspects of consensual sex work". The research is clear: criminalisation of sex work both reinforces stigma and discrimination against sex workers and puts their lives at risk.

As stated, our particular area of interest and expertise is the regulation of sex industry premises. That is, both the commercial and home based sectors as a legitimate and legal land use in NSW. While we make some comments in respect to immigrant sex workers and the circumstances under which they work, we will limit our responses to the issues and concerns of this inquiry in accordance with our area of expertise, experience and concern, for if decriminalisation respects the rights of both migrant and Australian born sex workers, the same protection is afforded to all.

We are always concerned to ensure that inquiries that have the potential to impact on the sex industry and sex workers avoid introducing unnecessary discrimination and costs, unintended health consequences and further stigmatisation of this marginalised community vulnerable to HIV. It is thus not possible to address issues of the implications of any proposal to introduce options such as registration or licensing for the NSW sex industry without addressing HIV and sexual health needs amongst other issues of health and wellbeing and the human rights of sex workers in NSW. It is also important to recognise that our industry is already one of the most highly regulated industries in NSW.

Overview of simultaneous reviews by NSW Department of Premier and Cabinet and the Independent Pricing & Regulatory Tribunal

It is important to note, and you no doubt would be aware, that in committing to improving the regulation of NSW sex services premises (brothels) the NSW Government in 2012 charged the Department of Premier and Cabinet (via the Better Regulation Office) with the task of developing reform options. The objectives include the protection of residential amenity, protection of sex workers and safeguarding the public health.

The Issues Paper – entitled *Regulation of Brothels in NSW (September, 2012)* and call for submissions served as a basis for consultation with a wide variety of stakeholders aimed to produce an evidence-based understanding of the NSW sex industry, as a part of identifying the best options for potential improvements. From our perspective, and that of other experts in the field, this consultation process gave respondents including ourselves, an opportunity to address what has worked well to improve outcomes for sex workers and the industry generally since the 1995 reforms that decriminalised the NSW sex industry. Conversely, it gave us the opportunity to: (a) address matters that require greater effort on the part of our regulators - particularly local government - in implementing best practice regulation of sex industry land use via planning law; and (b) provide feedback on possible reform options.

The Better Regulation Office review included 3 options for reform

- **Option 1:** Improve the current regulatory system, including improving decision-making in planning for sex services premises and improving the sharing of information between NSW regulators. This option does not include registration or licensing, but might equally be relevant for adoption as part of the registration or licensing options (i.e. options 2 or 3).

- **Option 2:** Introduce a registration system for owners and operators of commercial sex services premises. The register could be maintained by a community-based peer outreach body or by a Government agency.

- **Option 3:** Introduce a licensing system for owners and operators of commercial sex services premises. The licensing authority, in determining suitability for a licence, would consider: whether the applicant is a fit and proper person; whether it is in the public interest for the licence to be granted; and whether appropriate arrangements have been made to ensure the health, safety, and welfare of sex workers and clients.

In responding to the Better Regulation Office review we provided overwhelming evidence identifying that the best option for achieving the Government's objectives is to maintain decriminalisation but find ways to improve current outcomes through the adoption of Option 1.

As Mr Sam Haddad, the Director General of NSW Department of Planning told a Select Committee investigating the NSW Planning Framework in 2009:

> When people compare our legislation with legislation from other States or wherever we need to respect the fact that the community in New South Wales is different from other communities. Planning legislation will have to reflect that. It will have to reflect the demand and the complexities or whatever. When people say it is complex they need to understand why it is complex. It is not easy to just jump from one scheme to another, because our community

> is different. This is something that is not usually commented on and it is not usually appreciated. You cannot just import a scheme and put it in place[1]."

Improved decision making improves best practice outcomes. See chapters 5 and 6 of the Sex Services Premises Planning Guidelines (SSPPG 2004) for an explanation of the advantages and disadvantages of different planning approaches. Information is also provided on how to introduce better decision making and how best to engage with various stakeholders during the processes of policy development and implementation. [2]

In supporting evidence based approaches that reflect best practice, we supported Option 1 for reform, providing there was an amendment of the term used to describe the range of sex industry premises that exist in NSW.

While on the subject of language used when describing brothels and their legal status, the terms used, given the removal of most legal sanctions against brothels, renders them either 'authorised' having development consent or 'unauthorised' meaning being without appropriate, or any consent.

It is important also to note that at the time of writing no report has been forthcoming from the Better Regulations Office Inquiry. This inquiry was conducted some 3 years ago in 2012. While we cannot state categorically that they didn't support licensing as an option, we can only assume that they did not support this option, as surely a finding for licensing or some form of licensing would have been released by now.

In 2012 the Independent Pricing & Regulatory Tribunal (**IPART**) – put out an issues paper (Regulation Issues Paper 2012: Reforming Licensing in NSW – Review of license rationale and design). The basis of this review was to reduce red tape and identify "those licences that are unnecessary or excessively burdensome." In the Introduction to the IPART Issues Paper it clearly states its desire to reduce the regulatory burden.

> "In recognition of the benefits of reducing the regulatory burden, the NSW Government has a target of $750 million in reduced 'red tape' costs for business and the community by June 2015. This review of NSW licenses is a step in addressing these challenges."

In responding to the IPART issues paper our submission provided evidence identifying that the best approach to the regulation of brothels is to maintain decriminalisation but find ways to improve current outcomes including improving decision-making in planning for sex industry premises and improving the sharing of information between NSW regulators. We advised accordingly, that on the evidence

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[1] NSW Parliament: REPORT OF PROCEEDINGS BEFORE the STATE DEVELOPMENT COMMITTEE Inquiry into the New South Wales Planning Framework, 2 Monday 30 March 2009, p.12

[2] NSW Department of Planning (then DIPNR), *Sex Services Premises Planning Guidelines*, 2004

available, licensing of industry operators including sex workers would be costly, ineffective and contradictory to the intent of the original reforms that decriminalised the sex industry.

The Government released IPART's Final Report on *Reforming Licensing in NSW* on 12 August, 2015. The report recommends reforms for licensing across many industries in NSW. Notably IPART did not recommend the introduction of a licensing scheme for the sex industry, noting 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".

The IPART report observes a proper process would require:

> "Stage 1 assessment using the Licensing Framework, a comprehensive review of literature and independent evaluation of evidence is required to support the decision."

IPART concluded by stating:

> "The arguments presented in submissions to our Issues Paper and Draft Report suggest that "**alternatives to licensing may be more appropriate to address the NSW Government's policy objectives in this area**." [3]

Select Committee Chair fails IPART prerequisite for independence

The current Chair of this Select Committee made disparaging public remarks in connection with a proposed expansion of a brothel in Pymble published in the Daily Telegraph on August 12, 2015, 8 We believe the Minister's statements have severely compromised the potential for a fair and unbiased review of the issues to hand.

This is a most unfortunate demonstration of a lack of willingness by the Chair to reserve his opinion and comment until he has been informed of all issues raised via the Committee's collection of written and oral evidence. Notwithstanding this lack of the well-informed objectivity sought by IPART, we hope that this inquiry serves as a basis for genuine consultation with all stakeholders to develop the evidence base for understanding:

a. the sex industry in NSW,

b. the benefits attributed to the current legislative framework and

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[3] IPART's Final Report on *Reforming Licensing in NSW* (2014) p.215 http://www.ipart.nsw.gov.au/Home/Industries/Regulation_Review/Reviews/Licence_DDesign/Licence_Rationale_and_Design/11_Aug_2015_-_Final_Report/Final_Report_-_Reforming_Licensing_in_NSW_-_Review_of_licence_rationale_and_design_-_September_2014

c. any possible options for reform that could maximise the protection of sex workers under decriminalisation and the safeguarding of public health; whilst continuing to maintain the status quo in connection with residential amenity.

In support of our arguments against the NSW sex industry being subjected to a registration or licensing regime we drew upon up to date research. This included research conducted by the Kirby Institute, Faculty of Medicine University of New South Wales: *The sex industry in New South Wales – a report to the NSW Ministry of Health,* 2012; and BB Professional Services: *At Risk Sex Workers Gap Analysis report* – prepared for the HIV/AIDS & Related Programs Unit, 2011 **(Attachment A)**. This research and anecdotal evidence gives a clear insight into the failings of the Queensland and Victorian sex industry licensing systems and our own home grown shortcomings caused through faulty implementation of decriminalisation, which are addressed below.

Self-regulation highly successful under decriminalisation

As stated previously, the NSW sex industry is already one of the most highly regulated industries in NSW. Although our regulators include the NSW Ministry of Health, Local Health Districts, WorkCover NSW, local government and the NSW Police Force, it is of course ultimately sex workers who have been empowered and supported to self-regulate so as to ensure safer sex occurs in the course of providing services to their clients. Self-regulation is supported by 30 years of peer education by Government funded services such as the Sex Workers Outreach Project (SWOP) and representative bodies like the Scarlet Alliance - the Australian Sex Workers Association and through sex workers sharing safer sex knowledge amongst each other in their workplaces.

So it is vital to recognise and pay tribute to the role that sex workers (both migrant and Australian born) and sex industry operators have played self-regulating their role in the fight against HIV since the beginning of the epidemic in Australia.[4]

As a result NSW sex workers as an industry and population group enjoy better sexual health outcomes than the general population. The rates of HIV among sex workers and clients is very, very low, however the high rates of safe sex practices and the framework of HIV prevention in Australia mean that sex workers are making a positive contribution to HIV prevention strategies.

HIV remains a significant health issue in NSW, with more than 300 new infections in the past 12 months alone amongst other vulnerable populations; with the majority of new infections occurring amongst men who have sex with men. By comparison, the success of NSW sex workers, their representative bodies and industry operators, in promoting a harm reduction approach to commercial sex via the use of condoms and other safe sex practices, is a remarkable achievement under a voluntary compliance régime. The NSW success has been documented in international health journals

[4] Bates, J and Berg R: Sex Workers as Safe Sex Advocates: Sex Workers Protect Both Themselves and the Wider Community, *HIV AIDS Education and Prevention,* Vol. 26, No. 3: 191–201.

such as the Lancet, as an example of best practice legislation for sex work, and public health. This achievement deserves praise and recognition rather than adding an additional burden and ensuing harms any repeal of the current legislative framework would bring. [5] [6]

Evidence-based approach that reflects best practice

We seek always 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 (with or without registration) will not support these important outcomes; nor benefit the wider community in any way. Licensing or any form of registration in fact would be demonstrably detrimental.

Speaking broadly we support evidence-based sex industry legislative and regulatory approaches that:

- enable the rights of Australian born and migrant sex workers to safely engage in their work in a range of scales and types of sex industry premises free of harassment and discrimination;
- enable the rights of people with disability and other clients to gain access, in a safe and dignified manner befitting the individual's level of ability, to the range of various scales and types of sex industry premises that exist within any given local government area, without experiencing discrimination or systemic barriers; and
- enable sex industry operators to perceive of themselves as legitimate service providers with the same rights and responsibilities as other commercial and home-based business operators:

The above aims can be achieved by implementing the guiding principles[7] that relevant NSW stakeholders negotiated together and delivered in the SSPPG in 2004. These guiding principles balance the rights and responsibilities of the sex industry, local government and local communities with the aim of enabling sex industry policies that result in 'fair and equitable treatment'[8] for this land use.

We note that 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

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[5] Donovan B., Harcourt C., Egger S., et al. (2012), *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health,* Sydney: Kirby Institute.

[6] Harcourt C., O'Connor J., Egger S., et al. (2010), The decriminalization of prostitution is associated with better coverage of health promotion programs for sex workers. *Aust NZ JPublic Health*, 34(5): 482-6.

[7] NSW Department of Planning (then DIPNR), *Sex Services Premises Planning Guidelines*, 2004, p.3

[8] ibid; Foreword

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 and have led to the degradation of paying for private investigators to engage in sexual acts with sex workers.

Work Health and Safety

Despite the discriminatory decisions of local councils, sex workers now have greater capacity to choose their work place whether it is in a 'brothel', escort and/or home or street based sectors. With decriminalisation, sex workers' work health and safety, and industrial rights are more supported and enforceable. Sex workers can participate in debate and contribute to the decisions and policies which affect them and their workplaces through the consultation process.

WorkCover NSW, the government department that promotes workplace health and safety can now more easily access the sex industry to give advice and assistance on safe workplace equipment, practices and the implementation of best practice procedures. The NSW sex industry has WH&S guidelines (available from the Work Cover NSW website) which enable businesses to set up and operate safely; which benefits sex workers, clients, operators and the wider community. Sex workers' rights to safe workplaces are enforceable under WH&S legislation.

The sex industry, and sex industry workplaces are not considered to be a high risk workplace in NSW, due to strong implementation of WH&S across the industry.

Decriminalisation has also facilitated the development of non-Government organisations such as Touching Base Inc, which developed out of the need to assist people with disability and sex workers to connect with each other. The work of Touching Base focuses on access, discrimination, human rights and legal issues and seeks to address the attitudinal barriers that these two marginalised communities often face. They provide popular training workshops for sex workers and disability service providers.

Touching Base has developed resources like their *Policy and Procedural Guide for disability service providers supporting clients to access sex workers*. This unique resource was launched in 2011 by a group of highly recognised human rights supporters: Justice Michael Kirby, Eva Cox and Graeme Innes. It further supports sex worker's WH&S by introducing best practice policy and procedures to use when accessing sex services under a decriminalised setting; policy and procedures which are firmly anchored to a human rights framework.

Crime prevention and removing barriers to access to justice

Under decriminalisation sex workers can more easily report crimes and seek police assistance, like any other person. The businesses in which they work can also report any crime that may occur, such as robbery or sexual assault. This has not only

removed opportunities for corruption, but also contributes as a preventative measure against crime.

Public Health policy promotion needs urgent improvement

Despite these significant improvements there has however been a decreased function in information sharing between the NSW Ministry of Health, the Department of Planning and local councils as regulators; particularly in regards to the development of planning instruments which enable rather than negate Federal and State HIV and STI prevention strategies. This situation needs urgent improvement to ensure the public health and work health and safety of sex workers maintains a primary position in the minds of policy and decision makers.

It is vital that this review upholds the intent of the 1995 legislative reforms that decriminalised the NSW sex industry and handed regulatory responsibility to local government - without the added financial and administrative burden of an unnecessary and unjustifiable new licensing or registration regime.

Sex Workers are the real public health practitioners

One cannot consider the regulation of the sex industry without addressing Australia's response to the HIV pandemic and sex worker health and wellbeing. This means there needs to be a whole of government approach and in particular any efforts to review sex industry legislation should involve the Department of Health, the sex industry and their representative bodies such as the Scarlet Alliance, Australian Sex Workers Association and the Sex Workers Outreach Project. Sex workers individually and through their representative bodies have a long history of educating their clients and supporting each other around issues of health and wellbeing, improving workplace conditions, challenging laws, stigma and discrimination. In terms of sexual health, sex workers continue to demonstrate high levels of sexual health outcomes and in the now over 28 years of HIV in Australia, there has been no recorded case of transmission of HIV between a sex worker and a client or vice versa. This has occurred on a voluntary basis and despite the restrictive legislative conditions that impact on their lives and livelihoods, sex workers have shown great resilience in maintaining such high levels of safe sex practices. Sex workers should be rewarded with a legislative approach which respects the role as primary sexual health educators along with their human, legal and industrial rights.

In contrast with the high rates of HIV in the surrounding Asia Pacific Region, Australian sex workers have the lowest rate of HIV/AIDS in the world, due to effective provision of information, resources and support to sex workers.

> "Australia has the lowest rate of HIV/AIDS among sex workers in the world, due to the work of community-based sex worker organisations and projects conducted in partnership with State and Territory and Australian Governments, and with other agencies. Peer education has been a significant focus of the work of community-based sex worker organisations and has

included the provision of information on safe sex practices, up-skilling new workers to implement these practices, and outreach services.*"*[9]

Despite this, the potential for increase in HIV (and other STIs – including antibiotic resistant gonorrhea[10]) in the sex industry remains due to the high turnover of industry workers and the barriers to market entry including over-restrictive planning controls and their inequitable implementation. There is a growing body of informed opinion to support the relaxing of zoning and other controls that restrict competition and impact on the health and well-being of sex workers[11].

Legislative and Regulatory Context – Ongoing Challenges

The experience of Sydney City, Newcastle and Wollongong councils provide evidence that the commercial sector of the sex industry can be regulated like any other land use without community backlash and ensuing amenity impacts. Disturbingly, this is not the case for the majority of councils, where councilor determination of development proposals for sex services premises are rarely considered on the merits of the proposal but rather emotion and moral argument is allowed to guide the decision making process.

Similarly, the City of Sydney, Armidale, Clarence Valley and Uralla regulate home-based sex work as exempt development without problems. Yet a Fact Sheet on recent research by UTS for Touching Base in to LEPs shows Sydney metropolitan local councils are overwhelmingly prohibiting or tightly restricting the commercial sector and 32 of 40 metro councils have an outright ban of home-based sex workers [12]

To further highlight this inequity, we have provided case studies of the obstacles faced by proponents of developments applications and some of the ensuing Land & Environment Court appeals along with commentary by experts in the field. **See Attachment B: Regulation not Elimination - Case studies on planning process**

Along with a consultation process, we commend the use of NSW Sex Services Premises Planning Guidelines (SSPPG, 2004). The SSPPG provides a comprehensive resource to assist anyone grappling with the regulation of the sex industry. As previously stated, it provides evidence based advice on a range of planning and related issues and was based on a set of guiding principles that were

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9 (5thNational HIV/AIDS Strategy 2005-2008 p4)

10 A New Multidrug-Resistant Strain of Neisseria gonorrhoeae in Australia, *The New England Journal of Medicine*, Vol.371; No.19 November 6, 2014

11 Harcourt, Egger & Donovan*: '*Sex Work and the Law', *Review Sexual Health*, 2005, 2, 121-128.

12 *The Subversion of Progressive Intent: Sydney metropolitan local councils' unworkable sex industry regulations,* Touching Base Inc, 2015, http://www.touchingbase.org/wp-content/2012/07/The-Subversion-of-Progressive-Intent.pdf

intended to inform decisions regarding planning for sex industry premises. We set out below the guiding principles.

1.3 Guiding Principles "These Guidelines are based on the belief that the following collectively agreed to guiding principles should inform all decisions regarding planning for sex services premises:

- appropriate planning for sex services premises can provide councils with greater control over their location, design and operation
- planning regulations and enforcement actions have direct implications for the health and safety of workers and their clients
- sex services premises should be treated in a similar manner to other commercial enterprises, and should be able to rely on consistency and continuity in local planning decisions
- planning provisions should acknowledge all types of sex services premises and ensure that controls relate to the scale and potential impact of each premises
- reasonable, rather than unnecessarily restrictive, planning controls are likely to result in a higher proportion of sex services premises complying with council requirements, with corresponding benefits to council, the local community and health service providers
- provision and consideration of sound information enables appropriate policy and decision-making processes, and
- engaging the community, including the sex industry, and developing professional strategies can assist the community and professionals to understand the nature of sex services premises and recognise that they are a legitimate land use to be regulated through the NSW planning system.

  Maintaining a focus on these guiding principles can assist government departments, councils, the sex industry and the local community, by providing clarity and consistency of regulation, minimising amenity impacts and ensuring the health and safety of workers and clients." [13]

There is now urgent need to facilitate reasonable development of sex services premises, without requiring recourse to the Land & Environment Court as is becoming a too regular occurrence, and the consequent beneficial social and health outcomes of reasonable regulation. As a consequence, we suggest the following as key components to providing a pathway to possible solutions to the problems without resorting to a costly and ineffective licensing regime.

- Department of Planning to appoint a sex industry liaison officer with a demonstrable understanding of the sex industry and the intent and

[13] Sex Services Premises Planning Guidelines (2004), NSW Department of Planning, p. 3 http://www.scarletalliance.org.au/library/ssppg_04/view

justification of the original planning reforms. This person would be tasked with revising and bringing up to date the existing SSPPG and then assist Councils with the implementation of the objectives of those reforms in ongoing LEP reviews.

- An analysis of the actual sex services premises amenity impacts to address and respond to community concerns and public perceptions of fear and safety, including an analysis of LEC decisions and a randomly selected review of existing approved sex services premises;
- A half day education program at the next Local Government NSW conference or sooner if possibilities arise covering legislative framework for sex services premises under the Standard Instrument LEP template, the impetus and intent of 1995 reforms, impact of zoning controls and planning on competition and economic outcomes; including case studies of the DA process, myths and realities, the reality of amenity issues, and case law.

Nothing About Us Without Us

The amazing gains of decriminalisation, including NSW having the best workplace conditions and lowest STI's among sex workers in Australia, are at risk of being overlooked when decisions about sex work are made without effective input from sex workers and health experts. Without effective health input, unintended consequences, such as the putting at risk the enabling environment for sex workers best health, are always present.

The 1995 law reforms have enabled a range of progressive responses denied the previously illegal and underground status of the sex industry. They include the ability of government instrumentalities, for example WorkCover NSW, to work in consultation with individual sex workers and representative organisations (SWOP, Scarlet Alliance, and Australian Federation of AIDS Organisations) to develop Occupational Health & Safety Guidelines. These reforms have better enabled access by representative organisations to the industry which can only improve peer education and support opportunities. It has enabled sex workers to demand better working conditions and industry operators to realise their responsibilities.

Above all, the reforms have provided opportunities for sex workers and operators to perceive of themselves as legitimate workers in a legitimate business with the same rights and responsibilities as others. However, if the regulatory system is too restrictive and the goal posts keep moving, the benefits of the reforms will be negated - people will choose to remain outside of the regulatory system and we may see a return to the mistrust, fear, health and safety risks and corruption that existed pre-1995.

Since 1995 the sex industry in NSW has successfully collaborated with WorkCover, NSW Health, and through Touching Base – the NSW disability sector; in order to produce information and training resources that encourage evidence-based better practice in these aspects of the sex industry - to the benefit of all involved. These successes in other fields are reflected in the policies of a limited number of councils like the City of Sydney - which have been willing to consult and use evidence to inform the approach they have taken. This makes it obvious that the vocal local councils which enact an overly-restrictive approach are really facing problems entirely of their own making.

