

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE REGULATION OF
BROTHELS**

INQUIRY INTO THE REGULATION OF BROTHELS

—

At Sydney on Tuesday 1 September 2015

—

The Committee met at 10.00 a.m.

—

PRESENT

Mr A. Henskens (Chair)

The Hon. M. Pavey

Ms M. Gibbons

Mr A. Greenwich

Ms J. Haylen

Ms E. Petinos

Ms K. Smith

CHAIR: Good morning everybody and thank you for attending the public hearing of the Select Committee on the Regulation of Brothels.

My name is Alister Henskens, I am the Chair of the Select Committee and the member for Ku-ring-gai. With me today is the Deputy Chair, Mrs Melinda Pavey, the member for Oxley, Ms Melanie Gibbons, the member for Holsworthy is currently absent but she will be joining us shortly. We have Mr Alex Greenwich, the member for Sydney, Ms Jo Haylen, the member for Summer Hill, Ms Eleni Petinos, the member for Miranda and Ms Kathy Smith, the member for Gosford.

Today the Committee will hear from witnesses from the Department of Planning, the NSW Police and the Department of Justice. Following the lunch break the Committee will hear from witnesses representing the public health organisations, the Kirby Institute and the Kirketon Road Centre.

The Committee will also hear from witnesses representing Marrickville Council, the Council of the City of Sydney and the Hornsby Shire Council.

At the outset I thank the witnesses appearing today for making themselves available. May I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment? For the benefit of the gallery, I note the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public hearings. Copies of the guidelines governing the coverage of proceedings are available. I now declare the hearing open.

ALISON JANE FRAME, Deputy Secretary, Policy and Strategy, Department of Planning, 29-33 Bridge Street, Sydney, and

ELIZABETH KINKADE, Executive Director, Planning Policy, Department of Planning, 29-33 Bridge Street, Sydney, sworn and examined:

CHAIR: Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing proceedings?

Ms FRAME: No.

Ms KINKADE: No.

CHAIR: Would either of you like to make an opening statement before the commencement of questions?

Ms FRAME: Yes, I would, if that is possible. I was just going to read a statement that provides some context about the role of the planning system and then Ms Kinkade and I will be happy to take any questions you have.

Following the decriminalisation of brothels and prostitution in 1995, brothels became development covered in the planning system under the Environmental Planning and Assessment Act 1979. The planning system allows for the consideration of land use matters for brothels, including the location, permissibility, building requirements and enforcement options. The planning system offers tools to assist in the operation of the wider brothels regulation framework, however, planning alone cannot address the broad range of operational and compliance issues surrounding sex work in New South Wales.

Under the Environmental Planning and Assessment Act councils regulate brothels through local environmental plans or development control plan. In 1995 the then Minister for Urban Affairs and Planning advised councils that he would not support them operating blanket bans on brothels in

their local environmental plans by prohibiting them in all land use zones, as it would undermine the decriminalisation of prostitution. As an alternative, councils were able to make brothels permissible only in industrial areas to avoid them being made permissible in other commercial areas such as shopping centres.

This approach has been adopted by many New South Wales councils in preparing local environmental plans and has been the established policy position for the preparation of plans throughout the delivery of the standard instrument local environmental plan program.

Local environmental plans may permit or prohibit sex work in specific locations through zones in local environmental plans or specify standards or controls that must be met for the location, design and operation of such premises.

There are a range of definitions in relation to brothels and sex work that apply across New South Wales legislation. The Environmental Planning and Assessment Act adopts the definition of a brothel as established by the Restricted Premises Act 1943 but further provides that a brothel is a premise used or likely to be used by more than one sex worker.

Under the standard instrument local environmental plan a brothel may be defined as a sex service premises or home occupation sex services.

In accordance with the 1995 ministerial advice, councils continue to be required to permit with consent brothels in at least one zone in their local government area. Throughout the implementation of the standard instrument local environmental plan program, councils generally sought continued local control over how to plan for brothels.

Development consent obtained through lodgement of a development application is generally required from a council to operate a premises as a brothel. Requirements for the location, design and operation of brothels are generally set by councils in their development control plans, which also usually require the notification and/or advertising of these development applications to the community or for them to be determined by a full meeting of council rather than a council officer under delegation.

If a brothel is to be granted development consent, it will be required to act in compliance with conditions of consent. The conditions of consent are set by the relevant council and may relate to the management and operation of the premises, including maintaining a plan of management, hours of operation, limits on the numbers of workers, cleaning requirements or allowing access by health professionals to assist and educate workers.

As the consent authority, councils are primarily responsible for regulating the operation of brothels, including those with or without development consent. Although there is no role for the department in undertaking prosecutions in relation to illegal brothels, the department is in contact with councils regarding the issues they face in this area, such as identifying the appropriate person to prosecute, the costliness of prosecution and the evidentiary requirements.

In November 2014 the Parliament passed the Environmental Planning and Assessment Amendment Act 2014 to establish the strongest investigations and penalties framework for planning offences in Australia. There are a range of legislative avenues for councils to undertake compliance and enforcement for brothels, including issuing a penalty notice—these have recently broadly doubled up to \$6,000 for corporations and \$3,000 for individuals where issued by a council officer; issuing an order to comply with a development consent; issuing an order for a premises to cease being used as a brothel, which is a brothel closure order. If a brothel closure order is not complied with, enforcing the order by cutting of utilities to the premises via an order to the Local Court or the Land and Environment Court and also undertaking action in the Land and Environment Court or Local Court.

With regard to licensing, there have been arguments suggesting that a licensing system would strengthen the regulation of brothels, however, it needs to be noted that such a system would not eradicate the need for approval or enforcement under the Environmental Planning and Assessment Act. Introducing such an initiative would create a system where separate requirements would need to be met for the purposes of both development consent and a licence.

In assessing a licensing system for brothels, consideration would need to be given then to minimising the inconsistencies and duplications between conditions of consent and licence requirements.

CHAIR: The Department of Planning fulfils its function based on its knowledge of activities that take place, correct?

Ms FRAME: That is right.

CHAIR: It can only do so if the information that it has is accurate as to activities that are taking place?

Ms FRAME: That is right.

CHAIR: If brothels are, in effect, being conducted on premises that are being called massage parlours and there are no planning approvals for those premises to operate as a brothel, then I assume you would agree that that is an undesirable planning outcome?

Ms FRAME: It is a use for which there is no consent for that premises. A consent would exist for a massage parlour but not for operation as a brothel.

CHAIR: But if the planning regime is premised upon the fact that uses are authorised, then it is an undesirable planning outcome, do you agree?

Ms KINKADE: I think in the planning system there are a lot of uses that may occur without consent where they require consent and this would be another one of those situations where that can occur.

CHAIR: As a consequence it is undesirable, correct?

Ms KINKADE: It is not the preferred outcome, we prefer all uses to occur in accordance with the appropriate consents.

Ms FRAME: Which is why we also went through all the actions that are available to rectify that, to take action about that unauthorised use.

The Hon. MELINDA PAVEY: Who would take that action?

Ms FRAME: Councils.

The Hon. MELINDA PAVEY: Not police?

Ms FRAME: You would need to ask councils about how they work with police. They may have examples of them working quite collaboratively with police in taking those actions, but the department is not involved. From the planning system's perspective, it is councils who take that action under the Environmental Planning and Assessment Act.

CHAIR: The range of measures that were introduced in November of last year that you referred to in your opening statement; they were all measures that were available to Hornsby Council

when they failed in their prosecution with regard to a massage parlour earlier this year?

Ms FRAME: Everything except the increased fines, the court case may have pre-dated the amendment regulation in November.

CHAIR: The problem they had was establishing that a massage parlour that was offering sexual services was in fact a brothel within the definition of the legislation, was it not?

Ms FRAME: Yes, that is right.

CHAIR: The measures that you refer to in November of last year that were introduced were all predicated on that definition of a brothel, were they not?

Ms KINKADE: The definition of brothel has not recently changed.

CHAIR: That is right, so those measures would not have assisted at all in the attempts by Hornsby Council to cease the operation of illegal sexual activities at a massage parlour, correct?

Ms KINKADE: It would be difficult to comment on whether or not the increase in the penalties would have led to a different outcome for that matter.

CHAIR: If the penalties are predicated on establishing a place as a brothel within the legal definition and they were unable to do so, the increased penalties would not have assisted in any way, would they?

Ms FRAME: The penalty may have been issued on the, not assumption, but circumstantial evidence and whatever additional evidence the council had available to them at the time and there could have been more examination of evidence on appeal, if the infringement notice was appealed. That is all hypothetical.

CHAIR: What is your understanding of the manner in which Hornsby Council tried to undertake the prosecution earlier this year? Did they use any of the penalty notices that you are referring to?

Ms KINKADE: I cannot comment on the detail of the manner in which they undertook their prosecution for that brothel, but those penalty arrangements were in place and before that matter was considered by council the utilities order option was also available to brothels. The amendment last year extended that to two additional uses, but the utilities orders were in place.

CHAIR: If a massage parlour, so-called, is offering sexual services on their premises and there is no planning approval for those premises to be operating as a brothel and a council therefore wants to cease that activity taking place because it is unauthorised, what do you say are the legislative weapons available to the local government authority to cease that activity?

Ms FRAME: To start with, council investigation officers are authorised under the Act to enter any premises other than premises used for residential purposes without notice and without the consent of the owner or occupier to determine whether there has been a breach of the Environmental Planning and Assessment Act under section 119D of the Environmental Planning and Assessment Act. This means that investigation officers can enter suspected brothels without notice, giving council a better chance of obtaining evidence of unlawful use.

While at the premises they can obtain evidence under section 119F, such as taking photographs and videos of the premises and people at the premises and they can require records to be produced, such as inspect appointment books and other written material. A site inspection may provide then both direct and circumstantial evidence that the premises is being used as a brothel.

Councils also have powers to conduct formal interviews and formally request information or records if necessary, although this evidence cannot be used personally against the person providing the information.

Moving on from that, if following an investigation a council forms a view that premises are being used as a brothel without consent or not in accordance with a consent, the council has the enforcement options available to them.

All that compliance action taken by council is discretionary, that is whether or not the compliance action is taken and the type of compliance action that is taken will depend on a range of considerations that are made by council.

Usually a council will decide which action to take by assessing the alleged breach against its internal compliance policy or guidelines. There are two categories of compliance action, remedial or rectification action, where the aim is to rectify the non-compliance, which is usually a civil action, or a penalty action, where the aim is to punish the offender for the non-compliance, which is a criminal action. It is not uncommon for a council to pursue both civil and criminal enforcement action for a breach.

CHAIR: Just hypothetically, assuming that a council exercised the powers of entry that you have just identified and let us assume that they assembled sufficient circumstantial evidence to establish that the premises was operating as a brothel, can you talk through the procedure whereby they would be in a position to shut down that operation?

Ms FRAME: Certainly. They can issue a brothel closure order, which is an order given to an owner, the purpose using the premises or any person who seems to be managing the premises, which requires them to cease using the premises as a brothel.

Brothel closure order are not subject to the natural justice provisions in the Environmental Planning and Assessment Act which usually apply to orders, such as giving notice of the proposed order and the opportunity to make representations before an order is issued. Those requirements do not apply to brothel closure order.

Once a brothel closure order is issued, the recipient of the order can comply with the order and cease using the premises as a brothel or they can appeal to the Land and Environment Court and the court will then decide whether or not the order should be complied with or they can ignore the order. If the order is not complied with, the council can commence proceedings in the Land and Environment Court or the Local Court to seek a utilities order to cut off the water, gas or electricity services to the premises or they can commence proceedings in the Land and Environment Court to seek orders that the recipient of the order comply with the order, which is civil enforcement proceedings.

CHAIR: You said that the recipient of an order can decide to cease operating as a brothel, the difficulty in the case of concealed conduct, where people are ostensibly calling themselves a massage parlour but they are really operating as a brothel, is that they will continue on with their concealed conduct, so you will not know as a local government authority whether they have ceased conducting sexual acts or not on their premises without doing follow up investigations unless they shut down their business entirely. Would you agree with that?

Ms FRAME: No, that is correct.

CHAIR: So it will require a follow up or maybe several follow up investigations. Is it the case that if in any subsequent investigation sufficient evidence could be gathered to suggest that they are continuing to operate sexual services, that that will be sufficient to obtain a closure order? What

evidence will they need to put together in order to get a subsequent order shutting the electricity and water supply?

Ms KINKADE: It is a civil enforcement proceeding and so in relation to those, they need to proceed to proof on the balance of probabilities in relation to the premises being used in that manner.

CHAIR: That is an order from the Land and Environment Court, is it?

Ms KINKADE: Yes it is.

Ms FRAME: The other option also is to issue another infringement notice. Infringement notices can be issued germane to specific periods of time. There may be an infringement notice for operating as a brothel, an unauthorised use, from 1 July to 31 July a certain year and then a subsequent infringement notice could be issued again for another period of time if the premises was again, on the balance of probabilities, assessed as operating as a brothel for an unauthorised use.

CHAIR: Is there a maximum period of time that an infringement notice can last? Does it have a use by date?

Ms KINKADE: My understanding is they specify a timeframe, when you need to comply with the order by.

Mr ALEX GREENWICH: On the submission that we have here, it says that an order can also be made against a premises being used for related sex uses to ensure that brothels that are closed do not immediately re-open with a related unauthorised use. Would that help to satisfy the issue of a brothel being shut down and re-opening as another type of business?

Ms KINKADE: I suppose we want to ensure that the legitimate uses can continue to operate, so there will be legitimate massage parlours and places that provide those services and we want to make sure that they can continue to operate. So that will deal with that issue where there was no legal brothel and then they would continue to offer services that were not in accordance with what was considered appropriate in the planning controls.

Mr ALEX GREENWICH: Are we all right if I move out of Hornsby to the City of Sydney?

CHAIR: Mr Greenwich, you can move wherever you like.

Mr ALEX GREENWICH: The submission also highlights the approaches that different councils take and obviously Hornsby Council is one. It highlights the City of Sydney Council and their strategic planning approach. Could you speak to that and how that works and its effectiveness?

Ms FRAME: The City of Sydney Council as you would be aware, have undertaken substantive policy and strategic planning work to establish planning frameworks for the control of brothels and related adult entertainment premises. I think it is fair to say that it is less of a restrictive approach than has been taken by some other councils in terms of where they are prepared to contemplate permissibility of a brothel operating. Other councils have taken a more limited approach in terms of the zonings in which they would consider that a permissible use.

Mr ALEX GREENWICH: Going back to one of the Chair's original questions about knowing where the sex services premises are, that the City of Sydney Council's approach would give that council a greater understanding of where the sex services premises are and how they interact?

Ms FRAME: That would be true, yes. Also it is noteworthy with enforcement as well, that the City of Sydney Council are well resourced and equipped and use those enforcement powers with the resourcing accompanying it to really give maximum effect to that, I think.

The Hon. MELINDA PAVEY: Alex, I do not want to cut in but I think it is important to note, you talk about using their powers, is there any data or statistics on the number of prosecutions, successful or otherwise, by councils for illegal massage parlours across the State?

Ms FRAME: We do not have that, I am sorry.

The Hon. MELINDA PAVEY: Who would have that?

Ms KINKADE: As a lot of the cases are held in the Local Court, we would need to look into all of the proceedings that have been undertaken in the Local Courts and go through an exercise of collating all of that information. In relation to the Land and Environment Court, that information could be more easily obtained.

Ms FRAME: We could get that on notice from the Land and Environment Court. The Local Court does not have data extraction the same way. You cannot just pull the cases but with the Land and Environment Court we could undertake that kind of search.

The Hon. MELINDA PAVEY: We should take that on notice. It is really important that we somehow collate this data of what pattern is happening across Sydney and who is doing it well and who is not so that we can have a better picture.

Ms JO HAYLEN: To that I guess the other element would be, of course, that local councils can issue a simple penalty notice and that would not be recorded in any of those jurisdictions. Do you have reports of that or could you collate that information?

Ms KINKADE: We can get that information.

Ms JO HAYLEN: That would be very useful as well.

Ms FRAME: We will take that on notice for the Land and Environment Court and the penalty infringement notices. The Land and Environment Court, the request was specific to prosecutions around massage parlours?

The Hon. MELINDA PAVEY: Illegally operating.

Ms FRAME: Illegally operating as well.

CHAIR: Could I just ask this question, the advantage of the Local Court is obviously one of expense; that is it is a lower expense for councils to take proceedings in the Local Court than the Land and Environment Court. However, if proceedings were confined to the Land and Environment Court it would be easier to monitor the results because their judgments are published on the internet, whereas the Local Court's are not and also, it would provide a greater capacity for uniformity in decision-making. Have you given any consideration to the desirability of confining these prosecutions to class 5 proceedings in the Land and Environment Court?

Ms FRAME: We have not given that consideration to restricting access, in effect, to the District Court is what you are proposing or one pathway?

CHAIR: Effectively giving the Land and Environment Court exclusive jurisdiction over these matters.

Ms FRAME: We have not given consideration to that.

Ms ELENI PETINOS: What is the position of the department in relation to home-based sex

workers?

Ms KINKADE: Home-based sex workers are defined as a separate home occupation sex service premises and in the same way that we identify where sex service premises are permissible through a local environmental plan, then we also work with councils to identify where home-based sex service premises could be located across the council area.

Ms ELENI PETINOS: Can you confirm that they are not subject to any development consent?

Ms KINKADE: No, they can require a development consent. In most cases councils can specify that a development consent could be required.

Ms KATHY SMITH: If individual councils are responsible for designating zones for people to operate a brothel, from home, how does someone find out? I am just puzzled; you can in this street but not the next street or do they designate whole suburbs? How do they do this?

Ms KINKADE: Generally they would designate a zone which might cover a type of land use, general residential area or sometimes even in commercial areas or in shopping strips, there may be residences located above shops. But you could go to the council's local planning controls and you could very specifically identify whether or not that use is made permissible and then you can look at the map and that will clearly tell you where in the council area that would be a permissible use.

Ms KATHY SMITH: In your experience do most councils do this, do they have designated areas?

Ms KINKADE: It is mixed but yes, most councils do go through the process of identifying areas where they can be permissible.

The Hon. MELINDA PAVEY: Just in terms of the practical aspect of that, I think what the member for Gosford is saying is that you would not necessarily know and it is not illegal for somebody to provide sex services in their home.

Ms FRAME: That is right, with the appropriate consent, if a consent is required in that local council area.

Ms KINKADE: Yes.

The Hon. MELINDA PAVEY: The local council would have to have in their local environmental plan something that says sex workers cannot operate from their home?

Ms KINKADE: You would identify where you could have that use and then the way that the planning instruments are drafted, in areas that are not identified where the use is permissible, then generally it would be something that is not allowed.