Examples of Failed Licensing Models

When conducting the Victorian arm of the Law & Sex Worker Health (LASH) study, data collectors identified 80 licensed brothels plus up to 70 suspected unlicensed brothels. This indicates that close to 50% of the Victorian sex industry operates outside of the licensing system[14]. Anecdotal evidence also suggests that 90% of the Queensland sex industry operates illegally outside of its licensing framework. In short, there is no evidence of a large number of "illegal" brothels in NSW and plenty of evidence that licensing has created the large number of illegal brothels in Victoria and Queensland; with corresponding dangerous and harmful consequences for sex workers.

Under both these regimes, and in fact, licensing generally, there are no known advantages in sex worker protection. To the contrary, they alienate the majority of sex workers and have created harmful and discriminatory controls and environments. For instance in Victoria private sex workers can only do 'out calls' to clients. This takes away the 'home' safety advantage of knowing your surroundings and being able to better protect yourself if a difficult situation arises.

In Queensland, sex workers are prohibited from working in pairs; eliminating any opportunity for peer support or peer education in the workplace, and again removing common sense safety options. Generally speaking licensing regimes discourage and/or prohibit peer support, force compulsory permanent police registration, add costly mandatory STI/HIV testing and relegate sex services premises to isolated industrial areas. There are no real 'up sides' to licensing.

In terms of better access to sex workers, when comparing access between the NSW decriminalised model and the Victorian Licensing model, NSW peer outreach workers, WorkCover staff and sexual health clinic staff have unfettered access to NSW sex industry premises regardless of their regulatory status i.e. whether they have or require development consent from their local council. Victorian peer outreach workers and sexual health staff on the other hand only get access to the small licensed sector[15].

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14 ibid p.482

15 Christine Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, (2010), 'The Decriminalisation of Prostitution is Associated with Better

A review of the Australian *National HIV/AIDS Strategy*[16] argues that legal prohibitions further marginalise many sex workers and alienate them from health promotion activities. Similarly, a requirement for industry operators to be licensed or sex workers to be registered will return large segments of the industry to their former underground status and thus further marginalise and alienate sex workers and industry operators from health promotion activities.

A recent UNDP report states:

> "New South Wales has some of the highest rates of condom use among sex workers anywhere in the world (exceeding 99 percent), and consistently low STI prevalence. There is no evidence that decriminalization increased the frequency of commercial sex in New South Wales. An assessment of the New South Wales model found that it had significantly "improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion and safety of the NSW sex industry."[17] (p.198)

We are opposed to the introduction of a licensing system (with or without registration) for the sex industry. As with a registration system, it would similarly add another level of cost, harm and red tape that, in our considered opinion, the majority of sex industry operators would avoid as they have done under the licensing regimes in both Victoria and Queensland. As you will see from the research provided; licensing has very low compliance, has a detrimental impact on health promotion access and activities, discourages peer support, is not cost effective. It creates a two tiered industry- the minority who can comply and the majority that cannot, for a range of reasons including safety and confidentiality risks, and therefore avoid the system

For your further information on overarching issues affecting the NSW sex industry, with a focus on issues of licensing and registration, **See Attachment A: Submission to the Better Regulation Office Premier & Cabinet dated September 2012.** This submission also provides a full description of sex industry definitions with reference to the current review of the NSW planning system.

Migrant Sex Workers

Our focus is on the sex industry and the benefits and outcomes of sex work as legitimate and legal work in NSW under decriminalisation. As stated, we support evidence-based sex industry legislative and regulatory approaches that enable the

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Coverage of Health Promotion Programs for Sex Workers', *Australian and New Zealand Journal of Public Health*, 34:5 p. 482

[16] Australian National Council on HIV/AIDS and Related Diseases (ANCHARD), *Proving Partnership: Review of the National HIV/AIDS Strategy, 1996-97 to 1998-99*. Canberra, Commonwealth of Australia 1999: 55-57

[17] John Godwin, UNDP Asia-Pacific Regional Centre and UNFPA Asia Pacific Regional Office, *Sex Work and the Law in Asia and the Pacific,* October 2012 p196

rights of Australian born and migrant sex workers to engage in their work in a range of scales and types of sex industry premises free of harassment and discrimination.

However, we are concerned about the continuing conflation of sex work with trafficking.

The primary goals of any review or reform agenda that concerns migrant workers should be maximising their health and safety, working conditions and human rights including equal access to appropriate and sensitive immigration pathways and supports. For migrant sex workers, the aim should be to address laws and regulations and cultural barriers that prevent women from resource poor nations gaining equal access to the institutions and appropriate systems of migration.

Regardless of their place of birth, sex workers in a decriminalised legislative environment, as in NSW, have greater agency than their counterparts working under other less favourable and less successful regulatory regimes, both in Australia and overseas.

In support of migrant sex workers we endorse the statement of the AIDS 2012 sex worker conference Kolkata in July 2012. The conference attracted over 500 sex worker representatives from some 41 countries and was held as an alternative to the 19th International AIDS Conference in Washington as the United States had refused entry to sex workers.

Freedom of movement and to migrate

Freedom to access quality health services

Freedom to work and chose occupation

Freedom to associate and unionize

Freedom to be protected by the law

Freedom from abuse and violence

Freedom from stigma and discrimination

Concluding Remarks

Decriminalisation without the imposition of a license or registration has achieved better regulatory outcomes in terms of sex worker health and wellbeing, preventing large scale corruption and protecting neighbourhood amenity than has occurred in other jurisdictions that have adopted a licensing (with and without registration) approach. As previously stated, there is no clear need or evidence for a license and/or registration to operate a sex industry premises, because:

- the sex industry is a low risk activity already highly regulated and a license would be an unnecessary duplication of costs and legislative requirements that would negatively impact on compliance and previously successful public health outreach initiatives by SWOP, et al;

- the broader generic legislative framework is sufficient to address any perceived risk or problem that would otherwise be targeted by a 'license';

- it would duplicate regulatory functions performed by other agencies and authorities which would inevitably lead to confusion and a multiplicity of similar regulatory requirements;

- It would contradict the aim of the IPART to cut red tape and reduce the regulatory burden particularly when IPART itself acknowledges submissions to their Issues Paper and Draft Report suggest that "**alternatives to licensing may be more appropriate** to address the NSW Government's policy objectives in this area;

- under decriminalisation there are more effective regulatory and non-regulatory alternatives with lower net costs and greater net benefits to the sex industry, their clients and society generally;

- if a license or registration were to be imposed on individual sex workers it would have an unjustifiable and disproportionate impact upon their human rights - let alone being dangerous, unworkable and lead to a dramatic increase in the potential for corruption;

- a license would be excessively burdensome on sex industry operators and would impose unnecessary costs on businesses, their clients and the community;

- licensing would act as a disincentive to current or prospective business operators. By unduly restricting or deterring new operators from entering a market through the introduction of additional layers of invasive and costly red tape, thereby impeding competition to the detriment of consumers, staff and the broader community;

- it would impede otherwise successful consultation processes, particularly with sex workers which is a key to implementing the best, most workable policies, that are tolerated by the community and benefit the most people;

- sex workers as a population group enjoy better levels of sexual health than the general population in NSW and a licensing or registration regime would risk these outcomes;

- under decriminalisation violence against sex workers has decreased, and workplace crime is rare, isolated and usually reported and prosecuted;

- There is no evidence of a nexus between the sex industry and crime. We refer to the planning principles in Martyn v Hornsby Shire Council in which Senior Commissioner Roseth noted "...there is no evidence that brothels in general are associated with crime or drug use. Where crime or drugs are in contention in relation to a particular brothel application, this should be supported by evidence[18]." and

- under decriminalisation, although there has been diversification and more options creating competition, the scale of the sex industry hasn't increased.

[18] *Martyn v Hornsby Shire Council* [2004], NSWLEC 614

Finally, the definitive word on sex industry licensing comes from The Kirby Institute's 2012 Report to the NSW Ministry of Health, which states that licensing is a ***'threat to public health'*** and should not be regarded as a viable legislative model[19].

We thank you for your consideration of the issues we have identified in this submission. We look forward hoping for a final outcome that recognises the multiple benefits of the amendment to the Disorderly Houses Act in 1995 which decriminalised brothels and handed regulatory responsibility to local government but also acknowledges the problems inherent in the those responsibilities.

With respect, the overarching question to be asked, based on all of the evidence available, is "What can promote safe working conditions and labour rights for all sex workers, maintain residential amenity, 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 help combat exploitation and coercion if and when it does occur? The answer is resoundingly "Decriminalisation", the existing model, with further improved implementation.

Overarching Recommendations

1. **Clearly separate the regulation of home-based sex workers with that of commercial SSP and regulate them equally to other home-based enterprises under the Codes SEPP.**
2. **Create a directive to local councils to cease taking enforcement actions under the EP&A Act until the following steps have been undertaken:**

    a) The production and endorsement of updated SSP Planning Guidelines for all local councils

    b) The production of community resources to assist councils, the sex industry and the public in understanding the rationale of planning policies – in a range of community languages.

    c) The development and facilitation of training and advisory opportunities to inform councils and the sex industry of the application of the updated SSP Planning Guidelines

[19] 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, p.7

‘AT RISK’
SEX WORKERS
GAP ANALYSIS REPORT

BB
PROFESSIONAL
SERVICES

PREPARED FOR
THE HIV/AIDS & RELATED PROGRAMS UNIT
NOVEMBER 2011

NSW GOVERNMENT Health
Illawarra Shoalhaven
Local Health District

NSW GOVERNMENT Health
South Eastern Sydney
Local Health District

BB PROFESSIONAL SERVICES

SOUTH EASTERN SYDNEY AND ILLAWARRA HEALTH REGION GAP ANALYSIS 'AT RISK' SEX WORKERS REPORT

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South Eastern Sydney and Illawarra Health Region

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- Invaluable assistance from the SWOP Multi-cultural Team
- Co-operation from the sex services business operators who admitted us to their premises
- Complete co-operation from all Sexual Health Services and the HARP Unit
- Useful insights from the considered comments of other stakeholder informants.

Without all this high quality input, we would have no report.

We dedicate this report to our friend and colleague, Dr Christine Harcourt, who devoted her professional life to social justice and sensible public policy in relation to the Australian sex industry. We were privileged to know and collaborate with Christine on this her last project. Despite her ill health, her contribution was substantial and meticulous.

Rigmor Berg and Julie Bates

0 EXECUTIVE SUMMARY

Effective engagement with the most at risk of sex workers is difficult and labour intensive work that requires appropriate staffing and resources, whole of government co-operation and collaboration with the community sector.

Groups most at risk and not in contact with SHSs

This gap analysis has identified three main groups or clusters of sex workers who may be at greater risk for HIV/STIs and not in contact with sexual health services:

- sex workers from culturally and linguistically diverse backgrounds
- sex workers with complex needs (including street-based, Aboriginal and transgender)
- male sex workers.

Factors that may increase risk for any sex workers include:

- working in isolation
- not identifying as a sex worker
- working in circumstances not clearly defined as legal.

Current changes in planning regulation at local government level have potential to greatly increase risk for brothel workers and/or private workers in some LGAs, but there is opportunity for input by NSW Health and Police to prevent this happening.

Sex workers from a CALD background

Those who are at greater risk and least likely to be accessing sexual health services tend to be those who are:

- young and recently arrived (in Australia and/or the industry)
- with poor English language skills
- under contract and frequently moving from one sex services premises (SSP) to another
- working in SSP without appropriate development approval.

The Multicultural Program at Sydney Sexual Health Centre currently provides an excellent clinical service to many sex workers from a CALD background. Some prefer to access non-language clinics at the Kirketon Road Centre (KRC), Port Kembla Sexual Health (PKSH) or private practices.

Sex workers from a CALD background are generally aware of sexually transmissible infections as an issue and that use of condoms can prevent transmission. However,

- many are less aware of the need to use condoms for oral sex as well as vaginal sex and other safe sex measures
- those new to the industry lack skills for negotiating safe practices with clients
- some are not well supported to insist on condom use in their workplaces
- those new to the industry have little knowledge of available sexual health and peer support services.
- many need visa advice.

Sex workers from a CALD background who work in the Illawarra are less likely to access their local SHS than those who work in Sydney, but some may be accessing sexual health

services in Sydney or other capital cities as they travel around and some may use private GPs.

Current barriers to CALD sex workers accessing sexual health services include:
- lack of awareness of services
- limited English language skills
- visa concerns.

The most effective strategy for improving the knowledge and skills of sex workers from a CALD background and bringing these sex workers into contact with sexual health services is joint outreach with multicultural outreach workers. However, this activity is currently too infrequent for each SSP to reach many sex workers from a CALD background due to:
- the limited hours available from a small team with state-wide responsibility
- the high turnover of workers in CALD SSP
- in the Illawarra and St George district, restricted staff hours and lack of a dedicated outreach vehicle.

To improve sexual health access to sex workers from a CALD background will require action on several levels:
- there is need for more multicultural peer support / health promotion workers
- there is need for information to be made available in more non-English languages
- all sexual health services should have access to the SWOP website
- there is need for a program and resources targeting owners and managers from a CALD background to make their rights and responsibilities clear to them
- there is need for health promotion resources for clients from a CALD background in non-English languages that declare and explain the need for safe sex policies and practices.

Sex workers with complex needs

Sex workers with complex needs mainly do street-based sex work, but some work in brothels or opportunistically. They are more likely to be at risk and less likely to be in contact with sexual health services due to diverse personal and circumstantial issues that can make them more vulnerable, such as AOD dependency, mental health issues, homelessness, intellectual disability and disadvantage related to minority group membership.

Core problems increasing risk for street-based sex workers (SBSW) include:
- closure of effective safe houses
- police moving SBSW on to more dangerous streets
- in the Illawarra, the best access point (Darcy House) being now dominated by homeless men.

There is need for:
- more active outreach
- more outreach workers/worker hours, including transgender, Aboriginal
- more effective liaison with and training for Police
- a more holistic approach to the health and related needs of those who do present.

In the Illawarra specifically, there is need for
- a dedicated outreach vehicle and late hours SHS staff time
- more ACON/SWOP outreach worker hours
- a women's safe space access point.

Male sex workers

MSM sex workers are at greater risk for HIV/STIs because

- they generally work in isolation and are less likely to be in contact with sex worker organisations to increase their knowledge and receive peer support
- there is higher prevalence of HIV and other STIs amongst their client population, that is gay men, than in the general population
- there is greater awareness and concern about HIV than other STIs in this population, but some HIV risk reduction strategies that are widespread within the gay community do not provide adequate protection against other STIs.

MSM who identify as sex workers include some brothel workers and a few SBSW, but most of them work privately, advertising for clients in gay print media and on the internet. However, the population of MSM who occasionally opportunistically receive payment or favours for sex is probably much larger than the population of identifying male sex workers[1] and they may be more likely to take risks than professional sex workers.

For those who identify as sex workers, useful strategies would include:

- collaboration with the SWOP male health promotion outreach worker engaged in active outreach to all advertising male sex workers
- providing a dedicated MSM clinic with male sexual health nurse
- promotion of free, confidential, no Medicare card sexual health services in gay print media and on Gaydar commercial, if possible
- offering a text message sexual health testing reminder service.

For non-identifying MSM working opportunistically, useful strategies would include:

- collaboration with ACON SOPVs outreach worker
- seeking opportunities to trial outreach clinics in SOPVs for any men attending.

Legislative and regulatory context

It is not possible to address sex workers who are at risk for HIV/STIs and not in contact with sexual health clinics without giving some attention to the legislative context in which they work, particularly the way the law is interpreted and implemented at the local government level and Police responses in specific locations, as well as the stigma and consequent discrimination that remains despite the legal standing of the industry. Sex workers are highly mobile and those from overseas or interstate may have very poor understanding of their rights and responsibilities under NSW law. Even long term NSW residents can be confused.

The sex industry is not illegal in NSW, but regulated, with responsibility divided between local government, WorkCover and NSW Health, with a limited Police role. Variations in the ways these responsibilities are discharged can increase or decrease the vulnerability of particular categories of sex worker and affect their willingness and ability to access government services including sexual health clinics and to seek Police assistance.

This gap analysis has been undertaken at a time of change in planning regulation at state and local government level that will affect the sex industry and may result in significantly increased vulnerability of sex workers including private workers, massage workers and brothel workers in some LGAs unless effective input from health authorities ensures that public health issues are given due consideration.

[1] Prestage GP, McCann PD, Hurley M, Bradley J, Down I, Brown G. (2010). Pleasure and sexual health: the PASH study

Recommendations

General

This gap analysis has been undertaken at a point in time when there are opportunities, not only to improve services' access to sex workers who are at risk for HIV/STIs, but also to systemically influence some contextual factors that contribute to these risks.

1 Many actions that could be taken by sexual health services (SHSs) to improve their access to sex workers who are currently at risk for HIV/STIs depend upon increased availability of SWOP outreach workers, including the multi-cultural team, the male, transgender and Aboriginal outreach workers and general female outreach workers, including the SWOP outreach worker based at ACON Illawarra. As SWOP does not have the funds to employ more staff it is recommended that the HARP Unit supports any SWOP applications towards expanding their outreach team hours, particularly funds for staffing the multicultural team and Illawarra SWOP worker hours.

2 To improve access for sex workers who work at night and sleep through most of the day, it is recommended that SHSs:

a) actively promote to sex workers the days when clinics are open for extended hours
b) trial providing clinical services on a drop in basis, with no appointments necessary, on the extended hours day
c) consider introducing a telephone system that provides a call back option, to prevent potential clients being lost due to time on hold exceeding their mobile phone credit.

3 It is recommended that SHSs offer to provide sexual health testing reminder text messages at agreed intervals to all sex workers attending their clinics.

4 It is recommended that the HARP Unit facilitates some sensitivity training for SHSs staff, where necessary to ensure they are equipped with:

a) accurate information concerning the legal rights and responsibilities of HIV positive sex workers
b) a protocol for serving HIV positive sex workers that will allow them to feel safe under the Public Health Act in accessing sexual health services.

5 It is recommended that the HARP Unit makes both oral and written submissions to the Review of the Environment Planning and Assessment Act recently initiated by the NSW Government, explaining the public health and safety issues that should be considered in relation to regulation of the sex industry and the need for consistency with the National HIV and STIs Strategies.

6 It is recommended that the HARP Unit makes submissions to all Local Government Councils in relation to their uptake of the Standard Instrument Local Environment Plan (SILEP), explaining the public health and safety implications if they do not accord with the National HIV and STIs Strategies, addressing SSPs, SBSW and HO(SS), ie private workers.

7 It is recommended that the HARP Unit initiates via the AIDS and Infectious Diseases Branch and supports more effective and higher level liaison between government sectors to support better sharing of information and training opportunities in relation to the sex industry, involving clinical services, SWOP, Police and local government Councils.

8 It is recommended that the HARP Unit via the AIDB seeks interdepartmental collaboration on development of best practice guidelines for regulation of the sex industry, which may include review and revision of the *Sex Services Planning Guidelines*.

CALD

Identified keys to outreach workers gaining access to CALD SSP include:

- strict confidentiality and clear separation from government authorities including Police, Council and Immigration
- providing resources and information that are useful to the SSP owners and/or managers as well as information, resources and services useful for sex workers
- using bilingual peers (people with sex work experience) to support and inform sex workers from CALD backgrounds.

9 It is recommended that the HARP Unit advocates to the AIDB that they secure funding and request collaboration with SWOP, SHSs and WorkCover in:

a) reviewing and revising *Health and Safety Guidelines for Brothels,* as necessary to be consistent with new legislation and Council regulations and to meet CALD owner/operator information needs in English and relevant non-English languages
b) developing an education program for SSP owners and managers, addressing:
   - rights and responsibilities under NSW legislation and local government regulations
   - best practice for occupational health and safety in SSP
   - the free and confidential services provided in sexual health services and
   - the benefits of peer support by SWOP outreach workers for their staff.

10 It is recommended that the HARP Unit and SHSs support as needed:

a) An increase in multicultural peer support / health promotion outreach team hours (Recommendation 5 above).
b) Produce information resources that declare and explain the need for safe sex policies and practices to CALD SSP clients in relevant non-English languages.
c) Produce new sexual health information resources for CALD sex workers
d) Scarlet Alliance in translation of their *STI Handbook* (known as "the Red Book") into further non-English languages, to be made available on-line if not in hard copy.

11 Because it was reported that SHS staff cannot access the information available in Chinese, Thai and Korean on the SWOP website because sites with "sex" in the title are blocked, it is recommended that the HARP Unit ensures that all SHS staff do have access to SWOP and all other websites relevant and helpful to their work in their workplace.

12 It is recommended that the HARP Unit:

a) develops simple promotional resources in English, Chinese, Korean, Thai and other relevant languages (identified in consultation with SWOP):
   - declaring that free sexual health testing and advice, pap smear test for cervical cancer and pregnancy tests, are available without need for a Medicare card
   - giving SHS locations and open hours for language and general clinics
   - any appointment requirements and contact details
   - and continue to not specify on promotional materials that this service is for sex workers.
a) seeks permission for these promotional resources to be displayed in English language and other private colleges, universities, TAFE colleges and ethnic community and other community centres and backpacker accommodation.

13 It is recommended that Thai, Chinese and/or Korean language skills, as needed, be listed as desirable skills amongst selection criteria for SHS clinical staff and that key signage in SHSs be provided in Thai, Chinese and Korean, as well as English.

Complex needs

To improve SHS access to sex workers with complex needs, need was identified for:

- more active outreach to the street, particularly in the Port Kembla area, and to a small number of SSP known to provide inadequate support for safe sex practices
- more effective and higher level liaison, information exchange, training opportunities and referral resources for use by Police
- a more holistic approach to the health and related needs of sex workers with complex needs who do present
- extended hours and access without appointment, with incentives to attend
- sexual health training for disability support service providers and carers.

14 It is recommended that the HARP Unit develops, in collaboration with a few key agencies that serve SBSW and cater to basic needs of IDU and other people with complex needs and in consultation with Police, referral print resources that explain in simple English:

a) that SHSs offer free sexual health testing, including pap smear tests for cervical cancer, without need to produce a Medicare card or make an appointment, free condoms and needle exchange, mentioning locations, open hours and contact details, but again not specifying the service is for sex workers
b) locations, hours and contact details for agencies that provide free food, free clothing, personal and clothes washing facilities and/or assistance with accommodation or income support problems.