Ms JO HAYLEN: I guess further to that, you do note in your submission that other councils in contrast to the City of Sydney Council have broadly limited the development of brothels in their area through extensive planning control. Are there examples of councils that have effectively made it not permissible for sex services to operate in all but very small or indeed, no areas of the local government area?

Ms KINKADE: The department has a position where we require councils to allow the uses in at least one zone in their local government area. A number of councils have restricted that to industrial zones, although not all councils restrict it to those zones. But we do not contemplate the option of having the use prohibited across the whole local government area. We would work with the

council to make sure that their planning controls did not mean that the use was going to be prohibitive completely across the local government area.

Mr ALEX GREENWICH: Would it be possible for a council to limit it to just those industrial zones and to not allow for home-based sex work to occur?

Ms KINKADE: Yes, that would be possible. That would be something that the department would consider.

CHAIR: What is the solution in an electorate like mine where there are virtually no industrial zones other than in an area which is very close to a number of schools? What are the reasonable planning options then for brothels if they are not to be adjacent to residential areas and/or in areas close to railways where large numbers of children go?

Ms FRAME: The Land and Environment Court have some principles since 2004 that they broadly apply; we can find those for you.

CHAIR: Yes, we do have them.

Ms FRAME: The criteria for locating brothels as applied by the Land and Environment Court as a result of this case in 2004, that brothels are a legal land use that benefits some sections of the community and that offends others. Do you want me to read those through or you do have those?

CHAIR: No, we are familiar with those.

Ms FRAME: I just was aware that they went to some of the questions you were asking about what locations might be more or less suitable. There is no need to exclude brothels from every stop on a public transport route however, it would not be appropriate to locate a brothel next to a bus stop regularly used by school buses.

CHAIR: In my electorate, according to Infrastructure Australia, we have the most heavily utilised rail service in Australia and every one of our railway stations has large numbers of children using them every day. So that principle does not apply to my electorate.

Ms KINKADE: The approach that the department would take would be we would work with the council and look at what other zones there are and what other possible locations there are to identify where the use would be considered to be an appropriate use having regard to all of those issues and for the local circumstances.

CHAIR: But given the diversity of the different areas within New South Wales, it is very difficult to have universal principles like this, is it not, because I can see in many instances yes, there would be electorates where railway stations would never be frequented by numbers of children for example.

Ms FRAME: As Ms Kinkade said, we would work with councils around their unique circumstances and the characteristics of their area and the department and its strategic planning capability; we would be happy to work with councils and would do so around what might be the most suitable areas.

The Hon. MELINDA PAVEY: Do you think that there is sufficient clarity around the Department of Planning's role and other local government agencies in regulating brothels? Is there room for greater demarcation or better clarity? What do you think is working?

Ms FRAME: I think that the issues that arose with regard to the Hornsby Council case that has been mentioned today were not about clarity of the department's role versus local council's role,

so there are concerns. I know about the evidentiary standard required to prove the unauthorised use of a premises under the Planning Act but I do not think they are issues particularly about clarity of role definition and accountabilities.

CHAIR: Can I just go back to some of your evidence earlier about issuing notices against, for example, a massage parlour if it is found that there is sexual activity taking place there. It seems as though, if I understand your evidence, the cessation notice would last for about a month; is that right or not?

Ms FRAME: No, that was just an example I used.

CHAIR: Can you say you shall cease forever from doing that?

Ms FRAME: A brothel closure order would be cease operating.

CHAIR: If at any time in the future you find a repetition of that activity, then that would be sufficient for you to then invoke more draconian relief against these premises?

Ms FRAME: That would be an action for councils to take but I am sure that would figure in their approach.

There was one other thing I wanted to mention in regard to you talked about the District Court versus the Land and Environment Court.

CHAIR: I was actually talking about the Local Court as opposed to the Land and Environment Court.

Ms FRAME: Local Court, sorry, my mistake. One thing that also may figure in council's decision-making there is, as you said about costs of the proceedings, but another thing that may be a factor for them in contemplating that is the quantum of the fine also, which there is a considerable difference.

In the Land and Environment Court a tier two offence, the maximum penalty could be up to \$2 million for a corporation and \$500,000 for an individual. In the Local Court the maximum fine is \$110,000. I spoke about councils having the discretion and making those decisions about where to take action, the quantum of the fine and have there been offences in the past and the message that the council wanted to send about the acceptability of the practice may impact their decision where to pursue the proceedings.

Mr ALEX GREENWICH: Would it be the experience of the department that the local government areas where there are a greater number of unauthorised sex services premises are the local government areas that are most restrictive in their approach?

Ms FRAME: We would not have that information.

Ms ELENI PETINOS: Ms Frame, you touched on brothel closure orders earlier, can you tell us how many brothel closure order have actually been given?

Ms KINKADE: We do not have that but we can take that on notice and see if we can source that information.

CHAIR: I think that concludes our questioning. Thank you very much for appearing before the Select Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within say five business days to any further questions?

Ms FRAME: Yes, that will be fine.

(The witnesses withdrew)

NAGUIB KALDAS, Deputy Commissioner, NSW Police, Field Operations, sworn and examined:

CHAIR: Your title is a reasonable mouthful, would you not mind if I call you Mr Kaldas?

Deputy Commissioner KALDAS: You can call me anything you like Mr Chair.

CHAIR: I hope you don't think that disrespectful at all.

Deputy Commissioner KALDAS: Not at all.

CHAIR: Thank you very much for appearing before the Select Committee today to give evidence. Before we proceed, do you have any questions concerning procedural information sent to you in relation to witnesses and the hearing process?

Deputy Commissioner KALDAS: No, I am fine, thanks.

CHAIR: Mr Kaldas, thank you for giving us your valuable time this morning and appearing as a witness. The police force has had a somewhat difficult history with regard to this area of policing and is it fair to say that since prostitution has become decriminalised that the police force has had much less to do with this area of policing?

Deputy Commissioner KALDAS: I think you could say that. I did have a very brief opening statement which may answer that, if that were helpful.

I just want to thank you initially for the opportunity to appear today. We obviously think it is a very important topic and we commend the effort of the Parliament obviously on looking at this industry, which we think has been under-regulated for some years; which is the point you have made Mr Chair.

Where standards are not enforced in this industry the cost on human beings could be horrendous and every effort obviously must be made to ensure appropriate standards are maintained.

By way of background, I am the Deputy Commissioner for Field Operations. In effect, I have command of all the police stations in New South Wales, as well as State crime command, comprising all the organised and major crime squads and criminal intelligence. I also have command of the major events and incidents command, which is not relevant to your proceedings today.

In short, whether police respond to brothels at the local area command level or at the higher organised or major crime squad level, I have responsibility for the police who would respond to the industry.

Brothels and prostitution are known as the oldest profession in the world for a reason—it has always been with us and will never disappear. I think our society sometime ago reached a level of maturity where there was a recognition of that fact and then focused on how best to regulate the industry rather than attempting to suppress it.

You have a good summary of the status quo in the government submission. I will not go over any of the points made in that submission and I was part of the working group which formulated it.

We feel that regulation of the industry is necessary and currently where the responsibility for that regulation sits is ambiguous. Regulation is necessary because in that industry much could go wrong if unregulated and the rules are not enforced.

Some issues that could arise, obviously the use of under-age workers, the use of drugs and sometimes forcing workers to take drugs against their will, and most seriously, sexual servitude.

We have looked at the magnitude of the industry. We do not have definitive empirical data on the number of brothels active in New South Wales, however, we have done some preliminary work and I want to acknowledge the analysis carried out by our intelligence directorate and the sex crimes squad or State crime command. A lot of the information I will quote today is from their efforts at my request.

The Hon. MELINDA PAVEY: Excuse me Deputy Commissioner Kaldas, has that information been submitted to the Inquiry yet?

Deputy Commissioner KALDAS: No, it is really an ad hoc series of pieces of paper that we have relied on. It is not a structured thing that I can give you. We can certainly pull it together in a more structured form if it helps.

The Hon. MELINDA PAVEY: I am really sorry to interrupt your opening statement but one of the things that we are having a lot of trouble with is empirical evidence and data. We are craving it.

Deputy Commissioner KALDAS: I will have a bit to say about that very shortly and I share your concerns.

We have, as I said, looked at the magnitude of the industry. We feel that 340 brothels active in New South Wales is probably the ballpark figure. The largest concentration is in the city and suburbs, what is for us, the central metropolitan region with 130 and then southwest Sydney with 81. If I could take that on notice, I will produce some of our preliminary analysis for the Committee's consideration.

CHAIR: Sorry, could I interrupt you just for one second, again. When you are talking about this number of brothels, are you talking about authorised brothels by local council areas or are you talking about massage parlours which may be operating as a brothel?

The Hon. MELINDA PAVEY: Council approved brothels?

Deputy Commissioner KALDAS: What I did is, at the middle or end of last year, on this topic, I asked each local area command to look at their backyard and to report centrally to me what they knew about how many brothels they had in their area. I have to say, there were some inconsistencies in their approach. It went back and forth a couple of times but ultimately each superintendent in charge of a local area command looked at his area. Some of them went as far as looking at the local newspapers which advertise regularly—that was actually a useful means of intelligence gathering—as well as all the properly registered ones, and that is the figure we came up with.

The Hon. MELINDA PAVEY: Can I ask how many were properly registered of the 340?

Deputy Commissioner KALDAS: I do not have a breakdown, I regret.

CHAIR: We are not going to interrupt you anymore; you can keep going.

Deputy Commissioner KALDAS: While I comment on general perceived trends and we have made estimates of guesstimating the numbers and we have spoken to our Federal colleagues. I have to stress that our figures are, in a sense, rubbery, which is the point you have made Deputy Chair.

Our inability to get exact figures highlights one of the problems we face. That is, there is no central record kept of each establishment, let alone using those records to ensure that they are doing the right thing and let alone, records of staff involved. You cannot regulate establishments you simply

do not know about.

The incidence of under-age workers within the sex industry has remained infrequent, thankfully, over the past 10 years, with only one confirmed report since 2012.

On sexual servitude; reporting of sexual servitude unfortunately, however, has increased, although there have been few confirmed cases. Of significance is consistent recent reporting which alleges large scale networks using Asian students as sex slaves throughout New South Wales and other States. There has been a considerable increase in reports for student and tourist visa breaches over the past two years. Once again, it is likely these figures are well below the actual rate of incidence due to regulation falling outside of NSW Police responsibility, thus not entirely visible to us.

The typical scenario reported has been that of Asian females that are brought into the country on a tourist visa by a brothel operator or agent, then while here they apply for a student visa, enrol in some kind of course—usually not tertiary, such as English language training, minimal attendance or effort required. That application for student visa status is usually rejected and an appeal is immediately lodged. That could take two or three years. During that time the person is allowed to work, typically up to 20 hours a week. However, there does not appear to be any auditing, checking or enforcement of how many hours the person actually works, nor significantly, what the work actually is or what conditions exist for that worker. Further, there is no prohibition on people with student visa appeals pending working in the sex industry.

So the result is that that worker, usually an Asian young lady, is extremely vulnerable, probably has poor English language, lack of knowledge of the legal system, their legal entitlements and is incapable of breaking away, no matter how bad things get. They are almost dependent on and at the mercy of their employer who brought them to Australia.

There is some anecdotal evidence in this scenario of girls being forced to do things they do not want to do, including the taking of hard drugs with clients during sessions. Again anecdotally, it has been the case that brothel owners will keep the girls' passports and they are forced to work in the brothel to pay off their debt for travel costs, et cetera.

The girls will often reside on the premises or be transported back and forth, working extremely long hours and seeing large numbers of clients. If they do not comply, they may receive threats to their families that their families will be harmed or their families told exactly what they are doing, thus disgracing them at home.

At times they may be threatened with violence. They are extremely vulnerable, without access to or knowledge of the legal system and their rights.

There is also some evidence of some outlaw motor cycle gang groups, particularly the Rebels, with ties to brothels. Conclusions, however, are weakened by frequent changes in ownership and unconfirmed associations between owners/managers and a named group. Several karaoke venues in the south-west metro region were found to have or are suspected of provided sexual services and employing illegal Asian workers, including those I mentioned, as unlawful residents, tourists and students.

Karaoke venues offer a unique loophole, in that they are not categorised as an adult entertainment industry premises and therefore do not fall under the local council regulation for the activities undertaken there. The venues identified also appear to have links to Asian organised crime networks.

The results from our analysis and thinking indicate that there are clearly issues in the industry in terms of servitude, the use of illegal workers and extortion by or involvement of organised crime

and outlaw motor cycle gang groups. Around 40 brothels have some recorded connection or ties to outlaw motor cycle gang groups in our intelligence holdings.

So on the way forward, the work done on reforming boarding houses, we felt may be a useful example. Some key recommendations from us—and we would certainly never presume to tell the Committee the way forward, they are simply thoughts for you to consider in your deliberations.

While more co-ordination between agencies is important, our view is that clear primary responsibility is required. In short, the key to this will be that one area accepts primary responsibility and for us, councils or local government is the logical choice as the primary regulating authority.

The second thing is that they should be supported in their efforts by other stakeholder agencies such as us, with a framework of co-ordination and exchange of information.

If we accept that regulation is essential, then perhaps we should consider creating and maintaining accurate registries of all adult entertainment premises, brothels particularly and to keep this data up to date. These registries should list owners and managers and some background or probity checks should be carried out on them. Those banned in other jurisdictions should be banned here. There is anecdotal evidence that some individuals who are banned interstate, simply move to Sydney and set up shop here.

The registers should also list all staff on the books of such establishments. This is important. These lists could then be cross-referenced with New South Wales Police Force missing person lists and would be invaluable for our Federal colleagues when checking on visa issues. Police can work with councils on building this data.

Similarly, as stated previously, other stakeholders have an important role to play, such as health, Department of Planning and Environment and WorkCover. I know the Committee is taking note of all of that.

The issue of powers of entry is important. Police do not have any automatic power of entry or a power to examine anything in brothels. Other agencies such as the Department of Immigration and Border Protection and WorkCover may have more relevant, stronger powers and whatever regulatory regime is implemented, should consider the effectiveness of police support to operations without a power of entry.

Finally, if I could make the point, we do not accept that regulating the industry properly will force it underground, as some may argue. As it is right now, there exists next to no regulation, no enforcement and abuses are far more likely to go undetected with horrible consequences for individuals. Lax or non-existent checks and balances are not the answer to what is a very real problem.

Ladies and gents, thanks very much for giving me your time today, and as I said at the beginning, we certainly think this Committee's work is important and if there is anything we can assist with, either today or later on, we will be more than happy to help.

CHAIR: Thank you very much Mr Kaldas. The statements that you have just made with regard to sexual servitude and organised crime elements I find quite disturbing. I have difficulty, therefore, marrying up those statements with your proposal that the body with primary responsibility should be local councils, because you have raised issues that seem to be well beyond their area of expertise or job description.

Deputy Commissioner KALDAS: If I could just answer that. We would suggest that it is probably in a large number of cases but not the majority, people are not acting in a criminal way, in which case we would probably add nothing to the equation by being involved. What we are

suggesting I guess, and probably I did not articulate it all that well, is that councils would be the conduit through which things are filtered. If there is a problem with a brothel, more often than not it will not be in relation to sexual servitude, but when that occurs, they should have the capacity to reach back, if you like, into the police and our resources and then we become involved.

If I could also make the distinction, I think most of the issues that would arise in brothels, even though they may be described as illegal, are not criminal. I think that is a fine distinction. Police should handle criminal matters, not necessarily illegal matters. If somebody is breaking the council planning laws, it may be illegal, but it is not something we are going to add any expertise to. If it is criminal, obviously it is a different matter.

The Hon. MELINDA PAVEY: But what if that is where criminal activities are taking place? When we were in Victoria that was one of the issues raised, that the regulation and the licensing, that is two different issues, regulation and licensing and we have got to look and canvass all these issues, that even in one of the licensed brothels they found an Asian worker in a cavity who was not able to give evidence against her boss. But we also heard of lot of evidence of how it has been driven underground through massage parlours and through other illegal activities. That you have a highly regulated and licensed industry in Victoria which has not solved those very problems, including evidence that Triad money is potentially coming in and investing in even the legal brothels.

Deputy Commissioner KALDAS: We have to have a framework that allows councils to be the front door, if you like. They should be the first ones that look at this stuff and then they can decide whether there is criminality involved and whether police should be involved. Not only us obviously, but as I mentioned earlier, Health, WorkCover, certainly the Federal authorities, Immigration and Border Protection have a vital role to play, particularly in relation to servitude and people trafficking.

What we need though is someone to have ownership for it up front and then they can disseminate all of this, and involve other agencies, as required. I am not sure that that should be the police simply because I suspect that most of the work that will need to be done is simply not in our remit; it is more in council's remit.

Mr ALEX GREENWICH: Can I just build on the Deputy Chair's point about the need for data here. The case studies and examples you gave of the Asian student visa being put through sexual servitude, that certainly sounds horrific, but I guess we need to know the quantum that we are dealing here with and this is a common place activity.

On a more local level, we are told in various submissions and in various media articles around the establishment of brothels in local government areas links to negative impacts on residential amenity. Do you have any information to suggest that that is the case? I am the member for Sydney, so I have got Surry Hills and Kings Cross command and as you can imagine, we have got a couple of brothels in that area. I attend police meetings regularly and none of these issues are ever brought up, so in terms of impacts on residential amenity, noise, anti-social behaviour, et cetera, do you have any information there?

Deputy Commissioner KALDAS: I certainly do not have any statistics but my sense is it is not the primary issue. It is not really one that we see on a very regular basis. In the city particularly, I think there has been some forethought put into where these places exist. It is in everyone's interests, particularly the brothel owners or operators, to make sure that they are not somewhere where they are going to come under notice and get in trouble for upsetting the local residents. I think a great deal of thought has gone into that from everyone's side.

Ms KATHY SMITH: Mr Kaldas, while we were in Melbourne on Friday we did go to a few brothels and at one in particular we spoke to a couple of the girls there, the working girls. One Australian girl told us that she was a student who was putting herself through university with the money that she was earning through her work. She also told us that a lot of Asian girls do that on the

20 hour per week working visas. How can we know that the girls you are talking about who are claiming servitude are not just using that once they are discovered? Are they really in sexual servitude or is that just a reason they come up with when they are discovered doing this work?

Deputy Commissioner KALDAS: We have certainly seen some cases of very genuine sexual servitude. I have brought along and am happy to supply the Committee with a copy of my spoken submission today, if that helps.

There is some news reporting and in fact there have been some journalists who have come to us with people who ended up informing the police about a whole lot of activities going on and it is very useful. I am also happy to leave them for the Committee's benefit here.

But one in particular comes to mind and it is about a particular fellow who fell in love with a woman. It took him some years and tens of thousands of dollars to get her to break away from that system. They are not making this up.

Ms KATHY SMITH: No, no.

Deputy Commissioner KALDAS: I appreciate what you are saying but all I am saying is it may be in the minority, but I would suggest—and I do not think anyone would disagree—one woman held in sexual servitude is one too many.