15 It is recommended that the HARP Unit seeks permission for these promotional resources to be displayed and/or distributed by needle and syringe programs, relevant welfare and related services and community centres and provided by Police to sex workers they encounter in the course of their duties who are in need of such referrals.

16 It is recommended that, as appropriate, sex workers who attend SHS clinics be offered pap smears, Hepatitis B vaccination, Hepatitis B and Hepatitis C testing and treatment, pregnancy testing and supported referral to services that can help with other basic needs like food, clothing, shelter, as well as counselling and assistance in relation to drug treatment programs, accommodation and income support.

17 It is recommended that the HARP Unit advocate for SWOP in support of any application towards expanding their outreach team hours, particularly for the multicultural team and Illawarra SWOP worker, but also maintaining adequate hours for the transgender, Aboriginal, male and female workers.

18 It is recommended that Port Kembla Sexual Health Service:

a) seeks funding for a dedicated outreach vehicle
b) approaches community centres in Warrawong and Port Kembla about the possibility of trialling a monthly afternoon outreach clinic for women in their premises
c) trials an outreach clinic in a community centre for any women attending who wish to participate (without need to identify as a sex worker) in collaboration with the ACON/SWOP outreach worker, providing a pickup service, activities of interest to the target group and incentives to attend, as well as sexual health testing.

19 It is recommended that Short St Clinic:

a) seeks funding for a dedicated outreach vehicle
b) trials a drop in clinic at later hours one day per month
c) promotes the late hours drop in clinic to sex workers, without identifying it as being specifically for sex workers.

MSM

Access by SHSs to male sex workers, who mainly work privately in isolation, can best be achieved through collaboration with SWOP. SWOP's male outreach worker actively seeks out male sex workers and has constructed a "male-out" contact list. The most effective way for SHSs to reach this population would be to develop a small promotional resource that can be included in SWOP's "male-out".

20 It is recommended that the HARP Unit supports the SWOP Male-out Project as needed and, in consultation with SWOP, develops a small SHS promotional resource that can be included in SWOP "male-outs". This resource should specify:

- SHS locations, contact details, appointment requirements if any
- day/s when a male sexual health nurse will be on duty, where applicable
- that the service is confidential and no Medicare card is required.

21 It was identified that many MSM who do not identify as sex workers may occasionally accept payment for sex when it is offered by men they encounter in sex on premises venues (SOPVs) or gay social networking websites. It is therefore recommended that the HARP Unit and/or SHSs, in consultation with ACON, place advertisements for dedicated MSM sexual health clinics:

- in the gay press
- on gay social networking sites, if permitted
- at sex on premises venues, if permitted.

22 Some MSM sex workers prefer to see male clinicians. It is therefore recommended that SHSs trial a dedicated MSM clinic with a male sexual health nurse on duty and promote this via the SWOP "male-out".

23 It is recommended that in keeping with current good practice all sexual health testing of MSM includes oral and anal samples and that safe sex education provided should emphasise STI risks inherent in unprotected oral sex.

24 It is recommended that the HARP Unit/SHSs, in collaboration with ACON's SOPV outreach worker, seek opportunities to trial outreach clinics in sex on premises venues.

1 INTRODUCTION

The brief

The HIV/AIDS and Related Programs Unit (HARP) of South Eastern Sydney and the Illawarra Shoalhaven Local Health Districts provides strategic leadership for local and state-wide services in HIV/AIDS, sexual health and hepatitis C prevention and care programs. In 2007, the HARP Unit undertook the HARP Redesign Project in partnership with Area Redesign Unit and external consultants. Outcomes from the project include improving patient journeys; a workforce that is better equipped to manage the challenges of delivering the highest quality care to patients; and sustaining a culture change that promotes adequately resourced ongoing improvements in HIV and STI health service provision. The HARP Redesign Project focused on five solution areas. One of these areas was enhancing access to HIV and sexual health services for priority populations. The term 'access' relates not only to treatment and care services, but also health promotion, screening, prevention and testing services. Sex workers are documented as one of the priority groups in the *NSW HIV/AIDS Strategy 2006-2009* and in the *NSW Sexually Transmitted Infection Strategy 2006-2009.* To support this redesign, several gap analyses addressing specific priority populations were commissioned.
The present gap analysis was required to:

- identify characteristics, needs and barriers for sex workers at increased risk of HIV/AIDS and STIs who are not accessing HARP funded HIV/AIDS and STI services in SESIH
- provide recommendations for how SESIH services can better target/improve access to sex workers who are at increased risk of HIV/AIDS and STIs
- identify support strategies for the successful implementation of the recommendations.

This gap analysis will inform the aims of the HARP Redesign/Service Development Projects:

- To improve service delivery, equity of access to services and parity of care for individuals with HIV/AIDS and/or STIs, their carers, and those at risk of being exposed to or contracting HIV/AIDS and/ or STIs;
- To decrease the rate of newly acquired HIV and STIs in accordance with outcome targets set by NSW Health;
- To enhance access to services for priority populations, those at higher risk and those that are difficult to engage;
- To develop performance indicators and measurement systems that will enable monitoring of changes and their effectiveness; and
- To develop solutions that will be sustainable beyond the time frame of the project.

Sources and methods

Information for this gap analysis has been gathered from the following sources, using the methods outlined:

1. Review of relevant strategic documents and research literature

2. Consultations (face to face, by phone and/or email) with a range of stakeholders and relevant experts (listed as an appendix) including:
   - HARP Unit
   - relevant HIV/AIDS & Sexual Health Service Directors and staff including Sexual Health Nurses, Nursing Unit Managers, Counsellors and Health Education Workers and committees
   - SWOP, Scarlet Alliance and some interstate/overseas sex worker organisations

- ACON, AFAO and NUAA
- NSW Police
- Local government Councils
- Other service or advocacy agencies in contact with particular categories of sex workers
- Sex industry business owners and managers.

3. Individual interviews with and observation of more than 30 sex workers including:
   - 15 sex workers from a CALD background (Chinese, Thai, Korean, Japanese, Malaysian, Cuban, Indonesian, Indian, South American, Eastern European)
   - 2 Aboriginal sex workers
   - 4 male sex workers
   - 3 transgender sex workers
   - 6 street-based workers
   - 18 brothel-based workers
   - 5 private workers
   - 1 HIV positive worker.

   This project is qualitative in nature and the sex worker sample consulted is very small. It should not be confused with large sample research projects that can describe the distribution of attitudes and practices with reasonable certainty. It is also noted that it is extremely difficult in a short time frame to gain trust and find opportunities to talk effectively with some of the most vulnerable of sex workers, so many of those interviewed are somewhat less vulnerable and safer in their practices than some other members of their respective groups.

   The methodology used has been sufficient to identify several clear priority target populations and some of the reasons they are more at risk than other sex workers and less likely to access sexual health clinics, as well as some strategies that may help to improve access to these groups and the appropriateness of services to meet their needs.

Sex workers who are at risk for HIV/STIs and unlikely to access sexual health clinics

Before addressing sex workers who are at risk for HIV and/or other STIs and unlikely to access sexual health services, it must be acknowledged that most Australian sex workers are well informed, safe in their sex services practices and most do access sexual health testing services routinely and/or in response to any incident that may have put them at risk. Some access government sexual health clinics, while others receive adequate sexual health clinical services elsewhere.

"I do know what I'm doing and I know I'm not at any risk, so I think it's up to me to decide if and when I need STIs testing. When I think there has been some risk, I see a GP I trust, who knows what he needs to know about me."
(private sex worker, about 40)

The literature (reviewed in the following chapter) identifies three main groups of sex workers who are most likely to be at risk for STIs including HIV and least likely to be in contact with sexual health clinics: CALD sex workers, street-based sex workers and male sex workers.

Comments by informants to this gap analysis (see a selection quoted below) were generally consistent with this conceptual grouping, but in the following chapters they are addressed in the following three clusters:

- sex workers from a CALD background who mainly work in brothels
- sex workers with complex needs such as: AOD, mental health, intellectual/cognitive disability and minority group disadvantages, who mainly do street-based sex work, but can also be found in a few brothels
- male sex workers, who mainly work alone, some advertising their services in gay print media or online; others finding clients opportunistically through gay social websites or at sex on premises venues (SOPVs).

Across all sectors of the sex industry, the literature suggests a number of characteristics that may increase risk: sex workers who are young and/or new to the industry may be vulnerable if they are not in a supportive work environment where information, safe sex supplies, self-protective strategies and peer support are provided. Those in workplace locations that are isolated and/or where their right to conduct sex work is disputed are vulnerable to exploitation, coercion and force. HIV positive sex workers may be more at risk for other STIs and are unlikely to disclose that they are sex workers when they access health services.

Comments from various informants, identifying the sex workers they perceive to be most at risk for HIV/STIs and unlikely to access sexual health clinics, follow.

"Drug users are less capable of insisting on safe sex. New workers without opportunities for peer education/support and support from management... Drug users and new workers (are least likely to access sexual health services)."
(CALD brothel owner, Sydney)

"I believe the sex workers who are most at risk are those with mental illness and intellectual disabilities. Teaching women who are living with these challenges is not an easy task and building trust needs to be addressed first and foremost."
(community worker, Illawarra)

"(Transgender workers) who are private workers, migrants and new to the industry."
(Gender Centre)

"The most vulnerable population ... that are the focus of our activity are the street-based sex workers of Port Kembla... Homeless, sex workers unable to maintain housing - those with mental health issues are the primary group with D & A co-morbidity issues."
(ACON/SWOP Illawarra)

"(Our) clients tend to have an intellectual disability and complex mental health needs. This leads them to being extremely vulnerable members of the community...
(disability care organisation)

While it is convenient to address the reasons underpinning vulnerability and strategies for improving access to services in relation to a few "at risk groups", it must be acknowledged that there are many exceptions within each of these categories as well as areas of overlap, so it is generally unwise to make assumptions about individuals based on a few personal characteristics or choice of workplace.

"There's a lot of girls doing it without a condom, head jobs mainly, (but) there's no way for $50 I'd risk 30 years of my life. Come on! Get herpes or die for $50!... There's no way I could get an STI (through sex services I provide), but I get tested anyway. I was a Medicine student, but I didn't finish. I was in a car crash and started using morphine."
(Indonesian street-based sex worker, IDU, about 30 years)

2 LITERATURE REVIEW

Background

History and distribution of sex workers in South Eastern Sydney Illawarra Region
Those parts of the City of Sydney which are covered by South Eastern Sydney Illawarra Region have for two centuries had a high concentration of sex industry activities. During much of the twentieth century street-based sex work, small-house brothels and latterly 'massage parlours', were heavily concentrated in this part of the metropolis. However from the 1970s changing laws and demographic developments in Sydney led to a much more diverse and more widely distributed industry.[2] Successive moves toward decriminalisation of sex work from 1979 led eventually to local government exercising planning control over brothel (and 'massage parlour') location, an increase in the number of male and female private sex workers, and police and public pressure to reduce numbers of street-based sex workers.

Since the brothel-based sex industry was finally decriminalised in 1995, over 60 brothels have received development approval within the City of Sydney (the majority within the Central and Eastern suburbs).This number far exceeds similar approvals in other local government areas (LGAs). Marrickville has the next highest concentration with about 15 approved brothels.[3] Many LGAs have none at all.

In addition to approved brothels within South Eastern Sydney Illawarra Region, most LGAs have a few unapproved premises, some seeking approval and others operating undercover, prepared to relocate at short notice. There are significant but unknown numbers of private sex workers, escorts (call girls), street based sex workers, and also club and bar workers who occasionally provide sexual services. Other premises, still classified as 'brothels', provide non-penetrative sexual services (erotic massage).

Southern municipalities within South Eastern Sydney Illawarra Region have fewer recognised brothels but nevertheless the sex industry is well represented in these areas. There is also a busy and diverse sex industry including street-based sex workers in Wollongong and its region.

Numbers of sex workers
The literature does not provide an estimate of the numbers of sex workers in the South Eastern Sydney Illawarra Region but notes that estimates of the total number of sex workers in NSW have varied widely from between 2-3,000 up to 10,000.[4] There are good reasons for this variation in that most sex work is performed covertly, many sex workers work sporadically or for only a short period in their lives, and relatively few self-identify as sex workers because of the stigma that still attaches to such work in spite of the industry having been decriminalised for over 15 years. Private sex workers by definition represent a hidden but probably growing population. Businesses employing sex workers are often transitory, small scale and present a low profile in the public domain. It is apparent however from brothel approvals, sex worker clinic attendances and the work of the Sex Worker Outreach Project (SWOP) that many hundreds of sex workers live and work within South Eastern Sydney Illawarra Region.

[2] Donovan et al 1996.
[3] Harcourt; unpublished.
[4] *HIV/AIDS Strategy:* 34

Between the years 1992 and 2006 Sydney Sexual Health Centre (SSHC) recorded 3,834 female sex workers attending for the first time. Between 2002 and 2006 1,110 individuals attended for follow up visits.[5]

Profile of HIV/AIDS and STIs in South Eastern Sydney Illawarra Region

Rates of HIV and STI are generally higher in the South Eastern Sydney Illawarra Region than in other health areas and this reflects the concentration of populations at risk within this area of Sydney.

The *HIV/AIDS Care and Treatment Services Needs Assessment* notes that NSW is the state with the highest numbers of people with HIV. While 63% of all HIV notifications in NSW were among gay and homosexually active men, the *HIV/AIDS Strategy* states that notifications for people of CALD background increased to 20% for 2000-2003. Heterosexual contact is a major source of transmission in this population and individuals often present late for diagnosis. It is also noted that HIV infection in Aboriginal people may well be under-reported as a result of poor access to health services.

The NSW Health NSW HIV/AIDS, sexually transmissible infections and hepatitis C strategies: implementation plan for Aboriginal people (2006 – 2009), (p.3… reports that 'in 14 percent of notifications of HIV in Aboriginal people heterosexual sex was reported as the primary exposure, 32 per cent reported injecting drug use and 46 per cent reported male homosexual sex, compared to 17 per cent, 4 per cent and 70 per cent, respectively, of notifications in non-Aboriginal people'.

Notifications for STIs have been increasing since the mid 1990s. In 2004 South Eastern Sydney had the highest rates of gonorrhoea (66 per 100,000) and infectious syphilis (159 per 100,000) and the third highest rate of Chlamydia (210 per 100,000) of all NSW Areas.[6] *The STI Strategy* notes the '*significant overlap'* with priority groups in the *HIV/AIDS Strategy* and its links with the *National Sexually Transmissible Infectious Diseases Strategy* 2005-2008 and the *National Aboriginal and Torres Strait Islander Sexual Health and Blood Borne Virus Strategy 2005-2008*.

Sex Workers as Priority Populations

Both the *HIV/AIDS Strategy* and the *STI Strategy* list sex workers among their priority populations for targeted health care and health promotion. The *HIV/AIDS and Related Programs Unit* (*HARP)* also recognises sex workers as a priority group.[7]

The *HIV/AIDS Strategy* priority target populations are:

- *gay men and other homosexually active men*
- *people living with HIV/AIDS*
- *people from priority culturally and linguistically diverse backgrounds*
- *Aboriginal people*
- *people who inject drugs*
- *sex workers.*

The *STI Strategy* has similar priorities with the addition of:

- *young people*
- *heterosexuals with recent partner change,*

[5] Donovan et al 2009.
[6] *STI Strategy*
[7] HARP Plan

Sex workers are vulnerable to heightened sexual health risks because of their work. Additionally some sex workers are at greater risk because of their backgrounds, work conditions or behaviour. Sex workers and their clients come from very diverse backgrounds and in many instances individuals share characteristics with one or more of the other priority target populations, including gay and other homosexually active men, injecting drug users, Aborigines and, importantly people of CALD (mainly South East and East Asian) backgrounds. Many sex workers still work in very unsatisfactory conditions and, as with all other groups, new people with less knowledge and awareness are constantly moving into the industry.

There is evidence that in the past decade there have been some significant changes in the sex industry in this state which potentially increase the risks to the sexual health of sex workers and to their occupational health and safety. These include:

- A large increase in the number of brothel-based sex workers for whom English is a second language. These women mostly come from Asian countries including Thailand, China and Korea.[8]
- Many brothels staffed exclusively with transient migrant sex workers who have little or no contact with other sectors of the industry.[9]
- A probable increase in the number of small, poorly-run brothels operating without prior council approval.[10]
- The dispersal of street-based sex workers from the inner city to more inaccessible areas in the suburbs.[11]
- Reluctance of many Councils to implement recommended best practice policy for brothel approvals.[12]
- Confusion over the status of massage parlours that offer 'erotic massage only'. They are classified as brothels under the law and may attract charges under the *Summary Offences Act* if advertised as 'Massage Parlours'.
- The proliferation of varieties of non-penetrative sex (including phone sex) which may nevertheless have some harm associated.[13]

There has also been an (unquantified) increase in the number of Australian born sex workers working privately from domestic premises. Private sex workers are usually mature people who are careful about their health and safety. However their work methods possibly expose them to violence and or exploitation by clients, neighbours or officials, especially where their right to conduct sex work at home is disputed. Similar concerns are raised by the increasing tendency for male sex workers to contact clients via the Internet thus potentially reducing their power to control and assess clients adequately. Sex workers present a more decentralised and mobile population than ever before and this *create(s) new challenges in reaching home-based and mobile populations.*[14]

The HIV/AIDS Strategy highlights the need for vigilance, pointing out that other developed countries have experienced *sudden increases in HIV infection …. when investment in prevention is wound back or fails to keep pace with changes in the communities themselves.*[15]

[8] Donovan et al 2009
[9] STI Strategy
[10] Donovan et al 2010
[11] Harcourt et al 2001
[12] Donovan 2010
[13] STI Strategy
[14] STI Strategy:21
[15] HIV/AIDS Strategy:7

Responses to HIV and STIs in the South Eastern Sydney and Illawarra Region

While acknowledging that NSW is the state with the highest numbers of people with HIV the *HIV/AIDS Care Assessment* also notes that SE and Central Sydney have the highest level of funding and concentration of HIV related services in the state. There are also good services for the treatment and management of STIs, sexual health promotion and outreach, targeted toward sex workers and their clients.

Community organisations

Sex workers themselves initiated very early changes in the industry in response to the HIV/AIDS epidemic in the early 1980s. By 1985 there was a well organised and efficient community-based outreach and advocacy organisation (Australian Prostitutes Collective) which successfully encouraged and enabled sex workers to use condoms consistently, promoted the adoption of industry regulated best work practices and lobbied for the decriminalisation of the sex industry. STI rates among sex workers fell dramatically from this period and have remained low ever since. Even more impressively there were very few sex workers diagnosed with HIV and no reported cases of HIV transmission within the industry.[16]

The APC received government funding in 1986 and was reorganised and refunded as *SWOP* in 1990 to carry on the work of peer based health education and promotion and advocacy for sex workers; SWOP is the *leading community-based organisation for HIV, STI and hepatitis C prevention for sex workers in NSW. SWOP conducts outreach both day and night to sex industry workplaces. SWOP is also active in lobbying for relevant law and health services reform. SWOP designs and produces many sex work related resources, offers confidential counselling and support, HIV and sexual health information, and health and workplace safety information.* (SWOP website)

Scarlet Alliance, the national association of sex worker organisations is also based in Sydney NSW. *Scarlet Alliance* is an effective lobby group and produces a large number of resources for sex workers. It also conducts and publishes research, and provides information and assistance to overseas sex worker organisations.

The *Sexual Health Outreach Workers Network (SHOWNet)* advises on the activities of *SWOP,* health services and other service providers to deliver outreach programs effectively to sex workers throughout NSW. [17]

Sexual Health Services

As part of the response to AIDS the Federal government and NSW Health opened many more sexual health centres during the 1980s, several of them in what is now South Eastern Sydney Illawarra Region.[18] Centres with a significant sex worker clientele have opened up specialist sex worker clinics that offer friendly non-judgemental and confidential service encouraging appropriate check up and testing to maintain sexual health.[19] These clinics work closely with SWOP and provide referrals, counselling, interpreter and other services. The largest clinic at SSHC cooperates and shares multilingual staff with SWOP through its separately funded Multicultural Unit, specifically to provide services and outreach to sex workers from CALD backgrounds.[20] Sexual health centres at St George Hospital and Port

[16] Donovan et al 1996
[17] STI Stategy:7
[18] Donovan et al 1996; STI Strategy: 7.
[19] STI Strategy; Donovan et al 2010.
[20] Harcourt et al 2010

Kembla Hospital provide sexual health services to sex workers in the Central and Southern part of the Area.[21]

The Kirketon Road Centre (KRC) in Kings Cross, was established in 1987 in response to recommendations of the *Parliamentary Select Committee Upon Prostitution* (1986). It offers general medical services, HIV, Hep C and STI screens, NSP, methadone access program, counselling and referrals for people who live and work in its vicinity including street based sex workers, injecting drug users, homeless young people and others with special needs and few resources. Its clientele includes some of the more marginalised and least accessible sex workers within the Area (such as Aboriginal people, young people and injecting drug users). These are not well represented at SSHC where the great majority of attendees are female brothel workers. In street-based sex worker sample populations described in 2001, 66.8% of KRC clinic attendees were current injecting drug users, and 13.6 % were Aboriginal. This compared with 7.5% injecting drug users and 0.3% Aboriginal women in an SSHC sample of brothel-based sex workers at SSHC.[22]

In addition to sexual health service development NSW Health has worked with SWOP and WorkCover to develop *Health and Safety Guidelines for Brothels*, a standard manual to protect the health and safety of sex workers and a guide to best practice for brothel owners and managers. Model *Sex Services Planning Guidelines (SSPG)* were prepared by the Planning Advisory Panel on behalf of the NSW Department of Planning to further assist local Government in dealing with Brothel planning applications. When brothels receive planning approval health and safety guidelines are usually incorporated as a condition of approval. Unfortunately the *SSPG* have not been formally endorsed by the NSW Government Planning Department and have been less than well received by LGAs.[23]

Sexual Health outcomes for sex workers.