Ms KATHY SMITH: Absolutely.

Deputy Commissioner KALDAS: It may be that some people will say that the systems collectively may be onerous, but I think they are necessary. We can make it as painless as we can for everyone. I think there is a lot of goodwill in many directions but the bottom line is, it is an industry when things go wrong, they go horribly wrong for individuals, ruining their lives.

Ms KATHY SMITH: I cannot help thinking though what you are proposing or what you are suggesting is very, very onerous and there is going to be a lot of loss of privacy here for a lot of innocent people who are working in the industry if they are going to have to be registered as working at premises or owning premises, et cetera. There is a lot of information that is going to have to be given. Is that not going to jeopardise a lot of individuals too?

Deputy Commissioner KALDAS: I do not think it will. I do not think that information would find its way into the public arena. You could have systems and processes in place where things are stored, similar to firearms licensing, security industry licensing. We manage all of that without any problems of the material getting out.

I know what you are saying, and it is a valid point, that some people will feel invaded. You have raised a good example of a student as somebody who would not want their family to know that she is doing that obviously, but there are many others who this may be the only way we would find out about them.

If it is onerous, it is obviously a matter for the Committee's deliberations. You may water it down and you may build some steps around it that make it less onerous for the industry and we would certainly be happy to help in any way we can in that discussion. But our view is that the registration and the logging of people, if you like, in the industry is something that is important.

CHAIR: Just following up on that, can you just step us through the kind of regulation that you believe would assist the police in respect of meeting organised crime, sexual servitude and some of the other matters that you have referred to, what is the regulation that you would propose and why you are advocating that?

Deputy Commissioner KALDAS: Sure. I accept that some of what I am about to say may be considered onerous by the industry itself and maybe segments of the community but they are simply suggestions for you to consider.

In the first place I would suggest obviously some sort registration of the business itself that is consistent across the State, not dependent on local government areas' whims, if you like. Some sort of probity check or background check on the individuals that are going to own or run the business I think would be helpful and again, I accept it may be onerous and it may be invasive, and some people may object to that.

But just to answer question about why some of these things are being suggested, if you do not do that, we do run a risk of people who have unsavoury backgrounds and may have even been in trouble in another State for similar things, using under-age kids or what have you, simply moving location to New South Wales to get away from their past. That is something we ought to have a look at obviously.

Then again in the perfect world, we would suggest that workers themselves be logged somehow or recorded so that we have some cursory means of working out who works where and then that data base, if it is able to be accessed, may be compared with missing persons' lists, it may be compared with immigration lists, maybe even people who are on the wanted lists. Again, I accept there will be a counter argument to that and there will be people that will say that is simply too invasive, but I make the point it is probably harder to get a dog and get a dog licence than it is to work in the sex industry at the moment. I think nature abhors a vacuum. If we have a gap in regulation, organised crime has to be attracted to make money out of the industry knowing that it is not that regulated or not that strictly enforced.

Mr ALEX GREENWICH: Is there any other legal profession that the police require to have members of that profession registered?

Deputy Commissioner KALDAS: The security industry is one and holders of firearms. That is not a profession but it is certainly people who possess articles that have to be registered.

Mr ALEX GREENWICH: Just building on that, the experience in Victoria which we heard from various stakeholders is when you do have that registration system, the sex workers largely choose not to engage with it for privacy and for various other reasons. Then what happens is when you have an onerous registration system, people fall out of the system and organisations like the Sex Workers Outreach Project (SWOP) for example, would be limited in their access to those sex workers.

Would the overriding motivation from the police be on harm minimisation or on making sure you know where people are and what they are doing?

Deputy Commissioner KALDAS: No it is very much, I would suggest, about harm minimisation and to be more specific, it is about identifying people who may be at risk. If there are people who have overstayed their visa because they are forced to do so or people who simply should not be there for one reason or another. If what we are suggesting is unacceptable, then we need to think about another way of doing it.

CHAIR: But Mr Kaldas, I can understand why you want to register the businesses, so that you know where they are. I can even understand why you would want background checks on the owners and managers, because if they are affiliated with organised crime, then they could be part of that network, but the reasons that you have advanced for recording the names of the workers were that they may be missing persons, on wanted lists or they may be subject to immigration offences. With the exception of the immigration offences, neither of those other two matters would advance, it seems to me, the policing of organised crime. They seem to be for extraneous policing issues not related to—

The Hon. MELINDA PAVEY: The Rebels.

CHAIR: Yes.

Deputy Commissioner KALDAS: The missing persons' issue, it may be, and I cannot give you any statistics, but if a young girl is missing, she may be being held there against her will. We tend to find with missing persons' lists, there are a range of reasons why people go missing and that has certainly been suggested as one.

But I take the point that the focus has to be obviously on harm minimisation rather than simply being some sort of Nazi state that invades people's privacy for no reason.

Ms KATHY SMITH: Mr Kaldas though, surely if a brothel owner is not going to declare that these people who they are holding against their will as working at their establishment so I do not see how it is really going to help.

Deputy Commissioner KALDAS: This is where enforcement would come in, visits perhaps with a joint team, Immigration, local government, the police, maybe WorkCover visits a place unannounced and goes through what is there. If somebody has 50 per cent of their workforce not registered, that will tell us something.

Ms KATHY SMITH: Is there a reason you cannot do that anyway?

Deputy Commissioner KALDAS: We have no power of entry. We certainly have no power to force brothels at the moment to tell us who is working there.

Ms KATHY SMITH: But what about the Department of Immigration if they suspected something, do they have power of entry?

Deputy Commissioner KALDAS: I should not speak for Immigration but they are stretched. Their ability to reach every corner of the industry is pretty limited.

The Hon. MELINDA PAVEY: To that point Deputy Commissioner Kaldas, that was the issue in Victoria, the brothel owners were very critical of the Victorian Police for not giving energy or manpower or resources to cracking down on the illegal industry in that State and I can imagine that is because the Victorian Police are under pressure. We are all under pressure. Have you thought to the degree of police resourcing required to be able to fairly accommodate a regulated brothel system?

Deputy Commissioner KALDAS: We have discussed and looked at the sort of commitment we would have to make. It would be at the local area command level and it would simply, hopefully, eventually become part of core business. We have a systematic way of measuring our performance and what we are achieving in every corner of the organisation in terms of drugs, break and enters and so on. What I would propose—and I am getting way ahead of myself—if some sort of regime was implemented, this would be one of the things that each local area command would have to include in its planning and would have to include in what is measured to see whether they are succeeding or not.

The Hon. MELINDA PAVEY: In that data that you received, where are the concerning spots for police in New South Wales, where are the hot spots, because as part of this, as National Party member, I sought advice from my colleagues across regional New South Wales and it is not a hot button issue certainly as it is in some parts of Sydney, so I am just getting a sense of where the problems are and where the data that you have been able to access is showing where the problems are?

Deputy Commissioner KALDAS: The south-west of Sydney unfortunately is where certainly a lot of the problems are occurring. That is where we found most of the breaches.

CHAIR: Just going back to my earlier question, you have recognised registration of businesses, background checks, perhaps a log of workers and better powers of entry as for regulatory matters that would assist in policing in this area. Are there any others?

Deputy Commissioner KALDAS: I think that is pretty much it Mr Chair.

CHAIR: You did mention that karaoke venues were a particular problem. They would need to be addressed somehow as well because they will not fall within the focus on massage parlours or brothels which the current legislation addresses.

Deputy Commissioner KALDAS: I think that is right. If the council were to become aware of that and if we have a framework of co-operation and co-ordination on this issue, I would think it would be the case that they would notify immediately that there is a problem in a particular karaoke bar and it could be acted on and treated as part of the sex industry.

CHAIR: It is partly relevant to that issue and it is also relevant to some of the problems with regard to establishing whether there is or is not sexual activity taking place in massage parlours for example. I just want to pick your brains as an experienced policeman if I may. There are particular problems of proof, are there not, in terms of establishing whether there is unauthorised sexual activity or not taking place in premises?

Are there any legislative tools that could be given to the police force to enable them to assist in this regard and if local councils, for example, were the co-ordinating authority that you have proposed, would you also see them being able to speak to the local police and get the assistance of local police, for example, to investigate whether there is unauthorised sexual activity going on in the same massage parlours, even if it is primarily a planning issue? They still have difficulties assembling evidence?

Deputy Commissioner KALDAS: We would be happy to help in any way we can. One of the things I have mentioned is the boarding houses legislation, which I think has been enacted. I do have a copy of the draft. I am not sure what it ended up looking like, but some of the issues you have just mentioned, Mr Chair, of entry and enforcement, of gathering evidence in an admissible way so that it is able to be used in court, to a great extent they are addressed in that legislation. We thought it was a very, very effective piece of legislation. It does not necessarily drag the police into each and every instance. It does give a lot of powers to the local government but I am told anecdotally that it is very successful and it has certainly had an impact.

I think some of this is about deterrent. If you know that there is a system in place where you may get caught, then you may be less likely to do it, we hope; but, maybe not.

CHAIR: Can I also just ask, one of the difficulties is obviously that in any given premises there may be issues with regard to immigration, which are Federal issues; there could be issues with regard to sexual servitude, which may fall under the Commonwealth Crimes Act or alternatively, may fall under the New South Wales Crimes Act or we can have planning issues. So we have got a multitude of legislative regimes, some State, some Federal and a whole lot of different authorities who are responsible for those pieces of legislation.

How do you see co-ordination of Federal and State and local government authorities in better policing and enforcement in this area?

Deputy Commissioner KALDAS: I think once these issues are decided by this Committee and by the Parliament, it may well be worthwhile having some sort of co-ordinating group. Certainly at State level but may well include Federal bodies, meet on a regular systemic basis and look at how they are performing and see where the gaps are and then collectively coming to conclusions so that they own the solution.

You are absolutely right, with some of these issues, it is impossible for us to tackle them without Federal colleagues—Immigration, the Australian Federal Police. We have had a number of meetings with the Australian Federal Police in particular and we have run a number of operations with Immigration and Border Protection. They usually yield some breaches that they act on using Commonwealth legislation but some sort of overarching forum, I think, would be useful.

CHAIR: I think you did mention earlier that there is a sex crimes squad in New South Wales?

Deputy Commissioner KALDAS: There is.

CHAIR: Does it already have protocols with regard to Federal agencies and is there any interaction between that organisation and local government at the moment?

Deputy Commissioner KALDAS: I do not think there is much interaction between them and the local government but there is a set of standard operating procedures at State level which mirrors what happens at a national level. I am not sure if they are for publication but I am certainly happy to take it on notice and see if we can produce them to the Committee for your consideration. Actually, if they are not for general publication, we will tell you that when we get them to you.

The Hon. MELINDA PAVEY: Deputy Commissioner, the sex crimes unit that you talk about, an enormous amount of their work currently would be dealing with paedophilia and under-age sexual assaults, so how many are in that team?

Deputy Commissioner KALDAS: I might stand corrected but somewhere just less than a hundred I think.

The Hon. MELINDA PAVEY: A lot of that energy is taken up on those other matters?

Deputy Commissioner KALDAS: There is also a child abuse squad, so there are two squads. In fact, at one point in time—without boring you with a history lesson—they were one and then some years ago we decided to split them up. The child abuse squad is more focused on the historic paedophilia offences, as well as the joint investigation response teams, which house Department of Family and Community Services and Department of Community Service workers, along with investigators to work all around the State in various offices.

The Hon. MELINDA PAVEY: Of a sex crimes unit of a hundred, how many people would be working in relation to illegal brothel activity or immigration issues?

Deputy Commissioner KALDAS: I suspect it would be minimal.

The Hon. MELINDA PAVEY: Just one other line of questioning in relation to what we learnt in Victoria—and I have got to tell you, we learnt a hell of a lot in the last week—but one of the things that I suppose that most struck me is the articulate nature of our sex workers and how strong they are in terms of their principles and rights of privacy. But also it became very clear from the brothel owners that there is a big shift in the industry to self-empowerment. The escort agencies are becoming less viable because sex workers can do their own transactions via the internet and that type of thing. As you pointed out in the beginning of your deliberations, we are a sophisticated society and whether we agree or not, that is people's rights, and it is one of the oldest professions in the world.

I just wonder if you had given much thought at all to the changing nature of the industry and the empowerment of some individuals and their strong need and desire to be able to operate in a framework that keeps their security of identity and capacity to do work within the community that does not affect anybody else on an individual basis?

Deputy Commissioner KALDAS: Victimless. I think you are absolutely right. There is certainly a move towards them being not only more articulate but more vocal and more visible, and certainly I think this Committee is hearing from a number of groups who will represent very articulately a lot of the people who work in the industry. I see that as a positive. They are obviously the people who are obeying the law, are acting within legal parameters and they are not breaking the law or committing acts of illegality with sexual servitude or otherwise.

The escort agencies, I must admit, they are not on our radar at the moment and I suspect—and I am not a social commentator, but part of that has to be because of the social media revolution. There are many websites that I stress I am not aware of, where married people can do things and people can simply meet other people who are of a like mind and they now have a conduit to meet each other and to hook up, as they call it, without having to pay for it and without having to ring anything like an escort agency.

There has been a fundamental shift in the way all this stuff happens in society. We are in many ways struggling to keep up with the social media revolution, certainly even legislatively I think we are probably maybe getting left behind and it is evolving quite rapidly. Where it goes next, I do not know, but I certainly think anything that you have seen in terms of the industry and those within the industry who are acting appropriately, standing up for themselves, being vocal and gaining the limelight, is a positive thing.

Ms KATHY SMITH: Mr Kaldas, if I can just play devil's advocate—which I suppose that is what we are here for anyway—I have all the respect in the world for what you do in your job and what the police do in their job and I respect that it is a very difficult one, but from what I am hearing with workers to be registered or logged or recorded, to be compared with missing persons' lists, looking for criminals or visa over-stayers, it strikes me that sex workers are going to lose their privacy, their respect to some degree, to help the authorities do their job because they are understaffed.

Deputy Commissioner KALDAS: No, I would not say that; if I can just go through them quickly. Missing persons, say this was to happen and we did identify someone who was a missing person, we do not automatically go and ring their family and say we have found them, they are working in this particular brothel.

Ms KATHY SMITH: No, of course, because they have their privacy too.

Deputy Commissioner KALDAS: Yes. What we would do is we would obviously let them know that they have been reported as a missing person and explain to them that it is probably in everyone's interests if they at least put their family's minds at rest by letting them know that they are well.

Ms KATHY SMITH: Excuse me Mr Kaldas, what I meant was—I am sorry, I have been misleading there—is that it is not the brothel owners or the sex workers that should be helping to locate missing persons, nor lists that the brothel owners keep.

Deputy Commissioner KALDAS: But surely it is in the industry's interests not to have people who have issues working in the industry undetected?

Ms KATHY SMITH: I do not know, they work in every other industry.

CHAIR: We will take that as a comment.

Ms JO HAYLEN: One further question. Thank you for your time Mr Kaldas. You have explained, I think, something that is very current to us and that is the evolution of social media and its

impacts on all industries but particularly this industry and I guess recent means this is the actual release of data. I guess I put to you that it is probably a time, as this is all evolving fairly rapidly, that it seems counter-intuitive to me to be a time to bring in what would be effectively some fairly heavy regulation over an industry that seems to be rapidly evolving and indeed, we are struggling to cope with that evolution with recent instances of release of data. As my colleagues have pointed out, there are some very difficult implications of recording and keeping that information.

Deputy Commissioner KALDAS: There are and it may be that this Committee says no, you will not recommend that. I accept that. That is a very viable alternative as well. They are simply recommendations for you to consider, but the other thing you may consider is, whatever regime you may come up with or you may recommend to the Parliament, it ought to have some sort of review, not sunset clause, but certainly a timeline on it so that we look at it again in six months or 12 months or whatever the Committee decides, so that we know whether it is working or not and whether some of what we have suggested may then become clearer as being required or may become clearer as not being required.

I wish we had a crystal ball and I wish I could tell you what you come up with will work or will not, but certainly for us what has worked in the past with difficult issues like this one, which this clearly is, is a review mechanism so that you can look at what you have done and whether it has worked or not and then come back in six or 12 months and say, look, we need to tweak it.

Mr ALEX GREENWICH: Mr Kaldas, the recommendations that you have put forward in terms of the various registration schemes, whether it be for the sex worker or indeed for the brothel, have those recommendations been made with any consideration, study or analysis of the health, safety and privacy impacts on sex workers?

Deputy Commissioner KALDAS: The short answer is probably no, they are simply from the floor. Certainly State crime command have pulled together some thoughts, pooled their ideas and that is where it came from. We have not looked at the broader picture and that is why, as I keep saying, we certainly accept the Committee's concerns that they may well not be suited, but they are simply for your consideration.

CHAIR: On the same topic of Ms Haylen's question, although social media and so on is an evolving environment impacting on this area, if in fact there are organised crime elements who are involved in brothels and who are involved in them because of other criminal activity like drug supply and so on, there will always be brothels around that criminal activity, will there not?

Deputy Commissioner KALDAS: There will be but obviously that does not mean that we do not have a go at trying to limit it. I am not going to tell you we will ever, all of us, be able to stop it completely but obviously we will do our best to try and limit it.

CHAIR: But that is still a reason for some regulation, at least maybe focused on the premises and the operators, if not the sex workers themselves.

Deputy Commissioner KALDAS: Certainly.

CHAIR: Mr Kaldas, can I ask you, just so that I do not miss anything, would you be able to send a note—because I am not 100 per cent familiar with the boarding houses legislation that you referred to—on the particular provisions of that legislation which you think may be of assistance in terms of better regulation?

Deputy Commissioner KALDAS: Certainly.

CHAIR: That would assist me if you could do that. Has anybody else got any other questions of the Deputy Commissioner? Thank you very much for appearing before the Select

Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any further questions?

Deputy Commissioner KALDAS: Certainly.

The Hon. MELINDA PAVEY: Just in terms of that data you have, Deputy Commissioner, you are going to come back to us with some of that.

Deputy Commissioner KALDAS: Yes, certainly.

(The witness withdrew)

(Short adjournment)

PAUL WILLIAM MCKNIGHT, Executive Director, Strategy and Policy, Department of Justice,
and

DANIEL NOLL, Director, Criminal Law Specialist, Department of Justice, affirmed and examined:

CHAIR: Thank you for appearing before the Select Committee today to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr McKNIGHT: No.

Mr NOLL: No. I am the managing lawyer at the Office of Director of Public Prosecutions who has been seconded to the Department of Justice to provide first hand criminal law advice and policy advice to the department and to the attorney.

CHAIR: Would either of you like to make an opening statement before the commencement of questions?

Mr McKNIGHT: No.