> *To date, the activities of community-sector sex worker organisations and sexual health services have contributed to a high rate of condom use, frequent sexual health checks among female sex workers and resultant low infection rates.*[24]

The literature does not give rates of HIV/AIDS or STIs for sex workers as a group because negligible levels of infection have been reported for many years now.[25] However, there are significant gaps in the data relating to sex workers in some sectors of the industry including,

> *… data on the number of sex workers diagnosed with HIV/AIDS but notifications among this population are believed to be relatively small.*[26]

The *STI Strategy* expresses concern about the levels of safer sex practised by street-based, CALD, and male sex workers. It states that sex workers must *remain a priority population group to ensure that achievements to date are sustained.*[27]

The *HIV Strategy* similarly is concerned that:

> *Maintenance of the current infrastructure for prevention among sex workers is considered an ongoing priority. At the same time, investment is required in gathering and analysing data that provides a more thorough picture of current prevention practices, service utilisation, and notifications rates among sex workers.*[28]

[21] SESIH Summary of Area Clinical Services Strategic Plan; HARP Plan
[22] Harcourt et al 2001.
[23] Donovan et al 2010
[24] HARP Plan:84
[25] Donovan et al 1996; Donovan et al 2009; STI Strategy: 21
[26] HIV/AIDS Strategy:11
[27] STI Strategy: 20
[28] HIV/AIDS Strategy: 34

Sex worker populations identified in the STI Strategy as being at heightened risk of infection and also (by implication) less well served by existing services, include people working in poor conditions, specifically transgender and Aboriginal sistergirl sex workers who *are often overrepresented among street-based workers.*[29] In a study of street-based sex workers in NSW 20.8% (10/48) reported they were of Aboriginal background. [30] An earlier study of Transgender people found 45% had worked in the sex industry and of these 70% had worked on the street.[31]

Street-based sex workers and male sex workers are *a high priority for clinical services and health promotion in NSW*. [32] Sex workers from CALD backgrounds also require culturally – respectful and appropriate services.

Sex Workers with Higher Priority

CALD Sex Workers

Background

In addition to the listed priority groups the *STI Strategy* also addresses the particular needs of the large CALD population within NSW … *all programs and services should consider the needs of CALD communities.*[33]

Sex workers from CALD backgrounds are currently estimated to comprise more than fifty percent of women working in brothels in Sydney.[34] Between 1992-94 and 2004-2006, the proportion of female sex workers attending SSHC who were Australian born declined from 40% to 20%, their numbers being replaced by overseas–born sex workers. A few of these women come from Europe, South America and the Pacific, but by far the majority come from South East and North Asia, (predominantly Thailand, China and Korea, fewer from Japan, Vietnam and Malaysia).[35] Unlike the broader immigrant CALD communities, these women are often transient visitors working for relatively short periods (3-6 months or so) before returning home, although many make repeat visits. These are mostly mature (median age over 30 years) and reasonably well educated women.[36] They may have been sex workers in other countries before coming to Australia and most have a good awareness of HIV issues and of the need to use condoms consistently. Scarlet Alliance reported that the understanding and support of CALD brothel managers and owners for safer sex practices in their premises has also improved over the past decade.[37] However it cannot be assumed that all brothels are supportive of safer sex given that sex industry premises change hands frequently and many remain covert.

Male and transgender sex workers are also sometimes from diverse backgrounds including South East Asia and the Pacific. Nearly half of the male sex workers in a study at SSHC were born overseas.

For a variety of cultural, language and practical reasons, few female CALD sex workers work privately or on the streets. A survey of street-based sex workers in NSW found only 6.2% of

[29] STI Strategy: 20
[30] Harcourt et al 2001
[31] Donovan et al 2010
[32] STI Strategy: 21
[33] STI Strategy:5
[34] Donovan et al 2010:11.
[35] Donovan et al 2009; Scarlet Alliance 2006.
[36] Pell et al 2006; Scarlet Alliance 2006; Donovan et al 2009.
[37] Scarlet Alliance 2006; STI Strategy: 20

people interviewed were of non-English speaking background compared with 41.2% in an SSHC sample of brothel based sex workers. [38]

Health risks

In the 1990s, studies showed that Asian migrant sex workers were less likely to use condoms than were Australian resident sex workers.[39] Risk factors for prevalent STIs in sex workers attending SSHC from 1992-2006 were Asian origin, younger age, or inconsistent condom use. However by the years 2004-2006 condom use among Asian sex workers had risen to 95% (compared with 98% for Australian-born) and STI rates for all female sex workers attending the clinic were the lowest *ever reported from a population of young Australian women*. …*Incident STIs had become too rare to determine risk factors.*[40]

There is little current evidence that sex workers from a CALD background in SE Sydney have significantly higher rates of infection than their Australian resident peers. However there are a number of additional risk factors that they encounter which may make them more vulnerable to STIs and HIV/AIDS. CALD sex workers and possibly a significant proportion of their clients may come from countries or regions with existing high rates of STI and HIV. HIV notification rates among resident CALD communities are disproportionately high compared with the population at large. Specifically, within SE Sydney and the Illawarra, rates for South/South East Asian and Pacific (37.4%) and North Asian (16.2%) language groups were among the highest reported.[41]

CALD sex worker exposure to high infection rates may be exacerbated by their mobility. Family ties and the time limitations of visas used to enter Australia mean that many CALD sex workers travel back and forth from their homelands several times over a couple of years. A high proportion (over 40%) of sex workers from CALD backgrounds are married and as with other sex workers, they are less likely to use condoms in private life. Workplace support for safer sex is also less certain or non-existent in many overseas countries.[42]

Access and other issues

There are a number of issues confronting sex workers from CALD backgrounds that may prevent them from accessing existing health services and community-based outreach in NSW or from adopting best practice even if they do so.

The STI Strategy observes that:

'*Overseas –born sex workers may be less likely to practise safe sex owing to:*

- *greater pressure to practise unprotected sex*
- *isolation from peer support and information services*
- *isolation within working environments which do not routinely insist on protected sex*
- *reduced skills and knowledge in negotiating protected sex*
- *lack of access to condoms and lubricant.*

These observations are reinforced by an apparent increase in the past few years in the number of small, poorly run brothels operating without council approval. Many of these brothels are fully staffed by short term migrant sex workers and managed by people from CALD backgrounds. There is little opportunity in these environments to improve English language skills, or to clarify misapprehensions about laws, rights and responsibilities in the sex industry in Australia. Furthermore, sex workers from CALD who are unclear about their

[38] Harcourt et al 2001
[39] Donovan et al 2010
[40] Donovan et al 2009
[41] HIV/AIDS Strategy; STI Strategy
[42] Pell et al 2006; Scarlet Alliance 2006

legal status in NSW may be less likely to seek help from government organisations and NGOs.

Health services, SWOP and Scarlet Alliance routinely produce health promotion and education material in languages and styles appropriate to sex workers from a CALD background. However, it is often extremely difficult to access the most poorly run, covert sex premises. Simple distribution of material without appropriate personal outreach by peers is problematic because levels of literacy and formal education are not always very high even in their preferred language. Individuals may have little experience of acting on written information and lack the confidence to approach services directly even when made aware of their existence.

Sex workers from a CALD background with stronger Australian resident community connections may wish to hide the fact that they are sex workers from other members of their language community and so be equally unwilling to identify as sex workers to service personnel. Sex workers from a CALD background need to be assured that sexual health services and health promotion programs are free, anonymous and confidential. This is often not the case in their countries of origin.

Uncertainty about the law and concerns about visa status and migration matters are exacerbated by constant media confusion between trafficking issues and legitimate sex work. Asian sex workers are most likely to be misrepresented in the media and therefore have good reason to keep a low profile, potentially at the expense of their health and safety.[43]

A survey of CALD background migrant sex workers by Scarlet Alliance found language issues including language based services and availability of interpreters and appropriate English language classes were a priority. They also sought assurance that services were 'free, anonymous and confidential'. Barriers to health promotion would be eased by sex workers having greater control in the work place, addressing OH&S issues and enhancing skills for negotiating with clients. Sex workers from CALD backgrounds also wanted more help with understanding migration and visa controls and managing their employment contracts. Media attitudes to migrant sex workers were identified as an important issue.[44]

Street-based sex workers.

Background

There may be one or two hundred people soliciting on streets within South Eastern Sydney Illawarra Region [45] Most of this activity takes place within the City of Sydney boundaries (Woolloomooloo and Darlinghurst) and in Port Kembla. Street-based sex work is only legal in non-residential areas, away from schools, hospitals and churches. This means that, unlike most other sex workers in NSW, these people experience frequent policing and contact with the criminal law.

Health Risks

Health risks for street-based sex workers arise primarily from their work conditions: on the street, in temporary shelters or short-time hire accommodation, where there is minimal opportunity to observe hygiene and safer sex precautions.

Some street-based sex workers are particularly vulnerable because of their youthfulness, Aboriginality, or unwillingness to self-identify as sex workers. Others have undiagnosed or

[43] Scarlet Alliance 2006
[44] Scarlet Alliance 2006
[45] Harcourt et al 2006

inadequately treated mental and physical health issues (including Hep B, Hep C and drug and alcohol related issues).

Studies of street-based sex workers in Sydney and Melbourne have found higher rates of STI and HIV, than in other sex workers.[46]

Access Issues
Complex lifestyle issues are more often than not part of the background to on-street soliciting. Many of these sex workers have experienced personal violence, homelessness, itinerancy and some level of community rejection. One study identified significant levels of untreated post-traumatic syndrome in female street-based sex workers in Sydney.[47] A large proportion (over 80%) report injecting drug use and dependency that further reduce their ability to access health services or acquire regular supplies of condoms and lubricant.[48]

Transgender and Aboriginal sistergirl sex workers often report very low self- esteem and personal rejection.[49] Almost half of transgendered people have a history of sex work because of the limited employment options open to them. Most of these have worked on the street, but some work in female brothels. Ongoing specialist services are needed to deal with the diverse needs of this population.[50]

While many street-based sex workers experience barriers to accessing fixed health services, there are also difficulties in providing adequate outreach to these people. Policing and resident vigilance have driven many away from previously well-identified inner city streets into more industrial suburbs and less well-trafficked areas. Outreach services can easily become over-extended both spatially and by the need for 24 hour services to people working round the clock.

Male Sex Workers
Background
Male sex workers make up a considerably smaller proportion of sex workers overall than do females, and relatively few studies or sets of data are available for this population. In the last century public health concerns related to sex work concentrated almost exclusively on health outcomes within the female dominated brothel-based industry but in a recent national study published in 2010 one in six gay men reported ever having been paid for sex and for 4.3%, this had occurred within the last year.[51]

The population of male sex workers clearly overlaps the priority population of 'Gay and homosexually active men' however some male sex workers have exclusively female partners.

Health risks and Access Issues
Male sex workers are considered to be at greater risk of HIV and STIs for a number of reasons. Some are work pattern related. Few male sex workers work in brothels where they can be readily accessed by outreach workers. There is greater mobility and increased preference for finding clients on-line. Some male sex workers only do sex work sporadically and others do not self-identify as sex workers because they receive payment in kind.

[46] Morton et al 1999; Harcourt et al 2001.
[47] Roxburgh et al 2006
[48] Roxburgh et al 2008; Harcourt et al 2001.
[49] Harcourt et al 2001
[50] Donovan et al 2010
[51] Prestage et al 2010

Overseas studies of male sex workers show they may have high rates of STIs and HIV.[52] A study of 94 male sex workers attending SSHC reported their median age as 25.5 years, (range 17-59) - younger on average than female sex workers in the same study.[53] Just over fifty percent were Australian-born.[54] Male sex workers had fewer clients and more non-client partners than female sex workers. Over 85% of male sex workers reported consistent condom use with clients but only about 50% with partners. They were less likely overall to use condoms with non-client male partners than were non-sex worker gay men. If their partners were exclusively female, they were least likely of all to use condoms outside of work.

The male sex workers in the SSHC study were also more likely to have a history of injecting drugs than were female sex workers and non-sex worker gay men (17.4% v 9.1% v 7.6%).

This sample of male sex workers had double the prevalence of STIs found in female sex workers (approx 30% v 15% with one or more STIs at first attendance). Four were HIV + and already knew their status.[55]

The STI Strategy identifies the need for STI prevention strategies to address male sex workers professional and personal risk assessments and upgrade their negotiation skills. It states that:

> *Male sex workers are a high priority for clinical services and health promotion in NSW.*[56]

Barriers and Access Issues Identified in the Literature

Background

The health planning documents reviewed here set out a number of requirements and targets for the Area that have implications for service access and equity for sex workers.
'Equity of access' is one of the Guiding Principles of the *Area Clinical Services Strategic Plan*.

The *HIV/AIDS Needs Assessment* identifies CALD and Indigenous people as being most in need of improved access to services. It notes especially that complex health treatments require cross servicing and linkages that are often difficult to navigate. It stresses the need to maintain culturally friendly and locally accessible (as opposed to centralised) services.

Both the *HIV Strategy* and the *STI Strategy* stress the need for culturally appropriate and accessible services with particular emphasis on the needs of their priority populations. Indeed two of the determinants for identifying priority populations are:

- access to health services
- equity – including social disadvantage and marginality.[57]

The HARP Plan also stresses improved access for priority groups as one of its main themes. It identifies *improved access and appropriateness of services for … sex workers (especially in the Illawarra)…* under the heading 'Areas for Improvement'. [58]

[52] Estcourt et al 2006
[53] Estcourt et al 1996
[54] Estcourt et al 2006
[55] Estcourt et al 2006; STI Strategy :21.
[56] STI Strategy: 21.
[57] STI Strategy: 4
[58] HARP Plan: 22

Language and Culture

For a large proportion of sex workers in South Eastern Sydney Illawarra Region language is potentially a major barrier to accessing health services. It has been noted that transient CALD background sex workers have reduced opportunities to become familiar with the English language.[59] Transient status and lack of contact with other sectors of the Australian sex industry isolate these women and reduce their ability to acquire knowledge from more experienced workers. Many lack confidence in their ability to speak English fluently[60] and reading health promotional material may be even more demanding. Being competent in the dominant language is essential to the attainment of full human rights.[61]

Cultural attitudes are also important for the way in which people engage with health services

> *…The stigmatised nature of STIs within many cultures in Australia influences both individual health outcomes and the standing of sexual health within the health system.*[62]

This is compounded when sex work itself remains stigmatised. Concerns about personal privacy, populist attitudes to sex workers, families and private partners are issues which most sex workers have to deal with. Overseas experiences may also undermine confidence in the confidentiality of sexual health services.

As with sex workers from a CALD background, language, cultural and attitudinal problems may confront Aboriginal sex workers when dealing with mainstream health services.

Addressing cultural needs and sensitivities requires a skilled and informed workforce with access to updated information and refresher courses to keep abreast of population changes, and service development.[63] It is sometimes difficult to find appropriately skilled and aware staff, particularly when they are sought from the priority groups themselves, or are required within small scale operations.

The Law

In spite of decriminalisation there are still some legal issues that form structural barriers to the ability of sex workers to conduct their work safely and with the same rights and responsibilities as other workers.

Australian prostitution law is complex because each state sets its own rules. Although sex work is not illegal in NSW, some things, such as false advertising can invoke the *Summary Offences Act*. Brothels also require LGA planning permission to operate and can be subject to closing down procedures if they don't comply.

The brothel based industry continues to face numerous problems with councils that are reluctant to implement appropriate brothel planning policies. This means the sex industry is treated differently from other businesses and results in many expensive legal and court costs to government and businesses. Perceived hostility to brothel applications does not encourage compliance.[64] Council planning issues and fear of closure can lead some brothel managers to be very resistant to outreach visits. Their reluctance may also reflect immigration fears and concern about the visa status of workers. Conversely, approval

[59] STI Strategy
[60] Pell et al 2006
[61] X Talk
[62] STI Strategy:3
[63] STI Strategy: 31
[64] Sex Services Premises Planning Guidelines: iii

allows health and safety conditions and SWOP access to be imposed as part of the approval process.

Street-based sex workers are still subject to criminal law. Police and local government actions have resulted in the dispersal of street-based sex workers away from traditional soliciting areas to less accessible sites. In some cases, outreach services to street-based workers have been reduced through pressure by residents and local government to ban visits by mobile services, such as NSEP or the KRC bus, in specific suburbs.

High profile legal cases against sex workers cause many people to become hesitant about identifying as sex workers to authorities, even those offering confidential support. When a male sex worker in the ACT was charged and convicted of working while knowingly infected with HIV, it was reported that sex worker attendance at monthly outreach clinics dropped from 40 to 2.[65] It is also likely that harsh anti-trafficking laws prevent some CALD sex workers from exerting their human rights.[66]

The *STI Strategy* has as one of its strategic objectives:

> *Support efforts to ensure a supportive regulatory environment which supports the health and safety needs of sex workers*

This is to be actioned by requiring SWOP, the NSW Advisory Committee on HIV and Sexually Transmissible Infections (CAS) and the AIDS/Infectious Diseases Branch, NSW Department of Health (AIDB) to: *Monitor the impact of legislation and local government policy on sex workers*. However it is unclear what actions are to be undertaken if the regulatory framework is unsatisfactory.

Locality

Equity of access requires that sexual health services be located near to the populations most in need. Experience in Melbourne and Sydney[67] show that even seriously disadvantaged sex workers will access services that are appropriately targeted to their needs. Barriers exist when the mobility and dispersal of sex worker populations cannot be accommodated by regular sexual health services. Even with extensive outreach, 24 hour working cycles, and low profile work locations result in many sex workers not being reached by services. These barriers are recognised in the STI Strategy.

Other health and social issues

Threats and violence from managers, clients, partners or dealers may prevent sex workers from accessing services, especially when compounded by poor physical and/or mental health. Injecting drug users often have trouble with balancing the numerous issues in their lives.

[65] Scarlet Alliance 2009
[66] X Talk
[67] Morton et al 1999; Harcourt et al 2001

Best Practice Models

Access to services, supportive environments and the removal of structural barriers are the bases of international recommendations to bring about effective responses to HIV and STIs linked with the sex industry.[68] These are also the basis from which to achieve full human rights for sex workers.

NSW took a major step towards advancing human rights and providing equitable access to health services for sex workers by decriminalising most sectors of the sex industry in 1995.[69] This has allowed sex worker community based organisations such as SWOP to operate effectively and openly with government support and in partnership with government agencies to reach a large proportion of sex workers in this state.[70]

Access to services

The overwhelming message from NSW health policy documents is that sexual health services must be culturally sensitive, appropriately organised and staffed, located in areas of need and targeted to the local priority populations. In addition to good clinical services, health promotion is vital to achieve the goals and objectives described.

> *…prevention and health promotion strategies to reduce transmission are as important as the diagnosis treatment and management of STIs.*[71]

The HIV Strategy states Area Health Services have an obligation to meet …*minimum service levels in a manner that is appropriate for the needs of their local population*. These services include *health promotion programs, harm reduction initiatives and clinical services*.[72]

Achievement of these goals and the implementation of plans outlined in the NSW Health documents are essential to deliver comprehensive sexual health services to sex workers in South Eastern Sydney Illawarra Region. This review of the literature shows that overall NSW health services and health promotion for sex workers within South Eastern Sydney Illawarra Region are well resourced and well targeted, resulting in good health outcomes for most within the sex industry.

Further work is required to maintain current achievements and to identify and correct gaps in service provision. CALD, male and street-based sex workers are identified as being most likely to have inadequate access.

Language, cultural and workplace issues are often problematic for sex workers from CALD backgrounds. Suggested improvements in the literature include:

- Peer–based outreach using CALD staff with appropriate language skills wherever possible.
- Further development of culturally sensitive, non-threatening, targeted sexual health services
- Assurances about confidentiality and anonymity of services.
- Continued efforts to ensure all brothels adopt health promotion and OH&S guidelines
- STI checks using self-collected specimens at the work site may be more acceptable to some CALD sex workers.[73]

[68] Ottawa Charter 1986; UNAIDS Guidelines: 7.
[69] UNAIDS Guidelines; Harcourt et al: 2005
[70] Harcourt et al 2010
[71] STI Strategy: 3
[72] HIV/AIDS Strategy: 14
[73] STI Strategy

- Develop new strategies for outreach to locate and access 'closed' premises. (Managers may be more receptive if material supports business as well as sex workers.)[74]

Male sex workers may be much more at risk of STI and HIV infection than female sex workers. Suggested improvements include:

- Improved data collection to better understand health service use and needs of male sex workers.[75]
- Appropriately targeted information to assist in risk assessment and negotiating skills[76]
- New strategies for contacting and engaging male sex workers in health promotion programs.[77]
- Develop resources for male sex workers including those from CALD background[78]
- Using the Internet for health messages and service engagement.[79]

A major issue for street-based sex workers is the laws which allow them to be moved to less safe work locations. Public and official attitudes to street-based sex workers are much harsher than towards 'indoor' sex workers. Nevertheless street-based sex workers have been shown to respond well to appropriate outreach at their work locations. Suggested improvements include:

- Maintain and further develop street outreach as necessary.[80] This may require later visiting hours.
- Use mobile clinics to opportunistically check for STIs using self-collected specimens.[81]
- SWOP and other outreach services to continue to monitor and report-back on safety issues and re-locations of street-based sex workers [82]
- Monitor any legal or other policy changes affecting street sex workers.
- Where possible engage with LGAs to provide 'safe houses' or improved locations for street-based sex workers to provide sexual services.[83]

  The HARP Plan also lists the need to: *Develop health promotion and education programs for clients of sex workers, particularly targeting male clients of male sex workers and those who travel overseas for sex.*

Supportive environments and partnerships

In addition to culturally appropriate and targeted services, the literature identifies the need to build and maintain partnerships with a variety of organisations and community groups.