CHAIR: Gentlemen, the Summary Offences Act has provisions which permit prosecutions to be made for the performance or solicitation of sexual acts at massage parlours. Do you have any data with regard to the incidence of the use of those powers? I am particularly referring to sections 16 and 17 of the Summary Offences Act? Do you have any data with regard to the number of prosecutions commenced under those sections in the last 10 years?

Mr McKNIGHT: I made a request of the Bureau of Crime Statistics and Research (BOCSAR) recently for data going back five years in relation to the summary offences provisions that relate to prostitution. The data that they brought back indicated that there were no prosecutions under section 17 and 18.

CHAIR: Sections 16 and 17?

Mr McKNIGHT: Under sections 16 and 17 there were no prosecutions when I looked it up.

CHAIR: In the last five years?

Mr McKNIGHT: In the last five years. If the Committee would like me to go back further in a request to BOCSAR, I am perfectly happy to take that on notice. We have data from BOCSAR going back five years for all of those prostitution related summary offences in section 15 through to section 20 which I am happy to provide to the Committee.

CHAIR: That would be helpful, if you could.

The Hon. MELINDA PAVEY: Could I also suggest Mr Chair that some contact be made with you and the Department of Planning officers so that there is a whole of government approach in the response back to our sets of questions to them which may correlate with BOCSAR so that we have some good data.

Mr McKNIGHT: Absolutely, I am not sure what you have asked them but we are absolutely happy to do that.

The Hon. MELINDA PAVEY: By Friday the transcript will be printed and you will be able to see our conversations with the Department of Planning staff but I think that would be useful to help them, as well as help you.

Mr McKNIGHT: Yes.

CHAIR: You are probably both familiar with Hornsby Council's attempts to prosecute a massage parlour for providing sexual services earlier this year. The council had the burden of proving that two or more sex workers were operating from those premises and they were unable to discharge the evidentiary onus in respect of that matter. However, the fact that there had been sexual services offered by one person at those premises would have been sufficient to perhaps cause a prosecution under section 16 of the Summary Offences Act and lead to at least a chain of enquiry as to whether there was sufficient evidence to prosecute under section 17 of the Summary Offences Act.

It does not seem as though the Summary Offences Act is being used in a complementary way with the planning laws in this area. Do you agree with that?

Mr NOLL: There does not seem to have been any prosecutions. Perhaps one of the issues, and I am not entirely sure of the time span that these investigations go over, but there is a statutory limitation on laying charges under the Summary Offences Act of six months. If it is going to be used in a complementary way, it has to be charged at the time as a back-up charge. It cannot be done or added at a later time once the prosecution has failed because by that stage the prosecution under the Summary Offences Act would be barred.

CHAIR: Indeed, so it may be that the six months statutory limitations is unhelpful in this particular area where there is overlapping of responsibility.

Mr NOLL: Or it could be that enforcement agencies like the Department of Planning could adopt operation procedures where back-up charges are laid in the normal course. NSW Police are quite practised and it is well known that summary offences have to be laid at the time as a back-up charge rather than later.

CHAIR: Part of the difficulty in this area is that—I think I am right in saying this—that only the NSW Police could lay an information under the Summary Offences Act but the planning laws are enforced by the local government authority, correct?

Mr NOLL: They are but—

CHAIR: So back-up charges are not necessarily practical in a situation where you have got two different regulatory authorities operating under two different Acts.

Mr NOLL: Criminal prosecutions are not commenced by informations anymore, they are commenced by the laying of a court attendance notice and that is dealt with by the Criminal Procedure Act. It authorises public officials to lay court attendance notices. So there are a whole range of public officials who can commence prosecutions apart from police. I would have to take on notice to check whether the Department of Planning fell within that definition of people who can issue court attendance notices under that particular section.

CHAIR: Is that something you could check, whether local government delegates' authorised officers can commence court attendance notices under section 16 and 17 of the Summary Offences Act?

Mr NOLL: Sure.

CHAIR: One of the problems with section 17 of the Summary Offences Act is that in order for the owners or managers to be liable, it needs to be established that they are knowingly concerned in the activity and there are particular problems of evidence with regard to those matters; do you agree?

Mr NOLL: Yes.

CHAIR: I suppose one way to get around those problems of evidence would be to make it more a strict liability offence with perhaps a defence that there was nothing that the manager or owner could have reasonably done to prevent a breach of the Act?

Mr NOLL: I would agree that that would make the offence easier to prove. Making reverse onuses and strict liability offences is an area that you have to be careful with in criminal law because it does undermine certain rules or principles.

CHAIR: But it is, for example, not unheard of in say occupational health and safety legislation?

Mr NOLL: And it is quite common in regulatory offences as well, yes.

The Hon. MELINDA PAVEY: Does the department do any work in particular to assist sex workers who need to access your services, for example, as victims of crime?

Mr McKNIGHT: The Department of Justice does not have a role in the regulation of brothels or the regulation of the sex industry at all. In relation to sex workers who are victims of crime, so if you are suggesting victims of sexual assault and the like, they would have access to the full range of victim services provided by the department through our victim services area.

The Hon. MELINDA PAVEY: You were here during the Deputy Commissioner's evidence before?

Mr McKNIGHT: We were.

The Hon. MELINDA PAVEY: He mentioned that they have a hundred staff across the State dealing with sex crimes but he said the amount looking at illegal sex work or illegal brothels or massage parlours was very minimal. Is it an area of concern within the Department of Justice in relation to women being exploited by massage parlour owners or brothel owners, whether they be illegal immigrants or drug addicts?

Mr McKNIGHT: At a policy level obviously the exploitation of women is always a concern when we are considering issues of—

The Hon. MELINDA PAVEY: We are all concerned about it, so we are trying to get some data.

Mr McKNIGHT: Currently we do not have any projects underway that I am aware of that relate to the sex industry in particular. I am not sure I can help you further with that question.

The Hon. MELINDA PAVEY: Do you have any discussions with your Federal colleagues at a policy level within the Department of Justice, within the Australian Federal Police or cross jurisdictions about this issue of servitude of sex workers?

Mr NOLL: At a policy level, as in implementing laws, there was work done with it in early 2000, 2001 when the sexual servitude laws model was drafted by the model criminal officers' code committee and they are the offences which are complementary offences, which are contained within the New South Wales Crimes Act and the Commonwealth Criminal Code, one being the Federal offences which have an international flavour and the more local offences, which are in the Crimes Act.

The Hon. MELINDA PAVEY: So policy officers from both jurisdictions got together in 2001?

Mr NOLL: The Act was passed in 2001 as complementary legislation both at the Federal level and the State level and there were model offences which were granted by model criminal code officers committee (MCCOC).

CHAIR: Sorry, what are those offences? Are they around sex trafficking, are they?

Mr NOLL: They are the sexual servitude offences. So there are mirror offences, but of course, with the limitations of the Federal criminal law. The Federal offences have an international or cross jurisdictional flavour, whereas the New South Wales offences are located in New South Wales and have to have a link to New South Wales and have occurred in New South Wales.

I will just tell you, the New South Wales offences are division 10A of the Crimes Act, section 80B, 80C, 80D and 80E.

The Hon. MELINDA PAVEY: So that question we asked at the beginning of your testimony Mr Noll in relation to BOSCAR data, will any offences within those areas be picked up in the data that you have committed to return to us?

Mr NOLL: Yes and I can tell you, I think there is only one prosecution for those offences in the last five years.

Mr McKNIGHT: There are three prosecutions that we have data on under the New South Wales' Acts. There is something like over 25 under the Commonwealth Acts in New South Wales. The two Acts have to be seen together, the prosecutions will be commenced according to what is the crime that applies to those offences.

The Hon. MELINDA PAVEY: Your data in relation to those three successful prosecutions—

Mr McKNIGHT: Those prosecutions were not successful.

The Hon. MELINDA PAVEY: They were not successful?

Mr McKNIGHT: No.

Mr NOLL: Could I also just add, I am unaware whether this Committee intends to seek evidence from the Director of Public Prosecutions.

The Hon. MELINDA PAVEY: If you think it is a good idea, we will do it.

Mr NOLL: I do not know whether it falls entirely within your terms of reference but a lot of criminal offences and of the type that the Director of Public Prosecutions deals with, serious indictable offences which are dealt with in the higher courts, will not be dealt with under these specific offences and the Committee will also be aware that there are particular child prostitution offences under the Crimes Act as well. Because of the intersection between sexual offences generally and sexual offences against children, you will find that child prostitution offences will often be dealt with under section 66C rather than the child prostitution laws because there are easier elements to prove and higher penalties.

So, even if sex with a child under the age of 16 has been committed, it is more likely to be prosecuted under section 66C rather than the child prostitution offences.

CHAIR: Is that because the penalties are greater?

Mr NOLL: Well, there is a mixture. They are generally greater but of course, they are easier to prove because under section 66C you only have to prove the extended definition of sexual intercourse with a child, whereas the child prostitution offences require proof of the context of prostitution as in a sexual service, money exchange and so forth. So I am personally aware—and I cannot speak for the Director of Public Prosecution—of prosecutions for child prostitution matters going on under section 66C rather than the child prostitution offences themselves.

The Hon. MELINDA PAVEY: Unless we look at each case individually through a court transcript, we are not going to be able to—

Mr NOLL: Again, I cannot speak for the Director of Public Prosecutions; they might be able to provide you with some information about particular cases that they have dealt with recently. I know that there are ones going on at the moment in relation to child prostitution.

CHAIR: Given that the failed attempts of Hornsby Council to deal with the massage parlour earlier in the year gave rise to the circumstances which led to this Committee's hearing, do you agree with me that that case could have been prosecuted under the Summary Offences Act on the basis of the evidence we have seen to have been gathered?

Mr NOLL: Yes.

CHAIR: Does the Department of Justice then look at areas where criminal provisions are infringed but not prosecuted, where there is evidence of breaches of the Summary Offences Act or other criminal legislation, where there is evidence to suggest breach but no prosecutorial authority seems to be taking up the cudgels and actually doing something about it?

Mr NOLL: It would be a part of the department's role to look at the prosecution of particular offences. Of course, you would know, Mr Chairman, there is a great overlap in many criminal offences and in the different authorities and agencies that might prosecute it. It is an issue which would be considered by the Department of Justice.

Mr McKNIGHT: The particular provisions in that case, as you point out, are the provisions of the Environmental Protection and Assessment Act, not legislation that sits within the administration that the Department of Justice supports.

CHAIR: No, but the facts were unable to show a breach of the planning laws but the facts, as established, would have established a breach of section 16 of the Summary Offences Act, but it was not prosecuted under section 16 of the Summary Offences Act. My question is, where that occurs, is that something that the department takes note of?

Mr McKNIGHT: The broad answer to your question is that there are a range of operational issues that occur across the criminal law from time to time and sometimes those issues are identified as a priority for government and we investigate and look at them. In this case those issues have not been raised with us and we have not looked at them, but if they were to be identified as a priority, then yes, we would look at those issues.

If the Committee were to identify that as a priority issue, that is something that this department could take up.

CHAIR: You only need to go to any suburban newspaper to see that there are advertisements for premises used for prostitution and there are advertisements for the employment of prostitutes, both of which are offences under section 18 and section 18A of the Summary Offences Act, yet no one seems to be doing anything about it.

If there are statutes on the books which are clearly being breached in a weekly basis and on a large scale, and no one is doing anything about it, is that something that the Department of Justice takes note of and either suggests that maybe the law needs to be changed or alternatively, someone needs to be enforcing it?

Mr McKNIGHT: Obviously the department does not have an enforcement arm. That is a matter for the police and for others involved in enforcement. If it were identified as an issue that those laws were not being enforced because of some particular issue, then that is something we could take up. Those particular issues have not been brought to our attention as an issue that we should focus on.

The Hon. MELINDA PAVEY: Is there anything else that you think we need to know?

Mr McKNIGHT: I think the Committee has got before it quite a lot of research that has been done before on this issue about the structure of the industry; I think that is really helpful. From our perspective, we are happy to be as helpful as we can. That data I think is something that would be useful to you but I do not know that we have got anything else of value to put before you today.

The Hon. MELINDA PAVEY: We have not asked you about Triad money, Rebel money.

Mr McKNIGHT: Those are the kinds of questions that you need and you have put to the police. We do not have access to criminal intelligence or that kind of information.

CHAIR: Can I ask you, I do not know if you were here when the Department of Planning witnesses were giving their evidence but because a number of the prosecutions in relation to the planning legislation take place by councils in the Local Court, there is a difficulty with data accessibility in relation to the number of those prosecutions. Is your department in any better position to be able to get access to Local Court prosecution data?

Mr McKNIGHT: What we would have access to is data collected by BOCSAR about criminal prosecutions. I think in the case of offences committed under the Environmental Protection and Assessment Act, those offences are described at a general level, so a breach of a development or the like, in which case it may not be possible to separate out those breaches by a brothel and those breaches that are related to an illegal garage or some other kind of breach.

I can go to BOCSAR and ask the question about whether they can be separated out. I doubt that they can but it may be possible.

CHAIR: Is there any facility, for example, to search prosecutions commenced by councils or local government authorities in the Local Court over the last five years, at least get access to that information and then sift through them, whether they are a dog prosecution or whether they are a planning prosecution relating to a massage parlour or a brothel?

Mr McKNIGHT: I would have to take that on notice.

CHAIR: Are there any moves at hand to make information with regard to proceedings in the Local Court a little bit more accessible from a statistical point of view than it seems to be at the moment?

Mr McKNIGHT: Because we have BOCSAR in relation to criminal statistics, we have quite rich data about the levels of offending and the kinds of offences that are committed. The issue is when those offences are described in ways that mean that you cannot separate out the particular issue that you are looking for. The short answer to your question is not to my knowledge but I can get some further information for you about that if you like.

CHAIR: Would it be possible to request BOCSAR to start recording this as a particular statistical item?

Mr McKNIGHT: I do not know the answer to your question here. That would come down to whether you could create a law part code around this or not and I will take some advice.

CHAIR: The deputy commissioner suggested that whatever we do, there should be some monitoring and review down the track and obviously if the current inadequate data continues into the future, we are probably not going to be in any better position to review the operation of whatever we recommend than we are now.

Mr McKNIGHT: As policy analysts we are always hungry for data.

Ms ELENI PETINOS: If I may, what level of detail are we likely to see from those BOCSAR statistics? What is the intention of what you are going to provide to us?

Mr McKNIGHT: If you ask us a question, we can try and provide that information to you. The questions I have asked of BOCSAR to prepare for today were about what prosecutions had happened under particular provisions of the Summary Offences Act and Crimes Act and the Commonwealth legislation. I asked them to go back five years and I asked them to give me outcome data; so what happened in those prosecutions, guilty, not guilty, other. If you want richer data than that, it may be possible, the question is what would you like to know.

Ms ELENI PETINOS: Is there a way to refine data around registered versus unregistered brothels?

Mr McKNIGHT: No.

CHAIR: Can I just ask you some questions about the current organisation of the Local Court.

Mr McKNIGHT: You can, I am not an expert on this.

CHAIR: Mr Noll might know the answer to this. There used to be mining wardens and degrees of specialty within the Local Court system. Does that continue?

Mr NOLL: I could not say. I understand that in the old days magistrates were appointed as mining wardens as well. I do not know whether that practice continues.

CHAIR: There were industrial magistrates who were specialists in the area and I think a chief industrial magistrate at least.

Mr NOLL: I believe there still is, yes.

CHAIR: Sorry, the reason for my question is the planning legislation which is enforced in the Local Court by and large talks about there not being the need for direct evidence of prostitution for the purposes of establishing that there is a brothel and that circumstantial evidence can be relied upon. In the case of the Hornsby Council prosecution that failed, it would seem as though they had some direct evidence, although only in respect of one sex worker and I do not know what other evidence they had of a circumstantial nature, but it seems as though the judicial officer may not have used the full evidentiary tools available to him or her in rejecting Hornsby Council's application. We will find out more about that this afternoon.

But it occurs to me that one way of maybe ameliorating that would be to have all cases in the Land and Environment Court. Another may be to set up some specialist judicial officers in the Local

Court that can hear these sorts of matters who may be more familiar with some of the evidentiary issues in terms of establishing whether sex workers are operating in particular premises. Do you have any comment on either of those two possibilities?

Mr NOLL: I can only comment as a prosecutor to say that it is my experience in all jurisdictions that there is a little bit of variance in relation to proving cases circumstantial.

CHAIR: That is a nice way of putting what has been my experience as well.

Mr NOLL: Some judicial officers approach it in different ways and have a different understanding about how to approach circumstantial cases.

Mr McKNIGHT: My understanding is this concurrent jurisdiction in this area—

CHAIR: There is.

Mr McKNIGHT: —with the Land and Environment Court, so councils would have something of a choice.

CHAIR: I think a factor around the choice, in my experience, is usually the question of cost and convenience. It is cheaper and more convenient to have matters heard in the Local Court than it is to go to the Land and Environment Court.

Mr NOLL: Particularly in regional areas, you would have to come to Sydney.

CHAIR: The witnesses would all have to come to Sydney too.

Mr McKNIGHT: Indeed, sure. There are issues around setting up specialist jurisdictions within a court like the Local Court that could really undermine the efficiency of the court and its ability to deal with the vast range of cases that come before it. There are a variety of areas where you might argue for specialist expertise in the court system overall but that does mean that you have scheduling difficulties and listing difficulties. There is a need in the court system to provide access to justice in a timely and efficient way.

CHAIR: I suppose, there is still an avenue to start a case in the Supreme Court if you believe there has been an error of law.

Mr McKNIGHT: Indeed.

CHAIR: Which would include mis-application of evidentiary principles, I would imagine.

Mr McKNIGHT: That would be the case.

Mr NOLL: They are not very common though.

Mr McKNIGHT: It is difficult to comment on the Hornsby Council case. We have seen media reports but obviously we have not seen the detail.

CHAIR: I think we will learn a bit more this afternoon.

Mr McKNIGHT: Indeed.

Ms JO HAYLEN: This morning you have identified for us that you have not been requested by the Government to look into the matters that the Chair has raised about the Hornsby Council case or indeed in relation to the advertising of sex services. Are there any areas that you have been asked in

this broad scope to look into and if not, what are the priorities of the Department of Justice in relation to strategy and policy at this time, perhaps your top three?

Mr McKNIGHT: In relation to the policy issues that are in front of us at the moment, gosh, there is quite a range.

CHAIR: None of which would fall within the terms of reference of this Inquiry I would imagine, so you probably do not need to burden us with the detail.

Ms JO HAYLEN: I put to you perhaps that the Government has not raised any issues in relation to the sex industry or brothels with the Department of Justice recently but you have other priorities, which we will not be burdened with today.

Mr McKNIGHT: We have been part of the group that put together the Government's submission to this Inquiry. We are participating in the whole of government processes around this. There are whole of government processes that led to this Inquiry. We are interested to see the outcome of your deliberations and the measures that you will recommend to make this area work better. Obviously we have a role to play in that process and a role to play once you make recommendations. We exist to serve.

CHAIR: Can I ask you this, in the New South Wales Government submission on page 3 the current regulatory framework for brothels in New South Wales sets out that seven different pieces of legislation impact on brothels and that is brothels as defined and not necessarily massage parlours operating as brothels and other related areas.

Mr McKNIGHT: Yes.

CHAIR: Do you have any comment to make on the observation that it may well be quite desirable to tie all these different pieces of legislation together under one co-ordinated set of provisions so that people who are impacted or who want to know if they are or are not operating lawfully within this area, have one place to go instead of seven different pieces of legislation?

Mr McKNIGHT: The set of legislation there covers a range of different kinds of issues. For instance, to take brothels out of the general work health and safety regime would be problematic; probably problematic to take it out of the general planning regime as well. Certainly criminal offences need to live in the Crimes Act and the Summary Offences Act, so I am not sure that a one-stop shop piece of legislation covering all aspects of the operation of the brothel industry is necessarily practicable.

If you think about other kinds of industries, they are also governed by planning legislation and work health and safety legislation. For instance, operating as a lawyer, you are still covered by the Work Health and Safety Act, even though there is a specific regulatory regime for lawyers.

The idea of an accessible regulatory regime where evidence understands what their obligations are is great and any moves in that direction are really helpful I think but that does not mean that the general legislation can necessarily be overridden by that. That would be my comment on that.

CHAIR: I take your point with regard to the Work Health and Safety, Public Health and Crimes Act.

Mr McKNIGHT: As you say, there may be opportunities here to simplify the regulatory regime and anything that makes the law simpler is a good thing.

CHAIR: Thank you very much for appearing before the Select Committee today. The

Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any further questions?

Mr McKNIGHT: Yes.

(The witnesses withdrew)

(Luncheon adjournment)

BASIL JOHN DONOVAN MD, Professor and Head, Sexual Health Program, Kirby Institute, and

PHILLIP JAMES READ, Acting Director, Kirketon Road Centre, South Eastern Sydney Local Health District, affirmed and examined:

CHAIR: Thank you for appearing before the Select Committee to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Prof DONOVAN: No.

Dr READ: No.

CHAIR: Would either of you like to make an opening statement before the commencement of questioning?

Prof DONOVAN: First of I would like to congratulate you, Mr Chairman, for the diversity of your Committee here. I appeared before the first Select Committee in 1983 and it was all male; a very august committee, it included Peter Collins, John Dowd and Pat Rogan and it was most enlightening for me. I recall at the end of my interview being asked by Peter Collins, “Dr Donovan, we’ve sat here today listening to a procession of pinky leftos who are all proposing a free market. Do you find that strange?” and I had to reply, “Mr Collins, I think you just have to deal with it.”

The Hon. MELINDA PAVEY: That gives us some context.

CHAIR: I must say, I was also mentally noting the spirit of free marketeering that we were observing in Victoria last week as well. Would you like to say anything else by way of an opening statement?

Prof DONOVAN: I have been appearing before several committees for years now and I find it interesting, in the main the New South Wales Government has responded to the concept of the sex industry in this State in an extremely and bipartisan mature fashion, and has achieved an international reputation for its excellent response.

I notice these Select Committees seem to keep recurring because there probably was an initial mistake made with decriminalisation, which was basically the baby got handed to local councils, who were not prepared for it. That has left residual issues which leaves local government uncomfortable. I can only hope that this Inquiry can come up with some recommendations that can support local councils through the process.

CHAIR: Dr Read, would you like to make an opening statement?

Dr READ: This is my first Select Committee; maybe I will be doing one in 30 years, I do not know—hopefully not.

The committee that Basil is talking about actually eventuated with the Kirketon Road Centre where I am the acting director being a recommendation of its findings. The purpose of that, the Kirketon Road Centre was established in around 1987 because the situation at the time, the not decriminalised environment and the many sex workers operating in that area who were not accessing services and were very much under the radar, had poor health, human rights outcomes and difficult interactions with police and so forth.

Over that 28 year period Kirketon Road has seen 10,000 men, women and transgender people who identify as sex workers. One of the main reasons that we have had success engaging with organisations like Sex Workers Outreach Project, brothels and sex workers locally is because of the

free conversation and lack of perceived barriers to engaging in care.

Kirketon Road Centre provides services to a particular component of the Sydney sex industry. It is not necessarily representative of the whole industry. We focus on people who are perhaps the more marginalised and often looking after providing services to people who choose the street as their place of work. We have a disproportionately high number of sex workers who report a history of injecting drugs compared to the general New South Wales situation.

It is those individuals, from my perspective, who are most likely to disengage with any additional regulatory requirements upon them or their brothel owners.

That is the background to where I work and my interest in the findings of this Committee.

CHAIR: I might just start off asking each of you a few questions. We have received evidence that there is a form of sex work which is underground even with the current system and that is sex workers who are operating in establishments called massage parlours rather than outward brothels that have been approved under the planning laws. Have you two gentlemen seen evidence of that; that is sex workers who have reported to you that they are working in massage parlours?

Prof DONOVAN: Dr Read can speak to that, he is published on it.

Dr READ: Broadly speaking, there would certainly be people that we have seen clinically who would be working in a place that may not have development application approval. Because in New South Wales that has them outside the legal system to a certain extent, research has still been able to access those locations and engage with the clients in there but what we did find was that if a place was not able to get a development application and it was also particularly related to certain work locations that had women from diverse cultural backgrounds, that failure to get a development application made it more difficult for those people to necessarily insist on condom use for oral sex with clients through their management. Because they were not able to potentially freely discuss the situation, they perhaps were not able to require of their management the availability of condoms.

CHAIR: How far do you go out into the suburbs of Sydney from where you are located for the purposes of your research?

Dr READ: The research is slightly separate. Our clinical work extends to the South Eastern Sydney Local Health District, so that is bordered around about central station, in terms of the city, Loftus Street and then goes down south but from a research perspective, Basil is referring to the findings in the last study where you did not just locate towards Sydney, you included North Sydney as well.

Prof DONOVAN: I have been doing research in this area for 35 years and that includes most of the States of Australia and a bit, not a lot, overseas; mainly because I am interested in the different anthropologies and the effect of the different regulatory environments. Australia is a fascinating country because it is the only place that has different laws in each State. So it gives us a natural experiment.

CHAIR: If we can focus on your research in New South Wales just to understand some of the findings that you have made. Does your research extend to, for example, the sex workers who may be operating in so-called massage parlours up in my electorate, where they have no planning approval, they are operating completely underground as providing sex services and how do you access those workers if they are underground?

Prof DONOVAN: We access them because they come to the Sydney sexual health centre, which is about 30 metres in that direction, because they feel comfortable with the place, the services. Since the beginning of the early seventies it has had a very close working relationship and has never

had a threatening role or a punitive role, so it has developed a relationship of trust. Fifty per cent of all the sex workers within 20 kilometres of here, when we questionnaired them in the brothels attended the Sydney sexual health centre in the previous 12 months.

CHAIR: If the anecdotal evidence that the police gave us this morning is correct and that there does appear to be elements of organised crime and sexual servitude operating in New South Wales, they are unlikely to be clients of your clinic though, are they not?

Prof DONOVAN: The Sydney sexual health centre has been targeting those women, again, because we are not the police, because we are a free public health service and we do not require identification from them, the public clinics in New South Wales have extremely good access to all components of the sex industry. When I hear the police talk about servitude, I think the police are often being manipulated. The worst place is the North Shore where you get approved brothel owners organising for unapproved brothels to get called illegal, screaming out to the police and tell the police all sorts of things about how these women have been coerced and so on, and all they are doing is trying to kill of the competition. They are manipulating the police.

I see a lot of people who are more in servitude relationships than most and they tend to be cooks and kitchen hands in Thai restaurants and Asian restaurants around Sydney. The sex workers, the women who are in debt bondage relationships, they literally dried up with decriminalisation, they disappeared. In the early nineties more than 50 per cent of the Asian workers we saw had arrived deliberately indebted in order to get a false passport and come to work in Sydney. But that phenomenon now has not been around for 20 years. It does not mean there are not individual instances where you have got a bad relationship but that old industry is history.

The Hon. MELINDA PAVEY: Deputy Commissioner Kaldas in his testimony today did refer particularly to south-west Sydney, which is a lot further away than 30 metres down the road to your sexual health clinic.

Prof DONOVAN: But half the Asian health workers who see the Sydney sexual health centre, come from south-west Sydney. When we ask them why, are we such a great clinic and they said, no because we get the day off and we can go to the movies in Chinatown.

The Hon. MELINDA PAVEY: And plus there is no public health clinic in south-west Sydney.

Prof DONOVAN: Yes there is, there are clinics in Liverpool and all around south-west Sydney. We actually surveyed them to find out why they were coming to see us, maybe there was something wrong with those clinics, but what is wrong with those clinics is they do not have movie theatres nearby or David Jones.

Dr READ: Can I add something? I have worked at the Sydney sexual health centre as well and to add to the question would one not see people who are in contract arrangement? I think that historically people did reveal that, even in the context of a criminalised situation, so I do not think that there is any reason to believe that the drop-off in Sydney, as I understand Basil, that used to be one of the questions, that the Thai, Korean and Chinese health promotion officers would always ask of the girls they saw, what sort of relationship are you in with your brothel manager and historically people did report that in the early nineties but that has hugely dropped off and is virtually never reported.

I think the other thing I would say is how does one access clients. Clearly there might be people that we do not know about that you cannot see but on the other hand, we at Kirketon Road are out and about till midnight every day of the year within our local health district, not within south-west Sydney health district, sometimes doing outreach work with sex worker organisations, sometimes with drug user organisations, communicating with local community organisations. We go to the safe houses and places like that, such that exist anymore which are clearly seeing people who are in a

marginalised situation. I think the access to parts of the sex industry from services like Sydney sexual health centre or Kirketon Road is actually extremely great. I do not think there is a significant component to the industry that are not accepting.

I would just like to make one additional point about my comment about condom use, which I do not want to be misinterpreted. The findings were that condom use is exceptionally high. I was just simply referring to oral sex in unplanned premises, which was slightly lower condom use but still over 80, 85 per cent of oral sex occasions were condom protected in those settings too.

CHAIR: Is one of the questions that you have your social workers ask the patients in your clinic whether they work within an approved premise or an unapproved premise?

Prof DONOVAN: No, I suspect most of them would not know.

CHAIR: Do you ask them whether they work in what is called a massage parlour?

Prof DONOVAN: We do. At entry they are asked the type of premises, whether they work in a brothel, on the street, massage parlour or privately.

CHAIR: Do you have any statistics for the proportion that work in massage parlours?

Prof DONOVAN: It would be of the order of about a third and when we went out around the brothels, in the questionnaire that we gave to the women, we asked them—even though it seemed like a dumb question because you were in a brothel—they actually described themselves as working in a massage parlour, even though to the, shall we say, socially astute research assistants we had, they were pretty obviously brothels.

Massage parlour, in fact for the last 50 years, has been the term used for brothel in New South Wales.

CHAIR: Correct.

Prof DONOVAN: I think there is a semantic muddle there. What you are saying is places masquerading as conventional massage but are actually providing sexual services and I think there is a fair bit of that across the board. A lot of it might be only once or twice a week that the additional services are provided and most of their work is actually massage. So it is a very grey edge.

CHAIR: When you said a moment ago that a third describe themselves as working in massage parlours—

Prof DONOVAN: We do not know really how to interpret that.

CHAIR: I just wanted to understand that. That could mean that they are actually called a massage parlour or it could be that they are referring to a brothel as a massage parlour?

Prof DONOVAN: Some are in very conventional brothels but for some reason just self-identify as massage parlour. Others are overwhelming massage providing occasional sexual services and everything in between.

Ms ELENI PETINOS: Mr Chair, through you, if we might request the statistics that the organisation has formally on the number of massage parlours that the girls are reporting.

CHAIR: Is that information that you would feel comfortable giving to the Committee?

Prof DONOVAN: You would need to ask the director the Sydney sexual health centre and

she could get it pulled off the data base if you want it, but again, being such a vaguely defined concept, I am not sure the number means much, but you are welcome to it.

Mr ALEX GREENWICH: I have a two-part question. One, why are rates of sexually transmitted diseases (STIs) amongst sex workers in New South Wales so low and two, Deputy Commissioner Kaldas put forward a proposal of a way of registering every single individual sex worker in New South Wales. What impact would that have on the health outcomes for sex workers?

Prof DONOVAN: Well, why are the rates so low—because they wear condoms at work. It has been documented and we are about to re-document because it has not been done for a long time, but certainly recently documented in Victoria that the principal risk in terms of infections for sex workers are their boyfriends. If they do not have a non-paying partner at home, they do not have STIs at all, because they wear condom. Big secret, condoms work. What was the other half of your question?

Mr ALEX GREENWICH: Deputy Commissioner Kaldas had put forward a proposal of a system registering every sex worker in New South Wales.

Prof DONOVAN: Gee, that has worked so well elsewhere.

Mr ALEX GREENWICH: This was my question—what do you feel the health outcomes would be of such a system, he did not seem to know?

The Hon. MELINDA PAVEY: To be fair, it was registration if they were working in a brothel, was it not?

Mr ALEX GREENWICH: No, he seemed to want to have a whole list of all workers.

Prof DONOVAN: They have a system like that in Victoria and your name goes onto a register for the rest of your life. What is it you are trying to achieve there? I find the concept of dehumanising these women and sometimes men, tagging them for life, rather strange because if that is your solution, what is your problem? Of course, no one wants to go on a lifelong register, so immediately everyone evaporates into the bushes.

That system has been shown to fail for 150 years. No one has ever shown it to succeed. We are watching two examples here in Australia at the moment of licensing systems failing.

Mr ALEX GREENWICH: Dr Read, in terms of your access to sex workers, do you think a system of registration would reduce the access that you currently have?

Dr READ: I think it would be an unmanageable disaster. From a public health perspective, and again, I speak to a certain part of the sex industry that Kirketon Road sees, we have trouble sometimes getting people to register for Medicare, let alone a brothel or a sex worker list.

The other thing is, there is a perception that every single sex worker is a full-time professional sex worker. There are many people that do intermittent sex work for various reasons and are highly unlikely to register and deregister and register and deregister every time the situation that takes them towards sex work occurs.

I think that the impact on the services like mine in terms of accessing our clients and really and truly, what are we interested about, a lot of the rhetoric is around the welfare of the people in the industry and preservation and protection of public health and I think that that would take huge step to eroding the incredible situation that New South Wales has found itself in actually through decriminalised and open discussion on sex work.

CHAIR: Can I just ask a slightly different question so I understand the statistics and I think Professor Donovan you may be the person to answer this perhaps.

Prof DONOVAN: Can I table the report on the New South Wales industry?

CHAIR: Certainly, you can table whatever you like. Professor Donovan, are the rates of sexually transmitted diseases amongst sex workers similar as between Victoria and New South Wales?

Prof DONOVAN: Good question. The women working in licensed brothels in Victoria have similar infection rates to the women working in any brothels in New South Wales but we could not get access to the unlicensed brothels; they would not even admit they were brothels; we could not get past the door. So we do not know what is going on in that unlicensed sector because with licensing, you effectively criminalise your unlicensed components, so you lose all access and we have documented that.

CHAIR: Why do you have a greater access to unapproved brothels in New South Wales than you do to unlicensed brothels in Victoria do you think?

Prof DONOVAN: Because there is no criminal law involved and also, in Victoria the Victorian Health Department only funds health outreach activities to the licensed sector. It means that the organisation involved in delivering education in the community is not funded to deal with the unlicensed sector.

CHAIR: I think you said a moment ago that it was the incidence of condom use which is responsible for the favourable outcomes from the sexually transmitted disease point of view and I think Dr Read, you said that the only area really where condoms are not being used as much in New South Wales is in the unofficial premises, is that right?

Dr READ: I was just referring to some of the findings. The overall findings are for vaginal sex and anal sex, almost all sex between sex workers and their clients is condom protected. There are some settings where it is not as high as 100 per cent use of condom use for oral sex but it is still in the order of 80, 85 per cent of all oral sex encounters between sex workers and clients are condom protected from our data.

CHAIR: The lower incidence of condom use for those oral sex acts, that tends to take place in what sorts of premises?

Dr READ: My speculation is that if a massage parlour is having to masquerade as a massage parlour rather than a brothel—and I note that in the submission from Willoughby Council they make a specific recommendation that condoms should be banned in massage parlours—my supposition is that if a place is having to work very hard to prove it is not offering sexual services, then the access to condoms for the girls in that service is lower because of structural issues, not because of a desire from the girls to use them or potentially for the management to have them.

CHAIR: In Victoria it is mandated, at least in the authorised sector, that they must have signage promoting the use of condoms in working rooms, I think in each room where a sex worker is operating. Do you think it would be desirable to have a similar rule in New South Wales in all approved brothels and even in all massage parlours?

Dr READ: I do not know what that would be remedying because the condom use is already so exceptionally high. I do not know what that would achieve.

CHAIR: You do not think there is any utility to that? What about in massage parlours?

Dr READ: If a place is allowed to say it is a brothel, then I think the circumstances might change but it seems contradictory to require a poster up in somewhere that is not allowed to call itself a brothel because it does not have a development application for such. If achieving a development application was more straight forward then the place would be able to say yes, we are a brothel and then say here are condoms. That is the way that I view the logic flowing, rather than the other way around.

CHAIR: It is to only the development application process though that makes some places operate sex services masquerading as massage parlours, there are some massage parlours in my electorate that are so close to a school that under no rule would they ever be approved as a brothel, for example; so they are deliberately operating outside of any law that they could possibly operate within. So it is not just the development application process per se, unless you take the view that it is acceptable to have brothels next to schools?

Prof DONOVAN: I went to school in Albury, which is a highway town and our brothels used to have the biggest carparks I have ever seen because of the trucks and that was right next to our school. I do not feel damaged from it. In fact, it was quite entertaining in the mid-eighties when I got a letter from the Catholic Women's Guild of Victoria and Wagga Wagga saying, "Dear Dr Donovan, we're offended by your claims about brothels in country towns. We've surveyed all of our members and there are no brothels in country towns."

You would be surprised how inconspicuous these places are. I have done work in brothels in Cammeray and across the North Shore and they are in townhouse developments, and you go: What do the neighbours think? They go: The neighbours just think we are friendly girls.

I have got fairly astute eyes and I have just accidentally discovered two brothels of within 100 metres of where I live in Bondi. Once while I was giving a talk in Bangkok about prostitution in Sydney and I noticed the phone number declared that they must be within 100 metres of where I live. They are invisible. The word brothel historically means a rowdy house but in fact brothels are trying to be as discreet as possible. They would love to be causing public amenity problems because of parking. The limiting factor in this industry is clients.