> *One of the key challenges is to build partnerships across and beyond the health system in order to improve sexual health outcomes for the people of NSW. Throughout this Strategy there is an emphasis on such partnerships.*[84]

…*Services must be located and developed in a way that maximises access for priority populations* …including effective partnerships *with affected communities and community-*

[74] Scarlet Alliance 2006
[75] HIV/AIDS Strategy
[76] STI Strategy
[77] Estcourt et al 2006
[78] HARP Plan
[79] STI Strategy
[80] Harp Plan
[81] STI Strategy, Morton et al 1999.
[82] STI Strategy
[83] Harcourt et al 2001
[84] STI Strategy

based organisations. Community-based organisations funded by NSW Health are also required to develop and maintain *strong mechanisms for consulting with their community …. while at the same time monitoring changes in the needs of community members*.[85]

The HARP Plan also emphasises the need to *maintain effective partnerships and collaboration between SWOP,* the South Eastern Sydney Illawarra Region health services*, SHSs and the health promotion team of the HARP Unit…*and…*enhance capacity of SHSs to work with [sex workers] (improving data collection, access and skills of staff in working with this group)*[86]

Sex workers have shown themselves to be unusually capable of absorbing and disseminating health promotion and safe work practices in their industry. They have also played a big role in educating clients about STIs and HIV. Programs developed in consultation with sex workers and delivered by their peers have been very successful here and internationally.[87]

It is essential that effective partnerships with sex workers and their organisations continue to be fostered.

Structural Barriers

The major structural barriers that still hinder sexual health delivery to sex workers in NSW are residual legal and planning impediments.

The *Summary Offences Act* still affects the ability of street-based sex workers to choose safer work locations and to engage more positively and protectively with police and the broader community. The same *Act* also affects advertising for some safer sex premises which offer only erotic massage.

Anti-trafficking laws have the potential to drive some CALD background sex-workers under cover and decrease their ability to challenge poor workplace conditions. Special efforts are needed to inform these sex workers of their rights and responsibilities and clarify their legal status in NSW.

State and LGA planning provisions have not kept pace with changes in the sex industry. Planning exemptions for private sex workers have been partially addressed to allow them to work more safely but are still unduly restrictive. Many LGAs have not been willing to deal appropriately with brothel applications or to keep up with demand for approvals.[88]

There are a number of resources available to policy makers and planners to assist in building best practice in the NSW sex industry and preserving the good health outcomes delivered over the past 20 years. These include the *Sex Services Planning Guidelines* (now in need of some updating), WorkCover/NSW Health *and safety guidelines for brothels, (widely distributed and used in brothels),* and Scarlet Alliance and AFAO, *A Guide to Best Practice.* Councils with less experience in developing appropriate brothel planning policy need look no further than the City of Sydney's *Adult Entertainment and Sex Industry Premises Development Control Plan 2006.*

[85] HIV/AIDS Strategy:15
[86] HARP Plan:37
[87] Harcourt et al 2010
[88] Donovan et al 2010

Conclusions drawn from the literature

- Sexual health services and health promotion programs for sex workers are well-resourced and effectively delivered overall in South Eastern Sydney Illawarra Region
- Much of the credit for early changes and continuing good health outcomes must go to sex workers themselves and to their community based organisations including SWOP and its predecessor the Australian Prostitutes Collective.
- It is important that government sexual health services maintain and extend partnerships with sex worker organisations.
- Some sex workers have poorer access to services for a variety of circumstantial and personal reasons. These have been identified as higher priority populations for better data collection, service enhancement and development, and targeted health promotion.
- The sex industry within South Eastern Sydney Illawarra Region is dynamic and diverse. Therefore ongoing vigilance is required to identify and manage changes as they occur.
- Current health promotion programs and partnerships must be sustained and developed to meet change and improve access for priority populations.
- Vigilance and a proactive stance by Health Services are required to ensure the regulatory framework around the sex industry becomes more, not less, supportive of occupational health and safety needs of sex workers

3 CONTEXTUAL FACTORS THAT CONTRIBUTE TO RISK AND IMPEDE ACCESS TO SERVICES

Informants to this gap analysis included a number of highly experienced and relevant professionals from both the private and public sectors, including town planners, environmental health officers, social planners and other sex industry experts. Their comments expressed a variety of concerns about failures of implementation of decriminalisation in NSW that have substantially prevented realisation of its objectives. In particular, the process of defining the new regulatory roles required of government authorities was not completed, resulting in many missed opportunities to achieve good public health outcomes, including prevention of HIV/STIs transmission.

In January 2000, the Brothels Task Force was established by the NSW Attorney General and the Minister for Urban Affairs and Planning, comprised of representatives from The Cabinet Office, Attorney General's Department, Department of Local Government, Department of Urban Affairs and Planning, Ministry for Police, WorkCover NSW, NSW Health, Police Service, and the Local Government and Shires Association. The Task Force was commissioned to monitor the regulation of brothels by local councils and to assess the success of occupational health and safety programs for sex workers, their clients and the public. A Panel was convened by the Task Force to develop best practice guidelines for local government Councils (*Sex Services Premises Planning Guidelines*), but these were never implemented.

Informants to this gap analysis noted the regressive current trend in regulation at local government level, which one described as "re-criminalisation of the sex industry" and expressed concerns that the approach of some Councils has had the effect of increasing risk of HIV/STIs transmission in some sectors of the industry, as well as creating new opportunities for corruption.

"A lot of Councils don't understand that the sex industry is now legal and should be treated like any other... The outcome in these LGAs is a lot of sex services premises operating without appropriate development consent so either they can't let condoms be found on the premises or no-one ever inspects to see what is going on in there. They may be models of safe sex practice or they may not...

As ICAC proceedings showed in Parramatta, brothels operating without appropriate development approval provide new opportunity for corruption of public officials. Prior to legalisation, the officials corrupted were Police officers; now those with opportunity for corruption are Council compliance officers."
(social planner)

"Working at five different (and diverse) Councils over 3 decades, I have seen an extraordinary shift from reluctant approvals to absolute and outright refusal even of fully compliant DAs. The 1995 reforms appear to have totally failed and we have been thrust back in time 20 years."
(environmental health officer)

In keeping with the regulatory role of NSW Health, the *STI Strategy* has as one of its strategic objectives:

> *"Support efforts to ensure a supportive regulatory environment which supports the health and safety needs of sex workers"*

Local Government Policies and Practices

This gap analysis has been undertaken during a period of extensive planning reforms that affect the sex industry The Standard Instrument (Local Environment Plans) Order 2006 (SILEP) prescribes a standard form and content of a principal LEP for the purposes of Section 33A of the Environmental Planning & Assessment Act 1979. All NSW Councils have a 2012 deadline for completion of a new SILEP and an associated single Development Control Plan (see attachments 1 and 2). Further, the new NSW Government has announced a Review of the Environment Planning and Assessment Act.

To inform this gap analysis, questionnaires were sent to Councils of the 13 LGAs within the LHN, inviting input, but only a few responses were received. In addition, a small selection of Councils within the LHN were reviewed using material available on their websites, including changes proposed in draft planning instruments on public exhibition, with a view to illustrating the variety of ways the current planning controls regulate the sex industry in their respective LGAs. (See Attachment 3.)

There is great inconsistency in the ways Councils approach the sex industry. When Councils take a pragmatic approach and assess each SSP DA on its merits, SSPs usually receive development consent with specified conditions of consent that support the health and safety of sex workers, which may include access by SWOP outreach workers, and premises are periodically inspected by Council officers and/or WorkCover. When SSPs operate with inappropriate development consent, there is strong disincentive to have condoms on the premises, since condoms are amongst items defined to constitute evidence that premises are being used as a brothel. When SSPs operate without any development consent at all, it may be some time before government authorities are even aware of their existence and they are only likely to be inspected in response to a specific complaint.

"The shop (where) they have the DA to cover everything (is better for workers than) the shop they don't have the DA or just the DA for massage, but they do everything at the shop like hand jobs or sex... the boss has condoms hidden in locked cupboard or in her car."
(Asian massage parlour worker, under 25)

City of Sydney and Wollongong Councils have completed or almost completed their SILEP processes and their plans are models of best practice from a health perspective. However, most of the others are much less advanced and communications with some Council staff suggest that some intend to introduce changes that will be prejudicial to sex worker health and safety and to community health outcomes related to sexual health. (See Attachment 4) While both Wollongong and City of Sydney Councils prohibit SSP in industrial zones under the new SILEP, some Councils intend to limit SSPs to industrial zones.

"I am a private worker but clearly these changes (to limit SSP to industrial zones) will limit our choices of where to work if we wish to work in a brothel and it will limit the kinds of brothels we are able to work in. The recent robberies in industrial areas is an unacceptable risk to me. No-one including sex workers should be forced to work unnecessarily in situations of risk such as isolated industrial areas."
(private and brothel worker, inner Western Sydney)

There are opportunities at this point in time for the HARP Unit to respond to draft planning controls via the public exhibition process, to ensure that public health objectives are given due consideration, most particularly likely impacts on sex workers' health and safety, including their capacity to prevent transmission of HIV/STIs, access sexual health, peer support and other services and have real choices in where and how they work.

The current NSW Government Review of the Environment Planning and Assessment Act also provides opportunities for the HARP Unit to explain, through written submission and participation in community consultations, the public health and safety issues that should be considered in legislation and ongoing regulation of the sex industry and the need for consistency with the National HIV and STIs Strategies.

"Health service providers need to understand that they can play a role in advocacy, such as at the local council level, where planning DAs may be being considered for brothels."
(sex worker advocate)

Police

Policing practices are another factor with potential to support public health objectives but also potential to increase the risk to some sex workers and increase barriers to access by sexual health and other services.

Currently Police advice is helpful in providing better security for brothel workers while inside sex services premises, but may have limited effect in protecting sex workers when they leave to go home if the SSPs are located in an isolated location such as an industrial area.

"We could provide advice on how to prevent violence and provide responses on new DAs for brothels in respect to safety and security... Some people who run brothels are less than caring."
(crime prevention officer)

"The question of safety and security of both staff and clients is also raised. Recently four establishments were robbed at knifepoint... One of these was held up a second time in as many weeks. It must be noted all of the premises are within industrial areas."
(environmental health officer)

When Police move street-based sex workers on from relatively safe traditional soliciting locations, this may substantially increase the dangers associated with their work and also makes it much harder for outreach workers to find them. Hostile encounters with police can make sex workers, particularly those with AOD, mental health or intellectual disability issues, less inclined to trust and seek help from any government agencies, including health services.

"The issues of girls working on the main street come up again and again and although a lot of discussion over the years has been rehashed, there are always a new lot of jocks coming from the Police Academy who want to force the street sex industry underground and into the back streets, away from the safety of lighted areas and the other workers. I get so sick of hearing that women are being herded away by police and community members who are not even aware of the laws governing the industry in NSW."
(community worker, Illawarra)

Police crime prevention officers consulted for this gap analysis saw need for more information and specific training for Police in relation to the sex industry. They advised that standard training does not prepare Police officers for their new role in relation to the sex industry. Often problems arise due to poor understanding of how the law has changed, what the role of police should be in the new legal context and the public health consequences of inappropriate policing. Police are aware that many of the sex workers they encounter are in need of health or support services, but they are generally not well prepared to offer appropriate referrals to people with complex needs and entrenched attitudes sometimes

prevent them from serving sex workers in the same way they serve other members of the community who are victims of crime.

"There is no in-service training for police around sex work and the industry... Ignorance of the issues is pretty bad amongst Police with a 'What do they expect?' kind of attitude. Police... generally see sex workers as chaotic people with problem lives. They deal with behaviours and don't see situations as health related issues... Sex workers are reluctant to report incidents or withdraw their report once it is referred to detectives... There is not as much compassion for sex workers as for other victims. Many sex workers don't appear to know what their rights are."
(crime prevention officer)

In the past, consultation, liaison and training initiatives between SWOP and specific Area Commands have shown very positive results, including more constructive interactions between Police and sex workers, improved access for services to street based sex workers and increased reporting of crime by sex workers.

"(By) creating... meaningful discussions and open communication pathways, we managed to create positive changes... Police have training sessions on all sorts of things... SWOP managed to coordinate about three Sex Work Information sessions, which were very successful... The outcomes of our training and info days included 3 police officers approaching us to become Police Sex Industry Liaison Officers (PSILO) of their own volition. This allowed for sex workers to contact Police officers (who) were respectful in their language and general conduct with the sex workers... A whole range of crimes were reported including stalking, pest callers, theft, stand-overs by clients, council officers - or guys pretending to be cops or council officers, domestic violence and AVOs."
(former SWOP outreach worker)

"*Speaking of cops, I have had a positive experience where one of the women from the brothel went missing. The cops took it very seriously and with respect".*
(former street based sex worker, over 50 years)

There is currently some liaison at Area Command meetings involving SHSs, SWOP, Councils and sometimes other community services, usually at meetings convened by SHSs and SWOP, that the local Police are invited to attend. However, information exchanged at these meetings has little impact if it is not passed on in some constructive way to other Police officers by the representatives attending. A more effective approach may be appropriate, with higher level liaison between government sectors to support better sharing of information and training opportunities to promote good health outcomes.

Collaborations with community-based organisations

As detailed later in this report, there is extensive collaboration between sexual health services (SHSs) and the Sex Workers Outreach Project (SWOP), particularly involving SWOP outreach workers. SHSs do joint outreach with SWOP to the street and to brothels and massage parlours, regardless of development consent status. SWOP's multicultural outreach team is particularly helpful in facilitating access to CALD owned SSPs and supporting CALD sex workers in accessing clinic services.

Outreach to sex workers most likely to be at risk is particularly time consuming, labour intensive work. While SWOP have been readily welcomed into many SSPs, others require repeated visits over time before access to sex workers is granted. This is often the case for

SSPs that are operating without appropriate development consent, those where unsafe practices are tolerated or encouraged and those where the owner/manager has limited English language skills and limited understanding of the law.

The keys to gaining access to SSPs include:

- strict confidentiality
- clear separation from government authorities including Police, Council and Immigration
- being able to provide resources and information that are useful to the SSP owners/managers.

SWOP and sexual health outreach staff run mini workshops, primarily for sex workers, when on outreach, with sexual health staff answering the more technical questions around STIs, testing and treatments. Occasionally there have been joint information sessions for owners and managers as well as sex workers.

"We have in the past run education days for management and workers. The morning session is for managers and receptionists and the afternoon session is for workers. The original workshop was well attended by both workers and owners. For owners and managers, they probably thought it was in their best interests to attend. This was about 12 years ago, when the new laws had not long been introduced and they wanted to get information about their rights and responsibilities.

We provided lunch and a relaxed environment offsite of the clinic. We had speakers talking about health issues and a lawyer talking about the law. We provided information on what we do and tried to explain that we were not in the business of taking the workers away. We tried it again more recently but it did not work."

(Port Kembla Sexual Health Service)

One area where SSP operators are hungry for information is the law. An imminent change in legislation may provide an opportunity for relevant NGOs and SHSs staff to gain access to SSP operators who have previously been reluctant to engage, because they will be able to provide information SSP operators need. This information will also be likely to increase commitment to safe sex policies and provision of condoms for workers.

SWOP outreach workers make "special outreach" visits to SSPs that have been identified as high priority by a sexual health clinic or other informant. However, these visits are low key, confidential and never coercive, because the need to maintain access is paramount.

Access for SWOP is given voluntarily and on the basis of trust. Any breach of that trust in relation to one SSP would be likely to jeopardise access to many SSPs.

4 CALD SEX WORKERS

Sex workers from a CALD background now make up at least half (and some informants believe the majority) of sex workers in Sydney, so they are probably the largest of the populations identified as being at greater risk for HIV/STIs and not in contact with sexual health clinics.

Many CALD background sex workers are no more at risk for HIV and other STIs than other brothel workers, but some are at greater risk for various reasons that may include:

- poor English language skills
- limited understanding of STIs transmission and prevention
- limited awareness and understanding of sexual health services
- poor understanding of legal rights and responsibilities and consequent fear of government agencies
- fear of government agencies due to visa issues
- workplaces where management practices are not supportive of safe sex services, access to peer support or sexual health testing
- origin in countries with higher HIV/STIs prevalence
- private life sexual partners from high HIV/STIs prevalence countries, with whom they do not use condoms.

"Migrants are less likely to access sexual health services, as it's illegal to work in other countries."
(SWOP NSW)

Understanding of sexual health, particularly transmission and prevention of HIV/STIs, is variable amongst CALD background sex workers, but most are aware of condoms. Those working in well run brothels and who are in contact with SWOP and/or attending a language clinic tend to be well informed and safe in their practices, but those who are new to the industry and/or the country and in less supportive work environments tend to have more limited knowledge.

"(Been working here) 2 weeks.. (Good place to work because) use condoms here... feel safe here. Very confident - use condoms. Check for disease under light for everything, not AIDS. (Get tested for STIs) every 6 months. Want to be sure my body good. I want money, not get sick."
(Chinese brothel worker, over 35 years)

"(CALD sex workers get information from) SWOP and language clinics in the sexual health services where appropriate... if these have been promoted to them."
(sex worker advocate)

Most CALD sex workers are aware that condoms prevent disease and prefer to use them, but they may be less aware of the need to use them for oral sex as well as vaginal sex and many don't know how to recognise visible signs of STIs on clients. Many CALD workers have a poor understanding of their legal rights and responsibilities in NSW and some have visa issues, which can make them fearful and reluctant to access any government services.

"For Asian girls, one thing to use condom, they think they safe. Maybe 70% use condom, (believe they are) safe, but need to know how to check customer."
(Thai brothel worker, over 40)

Many CALD background sex workers said they had learnt about safe sex and how to negotiate with clients from co-workers. While this information may have been adequate in some cases, it appeared to be very limited in others.

A few said they had only learnt about STIs at school. A few said they had been tested for STIs only in their country of origin if at all and they had no knowledge of sexual health services available in Australia.

"One week (working in this brothel)... One week (in Australia). Business Studies... Classmate (told her where she could get work)... Part time (sex work in Malaysia before). No, don't know (where could get sexual health check up in Australia)... Every year or two (tested in Malaysia)."

(Malaysian brothel worker, under 25)

While co-workers can be an important source of information for sex workers new to the industry or to the Australian milieu, brothels are competitive workplaces, with a high turnover of staff and both language barriers and cultural differences may separate various Asian ethnic groups, so workers can feel quite isolated and unsupported.

"Other women in the shops I work in are not so friendly anymore. Maybe it's because I seem to come and go so easily and not work full weeks, but I think it is about competition, not so many clients to go around these days. No one shares information anymore like they used to four years go."

(Japanese brothel worker, about 25)

Most CALD background sex workers work in brothels and for many this provides a work environment that is safe and supportive of safe practices, particularly where owners/managers are well informed, conditions of development consent specify compliance with high standards of occupational health and safety, notices declare safe sex policy to clients, condoms and other safe sex equipment is supplied, SWOP is admitted to provide peer support and Council regularly inspects to ensure that conditions of consent are being met.

"(Working) one month.. Yes, (good place to work). Management is supportive. Yes (can set limits), very supported... Very confident (about safety). Very confident (sex services provided are safe). Use condoms."

(Serbian brothel worker, under 25 years)

Comments by the Asian worker quoted below illustrate the constraints on safety in these circumstances, though her workplace is not particularly badly run. There are condoms available, but not readily available because they must be hidden, because the business could be closed down for providing services beyond the terms of their development consent.

"I have only worked in 'massage' shops. The first shop was in the city. All men were offered happy ending and more. We gave small massage first which lead into other things. Some girls did full service, sex and oral, others just did hand jobs, but all without clothes on... Boss had no lease on this shop and said if Council catch us doing happy endings we move, no worries... Boss tried to get DA for full service shop, but this did not happen, so boss got a new building in suburbs and got DA for therapy shop... Some customers they want massage only, but girls who work in the massage shop, they must offer sex to customers... At my work, just some special customers (get 'full service')... These are old regular customers... Yes (customers) ask for 'natural', some for oral and some full service, but I think all women

use the condom... If a customer wants full service, he (is expected to) phone for booking, then boss gets two condoms pack ready for women."
(Asian massage worker, under 25 years)

"I get (condoms) sometimes from SWOP people when they come to (one) shop. I sometimes pay for them myself when working at other shops that don't provide condoms and lube. I would go somewhere else (clinic or SWOP) if I knew I could get them for free."
(Japanese brothel worker, 25-34)

Some Asian sex workers arrive in Australia under contract to brothel owners because they needed to borrow money to pay travel expenses to get here and this can make them more vulnerable if the owners to which they are contracted do not have a strong safe sex policy. While Scarlet Alliance report that 50% of their study participants had no need to go on contract, which suggests that 50% are on contract, SSHC report that only 2% of the CALD sex workers they see are on contract. The disparity between these figures suggests that Asian sex workers on contract may be less likely to access government sexual health clinics than others.

Sex workers under contract may be moved around from one location to another by those who organised their entry to Australia. This reduces their opportunities to make contact with services, form friendships with other sex workers or improve their English language skills.

"Been working in Australia 2 years... (Not in same shop) move around."
(Thai brothel worker, under 25 years)

Many CALD sex workers have come to Australia specifically to do sex work, some intending to return to their country of origin, others with a view to gaining residency in Australia. Some enrol in courses as a step towards gaining residency. Others have come to Australia mainly to study, but find that the cost of living and tuition fees require a higher income than they anticipated. These younger, inexperienced workers have more freedom to walk out of unsupportive workplaces, but may not yet "know the ropes". Some from other countries are back-packers.

"In Australia (on study visa for 4 years) doing tertiary studies. (Doing sex work for) almost 4 years on and off... If I did not have this (sex) work, I could not go to school to get better education and maybe have to go back to my home country. My school fees demand that I earn very good money."
(Japanese brothel worker, 25-34)

Awareness of sexual health clinics often depends on the attitudes of brothel owners and whether or not they provide this information to workers and/or permit access by SWOP/SHS multicultural outreach workers.

Some brothel owners say that they take all their workers to a private GP, which may be true and due to visa concerns or may simply be untrue. Some CALD sex workers with better English language skills may prefer to see private GPs for sexual health services or to access non-language clinics at SHSs for privacy reasons. Others may use GPs because they are unaware that they can receive free, confidential service without a Medicare card at sexual health clinics, with or without interpreters.

"Yes (GPs are better) for some. They believe it gives them greater confidentiality."
(Asian brothel owner)

Recently arrived people from CALD backgrounds may be more likely to access some government sexual health clinics, if they go anywhere, because they are free and do not require a Medicare card or use of a real name. However, not all are aware of these benefits.