Ms JO HAYLEN: I think the distinction between massage parlours providing additional services and brothels that can call themselves brothels because of planning regulations goes to some of the issues about discretion and issues with perceived on amenity, particularly around schools and other areas that have been raised.

This morning we had evidence through the Department of Planning about how some councils have dealt with these issues by segregating the land uses to small areas of the local government area to purely industrial areas. Firstly, could you comment on those planning approaches and the potential impacts on workers, be it sexual health or otherwise?

Secondly, in your submission you refer to the Sex Services Planning Guidelines of 2004. Specifically in those guidelines do you think there are some elements that we could draw on that would improve some of these issues when it comes to the massage parlours offering those additional services that the Chair referred to, particularly in the upper North Shore of Sydney?

Prof DONOVAN: I think to relook at the Sexual Services Planning Guidelines is certainly a worthwhile activity because it was a very good document. It was developed in a very collaborative spirit. It may be a bit dated now; I have not re-read it in the last 10 years. What was the spirit of your question again?

Ms JO HAYLEN: We might need to have a look at it ourselves—whether there was anything in there in particular that might assist us to deal with the fact that some premises are not getting the appropriate planning approvals to be called brothels but instead are continuing to call

themselves massage parlours and offering additional services and then we are confronting all those problems, be it sexual health problems or amenity impacts. We can have a look at those ourselves.

Prof DONOVAN: A lot of the local governments are in a terrible position where small, noisy minorities are determining their policies and everyone else could not care less. When we surveyed local governments within 20 kilometres of Sydney, as part of that report, there were quite a substantial number of local governments who quite frankly and honestly just said: We would never approve a brothel. That is their attitude; that is their starting point. For others, the majority only ever got their approval by going through the Land and Environment Court and guess what, people usually win when they do because the council is not being rational.

It is council that is causing the problem. But again, they are not entirely to blame because local government is in a very vulnerable position. People do not go out and have street marches because there is a shortage of brothels in their street. Sometimes the local government needs to take a realistic attitude, which is, if they are going to ban these things in blanket fashion, they will just push it underground anyway and we are back where we started.

The thing about the planning guidelines is there were proposals in there that could be updated to support councils in this role, because it is complicated and there are sensitivities, and they were left high and dry. Sydney City Council is to be congratulated but essentially they inherited their protocols from the old South Sydney Council.

The Hon. MELINDA PAVEY: Who else is doing well council-wise in your opinion?

Prof DONOVAN: I do not really interact with councils; they do not really affect the client base I see, so I cannot really comment on that. I just run into individual council members who all voice complaints, but no, I cannot say who is doing well or not, other than to me a measure of a council is if most of the brothels in their area had to be forced through the courts because council would not grant an approval up front, I would say that council is not performing very well.

Ms JO HAYLEN: Sorry, are there any broader impacts or concerns you have about limiting the activities of sex premises to industrial areas?

Dr READ: I would say there is always potential safety concern around uninhabited areas, which is essentially the point of regulating a brothel to be in an industrial area, so there will not be any other people around and that is not necessarily a safe environment for people working in that place.

I do not really wish to speak to specific location requirements of where brothels are but I would just balance those requirements with the difference between perceived concern about the moral nature of what might be occurring within a building and actually anything particularly visually detectable by the looking at that building from 400 metres away.

I appreciate the concerns but also the reality is that clients, generally speaking, are not walking down the street with a megaphone saying: Off to the brothel and the workers in the brothels themselves respect that requirement of confidentiality as well. It is not difficult for them to be unnoticed and I think the data that Basil was referring to does suggest that, when people are surveyed, what do you think about the brothel on your street, 40 per cent of people said what brothel on the street? I think that is telling.

CHAIR: You have spoken a little bit about Victoria and their model. Queensland has a slightly different model. Do you wish to give any observations on how you see the Queensland system operating?

Prof DONOVAN: They have been trying to recruit brothels to their scheme for 20 years and I think at last count they made it up to 25 brothels at a cost of \$8 to \$10 million. What has that

achieved? The rest of their industry, no one knows anything about. Even researchers when they want to survey or study their industry, the only people they can find are the ones standing around on streets. All they are doing is comparing apples with oranges.

I find that a comic arrangement. If you write to Victoria and Queensland, they will forward your letter to the prostitution licensing authorities and you will get back a letter saying how successful their systems are, but all you are doing is setting up a self-serving bureaucracy that really cannot document its success.

CHAIR: You gentlemen are both working in the space of public health outcomes and the welfare outcomes of the sex workers, are there any recommendations that you would invite the Committee to make in terms of any public health auditing or other measures within brothels themselves that would help better protect the sex workers?

Prof DONOVAN: We actually have a very robust, durable and comprehensive surveillance system in New South Wales. We do much better than anywhere else. We are anticipating technological advances anyway now. People can actually now collect their own specimens for infections so it greatly lowers the threshold, it takes out the medical costs. I am very confident that New South Wales, short of doing something ridiculous in the regulatory environment, will maintain very high public health standards.

As we speak, we are sort of slowly slipping into history because I think service is being accessed and advertised online. I do not think anyone in this room can tell you how big the un-premised aspect of the industry is compared to the ones that work out of premises, but I suspect conventional brothels will probably drift into history over the next generation.

CHAIR: There is nothing that you see outside the public health issues that you are already involved in that would be able to achieve any better outcomes?

Prof DONOVAN: That is a good question.

Dr READ: I would like to look at it slightly in the negative. I think if you are looking at public health outcomes—we are both STIs doctors—what are we trying to aim for, lower rates than the general population of STIs? I think I would be satisfied with the rates of STIs as they are to be the same as the general population, I do not think there should be a requirement for sex workers to be super normal in that regard.

Rather than a recommendation, it is sort of a recommendation against, I think there is often a temptation to look at some sort of mandated testing calendar and process. I think that the frequency with which sex workers do already test in New South Wales for STIs, they take control of that issue themselves, use condoms and also the cost of doing that in Victoria where they had their one monthly to three monthly system was such that—correct me Basil—but it was tens and tens of thousands of dollars per year to prevent one Chlamydia infection or something like that. It was an extremely costly attempt to drive STIs rates to lower them and they already were low.

Here it works because of engagement with those brothels and managers. Many brothels managers they do not want to start a conflict between girls working in brothels and the management, just like an enterprise, some people love their managers and some do not. I am sure you can ask my team their views on me. There are many examples of where the girls and the managers work together to protect themselves and to a certain extent the clients of course.

Prof DONOVAN: In Victoria they did a survey of the wellbeing of the women working in the industry, like a job satisfaction survey and they were actually slightly happier than the average age-matched woman working in any other industry. If you would ask them now they would say at least it is better than working for 7-Eleven, which is literally why they choose the industry, because it

is better than making \$10 an hour.

Ms ELENI PETINOS: Professor Donovan, I am going to turn to the submission that you have made. I want to clarify the last line on the first page, “The public health achievements include lowest rates of HIV and STIs ever documented in female sex work and robust surveillance systems provide ongoing verification.”

In light of the comments that both of you have made about the instances of planned and unplanned brothels per se, women being intermittent in the industry and the inability to precisely account for the number of women or the exact women in the industry—and you have referred to our neighbouring States as something to the effect of, “self-serving bureaucracy who cannot measure their success”—how can you possibly make the assertion that we have the lowest rates of HIV and STIs every documented?

Prof DONOVAN: Because I read the literature and all the public health reports from all around the world.

Ms ELENI PETINOS: But given the inability to precisely account for who is in the industry, the number of these women, where the women are, given that we cannot account for women in the planned and unplanned, since you have been very precise in your fourth paragraph about the language around the nature of brothels so I am going to be very specific about the assertion you are making about the nature of STIs in this industry. How can you be so certain that they are in fact the lowest? You cannot account for all the women in the industry, there is no licence register to account for all the women in the industry so can we definitively make the assumption—

Prof DONOVAN: Perhaps I should clarify, the lowest ever measured. But unfortunately—

Ms ELENI PETINOS: Is it not possible that the sample of the women you are capturing over time may vary? You have not accounted for any of the variables; samples can change over time—

Prof DONOVAN: Yes they certainly do.

Ms ELENI PETINOS: —the number of women that are coming may have changed. We have no information about the number of workers you are getting over time.

Prof DONOVAN: And we have no information about the unlicensed sex workers that will not access health services. When often with police assistance around the world, unlicensed sex workers have been accessed. They have always been found to be much healthier than the licensed sex workers. That is why I am so opposed to creating licensing systems, because you finish up with this unhealthy under-class hiding from all assistance.

Ms ELENI PETINOS: In your opinion.

Prof DONOVAN: No, it has been documented over and over again for 150 years. It is not my opinion, it is the evidence. If you have got some evidence to the contrary, I would love to see it.

Ms ELENI PETINOS: I just noticed that your submission has been very clear in delineations of language and what have you.

Prof DONOVAN: Thank you for that.

Ms ELENI PETINOS: Given that, I think that you should also be clear about other assertions you are making, that is all.

Prof DONOVAN: I have evidence for everything I have said. Do you have any other evidence?

Ms ELENI PETINOS: Professor, I am not an expert. We have asked other people for evidence as well, so we are querying you on what you have put in front of the Committee.

Prof DONOVAN: I am telling you that I make those assertions because that is what the evidence says.

Mr ALEX GREENWICH: Professor Donovan, the research you have provided and the document you have just tabled, that research, that evidence and those findings are based on the trusted medical research principles and we should have faith in that research based on all the standards or general medical research?

Prof DONOVAN: We have the best access. We produce the best research in the world in New South Wales because we are the only research and clinical environment that has comprehensive access to every corner of the industry. When I present this stuff to my English colleagues, they go: How do you know these women are sex workers and I say: Because they tell me. In most jurisdictions sex workers will not even admit to their doctors what they do. It does not mean sex work is not stigmatised in New South Wales, it is still intensely stigmatised but I have spent my entire life building a trusting relationship and it works.

Ms ELENI PETINOS: What about the women who are transient workers that we touched on earlier. Are they likely to identify as sex workers in these processes?

Prof DONOVAN: Yes, they do because our public sexual health clinics are so essentially at saturation that a non-sex working woman coming in off the street without any symptoms will get triaged all the way to their general practitioner. Because these women tend not to have Medicare cards, they selectively come to the public clinics.

CHAIR: Professor, can I just identify for the purposes of the transcript or the Hansard of the Committee, the document which you sought to tender just a little while ago, that was the Sex Industry in New South Wales Report to the New South Wales Ministry of Health in 2012, which is referred to in your submission to the Inquiry, is that right?

Prof DONOVAN: Yes. I posted you a copy a few months ago I think.

CHAIR: Sorry, I did not see the document, so I just wanted to make sure for the purposes of the Hansard that that was the document that you tendered.

If there are no other questions, can I thank you both for appearing before the Select Committee today? The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any further questions?

Dr READ: Yes.

Prof DONOVAN: I am hosting the world conference next week, so can we make that 14 days?

CHAIR: We may not send it straight away. If you need some extra time though, if you could just let the staff know and that will be fine.

(The witnesses withdrew)

GEORGE LERANTGES, Team Leader, Compliance, Marrickville Council, sworn and examined:

SIMON GRIERSON, Manager, Monitoring Services, Marrickville Council, affirmed and examined:

LISA TERESA ANNETTE SIMONE, Safe City Manager, Council of the City of Sydney, Town Hall House, 456 Kent Street, Sydney, sworn and examined:

WILLIAM ALEXANDER MACKAY, Manager, Planning Assessment, Council of the City of Sydney, Town Hall House, 456 Kent Street, Sydney and

KATE LOUISE MURRAY, Manager, City Business and Safety, Council of the City of Sydney, Town Hall House, 456 Kent Street, Sydney, affirmed and examined:

CHAIR: Thank you for appearing before the Select Committee today to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr LERANTGES: No.

Dr SIMONE: No.

CHAIR: Would any of you like to make an opening statement before the commencement of questioning? No, very good.

With regard to the Marrickville Council submission, could I just ask some questions with regard to your experience of prosecutions in your local council area? You state that in the last five years you have had 57 complaints implicating 14 premises operating as massage parlours but the complaints have been regarding those massage parlours offering sexual services. You have taken action against two of the premises. Why have you not been able to take action against all 14 of the premises the subject of complaint?

Mr GRIERSON: Generally speaking it is because either there was no evidence to indicate that sexual services were provided or there was a lack of evidence indicating sexual services were provided.

CHAIR: You have stated that your council does not engage the services of private investigators and that you rely upon physical evidence, interviews of workers and owners and website forums as your three main sources of evidence, is that right?

Mr GRIERSON: Correct.

CHAIR: In the two cases that you have taken action against, was that evidence sufficient to secure successful outcomes?

Mr GRIERSON: Correct.

CHAIR: In respect of those two occasions, did you have any admissions by the owners or workers that you were relying upon?

Mr GRIERSON: In those two circumstances I am not aware that it was admission based, it was more physical evidence.

The Hon. MELINDA PAVEY: What sort of physical evidence was found?

Mr GRIERSON: Condoms, lubricant, pornography.

The Hon. MELINDA PAVEY: That was done by your compliance team?

Mr GRIERSON: Yes, from an inspection, a site inspection.

CHAIR: Did you use your powers of entry for the purposes of securing that physical evidence?

Mr GRIERSON: Because it is a commercial premises; we would turn up, knock on the door and ask for entry. They provide us entry, we go in. If they do not provide us entry, then we rely upon our powers of entry, which we would then issue a letter identifying our powers of entry and requesting entry. But generally speaking we do not have to rely upon it because most people let us in.

CHAIR: If people refuse you entry onto their premises, do you have arrangement with the local police where they can support you when you exercise those powers of entry onto the premises?

Mr GRIERSON: No, we do not have a formal arrangement for when we are investigating complaints. We do assist the police when they are organising an operation. We assist them in their operations, which generally involve immigration.

But for our complaints, we have never had the need to call upon police. We have never been refused entry when we have requested entry, so we have not had a need to explore that. Any time we are ever refused access to a premises then we will get a search warrant.

CHAIR: Can you give us an idea of the resources which are dedicated towards this sort of investigative function at your council?

Mr GRIERSON: We have a number of people who investigate complaints. As you can see from the number we gave you over five years, we approximately investigated over five years 10,000 complaints across a broad range of areas, including planning, building, environment and health, so that gives a context of the size of the complaints we receive against brothels or premises that are providing sex services. It is not large, so we do not have anyone dedicated specifically for this. It falls within a range of specialist investigative officers within our organisation that do a range of other complaint investigations.

Mr ALEX GREENWICH: How does your council deal with home-based sex work? Do you require a development application or any kind of planning consent?

Mr GRIERSON: The provisions of the local environmental plan, which is a comprehensive local environmental plan similar for all councils, I cannot recollect the last time we received a complaint about home-based—in the last five years we have not.

Mr ALEX GREENWICH: I am not talking from a complaints perspective, I am talking about how the council deals with it if there is a sex worker who is operating out of their home, whether the council has an issue with that, what they require from that home-based sex worker?

The Hon. MELINDA PAVEY: Or is it covered in your local environmental plan as an umbrella of home-based work?

Mr GRIERSON: It would be covered under that umbrella. It could even be covered under the code state environmental planning policy. It might not actually require approval but again, I would have to go and look at the code state environmental planning policy and I would have to go and look at our local environmental plan.

The Hon. MELINDA PAVEY: Mr Grierson, would you mind doing that for us and coming

back because it is quite an important aspect of our inquiry. Thank you.

Mr GRIERSON: Sure.

CHAIR: Can I just go back to brothels and massage parlours because you have given us some information about massage parlours and complaints about unapproved brothels. There is often the belief that council officers have that there is some unapproved activity going on and there are also the problems of actually establishing that. Have you found that there is some activity which you believe is unlawful but you have not been able to obtain sufficient physical or other evidence to prosecute?

Mr GRIERSON: I would suggest that is the case.

CHAIR: How many premises do you think operate in your local council area that would comply with that description?

Mr GRIERSON: I would not be able to give you a number.

CHAIR: More than one or two?

Mr GRIERSON: More than one or two. Anecdotally the therapeutic massage or the Thai massage type of business seems to be on the increase. Some of these have consent for that particular use, for therapeutic massage, some do not.

CHAIR: Under the Summary Offences Act, the provision of any sexual activity in a premises which calls itself a massage parlour is an offence under section 16, has your council ever investigated whether you could use that route as a means of dealing with that activity, because it is a less onerous test on one view of it than establishing that a place is a brothel under the planning legislation?

Mr GRIERSON: We have not explored that avenue.

Ms JO HAYLEN: Marrickville Council, you identify in your submission that you received 57 complaints in relation to 14 premises that the Chair has just recently referred to. Just to give us a bit of context, how many complaints, for example, have you received about health practices or food standards in restaurants across the Marrickville local government area over the last five years?

Mr LERANTGES: We roughly receive about 50 such complaints a year. So for the last five years you are looking at between 250 and 300, just complaints that come into the system.

Ms JO HAYLEN: I am not going to ask about trees or footpaths or anything else. Am I safe to assume that these are a very small proportion of complaints that you receive?

Mr LERANTGES: What Simon stated before is, every year we average about 2,000 complaints coming into our section for investigation. When you proportion the numbers that we provided in this report across the total numbers of complaints we get, then yes, it is a small proportion.

Ms ELENI PETINOS: I have the same question for both councils if you do not mind and it something we touched on earlier with the Department of Planning, can you tell us—if you cannot tell us now, can you both please provide it at a late time—how many penalty notices have been issued in the last five years, how many orders to comply with development consent have been issued in the last five years and how many brothel closure orders have been issued in the last five years by both councils?

Mr GRIERSON: We will take that on advisement. We will provide you with a written

submission on that.

CHAIR: Back to Marrickville Council, in respect of the two premises where you did have sufficient evidence in relation to the massage parlours, what was the outcome of those proceedings? Were you able to close the premises? Was it a fine? What was the nature of the proceedings that you commenced?

Mr LERANTGES: It was a fine because we the officers during their investigation were able to obtain evidence that sexual services were provided but they were an approved massage parlour. So they were approved for massage and on subsequent inspection the evidence was not available anymore. What they do is, I guess, identify what council has determined against them and they modify their behaviour to ensure that they comply with their approved use.

CHAIR: In respect of those matters, in terms of the follow up, in terms of inadmissible hearsay, have they indeed altered their behaviour or have they ensured that they covered their tracks more successfully so that you could not establish admissible evidence that they were continuing to operate outside of their approval?

Mr LERANTGES: The feedback I got from the investigating officers was that they had since provided signs saying: No sex on the premises. They stated that no sex was provided on the premises. There were occasions where the conversation went that that was a rogue operator, they are no longer employed in that service and there was no evidence of condoms or lubricants on the premises that the officers were able to disclose. They also got admissions, yes we have learnt our lesson; we are now just massage.

The Hon. MELINDA PAVEY: You said approved massage parlour, do you have to have an approval to be a massage parlour in Marrickville?

Mr LERANTGES: Development consent. That is just under planning requirements, that they submit a development application. It then gets assessed by council. Council then provides a determination, which approves the use, amongst many other types of businesses.

CHAIR: When you had credible evidence that they were providing sex services as an approved massage parlour, did your council have open to it the possibility of closing down the premises because they had been operating contrary to the approved use?

Mr LERANTGES: If that was the practice then a lot of premises would be closed down, not just this type of premises. There are enforcement tools that are available to council, including warnings, notices, orders, fines, depending on the circumstances, so we exercise use of those tools to get an outcome. In these circumstances we did undertake enforcement action and at the end of it there was an outcome that showed that they complied with their consent.

The Hon. MELINDA PAVEY: Can I just step back to this issue of development consent; does any business wanting to operate in Marrickville have to seek development consent?

Mr GRIERSON: It would depend on the nature of the business. Again, it goes back to the code state environmental planning policy. There are some businesses that can be complying or can be exempt; therefore they do not need to seek approval from council. It is not a carte blanche that every business needs approval.

The Hon. MELINDA PAVEY: But massage parlours is one?

Mr GRIERSON: In that particular space, yes.

The Hon. MELINDA PAVEY: But that would be different for every council?

Mr GRIERSON: I would suggest that it has become less different now because of the code state environmental planning policy, the state-wide planning controls that all councils effectively adhere to. So it should not vary from council to council.

Ms MELANIE GIBBONS: If I can just follow up on that a little bit. When you were saying in this circumstance they received a fine, in what range would that fine have been and who receives it, the operator or the worker?

Mr GRIERSON: The fine would have been \$3,000, which is non-compliance with consent and it would have been the operator who receives the fine, not the worker.

CHAIR: Was that in the Local Court?

Mr GRIERSON: No, this is a PIN, penalty infringement notice. We have not taken any matters to court in the last five years. We have been able to resolve them through penalty infringement notices or orders to cease the use.

Just to qualify your question, you were asking what do we think is actually going on? I would suggest that from our experience, when we turn up to inspect a premises and if we are finding physical evidence that may indicate sexual services are on offer, any subsequent inspection which has an absence of that, and even signage which indicates sex is not provided on the premises, that could be just a learnt behaviour of knowing what we look for and what are triggers are to issue penalties or orders and notices.

We are getting a fair bit of anecdotal information from forums now which indicate people's experiences at these particular premises, which are not only talking about addresses but also talking about the people's names that are providing the services. Still we are not comfortable using that solely as a means to instigate a prosecution or penalties, primarily because we do get a lot of complaints from competitors and it is very hard to distinguish who the competitor is and who is a genuine complainant about the particular land use. So we are very cautious about using it, but it seems to be that we are observing continuing use of these premises where they have indicated to us it is not being provided.

CHAIR: Blogs and the like would not be admissible in a court and getting the actual person who has made the post to bear witness would be fairly non-existent I would think.

Mr GRIERSON: It is just an indicator but it is something that did not exist a few years ago.

Mr ALEX GREENWICH: Can I ask a question firstly of Marrickville Council, from what you have said, it appears that brothels and sex work in Marrickville Council is not a big issue. Would that be fair to say?

Mr GRIERSON: From the complaints we received, correct.

Mr ALEX GREENWICH: My question to the City of Sydney Council, whether it has been the Department of Planning or the Kirby Institute, both have referenced the City of Sydney Council's planning model in dealing with sex work and brothels and how that has been, in their view, successful over time. What do you think that other councils can learn from the City of Sydney Council model?

Dr SIMONE: I think in regards to the City of Sydney Council's perspective, we consider brothels to be low risk premises and because we have got planning controls in place, we take a harm minimisation approach. That has been one that I think is considered best practice. We have developed guidelines in 2013 that set out clearly the way that the premises should be set up and complied with.

We also had a dedicated sexual liaison officer in the safe city team. So we obviously took it very seriously in regards to ensuring that the premises were looked after as best as possible.

We also take very much an inter-agency approach. We are represented on the sex workers outreach program, we liaise with NSW Health, Kirrketon Road up in Kings Cross, the needle clean-up line, so it is kind of a multi-agency approach in regards to ensuring that the premises are looked after and treated as a business, as Marrickville Council has spoken about just recently.

CHAIR: Dr Simone, are you a medical practitioner?

Dr SIMONE: No I am not, I am a criminologist.

CHAIR: In your local council area, is there a high incidence of underground sex service premises operating? I would have thought that you have got an electorate where if ever people would feel safe to be above ground it would be in Kings Cross and related areas?

Dr SIMONE: Not that I am aware of, no. We do not have any intelligence to indicate that is the case.

CHAIR: Also, you have a particularly advantageous rating structure. What sort of resources do you dedicate towards the sex industry in your local council area?

Dr SIMONE: Can you define what you mean by resources?

CHAIR: In terms of people that deal with it, I think you have already said there is a dedicated worker?

Dr SIMONE: Yes, we did have a dedicated worker who is no longer in the team, because that indicates that we do not consider it to be an emerging issue or a priority project that we need to put money into for a full time position. As I have mentioned, there are grants that are provided by the City of Sydney Council to non-government organisations to produce resources on good sex practices in regards to condoms and all that kind of thing. We have health compliance officers, a very similar model to the way that Marrickville Council has operated in regards to the investigations.

CHAIR: We have got some very helpful information from Marrickville Council as to their levels of complaint and so on. I am not saying this critically but you have not set out your level of complaint. What is your level of complaint, if at all?

Dr SIMONE: The information I have been provided with is basically we have probably between 10 to 30 complaints per year, but that is about massage parlours probably operating as a brothel, when they are not supposed to, so that is about them not having the consent to do that. But for us it is not something that is a high issue at all.

CHAIR: Do you follow up and investigate those complaints?

Dr SIMONE: Absolutely. It is similar very much to Marrickville Council. There is health and building investigators that would investigate any issue or complaint that is put forward.

CHAIR: What has been the outcome of those investigations?

Dr SIMONE: I would have to take that on notice and give you that advice at a later date.

CHAIR: That would be helpful if you could. Thank you very much for appearing before the Select Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to

provide a written reply within five business days to any further questions?

Dr SIMONE: Yes, not a problem.

Mr GRIERSON: Yes.

(The witnesses withdrew)

(Short adjournment)

NICHOLA LOUISE CLARKE, Team Leader, Compliance, Hornsby Council, and

SIMON LLEWELLYN EVANS, Compliance and Certifications Manager, Hornsby Council, sworn and examined:

CHAIR: Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Ms CLARKE: No.

Mr EVANS: No.

CHAIR: Would either of you like to make an opening statement before the opening of questions?

Mr EVANS: No.

CHAIR: I might just asking you a little bit of detail, if I may, about the Hornsby Council attempted prosecution of a massage parlour earlier this year which gave rise to the Inquiry. The massage parlour in question, I believe, is on Edgeworth David Avenue, is that correct?

Mr EVANS: Correct.

CHAIR: The massage parlour is about 50 metres or so from a high school?

Mr EVANS: Correct.

CHAIR: There seems to be a cluster of massage parlours around that high school in that street, is that right?

Mr EVANS: There is one other massage parlour in the same building.

CHAIR: I thought there was another one down the hill on the same side of the road?

Mr EVANS: Not to my knowledge.

CHAIR: I have seen signs; that is all. First of all, let us go through this chronologically. How did the massage parlour in question come to the attention of the council, were there complaints?

Mr EVANS: That is correct. We received a number of complaints, mainly from the other businesses that are in that complex and they are a chemist, doctor's surgery and accountants; so it is a professional type building.

CHAIR: You investigated the complaints?

Mr EVANS: An officer of my team did, yes.

CHAIR: Did your investigations include engaging a private investigator?

Mr EVANS: That is correct.

CHAIR: What was the evidence that the private investigator was able to assemble?

Mr EVANS: That sex services were provided by one masseuse or sex worker.

CHAIR: In the premises?

Mr EVANS: In the premises.

CHAIR: What was the nature of the services?

Mr EVANS: Masturbation.

CHAIR: What other evidence did you gather for the purposes of the proceedings other than the direct evidence of the investigator?

Mr EVANS: We gathered online and newspaper searches, advertisements for sexual services at the premises.

Ms CLARKE: Adult forums as well online, discussing the range of services provided.

Mr EVANS: We had an officer then make surveillance of the area, makes observations of how many gentlemen go into the premises as opposed to female clientele.

CHAIR: What were the services that the online advertisement suggested were being provided?

Mr EVANS: Masturbation.

CHAIR: That material was then assembled and presented to a court, was it?

Mr EVANS: No. The material was taken to the court but our first hurdle we needed to get through was proving the prima facie case that there were two sex workers operating from the premises, but as we only had one investigator be serviced by one sex worker, the magistrate dismissed the case that we were unable to prove our burden of proof. We should have had more. So we were not in the position to give the other evidence, which was our observations, interviews with the manager and the like.

CHAIR: You had interviews with the manager?

Mr EVANS: That is correct.

CHAIR: Did the manager make any admissions?

Mr EVANS: None.

CHAIR: Did you exercise your powers to enter the premises?

Mr EVANS: We exercised the powers in terms of asking if they minded us looking through the premises, which they had no objection, which is the norm.

CHAIR: When you inspected the premises did you find any physical evidence of condoms or other material?

Mr EVANS: None whatsoever. So there were no condoms, there were no lubricants. In fact there were signs on the wall saying: Please don't ask for sex.

CHAIR: In respect of the online material suggesting that there were sex services available at the premises, did that identify whether there were one or more women involved?

Mr EVANS: No.

CHAIR: Was that material posted by the owner/operator of the premises or were they online customer type blogs?

Mr EVANS: Can I go back one step. I think one of the blogs said something to the effect: If you get—I cannot quote the name—you'll have a good time if you get such and such a name. So that may have led us to believe that there was more than one.

CHAIR: There was a suggestion that someone other than the worker who the investigator had contact with was also providing services?

Mr EVANS: Through the blog.

CHAIR: There are provisions that allow for the use of circumstantial evidence so what you have just told me suggest that there is at least circumstantial evidence of more than one person providing sex services. What was the nature of the proceedings which the council started? Was it under the Environmental Planning and Assessment Act?

Mr EVANS: It was under the Environmental Planning and Assessment Act, so we were taking proceedings for operating a prohibited development, so it was a straight breach and we took that through the Local Court.

CHAIR: You were seeking a fine?

Mr EVANS: We were seeking a fine.

CHAIR: From what you have told me, the magistrate did not receive some of the material that you had put together, notwithstanding the fact that some of that was relevant to establish that there was more than one person providing sex services there.

Mr EVANS: Correct.

CHAIR: Did the council consider a stated case to the Supreme Court by way of a legal appeal from that decision?

Mr EVANS: No.

CHAIR: Did you get any advice on whether you should have done that?

Mr EVANS: No, I believe I made the decision that we could go back to square one and send three investigators through and get the same evidence, which would be a lot cheaper.

CHAIR: Was it available for you to issue a notice rather than commence proceedings that they cease that unlawful activity?

Mr EVANS: Yes, we could have gone down two other paths. We could have taken the matter to the Land and Environment Court and sought orders for them to close or we issue them with a closure order or the third option was the Local Court for a fine.

CHAIR: Why did you choose the Local Court for a fine rather than the other two options? I am not being critical; I just want to understand your thought process.

Mr EVANS: I guess 18 months ago we had no brothels disguised as massage parlours so in 18 months we ended up with six. They started coming in all at the same time, so our thought processes

were if we issue a closure order, they simply can close and then open up in another name or they close and move into another shire, across the boundaries.

CHAIR: Somewhere else in my electorate.

Mr EVANS: They would go somewhere else and we probably think that we have got these six massage parlours because another council has pushed them out of their shire into our shire, so our methodology, rightly or wrongly, was to simply say well we want a court to try and look at the circumstances of the case and issue a fine that is a deterrent from them working a prohibited business within our shire and any other shire, and if we were successful in our ventures, for want of a better word, then there would be a criminal record on that business owner that could be used by someone else if they decided to take their business elsewhere.

CHAIR: The premises in question, was it in suite 8 or suite 102?

Mr EVANS: Suite 8.

CHAIR: Judging from their website, they seem to be associated with another five massage parlours around Sydney, so they are a chain of massage parlours.

Mr EVANS: Right, well, no, I did not know that but it would not surprise me.

CHAIR: The massage parlour operating in the other suite is part of a chain of about 25 massage parlours operating around Sydney. So we are talking about largish organisations rather than one off organisations. Have you had any complaints about the other massage parlour in that building?

Mr EVANS: Yes, 102, yes we have.

CHAIR: Is the other massage parlour at suite 102 one of the six that had come in?

Mr EVANS: Correct.

CHAIR: My understanding of this particular unsuccessful prosecution is that it cost council about \$100,000, is that right?

Mr EVANS: According to the media, but no. It cost us for the investigation for between \$10 and \$15,000 and now it is more costly because we are having three investigators go through the properties. The case we lost, we were also awarded costs against us of \$8,000. Combining all of those matters that we were running at that time—which is probably where they got the \$100,000 from—all our legal costs, our time, investigator's time, on all of those matters, around about \$60,000 to \$70,000 all up.

CHAIR: This has obviously not been a very happy experience for the council, have you considered whether it may be more advantageous to go to the Land and Environment Court next time rather than the Local Court?

Mr EVANS: That is certainly an option. The disadvantage that we see, we still have to gather exactly the same evidence. So when we go to the Land and Environment Court we are seeking orders for them to cease the business, so in terms of council's costs and coming back to it is a very costly exercise, when you put the three things together, the Local Court where you get a fine and that covers council's investigation costs and legal costs. I guess it is a selfish way of looking at it in terms of recovering your costs as opposed to having a brothel sit there, but both could end up achieving the same outcome. We have still got to prove that there is more than one prostitute or sex worker.

CHAIR: Under section 16 of the Summary Offences Act, it is actually an offence with a

maximum penalty of three months imprisonment to solicit or provide prostitution on premises held out as being available for the provision of massages. From what you say, you had evidence that would have satisfied a prosecution under section 16 of the Summary Offences Act. Was that something which you considered?

Mr EVANS: No, not at all.

CHAIR: You do have to commence proceedings within six months of the act, which now has probably passed. The other thing is that I asked the question this morning and I think the Department of Planning took it on notice, but it may be that a council cannot use those provisions. It may be that only the NSW Police could commence prosecution under that section. We will try and find out the answer to that question, but if I could respectfully suggest that that might be a provision that you could use in future, to encourage the police to adopt, because it is slightly easier to prove.

There is also a provision under section 17 of the Summary Offences Act which provides for the owner, occupier or manager to also be prosecuted, but you must prove—which would not be an easy thing I would imagine in most cases—that they knowingly allowed the premises to be used for those purposes.

Mr EVANS: I guess by way of comment, the difficulty I would see is trying to get the real name to take those proceedings to serve the appropriate documentations on. There would have to be some way for the police to go onto the premises and apprehend that person so you have got a link between the investigator who has put a face to the name and then go back in there to lay those charges. I know our difficulty is to find out who the owner of these massage parlours is.

CHAIR: Mr Kaldas, the Deputy Commissioner, today expressed the view that he thought the principal co-ordinating authority with regard to this area ought to remain local government authorities but he seemed to be open to the idea that perhaps local government and the police force might act in a more co-operative fashion with regard to the enforcement of rules around unapproved operators. Would you invite the assistance of the police force in respect to those matters?

Mr EVANS: Definitely and we have.

CHAIR: Have you found them to be willing assisters in the past?

Mr EVANS: For legal brothels yes, illegal brothels, no.

CHAIR: So for legal brothels they have?

Mr EVANS: For legal brothels, yes.

CHAIR: What is the nature of the assistance that you have sought in respect of legal brothels?

Mr EVANS: Well it was not in terms of legal brothels, they sought our assistance in terms of legal brothels to go in there with the NSW Fire Brigade, council and the Department of Immigration to do an operation I think I heard earlier on our three legal brothels, which was undertaken. Stemming from that we thought when we were dealing with the massage parlour that it would be good if they could also attend our inspections for the illegal ones, and that is when they refused or they said no, it is not something they will avail their officers to do.

CHAIR: There seemed to be a concern by the Deputy Commissioner that they did not have a power to enter similar to the local government authority, which may be something that we need to recommend, that they be given that power, but that may have been the reason why they did not feel that they could give you assistance on that occasion.

Mr EVANS: The reason why they invited council to inspect legal brothels, in my opinion, is because when we knock on the door and we say that we are the council health unit, they open the door and let us in. I think it is that reason and if they said no, then we would have to follow the same route as the police themselves, but all four of us knocking on the one door seems to lead to it being opened.

Mr ALEX GREENWICH: Am I correct in saying that your council hired an investigator to engage in a sexual act in the massage parlour; that was the evidence that was given?

Mr EVANS: Correct.

Mr ALEX GREENWICH: Now you are hiring multiple investigators to do that?

Mr EVANS: For each complaint that we get for an illegal massage parlour or a brothel, we hire three investigators to attend the premises at the same time.

Mr ALEX GREENWICH: This is probably something where the council would need to get proper legal advice based on the Chair's comment about the Summary Offences Act, which covers soliciting sex. Potentially the council may themselves have been guilty for sending someone in to potentially solicit sex work in the massage parlour. So I would suggest getting legal advice from that perspective. You may in fact be guilty of a crime against the Summary Offences Act as a result of that.

Mr EVANS: That is an awful situation we find ourselves in.

Mr ALEX GREENWICH: In terms of the complaints you received to take you to that terrible position, were they about noise, amenity impacts, what were those complaints?

Mr EVANS: None of those. I am in dealing with six.

Mr ALEX GREENWICH: In this specific one.

Mr EVANS: In this specific one they believed they were having a loss of business because of the amount of people or men visiting that one business within that complex.

Mr ALEX GREENWICH: What evidence did they provide you to show you that loss of business?

Mr EVANS: None.

Mr ALEX GREENWICH: You would imagine that if more people are coming to an area, it could actually increase business to an area.

CHAIR: I think my wife's gynaecologist was in that building, so I am not sure that pregnant women would necessarily like that.

Mr ALEX GREENWICH: I think it depends on the individual pregnant woman.

CHAIR: It may well do, but I can see that there would be non-complementary uses.

Mr ALEX GREENWICH: But the issue then of the blogs that you monitor, the comments that were made, were they made by the business or they were made by people who may have gone to that massage parlour?

Mr EVANS: The people that may have gone to that massage parlour.

Mr ALEX GREENWICH: So no evidence came from people who run the massage parlour or work in the massage parlour that that were offering?

Mr EVANS: Not at all.

Mr ALEX GREENWICH: We heard earlier from Marrickville Council and the City of Sydney Council who said that sex work premises do not cause a problem in their electorate largely and in the local government area largely. What is it about Hornsby that people obviously have an issue; that you have got to go to the extent of hiring someone to engage with sex workers. Basically you are hiring sex workers to find other sex workers.