"Younger CALD workers are more likely to go to clinics than older more experienced CALD workers, who may be more experienced, but stubborn. Younger CALD workers are getting more information generally if they are here studying. Sexual health clinics that do not require a Medicare card or a real name and are free are the best places. This is seen as less threatening and less likely that the government or immigration will know what they are doing."
(SWOPNSW)

Other sex workers from a CALD background interviewed for this study had been working in Australia for a long time before they were tested or had never been tested in Australia.

"Asian, Thai don't go to clinic or doctor. Lot of Thai don't go, Japanese, Chinese, Korean - all not go doctor. Boss says take my girls to doctor for check, but take medicine, back in one week, two week... Not one say 'I check my pussy', never to pap smear for six years. Say 'too scared'."
(Asian brothel worker, Illawarra)

"(Been working here) two years... I had first check up four or five months ago... I talked to friend at shop, older Thai woman working longer than me... She told me about SSHC."
(Thai brothel worker, under 25 years)

Other concerns have been the hours of operation, time on hold when phoning for an appointment and that most signage and staff speak only English.

"They also make you hold on the phone for too long waiting to make an appointment and my phone card runs out while waiting. I have no access to a landline and cannot use that in case someone hears me booking clinic appointment."
(Japanese brothel worker, 25-34)

Joint outreach to brothels with the SWOP multicultural outreach team is the main way CALD background sex workers become aware of government sexual health services and meeting staff face to face helps to reduce fear and encourages attendance. This collaboration is mutually beneficial and sometimes it is association with a clinic that gets SWOP in the door.

"Outreach develops trust to bring (CALD) workers in contact with services. Building trust – they need to see the face of staff. Clinics need to do outreach to develop this trust. Workers respect us making the effort – the women really value that."
(SWOPNSW)

"Visit parlours with clinic staff, particularly from CALD background with introduction by SWOP staff from CALD background. You can then put a face to the type of person you may see at the clinic."
(Asian brothel owner)

Sydney Sexual Health Service conducts multicultural outreach to CALD background sex workers in brothels across the greater Sydney metropolitan area in partnership with staff from SWOP and other sexual health services. While this outreach effort is substantial, it probably still leaves many CALD sex workers uncontacted. In part this is because some sex services premises with CALD workers currently admit neither SWOP nor SHS outreach

workers, but it is also due to the substantial turnover of Asian workers and the practice of moving workers around a number of premises, not necessarily in the same city. SSHC said that 179 outreach visits reached 102 premises in one year. This means that each workplace received only one or two visits in that year, so it is likely that a substantial proportion of CALD workers did not receive any direct outreach contact. While some of the CALD sex workers interviewed for this review had been working in the same brothel for many years, many others had been in their current workplace for only a few weeks or months.

"Two, three places are all Asian. Girls only there two weeks, then other girls coming. Go Canberra, South Australia. Not many stay long time... Some residents, some student or holiday visa. Campbelltown Asian students working. Used to expensive stuff, lifestyle, shoes and handbags. Korean, Japanese students work only on weekend, Friday and Saturday night."
(Asian brothel worker, Illawarra)

Given that limited English language skills is a major barrier to accessing sexual health services for some sex workers from a CALD background, the availability of bilingual nursing and health promotion staff can be a strong drawcard. Many of those interviewed attend SSHC because there are interpreters available.

"Speak my language, please. Have Chinese doctor or nurse."
(Chinese brothel worker, over 35 years, Sydney)

"(Will get tested for STIs only if there is a risk incident.) Don't know where is clinic, but not scared... Got tested once in Hong Kong (before doing sex work)... Want hospital to speak Chinese... Be close to my house. Free for Chinese very good."
(Chinese brothel worker, over 35 years, Illawarra)

"We have easy access to interpreters from the more common languages, Thai and Greek, but the more uncommon languages, we need to use the telephone interpreting service. We have had interpreters come and meet us at a parlour. Generally we have found that the sex workers are happy to see someone who can speak their language... We need the multicultural SWOP outreach workers to go to the brothels to explain about sexual health and explain about the role of the clinic. We need support from this team who have very limited availability and huge territory to cover. They are coming to the Illawarra soon to do joint outreach with (outreach worker) of ACON/WOP."
(Port Kembla Sexual Health Service)

However, while the availability of staff with relevant language skills can be a drawcard for CALD background sex workers, interpreters can also act as a deterrent, depending upon whether or not the interpreter is perceived to compromise privacy. Many ethnic communities are small and tight-knit, so a sex worker may not want a member of their own ethnic community who has never been a sex worker sitting in on their appointment at the sexual health clinic. Some professional interpretersmay have judgemental attitudes, which can compromise the effectiveness of a sexual health clinic consultation. A better choice of interpreter may be a member of a different ethnic community who can speak the required language.

"Some of the workers had anonymity concerns possibly around immigration issues. There are also some issues in using outside interpreters who, while they may have language skills, are not skilled in the language of sexual health. For us as clinicians, it is difficult to know how our words are being interpreted. As was found in an earlier study 'Sex Work & Sex Workers in Australia' by Perkins et al (1994), Thai workers continued to attend KRC for sexual health screening precisely because KRC 'did not provide an interpreter service', as they had concerns of potential breaches of confidentiality within their own communities.

(KRC staff member)

While some sex workers from CALD backgrounds have a good grasp of English, most need to receive core information in their first language. Some also have low literacy in their first language or limited experience of acting on information received in this way. Some are unwilling to take printed information that would reveal their occupation to people in their private lives.

"Information needs to be transmitted in various ways. Having translated information sheets on HIV/STIs is not enough. It has been identified through the Migration Project Steering Committee that a number of sex workers are having difficulty in understanding the translations and/or content. Moreover, many CALD sex workers have expressed their unwillingness to take this information home."
(Scarlet Alliance)

There have been substantial efforts to provide information in the languages used by the largest CALD background sex worker groups: Thai, Chinese and Korean.

- SWOP and SSHC employ peer support/outreach workers with these language skills
- the *Red Book* produced by Scarlet Alliance and distributed by outreach workers
- the SWOP website has a range of downloadable information resources in these languages and the entire website can be viewed in these languages.

However, there are other language groups with poor English language skills amongst sex workers. Sex workers consulted for this gap analysis included Japanese, Vietnamese, Indonesian, Malaysian, Indian, Serbian and Cuban, amongst others. While it may not be practical to include all of these languages in print resources, core information fact sheets could be made freely available on websites so SHS can download them as needed. At present SHS staff cannot access the SWOP website from their work computers because the name "Sex Workers Outreach Project" includes the word "sex" and government computers have software blocking access to sites with names including that word.

""If in Thai or Chinese, some will read and understand, but not there. One thing is language and some too embarrassed even look in Thai book."
(Asian brothel worker, Illawarra)

"There should be a beginner's kit for new workers provided to all (SSP). Make sure it is easy to understand and is accepted by workers. Some don't like the big glossy posters with pictures of diseases. They turn away, don't want to see. Should be simple, short - one page and translated, straight to the point, in picture form. Some can't read or don't."
(Asian brothel owner)

Many CALD sex workers may have need for counselling beyond the peer support possible during brief contacts with multicultural outreach workers and most need information about legal rights and responsibilities in NSW. Some may also need referral to other services to help them address visa concerns and a range of other personal issues.

"I cannot talk about the job to even my best friends and have to continually lie about what I am doing. I have ... to pretend I am working back or something. If I did not have this (sex) work, I could not go to school... but I still can't let anyone know….I feel very lonely sometimes with not being able to talk about work and share my experiences and insecurities."
(Japanese brothel worker, 25-34)

5 SEX WORKERS WITH COMPLEX NEEDS

Sex workers with complex needs are a cluster of small overlapping populations who have some issues and needs in common, but are otherwise highly diverse. Characteristics qualifying sex workers for membership include any combination of the following:

- drug dependency
- mental health issues such as schizophrenia or personality disorders
- intellectual disability or cognitive impairment
- homelessness
- transgender identity
- Aboriginal identity
- doing street-based sex work.

While sex workers with complex needs make up the majority of street-based sex workers, they can also be found in some brothels and some work opportunistically.

Street-based sex workers

While many street-based workers would have difficulty getting work in brothels due to evident AOD/mental health or other issues, there are reasons why some actually prefer to work from the street. Most of the time they can choose their own hours and sex services provided, can refuse clients and can keep all of the money that they earn.

'The street is OK if the cops don't come, but we get hassled quite a bit. I don't want to work in a brothel. You have to come at a certain time and look a certain way, put makeup on... I can choose to do a hand job and no sex. You can't do that in a brothel and you have to accept any guy that chooses you. Here you can say 'No' and go home when you want to."
(Indonesian street-based sex worker, IDU, about 30 years)

While street-based sex workers generally prefer to sell safe sex, many clients offer more money for "natural" and ability to withstand financial pressure varies. Sex workers who are less attractive to clients may also be tempted to offer services that others refuse.

"There's a lot of girls doing it without a condom... head jobs mainly. No, there's no way for $50 I'd risk 30 years of my life. Come on! Get herpes or die for $50!"
(street-based sex worker, IDU, about 30 years)

"They get fits and condoms, but not sure how well they care for their health generally. They don't take the (information) resources. They have basic knowledge not to share needles and to use condoms. I overheard them talking about someone who picked up a used syringe from the floor. They said 'Disgusting, this person should know better'."
(safe house receptionist)

Street-based workers are also much more vulnerable than brothel workers to coercion and force by "ugly mugs": men who rob, rape, physically abuse and occasionally murder sex workers. For this reason many street-based sex workers like to use "safe houses" (where rooms can be rented by the hour or half hour) when they are available.

"SWOP (are useful. They come to the safe house. They have information about ugly mugs' numberplates. I've had no problems in (11 years) working on and off, but it can be dangerous. The problem with saying 'I'd bite his dick off' is you can't do much if the guy is bigger and stronger. Sometimes I take them to my place. My flatmate is there, so it's safer."
(street-based sex worker, IDU, 30 years)

While previously there were two privately owned "safe houses" in Sydney, now there is only one. In Port Kembla, a hotel that rented rooms by the hour and an area below an adult bookshop were both used by street-based sex workers as safe places to take clients, but both have closed. A consequence of these closures is that street-based sex work is more often happening in much less safe places, increasing the vulnerability of street-based sex workers.

"Where there were once two safe houses, only one remains and we're getting anecdotal information that there's more sex work happening in public places and that there are more car jobs being done. This is a problem for health and wellbeing of sex workers and their clients and for access by outreach workers."
(KRC)

Police activity to keep street-based sex workers out of sight of houses and churches has also added to risk, because there is often no-one to note car number plates or provide descriptions of clients when violence or abduction occurs. In the Illawarra, street-based sex workers now often pretend to be hitch-hiking on the highway in order to avoid being arrested. Police attend sex industry community meetings in the Illawarra and at a command level some appear to appreciate the difficult lives some street-based sex workers are living, but this does not always translate into a sensitive approach on the beat.

"(Danger) depends on where they do the work: in a back lane, bushy vacant lots or at the beach among the sand dunes is very isolated... Now they pretend to be hitch-hiking in back suburban streets of Warrawong, which is a lot more risky, with no-one looking out for you."
(ACON Illawarra)

Street-based sex workers often have many concurrent problems. They may need for food, shelter and a safe place to rest before sexual health becomes a priority for them and many could benefit from counselling support. Younger, less experienced street-based sex workers may be the most vulnerable, particularly those with complex needs.

"Most are desperate and scared and want someone to talk to. A lot of girls go to gaol and they need a place they can talk about it. They get out after four years and get busted again. A counsellor is very important."
(ACON, Illawarra)

"The younger the person, the more at risk."
(safe house receptionist)

"Coming from disadvantaged backgrounds and needing to survive with limited education makes (young street-based sex workers) more vulnerable to clients putting more pressure on them to do at risk practices."
(ACON/SWOP Illawarra)

IDU sex workers and those with AOD/mental health co-morbidity

Research[89] suggests most street-based sex workers (SBSW) are injecting drug users (IDU), some with mental health co-morbidity, which can make them highly vulnerable.

"Pressure from clients and need for cash with limited access to (safe sex supplies)... Sexual health is not always at the top of their priority list."
(SWOPNSW)

"Due to the cycle of needing drugs due to habit and needing dollars to buy the drugs, some may provide unprotected sex."
(safe house receptionist)

"Mental health issues (make IDU sex workers more vulnerable)... lack of awareness if working while in psychosis and complications of limited memory, learning difficulties."
(ACON/SWOP Illawarra)

Fear of being harshly judged may keep many IDU sex workers away from many health services, but most would access needle exchanges and/or methadone services. Sex workers with mental health issues may have a history of poor relationships with health services and so may be more reluctant to disclose information including their sex work.

"IDU workers have a double stigma. Not only are they a sex worker but they are a drug user. Judgement on these workers is very high."
(SWOP/ACON Illawarra)

Regular business hours can be very inconvenient for these workers and they have difficulty accessing locations that are not well served by public transport. For most, a mobile outreach service that provides for some of their immediate needs is the most likely to succeed in making contact.

"They work all night and sleep most of the day. Services need to understand and cater to this lifestyle with later opening hours."
(safe house receptionist)

Another common issue for IDU sex workers is that they have received a lot of HIV prevention information wherever they get their needles and syringes, which reveals correctly that oral sex is low risk for HIV transmission in comparison with unprotected vaginal or anal sex. Oral sex may therefore be perceived to be a safe sex alternative to condom use, when in fact it allows transmission of many other STIs. HIV and hence safe sex may be perceived by some to be an issue only for men who have sex with men (MSM). Safe sex may also be perceived to be appropriate for work, but not for private relationships.

"The risks to sex workers are not usually from their clients in an occupational setting, but from boyfriends, because they are not using condoms with boyfriends, wanting to separate work and personal relationships. Throat swabs are worth doing for the same reason. They may use condoms for oral at work, but not in private life."
(Port Kembla Sexual Health Service)

[89] Harcourt C, van Beek I, Heslop J, McMahon M, Donovan B. (2001). The health and welfare needs of female and transgender, street sex workers in New South Wales. *Australian and New Zealand Journal of Public Health,* 25*: 84-89.*

Transgender sex workers

Research has found that almost half of male to female transgender people have done sex work and most of those who have worked from the street[90], partly because change of gender can make earlier forms of employment much more difficult to get. They experience high levels of discrimination and hostility in many contexts and this can become a barrier to accessing health services.

"Some people find themselves unemployed and end up doing sex work. When they have no history of other work, particularly for transgender workers, it is difficult to find other work."
(safe house manager, Sydney)

"For most trans women, they think sex work is the only job they can get, partly because they will be accepted by peers and clients. You are not valued for anything else. Many of us try to find jobs in other areas, but have come up against discrimination and hostile and violent people and workplaces."
(Transgender private and brothel worker, about 25 years)

While transgender sex workers are more likely than female or male to do street-based sex work, a few do work in brothels, which can be safer, and a few work privately. On the night observed, most of the street-based workers using the safe house were transgender.

"It's a blunt workplace. There are rules which you agree to or not. If you don't, you don't stay, but they are mostly reasonable and provide security. I can set limits and they provide strong good security, particularly at access to the premises: security doors and cameras."
(Transgender brothel worker, under 25 years)

Transgender sex workers have specific sexual health information needs and many have complex needs. Community based service providers working with clients suggested that sexual health services should take a more holistic approach to the health and wellbeing of clients and be accessible at more convenient times. They also need to feel safe from the curiosity and potential hostility of other service clients.

"(SHSs can become more welcoming and accessible by providing convenient) hours of operation, bilingual staff, (convenient) locations, information in other languages. (Vulnerable sex workers) need an holistic approach: accommodation, legal services, health, advocacy, casework/support... Advertising transsexual/transgender friendly support services and having transsexual/ transgendered information available... Advertising what the SHS can do for this particular target group.... Outreach, resources, NSP"
(Gender Centre)

"There are AOD issues associated with some transsexual/transgendered street-based sex workers... Sexual health information needs of transgender sex workers are different and they need trannie friendly literature and pamphlets and a transsexual/transgender staff worker... Some transgender sex workers also need multicultural services."
(Transgender outreach worker)

[90] 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

Aboriginal sex workers

Aboriginal sex workers are often amongst the most vulnerable for a range of reasons which may include homelessness, AOD and mental health issues. They usually work alone and often from the street, where they frequently encounter racist hostility. Some Aboriginal sex workers work opportunistically, exchanging sex for food, alcohol/drugs and/or a place to stay and so may not see themselves as sex workers.

"Some Aboriginal workers don't use the word 'sexworker' due to the shame factor. Some are working in exchange for food and favours and other necessities, and are not necessarily identifying as a sex worker."
(KRC)

"... there is still a lot of stigma and racial (prejudice) attached to being Aboriginal and especially being an Aboriginal gay, lesbian, bisexual, transgender or intersex person who happens to be a sex worker or whose action is that of a sex worker ie sex for favours."
(Aboriginal outreach worker)

Aboriginal sex workers are likely to need help with a range of basic needs like food, shelter and a place to wash and rest. While they may be reluctant to engage with most services, those that provide for these needs in a non-judgemental way may provide a point of contact. Some Aboriginal sex workers may need support or referral for assistance in relation to other problems including sexual abuse and violence.

"The services and support they access is any place that is kind to them, treats them with respect and sees and values their worth as human beings. The services should be near where they work. The girls at Port Kembla drop into the Men's group on Wednesdays where they are treated with respect as that is the culture of the Port Kembla Community Project. The girls come for coffee, to have a chat, eat some food, and smoke cigarettes.

The other things they identify as needing include food, clothing, shelter, friendship, to be heard, to be loved and cared for, to be able to feel a valuable part of our society, to see their children and families if they want to, to have access to condoms and syringes and information and support services that meet their needs."
(community worker, Illawarra)

Aboriginal sex workers may attend Aboriginal Medical Services, but not for sexual health testing, due to embarrassment and concerns about privacy. Some prefer to see a private GP**.** Those with co-morbidity issues may not be in contact with any health services.

"I get tested 6 monthly by my own GP, because I have known him for a long time and I don't feel embarrassed with him. I feel my confidentiality is protected and embarrassment limited... My doctor tests for everything because he knows what I do."
(Aboriginal private worker, about 30 years, Illawarra)

Many Aboriginal sex workers have left school early after sporadic attendance and consequently they may have poor English literacy skills and poor understanding of sexual health including STIs prevention measures. They are unlikely to pick up pamphlets.

"Not sure (how to tell if a client has an STI). I rely on them to tell me, but they would say anything. Mutual trust, but it is really about protection. I keep getting tested and use protection."
(Aboriginal sex worker, about 30 years, Illawarra)

Effective engagement with the most vulnerable of Aboriginal sex workers requires time to establish trust, a high degree of cultural sensitivity and preferably Aboriginal outreach workers with personal experience of doing sex work and good health promotion skills. They can only be accessed effectively at times and locations that are convenient for them. The requirement to make and keep appointments can be a barrier.

"Have people who won't judge you. Having experience in sex work themselves, it makes them understand where you are coming from... Someone to talk to every now and then (would be good)... Never heard of (SWOP). I don't go to any of them (services)."
(Aboriginal sex worker, about 30 years, Illawarra)

"Indigenous street sex workers, those with mental health and issues of homelessness are less likely to access mainstream services of any sort. Often this is due to feeling a lack of respect from service providers, the service hours are outside their working hours, the services are difficult to get to due to lack of infrastructure and public transport, and most people who are not living in a stable lifestyle cannot make appointments as they are often not aware of what day it is and do not keep a diary."
(community worker, Illawarra)

Financial incentives to attend clinics have been effective in attracting Aboriginal sex workers in some locations in the past, when other incentives have failed.

"Outreach services are needed. The solution to engage with this client base would be to give cash incentives for attending groups or testing. This has worked in the past... It would help to have an Aboriginal worker on site."
(ACONSWOP Illawarra)

Sex workers with intellectual disabilities

Some people with an intellectual disability have very limited knowledge of sexual health. Existing safe sex and STIs prevention information print resources generally target people with a much higher reading age than is typical of this group. They are unlikely to have any knowledge of sexual health clinics. Usually all their health needs are provided by a local GP and in some instances, Family Planning may be consulted on fertility matters. Neither are likely to be informed of sex work activities. While carers and case managers may develop some awareness of opportunistic sex work, they have a conflict of duties and are poorly prepared to provide the person with protective information or advice.

"In times of boredom or breaking up with her boyfriend, my client will access chat lines and meet up with men at pre-arranged locations in the man's car. She will often come home an hour or so later with $20 to buy cigarettes... We are very conflicted over how to manage our clients who may be engaging in some form of sex work, albeit in an opportunistic manner. Our duty of care would not allow us to promote safe commercial sexual services without reporting this to the public guardian."
(disability care provider)

6 MALE SEX WORKERS

Men who do sex work are a small population, but one that tends to be at higher risk for HIV/STIs and tends not to be in touch with sex worker organisations or sexual health clinics. A few male sex workers serve female clients (and their issues and information needs are different), but most male sex workers are men who have sex with men.

Sydney has had a tradition of male street-based sex work at "the Wall" / Green Park in Darlinghurst, but very few men still work from the street. A small number now work in a few brothels, but the majority who identify as sex workers are private workers who get their clients by advertising in gay or local newspapers and/or the internet.

Research has found that one in six Sydney gay men has at some time accepted payment for sex[91], which suggests that many more MSM do sex work opportunistically, without necessarily identifying as sex workers. These opportunities occur at sex on premises venues (SOPV) and on gay social networking sites like Gaydar.com. While those who identify as sex workers and are in contact with sex worker organisations and/or gay community organisations are more likely to have safe practices that protect them from HIV/STIs than other than other MSM with many partners, those who accept payment as part of a pattern of sexual adventuring are probably less likely to stick with safe practices.

"When I lived out in the sticks, any time I came to Sydney for the weekend, I'd go into (SOPV) so I wouldn't have to pay for a hotel room. I'd pick up someone to give me a bed for the night, buy me dinner and give me money as well if I was lucky."
(gay man, late 30s, not an identifying sex worker)

"An older and perhaps less attractive man may offer money to a younger man (online or in a SOPV), believing that the younger man wouldn't want to hook up with him, but if they offer money, they might (expect to get whatever they want)."
(SWOPNSW)

In brothels, newcomers to the industry are well supported in safe practices, but this option is only open to a few men and more money can be made independently, so most male sex workers work independently. Whether they find clients through newspapers or online, most male sex workers work alone and are not in contact with sex worker organisations that provide peer support, sexual health and legal information and self-protection strategies for physical safety and negotiation with clients. Uncertainty about the law may make them reluctant to access health services or to disclose that they do sex work if they do.