Mr EVANS: My role and my team's role is we have got land use conflicts so that is what we largely deal with. Someone might put a shop in an area that you cannot have a shop. So it is much easier for my staff to go into the shop, purchase an item, get a receipt, take the documentary evidence, et cetera and come back and deal with it. We just cannot do that in a brothel situation to gather that evidence but it is still, nonetheless, a conflict that that premises should not be in that location because of our land use zonings and strategies, rightfully or wrongfully. That is not my role. So the only way I can do that is to gather the circumstantial evidence and be guided by our legal team which says how much evidence I need to produce.

Mr ALEX GREENWICH: You are then put in the situation of having to hire private investigators to engage in sexual acts in massage parlours because your council is knocking back development applications for brothels?

Mr EVANS: Well, we are not knocking back development applications for brothels because we are not getting any. I do not think we have had a brothel development application for six years, I think. I am not right up to speed on every application that comes across but generally if there is a brothel application I will hear about it. We have three legal brothels and they do not cause us any concern at all.

If you are asking me how many issues the massage parlours are causing, in some areas, very little because we do not know they are there, other than as soon as they put up their flashing massage sign, then we get the complaints in.

Mr ALEX GREENWICH: From hiring investigators to engage in sexual acts at these massage parlours, the council has not been able to find enough evidence to show that there is actually an issue as to what the court has found as well? There has been an isolated incident that has been identified.

Mr EVANS: No, in terms of the six brothels that we are dealing with, we have got two in the Local Court; September I think the hearing is where we believe we have sufficient evidence this time. I will not go into the details.

CHAIR: No, please do not.

Mr EVANS: We have another two brothels that we have—

CHAIR: Sorry, can I just interrupt you, I do not think we intend to compromise any investigation that you are undertaking, nor do we require you to disclose any material of that kind. I would not say anything further about those matters.

Can I ask you this though, the two premises at Edgeworth David Avenue, if either of them were to apply to become an approved brothel, it would be rejected under your development control plan because of their closeness to a school, would they not?

Mr EVANS: That is one reason but the other reason is they are only permitted in the industrial zones and the only industrial zones in Hornsby are quite small and isolated. I do not know if you know the area, Salisbury Road, Leighton Place, which is sort of the back of Hornsby and up in a small pocket of Dural and Pennant Hills.

CHAIR: Is that where the three that are approved are now?

Mr EVANS: No. The three that are approved, two are historic and they are on the west side of Hornsby. Obviously on the east side you have got Westfield and all big businesses, the other side is more the gyms and the takeaway food shops, coffee shops and furniture shops and chemists and the like.

CHAIR: So they are quite close to the Hornsby railway station?

Mr EVANS: Quite close to the Hornsby railway station.

CHAIR: Very good parking and public transport access?

Mr EVANS: Correct.

Ms JO HAYLEN: If an application was to come forward for an additional brothel in that area, it would not be compliant, is that correct?

Mr EVANS: No, it would not be approved; they are prohibited in that zone.

Ms JO HAYLEN: Do you think that it is those particularly restrictive planning controls that mean that these massage parlours are potentially acting in this way and therefore occupying a lot of your team's time taking up these cases in the way that you have been forced to do?

Mr EVANS: I would suggest that there would be areas within other zonings that these premises could be placed without impact but Hornsby is quite small, not small but when you look at the areas of business zones and things like that, quite close to all of that is schools, churches, so they seem to be in the centre of zones, exactly where those massage parlours have placed themselves.

Ms JO HAYLEN: Do you think it would assist your team and other departments within Hornsby Council if there were perhaps some guidelines to assist with dealing with planning controls and the approval or rejection of brothels?

Mr EVANS: Sorry, could you say that again?

Ms JO HAYLEN: Of course. You have identified the fact that there are very small areas where brothels could be approved and that you have not received any applications for brothels recently. I am just finding a way to stop you having to spend significant amounts of money and undertaking some interesting methods to bring about evidence for these activities. Do you think it would be helpful if your council had some guidelines to assist their planning controls and their planning assessments to find other places across the local government area for brothels to operate?

Mr EVANS: Our planning controls do provide controls for brothels and where they can be located and how big and the like. From my opinion, they want to be in the busy areas of the business zones to get the publicity so they can be frequented more often I guess and that is why they put their signage out. Unlike the traditional brothels that do not have any signage at all. Massage parlours tend to flash their signs and then I think I heard from one of the other speakers here today that massage parlours have a general connotation with brothels, so once they put that up then complaints come in.

Ms JO HAYLEN: Would it not be the case then that those other two brothels that have the existing land use that you referred to before, if they were permitted in other zones, that they would operate in the same discreet way that they do in the other zones?

Mr EVANS: They well could do, yes.

Ms KATHY SMITH: Mr Evans, I do know Hornsby very well, I lived there for 32 years. The two historical brothels that are there now used to be quite sufficient, I presume, to serve the population as Hornsby used to be. Hornsby population has grown incredibly over the last what, 10 or 15 years or so?

Mr EVANS: It certainly has.

Ms KATHY SMITH: So we have got this huge population, a lot of them living in units and I would say a lot of them without transport, without cars and yet, there can be no more brothels in that area for the needs of those people? The population of central Hornsby what, must have tripled, probably more than that actually in the last few years?

Mr EVANS: I could not give you the numbers but it certainly will be that in the next 15 years.

Ms KATHY SMITH: So the people without cars who would be looking for these services, if brothels are running at capacity, we cannot put anymore brothels in there, but the people do not have transport to get to services?

Mr EVANS: Well, that is correct because the land use zoning does not permit them.

Ms KATHY SMITH: So we are getting the illegal ones popping up?

Mr EVANS: That might be the cause of that or they just simply do not want to go that five more kilometres.

Ms KATHY SMITH: They are going to be knocked back are they not?

Mr EVANS: Not in the industrial zones, they will be very welcome in the industrial zones.

Ms KATHY SMITH: Leighton Place, Salisbury Road, around that area, that is a very small area. How many brothels would you allow in there?

Mr EVANS: Well as many that wish to apply because it is permissible, subject to meeting some of the controls that we have. We have got the brothel in George Street that was approved prior to the re-zonings.

Ms KATHY SMITH: The one above the cake shop.

Mr EVANS: Yes, that one too.

CHAIR: The location on Edgeworth David Avenue is desirable for two reasons for these massage parlours, one, they are allowed to show signage, which they would not be able to if they were an authorised brothel and secondly, they are right across the road from Westfield, which is the major commercial centre of Hornsby, correct?

Mr EVANS: Correct.

Ms KATHY SMITH: And George Street is not far away.

CHAIR: The reason they have located there is nothing to do with whether they could be approved or not as a brothel elsewhere, it is all to do with location, location, location, is it not?

Mr EVANS: Well with all the massage parlours disguising themselves, they all seem to be located next to schools or within those busy hubs. I am sure there are brothels elsewhere practising but we do not hear about them because they are not advertising. It is just those ones that pop up in those areas.

Ms CLARKE: Also because that is the area that the community frequents, so people are seeing it far more regularly than other areas where it is quieter.

Ms JO HAYLEN: We asked both Marrickville Council and the City of Sydney Council recently before you about how many complaints they were receiving relative to other types of complaints. Do you have statistics about how many complaints you received about these particular parlours and/or how many complaints you receive each calendar year?

Mr EVANS: In terms of the illegal brothels, quite a few have come through the councillors so they are not actually recorded.

Ms JO HAYLEN: Sorry, the complaints that come from the councillors are not recorded?

Mr EVANS: Well not recorded in terms of weight of numbers, so they will get a one, no matter whether there are five or six people all talking to the one councillor, because they are normally anonymous. But generally about 25 on the brothels that we are investigating now, a total of 25 complaints have been lodged on all of those brothels. Some might have been duplicates.

The Hon. MELINDA PAVEY: Over what period?

Mr EVANS: That is about 18 months since it started.

Ms JO HAYLEN: How many complaints do you receive per year?

Mr EVANS: We receive 1,900 complaints about various matters, land use matters, unauthorised buildings, environmental matters.

Ms JO HAYLEN: What percentage of those 20 something complaints came from councillors?

Mr EVANS: Probably—I am just struggling to answer the question because there were so many just coming through. I would say in weight of numbers of the 25, they were 25 complaints that we received directly from the general public that we could put a name to them or anonymous, because that is the way they wanted to be, and the ones that come from the councillors, we do not record them in the same way, we just put the councillor, it is like an internal matter, because there is no name attached. We are not weighting the same way as you have a general community person putting their name to it; so, with the councillors, probably 35 complaints.

Ms JO HAYLEN: Do you treat a complaint that has a resident's name attached to it in the same way that you treat an anonymous complaint?

Mr EVANS: Exactly the same way except when we are trying to investigate the complaint, if they do not put a name to them, it makes our job slightly more difficult to take it to the next step. We like to ask a few questions before we go barging into someone's property or make an accusation that is anonymous.

Ms JO HAYLEN: If you take out of that group of complaints, both the complaints made by councillors and the complaints that did not have a resident's name and address attached to it, am I right in saying it is actually a very small number of complaints?

Mr EVANS: It is a very small number. I can probably add them up. It is small.

Mr ALEX GREENWICH: Would you say that the focus on the issue and the crackdown which we have read about in media about these massage parlours, is it motivated by the community concern for it or is it at the insistence of the elected people in the council?

Mr EVANS: It is a land use planning matter where it is a prohibited development operating in an area and it would be acted upon in the same way as if someone had built an illegal granny flat or unauthorised additions to their property, so we treat it in exactly the same way.

Mr ALEX GREENWICH: I guess I am just saying you had to go to quite extreme measures, as you have said, by hiring private investigators to engage in sexual acts on these premises. That is obviously a tough call to make on these complaints so that the focus and the priority that has been given to this, is that as a result of a handful of complaints or is it as a result of the strongly held view by elected people on the council?

Mr EVANS: There has been no elective pressure to take any further action than the action that needs to be taken. I can only say that that is the only way we can get the evidence. On the other matters, as I tried to allude to before, it is quite easy to get the statements and get the evidence. This is just one of those things, it is difficult, I cannot send my staff in to get that type of evidence other than the circumstantial evidence and circumstantial evidence does not cut it in the courts.

Mr ALEX GREENWICH: Your submission calls for changes to circumstantial evidence and the way that that can be used, is that correct?

Mr EVANS: I think our position is one, we need clarification on the definition of what a brothel is, at the present time it is two sex workers and that has a couple of problems for council with land use issues, because it is two sex workers, it then opens up you can now have a sex worker working from your home, where you could not have that before because it was prohibited but now that one sex worker operating is not classified as a brothel, therefore it can be dealt with under home occupation under the code state environmental planning policy, then anybody can set that up in a residential zone.

Mr ALEX GREENWICH: Different councils deal with that issue of home-based work in different ways.

Mr EVANS: They do?

Mr ALEX GREENWICH: Yes, that is correct.

Mr EVANS: So if a brothel was classified as one sex worker, we think then obviously getting the evidence would be a lot easier, rightfully or wrongfully.

Mr ALEX GREENWICH: Because you only have to pay someone to have sex with one person rather than two people?

Mr EVANS: That is correct, yes.

CHAIR: I have had a number of constituents say that they do not wish their name to be put to a complaint because they are concerned about the organised criminal elements that may be associated with some of this unapproved activity. Have you received any similar type information,

that people are giving anonymous complaints because they are fearful to give their name and be associated with a complaint?

Mr EVANS: I think a quarter of all the complaints that we have to investigate, people are reluctant to give their names because they are talking about their neighbours and it is a reality that it breaks down good neighbouring relations when council knocks on their door. It is unfortunate, but that is what happens.

CHAIR: In this area, the level of anonymous complaint is no different to other areas?

Mr EVANS: No.

Ms ELENI PETINOS: I am going to start by picking up on a point that you were discussing with Mr Greenwich just now. I think I have fantastic councillors in the Sutherland shire and when they represent things to me I rely on the fact that the representations my councillors are making to me are the reflections of my community. Would you say the same, that when your councillors make the representations to you as employees of the council, that they are reflecting community sentiment, not their own personal view?

Mr EVANS: I agree with that statement.

Ms ELENI PETINOS: I will ask you something that I put to every other council that has come before us. In the last five years—and I do not expect you to have the information on hand, so if you could get back to us, that would be fantastic—how many penalty notices have been issued, how many orders to comply with development consents have been issued and how many brothel closure orders have been issued within our council area?

Mr EVANS: I can answer one of those three—three brothel closure orders.

Ms CLARKE: The other two we will take on notice.

CHAIR: When were the brothel closure orders issued?

Ms CLARKE: Over the last 18 months.

CHAIR: Are they in respect of premises which are operating as massage parlours?

Mr EVANS: Correct.

CHAIR: Have those brothel closure orders been complied with?

Mr EVANS: One was complied with for a week and then they re-opened under a new management.

CHAIR: Same trading name?

Mr EVANS: No, different owner.

CHAIR: How are you able to say there was a continuity of operation?

Mr EVANS: We were not, the real estate locked the doors on the previous tenant and within a week the owner found a new real estate agent and then we had another massage place trading. Then we commenced an investigation on the new massage parlour.

CHAIR: Was there any continuity of management or employees between the two?

Mr EVANS: None that we could identify.

Ms CLARKE: So effectively starting the process entirely again.

CHAIR: Would it assist councils if closure orders attached to premises so that you could get an order, for example, that no massage parlour could operate from a particular premise, regardless of who the operator was?

Mr EVANS: It would, the downside to that is it moves it to somewhere else.

Ms CLARKE: It might not solve the problem; that is what we are trying to say. It will just mean that that premises will not be able to operate like that, but it does not stop the neighbouring premises.

CHAIR: At least it would be a discontinuity in the goodwill of the business, if I could use a better term.

Mr EVANS: It would address the immediate concerns of the residents that are making that complaint.

CHAIR: It would have a greater disruption to the business operation than just being able to shut one week and just re-open the next week.

Mr EVANS: Correct.

CHAIR: That is something we can consider. Are there any other measures that would assist you that we could recommend with regard to unapproved premises calling themselves massage parlours but offering a little bit more than a massage?

Mr EVANS: Well I think we put it in our submission that some licensing regime or something of that nature where the sex industry was governed or regulated by one body, whether they are operating legally or illegally. That way you could get continuity. I have sat through a couple of interviews today where they were talking about the health industry and the sex industry, so I am not quite sure whether licensing is the best option, but from a council's perspective, we seem to push the problem between boundaries a lot rather than deal with it. I think that Marrickville Council said they are just leaving them alone in some respects because they cannot gather the evidence and if they could, they would probably push them out of Marrickville into Hornsby and then we will be taking action and around it goes. To be honest, I do not know the solution to the problem, but freeing up some of the planning controls to allow them to be somewhere that we could all live with is probably a good start.

CHAIR: Any other questions? Thank you very much for appearing before the Select Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any further questions?

Mr EVANS: I would.

(The witnesses withdrew)

JOSEPH VITORI HILL, Director, City Strategy, North Sydney Council, affirmed and examined:

MARISE VAN DER WALT, Manager, Environment and Building Compliance, North Sydney Council, sworn and examined:

CHAIR: We are going to take some evidence from North Sydney Council in camera or in private, at their request. What we propose to do is to take the public evidence initially and then we will go in camera and we will need to clear the public gallery.

I should also say to the two representatives of North Sydney Council that if any question that you are asked in public session causes you any difficulty, you may simply indicate that you would prefer to answer that question in camera evidence later in the afternoon and we can accommodate you in that fashion, so do not feel compelled in the public session to say anything that you are uncomfortable with.

The Committee has resolved to hear part of your evidence in camera as I have just said, and in relation to that evidence, it will not be published, although the transcript will be available for the Committee to review.

Do you have any questions concerning the procedural information sent to you in relation to the witnesses and the hearing process?

Mr HILL: No.

CHAIR: Would either of you like to make an opening statement before we commence questions?

Mr HILL: I am fine, thank you.

CHAIR: If you would like the opportunity to make an opening statement when we go into in camera evidence, I will give you that opportunity shortly.

Would anyone like to ask some questions in the public session?

Mr ALEX GREENWICH: My question would be about the complaints that the council receives in terms of sex work premises or alleged unauthorised sex work premises. What is the quantum there?

Mr HILL: There are no complaints that we receive from the community. The ones that we do probably date back to 2013 from Brothel Busters, which I differentiate them from the community; so I suppose when we do summarise the complaints, there have not been many for at least five years.

Ms VAN DER WALT: In the time that I have been at council, which is 10 years, we have only had a handful of complaints from the public spread over time. I cannot give you the exact number, but we had an influx in 2013/14 and the two recent cases, but not being residents.

Ms JO HAYLEN: Can you explain to me a little bit more about how you receive those complaints from Brothel Busters and the interaction between council and Brothel Busters, who are they, how do they operate and are they located in your local government area?

Mr HILL: Brothel Busters themselves actually do an internet search, provide as much evidence as possible, refer it to council and we act on that evidence. I do not know about the organisation, Ms van der Walt may be able to detail the organisation themselves. I know that they are no longer in existence and we just run our compliance case based on that evidence.

Ms VAN DER WALT: I do not know that much about the organisation but we have only dealt with one individual in the company and the correspondence is written correspondence. There have been a lot of press releases and stuff based on this one Brothel Busters raising issues but it generally relates to searches of the internet and that is provided to council in email form.

Ms JO HAYLEN: You acted on the basis of those complaints solely?

Ms VAN DER WALT: Yes we did.

Ms JO HAYLEN: Not on the basis of any other local business or local residential complaint?

Ms VAN DER WALT: That is correct. We have got an enforcement and compliance policy and we treat all complaints the same, so we action it in accordance with that policy to be consistent with our approach.

CHAIR: Any other questions in the public session?

Ms ELANI PETINOS: I am going to ask you the same question that I have asked the other councils today. In the last five years could you please tell the Committee how many of the following notices have been issued to brothels or massage parlours, penalty notices, orders to comply with a development consent or brothel closure orders?

Ms VAN DER WALT: I would have to look that up to give you the exact numbers but we have issued a number based on, in 2013, we had around 15 complaints from the one individual, 15 different premises. We have issued quite a few brothel closure orders on those ones but we can talk later more about the procedures we follow, because it is on a case to case basis and different premises respond differently to whatever legal action we take.

I am not aware of any fines issued. Generally because the fine does not resolve the issue, so we tend to go with orders and then after the orders, it depends on what action we take, whether that is legal action or whether the issue has been resolved.

CHAIR: If there are no other questions in the public session, I think we may go in camera and ask the members of the public if they would kindly leave the hearing room. We will be resuming tomorrow at the same time, at 10 o'clock if you are interested in joining us tomorrow.

(Evidence continued in camera)

(The witnesses withdrew)

The Committee adjourned at 4.20 p.m.