"Another factor was that a number of my friends doing sex work did not know about general support and information services available for sex workers, like SWOP. Apart from a small number of friends doing sex work, they didn't have much experience of the sex industry. These guys worked as sole workers and advertised on Gaydar (in the commercial section)."
(HIV health promotion worker)

"I have no understanding about the laws. I know it's illegal to work on the streets, but I don't know whether it is illegal to exchange sex for money."
(private male sex worker, over 30)

"No, I've never heard of SWOP... I just started working. I don't really know anything about the industry at all. I'm just learning."
(male brothel worker, under 25)

[91] Prestage GP, McCann PD, Hurley M, Bradley J, Down I, Brown G. (2010). Pleasure and sexual health: the PASH study

Some MSM sex workers know quite a lot about transmission and prevention of HIV and Hepatitis C, but very little about any other STIs. Asked to identify which of a list of STIs were treatable and which could be cured, no distinction was made between HIV and herpes and STIs that are easily cured if diagnosed. Further, many well known HIV risk reduction strategies are not sufficient to prevent transmission of other STIs.

"Gay and MSM (sex workers are at greater risk) due to higher rates of STIs in the client population and lesser safer sex practices in general compared to other industry sectors... Male workers may be likely to engage in different levels of safer sex practice than female or trannie workers. This arises from an overt focus on prevention of HIV transmission amongst gays and MSM, leading to common practice of calculated discretionary risk-taking amongst this population, i.e. 'strategic positioning' and oral without condoms (as these activities are considered no/low risk for HIV transmission – therefore are OK)."
(male sex worker activist)

Most information directed to sex workers has the needs of a female sex worker in mind and sex education in schools provides insufficient information about sex between men. MSM workers need information about a wider range of sexual practices than other sex workers. There is relevant information available in the recently produced Scarlet Alliance *STI Handbook* (the Red Book) and in the Scarlet Men section of the Scarlet Alliance website. Also available is the *Workers Handbook – Male Edition* developed by SWOP

"Due to most sex workers being women, most sex work information is targeted towards women, therefore excluding men. Also the kind of services offered by male sex workers is different to what female workers offer, therefore the health messages need to be different, ie emphasis on anal health."
(SWOPNSW)

MSM sex workers are far more likely than female sex workers to need post-exposure prophylaxis (PEP) for HIV, because there is a much higher level of HIV infection amongst their MSM client base and, due to gay community campaigns, they are far more likely to be aware of PEP. However, this awareness may not extend to a clear understanding of what is involved, where PEP can be accessed or the short time frame available for commencing PEP treatment.

"Yes. It's for taking the day after sex. I would get it from a GP."
(private male sex worker, over 30)

While many female sex workers have some regular contact with health services that give out condoms, male sex workers are more likely to buy their condoms and some rely on clients to provide them. This means they do not get peer support or counselling in relation to issues arising from their work, though some are aware of these needs. Stigma and shame can also be barriers to telling anyone where they are going to meet a client, which increases risk for all escorts who work independently.

"I buy (some supplies) myself from the chemist, but my clients have the condoms and lube. I know places to get them free, but I don't go there. There's only a select few people I tell I do sex work. I know they are meant to be confidential but... It's something I need to look at... (Male sex workers may need) psychological help if there are problems in your work. A safe place to go for general support, without feeling judged."
(private male sex worker, over 30)

"Shame and guilt is a big issue and any services for male sex workers should be specifically for males, staffed by (male sex workers). If you can't tell friends, it would be good to have a texting service (to say where you are going with a client for safety)."
(private male sex worker, over 30)

Young men with complex needs who do sex work opportunistically are particularly vulnerable, poorly connected to peer networks and unlikely to access sexual health services on their own initiative. Their focus is generally on meeting their basic daily needs, rather than on sexual health matters and most do not identify as sex workers.

"The ones least well informed are young men with complex needs. Lack of knowledge makes them more vulnerable. Lack of knowledge about the sex industry, risk of homelessness, drug dependency, poor hygiene and not identifying as a sex worker and/or not identifying as a gay man. Also mental health issues and generally poor negotiating skills and lack of control over work environment due to deficits in knowledge.

Younger sex workers don't identify as sex workers, which excludes them from sex worker communities and appropriate information. Lower literacy also excludes them from general sex worker information, as the information is usually pitched at a higher literacy level.

They aren't likely to seek out services themselves. This is why we outreach to them... Often they'll know of a service (eg KRC), but not utilise them for sexual health reasons... The barriers include fear of being 'outed', fear of test results, feeling they don't need to go to a sexual health centre."
(SWOPNSW)

Needs of male sex workers identified by informants included

- STIs prevention strategies for a range of MSM sexual practices
- awareness that STIs can be transmitted through unprotected oral sex.
- skills for negotiating safe sex with clients
- information about the law
- cheap safe sex supplies, counselling and peer support
- easy access to MSM appropriate STIs testing.

Informants suggested several ways to increase access to MSM sex workers:

- advertising free, confidential and sex worker friendly sexual health services
  - in the same places that male sex workers advertise
  - in sex on premises venues (SOPVs)
  - by SMS text message to all advertised mobile numbers
- providing free outreach clinics for all men attending SOPVs
- providing an SMS text message sexual health screening reminder service
- using outreach workers with MSM sex work experience.

"To reach people like me, they need some info in sex venues and back rooms. We know to use condoms, but have no understanding of where to go for testing or support. Shame and guilt is a big issue and any services for male sex workers should be specifically for males, staffed by peers"
(private male sex worker, over 30)

"I think services targeting sex workers should advertise where sex workers advertise – eg. Gaydar, Rentboyaustralia.com."
(HIV health promotion worker)

Male sex workers who see female clients operate in a different milieu from that of MSM sex workers. They have different information needs and may be less likely to identify as sex workers and hence be in touch with sex worker organisations or organisations that primarily serve MSM. They are also unlikely to have the benefits of exposure to sexual health campaigns targeting the gay community.

"(Male sex workers) exposed to safer sex promotions aimed at gays and MSM (tend to be best informed)... New workers and males working with female clients (tend to be least well informed)... Male escorts for female clients are likely to not identify with the stereotypical image of sex worker and are not likely to want to contact a sex workers' organisation run by gays and lesbians. There are differing standards of safer sex practice in various sectors – one size not fitting all. Those in contact with other workers through peer based organisations (tend to be best informed); isolated workers, NESB tend to be least well informed."
(male sex worker advocate)

"If they are men who are seeing only female clients, they need different information on how to health check the clients."
(SWOPNSW)

7 HIV POSITIVE SEX WORKERS

HIV positive sex workers are a small and largely hidden population. While in Australia HIV positive sex workers are most likely to be MSM, all three priority sex worker populations addressed in this report (CALD, complex needs and male) probably include some HIV positive members. The overall number of HIV positive sex workers is probably very small, but they are a vulnerable population with particular needs, who may be very shy of frank disclosure to government health services.

Media coverage and word of mouth knowledge of two cases (one in NSW in the '80s; one recent in the ACT), involving heavy handed treatment of HIV positive sex workers have resulted in reluctance to disclose both their HIV status and sex work simultaneously and may have made some reluctant to access government services at all.

"Criminal and public health law and stigmatising HIV and sex work has created barriers to sex workers accessing HIV testing and attending sexual health clinics where their sex work status may be identified.
(HIV social researcher)

"Although my (HIV+ friends doing sex work) were accessing good medical care in relation to HIV, I don't think they discussed sex work with their GPs. I actually don't know, but they generally kept their sex work pretty quiet, so if they were not open with their GPs, they may not have been getting appropriate care in relation to STIs testing. They were not going to sexual health clinics."
(HIV health promotion worker)

Knowledge of HIV positive sex workers and understanding of their needs is limited, but in 1992 the Scarlet Alliance conducted a needs assessment of HIV positive sex workers and in 2007 they undertook a second needs assessment to identify the current issues facing sex workers with HIV and better understand their needs. Their findings indicate that HIV positive sex workers are doubly stigmatised and that some HIV positive sex workers have experienced discrimination, judgemental attitudes and/or misinformation (particularly concerning the law) in government health services. These experiences (or word of mouth knowledge of them) have made HIV positive sex workers reluctant to access these services and some are unlikely to disclose their HIV status even to sex worker peer organisations.

HIV positive sex workers' specific needs include:

- accurate information concerning legal rights and responsibilities
- information to be included in sex worker publications (not in stand-alone resources due to disclosure and confidentiality issues)
- information on work practices including negotiation techniques for HIV positive sex workers

It was also suggested that, since some sex workers do continue to work when they have an STI, including HIV, they should be provided with sexual health treatment and advice that supports them in doing this safely.

"Always remember workers may still be able to work whilst they have an STI by adapting their activities to the circumstances at hand and offering services that do not place themselves or clients at risk
(male sex worker activist)

One HIV positive sex worker consulted for this gap analysis noted that HIV positive sex workers providing safe sex services are doing no harm, but may make a constructive contribution to community education about the need for safe sex practices.

"The rates of HIV among sex workers and clients is very, very low, however the high rates of safe sex practices and the framework of prevention in Australia means that these low participation rates poses no problems and can actually be a positive contribution to HIV prevention strategies."
(HIV positive MSM sex worker)

8 THE SEX INDUSTRY AND SEXUAL HEALTH SERVICES

South Eastern Sydney

The sex industry in South Eastern Sydney is like that of most major port cities, but since NSW has largely decriminalised the sex industry, there is a legal street-based industry, It also has the only Council approved safe house of its kind in Australia, where street-based sex workers can take their clients. The Eastern Sydney suburbs of Kings Cross, Darlinghurst and Surry Hills have the largest number of commercial sex services premises (SSPs) in NSW and a number of stand-alone escort agencies. The inner city area also supports a number of escort agencies and a large private sector. The sex industry in the St George area is estimated to include up to 20 SSP, which are mainly mixed cultures businesses. The suburbs to the south, from Kensington through to Rockdale, Hurstville, Kogarah, Botany, Tarren Point, Sutherland and Heathcote each have one or two, possibly three SSPs, some private workers and possibly some massage services which offer sexual services.

Sectors of the industry in this region most likely to include people who are at risk for HIV/STIs and not in contact with sexual health services include:

- sex workers with complex needs doing street-based sex work in the Kings Cross, Darlinghurst and East Sydney areas
- sex workers with complex needs working in suburban SSPs
- young people with complex needs including young Aboriginal females who do not identify as sex workers
- short stay CALD SSP workers
- isolated private workers, including some male and transgender workers.

There are nine LGAs in this region, with diverse responses to the sex industry, ranging from the pragmatic approach of the City of Sydney Council, through Botany Council, where no specific provision for the sex industry has been made in current planning controls, to Sutherland Council, which permits SSPs only in the Employment Zone, the equivalent of an industrial zone in other LGAs. Restrictive approaches to the sex industry in some of these LGAs have meant that many sex service businesses attempt to disguise their services as massage parlours. This in turn limits access by SWOP and SHS outreach workers and prevents operators from promoting safe sex practices as policy, making it extremely difficult for workers to insist on condom use.

"Some in our area are purporting to be a massage service. This leads to trust issues for letting in outreach staff and condoms are less likely to be available... Clearly there are barriers and sex workers are vulnerable because of the way the laws are implemented or interpreted. Councils ought to take a harm minimisation approach. Not be so black and white. They should collaborate in partnership with health promotion personnel."
(Short Street Clinic)

"Health promotion is non-existent when you are flying under the radar of the law. Owners/managers will say 'what the girl does in the room is not my business. We put up signs to say no sex'. This way they think they absolve themselves from responsibility for sex on their premises."
(social researcher)

"Yes, the signs say 'no sex'. We only do happy ending. Boss says it not sex."
(Asian massage worker, under 25)

The northern part of South Eastern Sydney region is well provided with sexual health services specifically targeting at risk sex workers with complex needs and those from CALD backgrounds. The southern part of South Eastern Sydney region and the Illawarra region do not have specialised sexual health services to address these populations.

The Kirketon Road Centre is the main provider of sexual health services to a range of sex workers with complex needs. KRC targets three populations: at risk youth, injecting drug users and sex workers. They provide safe, easy access for vulnerable people, many with chaotic lives who can be distrusting of mainstream health services. Clients do not need to make an appointment or come in for a specific health service; they can just drop in for a cup of coffee on the balcony or to pick up some condoms, needles and syringes. They also have an active outreach program to the street.

Sydney Sexual Health Centre (SSHC) has a Multicultural Health Promotion Project (MHPP) that provides services to CALD sex workers throughout Sydney. The MHPP provides dedicated language clinics for Thai, Chinese and Korean sex workers. The team includes health promotion officers with relevant community language skills, who attend these clinics, together with a sexual health registrar, a Thai speaking registered nurse and sessional health care interpreters. They also conduct multicultural outreach to CALD sex workers in brothels across the greater Sydney metropolitan area in partnership with multicultural staff from SWOP and other sexual health services.

The St George area in the southern part of the South Eastern Sydney region is served by the Short St Clinic (SSC). SSC provide outreach to about 15 SSPs, see about 50 sex workers per month and have about 450 sex worker clients altogether. While there is no street-based industry in this area, there are sex workers with complex needs and many from CALD backgrounds. To improve access for at risk sex workers, SSC would like to provide a drop-in clinic (no appointment required) and provide more outreach to CALD SSPs, but these changes would require additional trained staff, greater access to the SWOP Multi-cultural team and a dedicated outreach vehicle.

"Sex workers in English speaking brothels are being bribed with drugs by brothel management... In some of these brothels there are no health promotion materials available for workers or clients. Some of these managers encourage sex workers to do oral sex without a condom and we are hearing an increasing number of stories about full service being provided without a condom, mostly in the CALD brothels... To provide this service you would need to be consistent and have the required staffing level and regular access to the multi-cultural team."
(Short Street Clinic)

The Illawarra

The Illawarra has fewer sex services premises (SSPs) of the commercial variety than Sydney metropolitan areas, reflecting the smaller population. Like the South Eastern Sydney region, it has a significant private or home-based component and some escort services based in Wollongong, Dapto, Oak Flats and Unanderra. The latter largely operate from sex services premises rather than stand alone escort agencies. Like Eastern Sydney, the Illawarra has a street-based sex working industry, based in and around Port Kembla.

Wollongong Council takes a mainly pragmatic approach to regulation of the sex industry in their local government area (LGA), the result being that the majority of commercial operations have development consent, so Council has the ability to monitor the land use and occupational health and safety provisions in place for sex workers. These development consents were approved by Wollongong Council without recourse to the Land &

Environment Court and through its conciliatory approach Council has developed a good working relationship with much of the industry in their LGA. Council has placed generally reasonable conditions of consent on approved SSPs and undertake annual inspections to check whether these businesses are operating to these conditions of consent, including any plans of management lodged with the application.

Many (non-CALD) brothel workers in the Illawarra access PKSHS, though some prefer to use private GPs or to get tested in Sydney, just as some who live in Nowra prefer to be tested at PKSHS. The PKSHS location and operating hours are inconvenient for many and some are concerned about being recognised. An outreach clinic is provided at ACON, but some workers are even more concerned about being seen going there. PKSHS also do some outreach to brothels with the ACON/SWOP worker, providing clinical services in-house. This has built trust and works well for workers who have a day job as well as doing night shifts in a brothel. PKSHS would like to do more outreach to brothels, but they are constrained by the need to work with the ACON/SWOP worker whose hours are very limited.

"Some are worried they might get recognised at the SHS and might be identified as a sex worker because it's free for sex workers, but it's not just for sex workers. They advertise 'free for sex workers', but it might be better to say it's available to all... Some prefer to use their own doctor; some will go anywhere but their own doctor."
(brothel owner, Illawarra)

"We see young women in parlours who are not from the region but find it convenient to have checks while working (here). Some who live in Sydney and work in the Illawarra will choose to have their sexual health checks done in Sydney. Workers from Nowra will come to the Port Kembla Clinic to protect their privacy, due to confidentiality issues coming from living in a small town... We run an outreach clinic at the ACON/SWOP premises. Some workers liked the doctor, but felt being seen going into ACON, they might be identified as a drug user and therefore preferred to use the clinic services where they felt less visible."
(Port Kembla Sexual Health Service)

"Opening times and approach of staff to women working in the sex industry. Lack of stability in their personal lives, lack of transport to and from the services, lack of self efficacy are barriers to accessing services."
(community worker, Illawarra)

"Building trust is a labour intensive activity and there are no shortcuts. It is a changeable environment too, particularly with the high turnover of CALD workers and so you must reinvent the wheel every time you go into a brothel, because the manager and the workers change and because it is a changeable business."
(Port Kembla Sexual Health Service)

Many private workers prefer to see private GPs, but PKSHS do see some private workers and some of them are male, including a few who provide services to women. Some go to ACON for free condoms. Because they work alone, private workers may have particular need for peer support or counselling. To contact more private workers would require labour intensive outreach work.

"We see few male workers. One or two of them provide services to women."
(Port Kembla Sexual Health Service)

"(Sex workers also need) counselling on the emotional side of what the job entails and other people's views of sex work and how that impacts."
(female private worker over 50 years, Illawarra)

"Building a relationship with private workers takes time and when you get to talk to them, most privates say they see a GP."
(ACON/SWOP Illawarra)

The sectors of the sex industry in the Illawarra most likely to include people who are at risk for HIV/STIs and not in contact with sexual health services are:

- street-based sex workers with complex needs and some working in brothels
- short stay CALD brothel workers
- isolated private workers, including some male workers.

"When I started in this position about 3 years ago, it was clear that the most vulnerable population ... were the street-based sex workers of Port Kembla. Although they are difficult to engage, can lead somewhat chaotic lifestyles, are a disparate population and can have multiple challenging and complex psycho-social issues, it is important to work to overcome these potential barriers to promote empowerment, connectedness, identity, health and wellbeing... There are commonly drug and alcohol issues, mental health, cultural - in particular Aboriginal issues of historical and multi-layered disadvantage, sexual health needs, access to health and support services, and often compounded by further vulnerability to exploitation, harassment, violence and abuse."
(HARP Unit, Illawarra)

Recently there has been an overall decline in the sex industry, as local businesses have closed and tradesmen have followed work opportunities interstate. This has resulted in a more competitive environment and greater pressure on the most vulnerable to provide whatever services clients demand. A consequence in some contexts is that older, more experienced sex workers may be less inclined to mentor young, inexperienced workers, since they now present a competitive threat. Hostility towards SBSW from residents and businesses has increased in the context of economic hard times, sometimes resulting in harassment and abuse.

"The market has changed. The parlours are not as busy as they used to be. There's less money around. GFC. It's a working class town, but tradies can make good money going to WA mines or Queensland, so there's less population and a lot of small businesses are gone.... (The street-based industry) used to be bigger."
(ACON, Illawarra)

"As business owners suffer the hard times, I think they might naturally look to someone or something to blame for their hard times, and the sex work population, being the most vulnerable, are easy targets for this blame, and suffer the resulting harassment and abuse."
(HARP Unit, Illawarra)

Another reason risk has increased for this population is that two venues that had served as safe houses have closed, so SBSW are more often providing services in isolated outdoor locations, far from help. Risk has also been increased by local policing practices that have moved street-based workers from their traditional stretch of road to more isolated and dangerous locations. While some sex workers with complex needs avoid these risks by working in a brothel that tolerates drug use, using drugs with clients can also increase vulnerability.

"We need more (safe) houses where we can do jobs, instead of doing it in cars and in the street where it's not very safe."
(street-based sex worker, about 30, IDU, Port Kembla)

"Most of the time I can (control what happens), but the coppers make it harder, moving us on from safer places... Sometimes I do cocaine (with clients) or pot. I just wanna get it over and done with... See what girls have to put up with to support a drug habit? You've gotta have money to live... No-one wants to employ you. What we need is safe houses."
(street-based sex worker, under 30, IDU, Port Kembla)

The service needs of street-based sex workers are well understood.

"Access to safe sex equipment free of charge; services need to be provided in a non-judgmental setting. Information about safe practice; demystifying clinics with a less clinical approach, be more casual; address issues of confidentiality and how it is maintained."
(ACON/SWOP Illawarra)

"Long term workers are very organised. It's a job. They go to work and make their money and pay their bills like everyone else. Street-based sex workers are generally living more chaotic lives. Our physical location is a long way from where the street workers are working and with mental health issues, fear is a barrier."
(Port Kembla Sexual Health Service)

Access is the issue. PKSHS is far from the areas where they meet clients and people with complex needs are the least likely to access sexual health services on their own initiative. The strategy of pretending to be hitch-hiking in order to avoid being arrested has isolated street-based sex workers from one another and also made them harder for outreach workers to find. The Port area, previously a busy location for street-based sex workers, no longer allows access to potential clients and so is no longer a reliable access point for services.

PKSHS provide an outreach clinic at Darcy House. It is not promoted as being specifically for sex workers, although they are the primary target group. However, the population accessing Darcy House has changed.

While in the past Darcy House was focused on sex workers, it now serves a broader target population and those attending are predominantly homeless men with alcohol and associated behavioural problems, which has made the space much less a haven for female sex workers. Some SBSW now prefer to use the Port Kembla Community Centre for meals.

"When Darcy House was first set up as a specific sex worker service, we (asked) them what would be the best time of day or night for them to attend a clinic – if we go to a community setting to run a clinic would you come? Darcy House was originally set up for that purpose and we did see good numbers of street based sex workers. Rather than once a fortnight as we once did, we run a clinic at Darcy House once a month and it has limited attendance."
(Port Kembla Sexual Health Service)

CALD workers in the Illawarra may be at risk for HIV/STIs for the same reasons some are at risk in Sydney, but most do not attend the PKSHS. Low awareness, language barriers, fear of being seen entering a sexual health clinic and the remote location probably all contribute to reluctance. Some do travel to Sydney to use the SSHC language clinics, where they can be supported by bilingual peers. CALD workers with poor English language skills may lack the confidence to access an English language clinic.

Many CALD workers do not stay long in the Illawarra, either because there is not enough work to keep them or because those under contract (to repay travel expenses incurred in getting to Australia) tend to be moved frequently by their managers. Another issue is that some Asian brothels currently do not admit any outreach workers.

The main change that could improve PKSHS access to higher risk sex workers is increased collaboration with peer outreach workers, including the ACON/SWOP Illawarra worker and the SWOP multicultural team, but this can only be possible if these workers have more hours to use and a dedicated outreach vehicle is available. A print resource for travelling CALD sex workers in relevant languages telling them where free sexual health services are located might be helpful, as well as a CALD specific clinic day.

"We see few CALD workers in the clinic and the CALD workers we see are usually older workers. Access depends on the manager... We need the multicultural SWOP outreach workers to go to the brothels to explain about sexual health and explain about the role of the clinic. We need support from this team who have very limited availability and huge territory to cover. They are coming to the Illawarra soon to do joint outreach with (ACON/SWOP)."
(Port Kembla Sexual Health Service)

There is already an interagency group convened by the HARP Unit that provides a structure for whole of government and community sector collaborative action in the Illawarra: the Port Kembla Sex Worker Improvement Project. While participation by Police and Local Councils and the Chamber of Commerce has been sporadic and usually by invitation in response to increased violence and abuse against SBSW, there is potential for further constructive collaboration, particularly if this is supported by higher level interdepartmental liaison.

"A collective of supportive services formed the Port Kembla Sex Worker Improvement Project... to respond to the issues faced by this population, the main current members being SWOP, PKSHS, the HARP Unit and Darcy House... In the past, when there were significant issues relating to the population, representatives from other key stakeholder groups were part of the Project, including the PK Chamber of Commerce, local Council and Police."
(HARP Unit, Illawarra)

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10 ATTACHMENTS

Attachment 1

Sex Industry Premises Definitions

Under the Restricted Premises Act 1943 a 'brothel' is defined as premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose; including premises even though used by only one prostitute for the purposes of prostitution. By contrast, in the Environmental Planning and Assessment Act 1979 No 203, the definition of a 'brothel' excludes premises used or likely to be used for the purpose of prostitution by no more than one prostitute. Further definitions for the sex industry were introduced in the recently mandated Standard Instrument (Local Environment Plan) 2006 (SILEP). The SILEP separately defined home occupation and HO (SS) for the first time in a State wide planning instrument. HO (SS) is defined as the provision of sex services in a dwelling by no more than two permanent residents.

While there is no evidence or directive that they should be regulated differently, the separate definition has lead some councils, in adopting the SILEP, to prohibit HO (SS) entirely or require a development application in a limited number of zones, primarily in industrial zones. This occurs even though industrial zones are rarely considered suitable for general residential use.

In March 2009, through the "*Model local clauses for Standard Instrument LEPs (20090324): 6.6 Restriction on consent for particular sex services premises (local)*" the Dept of Planning specifically informs that:

"*LEPs* [Councils] *should provide for sex services premises somewhere in the LGA and the area (or zones) selected needs to reflect how the Council will adequately provide for this use."*

Although the SILEP separately defines commercial SSP from HO(SS), the Dept of Planning has given no such guidance on HO(SS).

Attachment 2

Some Planning Terminology and explanation

Local Environment Plan (LEP)
A local environmental plan (LEP) is a statutory document (legal standing) that controls land use and development at the local level through land uses zones and objectives as well as development standards. Land use zones describe the permitted and prohibited land uses. Development standards control certain aspects of development, such as density, building height or floor space ratio. Development standards are also contained in Development Control Plans but these are applied as policy rather than as a statutory instrument and have less weight.

Development Control Plans (DCP)
DCPs have traditionally been prepared by Councils in order to provide additional more detailed information, especially around development standards to that which is contained in a LEP. DCPs cover issues such as access and mobility for people with a disability, industrial and residential development, building height, waste management, car parking and location and design criteria for specific types of development such as sex services premises. A DCP is not a legally binding document like an LEP.

Sex Industry Policies or Sex Industry DCP
Very few councils have adopted a sole DCP or Sex Industry Policy for sex industry premises (sex services premises and home occupation (sex services)). The former South Sydney Council developed the first sex industry policy following the 1995 sex industry reforms and in 2005 following consolidation of the two councils, the City of Sydney reviewed the policy and with considerable community consultation, the Adult Entertainment and Sex Industry DCP (AESIDCP) was adopted. It has since guided the location and design criteria for sex industry premises in their local government area (LGA) and has been used as a guide by some other councils.

Under the SILEP other councils who have no sex industry policy or DCP and a small or unknown sex industry will likely adopt the direction given by the State Government for Model Local Clauses for sex industry LEPs. This direction requires that LEPs should provide for sex services premises somewhere in the LGA and show how the council will adequately provide for this. Apart from providing a definition, the SILEP is silent on zones where Home Occupation (sex services) might be permissible.

Exempt and Complying Development
Exempt development is generally minor development that has minimal environmental impact. To qualify as exempt development, and be permissible without consent, it must meet specific development standards set out in Council and State Codes. Home occupations are generally considered as exempt development and do not require a development application (DA).

Complying development is development that has a greater impact than the exempt development types, but will only result in a minor environmental impact. Complying development can include internal alterations to a house, a new single or two storey dwelling and a below ground swimming pool.

Attachment 3

Current and proposed LEP changes

The following tables provides a summary of the current status and where available proposed changes to sex industry regulation in four local government areas within the LHN

Source: Publicly available information from Council websites followed up with telephone communications with council staff

Table 1

Botany Bay Council	**Planning Instruments**		**Zone/Permissibility**	
On 19 July 2006 Council resolved to commence preparation of the draft Botany Bay LEP 2011 (BBLEP) and comprehensive DCP. Council will invite formal submissions when the drafts are placed on public exhibition mid to late 2011	LEP Underway	DCP Underway.	SSP Unknown	H0(ss) Unknown
Comment: Under the current BBLEP 1995, SSP and HO (SS) are not separately defined and as such are treated as a commercial business and home occupation respectively. A commercial business being permitted in a range of business and mixed use zones and home occupation as exempt development, not requiring a DA. It is uncertain how council will provide for SSP and HO (SS)				

Table 2

City of Sydney Council	**Planning Instruments**		**Zone Permissibility**	
Council's draft LEP and comprehensive DCP came off public exhibition at the end of April and Council is in process of reviewing submissions	LEP Draft only	DCP Draft only	SSP proposed to be permitted with consent in B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park	H0(SS) Proposed to permits up to 2 people as exempt development not requiring a DA in the full range of residential zones
Comment: The City of Sydney has identified that industrial zones are inappropriate locations for the sex industry and propose to prohibit the use in the IN1 General Industrial and IN2 Light Industrial zones				

Table 3

Sutherland Shire Council	**Planning Instruments**		**Zone/Permissibility**	
Council is in the process of developing new planning controls (SILEP and a comprehensive DCP) but it is unlikely to be available for public exhibition until early 2012	SILEP Undertaking research	DCP Undertaking research	SSP Unknown	H0(SS) Unknown
Comment: Under the current SSLEP, SSP are permissible with consent only in Zone 11 Employment. Home occupation is not separately defined under the LEP and HO (SS) is therefore not separately identified and requiring any special treatment. In communications with council officers it is likely that under the SILEP, SSC will again permit SSP only in the Employment zone. Location controls and social impact considerations for the assessment of SSP is captured in the current DCP. It is uncertain how Council will view HO (SS)				

Table 4

Wollongong Council	**Planning Instruments**		**Zone/Permissibility**	
Wollongong City Council LEP 2009 and comprehensive DCP is now in force having been gazetted in 2009	LEP Adopted	DCP Adopted	SSP permitted with consent in Local centre; Commercial Core and Enterprise corridor	H0(SS) permitted in General Residential; Residential; Low Density; Medium density; Large lot residential
Comment: Wollongong City Council has determined that industrial and business park zones are inappropriate locations for SSP and HO (SS) and prohibit the use in these zones.				

Attachment 4

Example of information provided on regulatory powers and responsibilities in relation to other authorities: Taken from Wollongong Council Development Control Plan Part C-Specific land use Controls Ch C16: Sex Services Premises and Restricted Premises (Sex Shops)

4 Council's Planning and Regulatory Powers in Relation to Other Authorities

1. Council's responsibility in relation to "sex services premises" centres primarily on land use planning under the Environmental Planning and Assessment Act 1979. Responsibility for safe health practices in the workplace rests with the NSW Department of Health, while the WorkCover Authority is the primary authority regarding occupational health and safety issues in any workplace. Sex workers and brothel owners/proprietors must comply with Section 13 of the Public health Act 1991.

2. Council will also periodically liaise with the NSW Police Service concerning complaints received about "sex services premises". Issues of illegal immigrant sex workers are matters for investigation by the Australian Federal Police and Commonwealth Department of Immigration. Issues of criminal behaviour are matters for the NSW Police Service to investigate and hence, are outside the scope of this plan.

3. In appropriate circumstances, Council may refer Development Applications for "sex services premises" to the following:
(a) NSW Police eg. For comment in relation to Crime Prevention through Environmental Design (CPTED) issues;
(b) NSW Department of Health;
(c) AIDS Councils of New South Wales (ACON); AND
(d) Any other relevant government department, agency or organisation, depending upon the nature and circumstances of the application

5. Relevant Legislation

4. The management and operation of "sex services premises" in NSW is regulated by the following Acts:

- Environmental Planning and Assessment Act 1979;
- Public Health Act 1991;
- Summary Offences Act 1988;
- Crimes Act 1900; and
- Local Government Act 1993.

5. Before submitting a Development Application, it is recommended that persons seeking approval for "sex services premises" should familiarise themselves with the relevant sections of these Acts and there effect on the operation of a "sex services premises".

6. Additionally, the NSW WorkCover Authority's publication titled "Health and Safety Guidelines for Brothels in NSW" published by WorkCover NSW (2001) is also recommended to be read. This Plan requires that sex services premises (brothels) shall have at least one current copy of the Guidelines placed in all staff and client waiting areas. Another useful reference document is the "Occupational Heath and Safety Act 2007".

Attachment 5: Informants to this gap analysis

Sex Worker Organisations/Groups

The Scarlet Alliance CEO, staff and members
SWOPNSW – Manager and staff including Multi-cultural Team
Nothing About Us Without Us (NAUWU) NSW
Respect Inc Queensland
SWOPACT Manager and staff
SWOPNT Manager and staff
SIN South Australia Manager and staff
Prostitutes Collective New Zealand Manager and staff

Sex worker advocates and other experts in the regulation of the sex industry

Saul Isbister and Rachel Wotton, Co-Director ISI CATS (Integrated Sex Industry Solutions – Consultancy and Training Specialists
Maria McMahon (former SWOP Manager and sex work policy advisor ACON)
Five relevant senior professionals who wished to remain anonymous

Sexual Health Clinics

Dr. Ingrid van Beek and staff, KRC
Dr. Anna McNulty and staff, Sydney Sexual Health Centre
Dr. Katherine Brown and staff, Port Kembla sexual Health clinic
Dr. Pam Konecny and staff, Short Street Clinic, St. George Hospital

Non-government organisation/services

ACON/SWOP Illawarra Manager and staff
Darcy House, Manager and staff
Port Kembla Community Centre staff
Warrawong Community Centre staff
Quality Health Care Disability service Manager and staff
Touching Base President
ACON Policy team
AFAO/NAPWA Education Team
NUAA Manager and staff
Women & Girls Emergency Centre Manager and staff
The Gender Centre Manager and staff

NSW Police

Crime prevention officers at several Area Commands within the LHN

Local Area Councils

Planning and related staff at Councils within the LHN

Sex workers

More than 30 sex workers from various locations and sectors of the industry.

ELIMINATION NOT REGULATION - SEX INDUSTRY CASE STUDIES AND RELATED COMMENTARY OF THE PLANNING PROCESS

Compiled by: Julie Bates, Urban Realists Planning & Health Consultants as an example of the experiences of proponents in development applications along with commentary from planning and related experts

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CASE STUDIES

Sex Services Premises Operator 1

"In the early 1990s I purchased a small brothel in inner Sydney and while I knew that brothels weren't exactly legal they nevertheless existed albeit, under the guise of a "massage parlour" or other euphemism such as a "health studio". I guess I was quite naive in those days and although I'd never had any contact with the police I had heard the rumours - the police would eventually call by to arrange for their regular payment of money and maybe free sex or may be both. Every day I waited for the "knock" on the door and spent the next 8 years or so feeling intimidated and disempowered. This, of course, had an effect on how I ran my business – here today, gone tomorrow kind of approach but it was the only way you could look at it back then.

There was no opportunity to legalise a brothel, you couldn't apply for development consent and even when the laws changed there was little promotion of the fact. It seemed to me that brothel owners were the last to know about the new DA process. The first thing I knew of it was a notice from council threatening to close me down. I put in a DA, Council refused it and ultimately at great expense I appealed to the Land & Environment Court and won. However, having had to raise tens of thousands of dollars to fight for the survival of my business and the additional financial burden of attempting to comply with the conditions of consent, I am just scraping by 7 years later.

On the positive side, I feel decriminalisation has allowed the industry to develop an increased awareness of occupational health and safety issues. That is, if you are lucky enough to get development consent. With consent, you can plan for the future, and start to believe that you are a legitimate business operator who should have the same rights and responsibilities as other businesses. However, such is the stigma still attached to either being a sex worker or operator that decriminalisation still does not allow me to tell my family that I own a brothel. We may have taken on increased responsibility and expenses but this is far from being matched with equal rights."

Sex Services Premises Operator 2

"In our case the granting of the DA itself, while a little drawn out, was a process in which common sense prevailed ultimately. This was because the council's planning officer assigned to the DA was an experienced planner ... but then the situation changed. On providing detailed signoffs (on matters such as health and building issues), individual council officers didn't seem to have a clear and common idea of what the legislation was intended to achieve.

As a result, they would err on the side of caution, always resulting in additional compliance and fit out costs for us. For example, (male) council officers were laying

down the law on the nature of amenities that female sex workers would require, without consulting the sex workers themselves! I think some of these officers have an exaggerated notion of the profitability of these sorts of businesses. Our DA was temporary - just 12 months in the first instance - and they don't seem to understand that, in the worst case of non-renewal, 12 month's approval is a joke in terms of recouping the costs of the capital works they insist we undertake."

Sex Services Premises Operator 3

"Our approval process has been dominated by NIMBYism and moral outrage. The trouble with both of these motives for opposition is that they can result in the atmosphere and fervour of a crusade. For this reason, a technically compliant application has to resort to the court (LEC) processes for sanity to prevail. We are hopeful that the court process will allow the heat to be taken out of the issues, and for sensible consideration to take over, albeit at greater cost to all parties.

The irony is that, while our application attracted opprobrium such that Council meetings took on the air of a revivalist meeting, all the while an extensive network of unapproved establishments continued to flourish under the campaigners' noses, apparently unnoticed."

Post Script:
Council amended its DCP in the intervening period i.e. from time the applicants lodged an appeal against council refusal and the appeal came before the LEC extending the separation distance between two sex services premises (SSP) to 500m, there being another SSP just approved by council within approximately 499m of the applicant's premises. However, the LEC upheld the appeal with a 12 month trial resulting in a fresh DA needing to be lodged at the end of the trial period. The DA was subsequently approved by Council. It is important to note that in the intervening period, there had been no complaints or amenity impacts as perceived by locals prior to approval. Not one complaint was received during the trial period and it came just within the prescribed separation distance of 500m.

Sex Services Premises Operator 4

"We've been here for what seems like forever (approaching our 30th year) but we find ourselves between a rock and a hard place. We can't get Council approval under existing use rights (not been here long enough would you believe) and being located in a zone (albeit a commercial type zone) which currently prohibits brothels, which means we can't even lodge a development application.

However, our Council has taken steps to consult with the industry and its various supporters and representatives. They have put in place an amnesty while a new and improved brothel policy is being developed in consultation with the industry and other key players. While plans and regulations of Council need a bit of tweaking, they at least continue to allow open dialogue, which has allowed us to find solutions to some of our issues. Council meetings have been civilized affairs and our representatives have been listened to and treated with respect - as it should be."

Post Script
The council amended their LEP in line with the standard instrument template which allowed brothels in the newly identify commercial core zone in which the subject brothel

had existed for decades permitting a DA to be lodged. It was subsequently approved, albeit for a trial period of 24 months, to be followed by 12 month trial period – a slight overkill but one that was no doubt taken to appease the one or two objectors to this application.

Sex Services Premises Operator 5

"I did my homework….if the Council doesn't have any planning laws relating to brothels, and there is no mention of brothels in their planning documents, my DA should be treated as any other commercial premises and get approval. Not so, and even with experts on my side, the Council refused my application. The next step was an even bigger shock to everyone on my team. While the Council didn't have any laws on brothels, the Court decided to help out and came up with its own planning principles. I'm left with a property I can't use, sell or rent, a huge mortgage and a belief that the new laws favour only a few lucky people and those who can afford to fight on. When will our industry be treated equally and with respect." *(translated)*

Post script

After several years of trying to sell the property, the applicant finally sold at a significant loss.

Sex Services Premises Operator 6

"After spending months and months looking for a suitable site to set up a brothel, we settled on an industrial site with a factory in an industrial estate full of smash repair shops and other heavy industry in ….council. This, of course, was not an optimal location but on the surface and according to their planning laws, was the only zone in which they would permit brothels.

Our planner looked at the planning documents and advised us that the site met all of the council requirements and was even in an area that was edged with black ink on the plans that said brothels are permitted, with consent, in this location. Knowing this was going to be a long and expensive process we needed to have some sense of development certainty and thought this council's planning controls provided that.

Our planner lodged the DA leaving no stone unturned in terms of how our premises met all of their planning requirements and helped us develop a plan of management for the operations which was lodged with the DA. The DA was recommended for approval by the planning officer and it went to Council where it was refused. The Councilors believed it was an inappropriate use of the site as young children would walk past and a school existed across a 6 lane freeway behind a grove of trees over 1000m away completely out of site.. Furthermore, the Mayor announced at the council meeting that he would never support a brothel approval so long as he was mayor of X council.

We had now gone so far and had already spent so much time and money securing the site we had to fight on. We still believed, as did our planner and our new lawyers, that the site met all of the planning controls and so we embarked upon an expensive appeal to the Land & Environment Court. We ultimately won. Were given a 12 month trial to ensure we did not create what they called an 'amenity impact'. The truth is we made the neighborhood a whole lot safer with our late night electronic and other surveillance. The

next step, even though we only had a 12 month trial, was to turn a disused and oily industrial warehouse in the middle of the nowhere into a plush new brothel."

Post Script
After 12 months the operators were granted an occupation certificate for the continued use the premises having complied with the conditions of consent for the refurbishment and fit-out of the premises and that there had been no complaints – the community had not gone to the dogs after all! After 14 months, two robberies later and being too frightened to stay open after dark, the operators sold the business. Industrial estates are dangerous locations at night for anyone let alone brothels which are mostly staffed by women.

EXPERT COMMENTARY

"As a Consultant with over 50 years experience in both the Public and Private sectors of the Planning and Development world I was delighted to see the Government legislate to legalise the sex industry back in 1995. Unfortunately the then Minister Knowles did incredible damage to what was an enlightened decision by allowing Councils to relegate Brothels to Industrial Zones. Even then some Councils, like the Hills Shire who recently attempted to get other Councils to support a total Ban on Brothels in all Council areas, still object to their presence anywhere. Some still live in the dark ages.
Problems then arose because most Council's could not accept the social value of the industry and except for the enlightened former South Sydney Council most Councils refused development applications for brothels. It was good work for the lawyers and Consultants. Although the initial rush has now subsided others are continuing to fight costly and lengthy legal appeals when there was no justification for refusal.

(Town Planner currently in private practice)

"A lot of Councils don't understand that the sex industry is now legal and should be treated like any other. It was legalized to end the association with organized crime, to stop the corruption of public officials (police) and in the interests of public health: the health of sex workers and the health of the whole community. Councils' job is to regulate the industry; but some think their job is to eliminate it. Elected Councilors are often less informed and more open to pressure from organized community groups like local churches. The outcome in these LGAs is a lot of sex services premises operating without appropriate development consent so either they can't let condoms be found on the premises or no-one ever inspects to see what is going on in there. They may be safe sex models or they may not. As ICAC proceedings showed in Parramatta, brothels operating without appropriate development approval provide new opportunity for corruption of public officials. Prior to legalization, the officials corrupted were police officers; now those with opportunity for corruption are Council compliance officers."

(social planner/expert witness LEC)

"Working at five different (and diverse) Councils over 3 decades, I have seen an extraordinary shift from reluctant approvals to absolute and outright refusal even of fully

compliant DAs. The 1995 reforms appear to have totally failed and we have been thrust back in time 20 years, once again falling victim to the moralistic and religious hypocrites in society.

Putting brothels where they are least likely to offend as Senior Commissioner Roseth wrote in his planning principles in the case of Martyn v Hornsby Council usually translates to putting them in out of the way industrial zones. That's what councils take that to mean. Where they have been previously allowed to locate in commercial and mixed use zones in areas like Marrickville, Surry Hills, Newtown and Canterbury they are less likely to be targeted by opportunistic thieves due to their location amongst other businesses and presence of passers-by, even at late hours. They are usually no-where near public transport which poses extra problems for staff and management. Establishments in factory areas are asking for trouble.

To give you an example of the hostile approach taken by some councils and particularly councillors, the Mayor of one Council announced in open Council, that he did not want brothels "anywhere in his Municipality". This is a total disregard of planning principles and contempt for Planning staff. These comments were made at a Council meeting where a DA for brothel in an industrial zone and fully compliant with all the LEP and DCP requirements was refused.

(Environmental Health Officer)

"A consequence of the 1995 reforms has been that brothels have been subject to a significant number of conditions attached to consent conditions, when approved either by Council or the Court. The extent and breadth of these conditions has lead to an over regulation of brothels that makes it less commercially attractive to seek development approval. unauthorised brothel are still flourishing."

(Barrister at Law)