

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE REGULATION OF
BROTHELS**

INQUIRY INTO THE REGULATION OF BROTHELS

At Sydney on Friday 11 September 2015

The Committee met at 10.00 a.m.

PRESENT

Mr A. A. Henskens (Chair)

Ms M. R. Gibbons
Mr A. H. Greenwich
Ms J. E. Haylen
Ms M. J. Pavey
Ms E. M. Petinos
Ms K. Smith

CHAIR: Good morning and thank you for attending the third public hearing of the Legislative Assembly 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 Deputy Chair, Mrs Melinda Pavey, the member for Oxley; Ms Melanie Gibbons, the member for Holsworthy, who has just stepped out for one moment; Mr Alex Greenwich, the member for Sydney; Ms Jo Haylen, the member for Summer Hill; Ms Eleni Petinos, the member for Miranda, who is on her way; and Ms Kathy Smith, the member for Gosford, who has also just stepped out for a moment.

At the previous public hearings on 1 and 2 September the Committee heard from a range of State Government agencies dealing with planning, police and justice, local councils, social policy advocacy groups, and sex worker support and outreach organisations. Today the Committee will hear from witnesses from Camden City Council, NSW Health, Victoria Police, Coalition Against Trafficking in Women Australia, Touching Base, Local Government NSW, SafeWork NSW and the Australian Federal Police. At the outset I thank the witnesses appearing today for making themselves available. 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 that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing coverage of proceedings are available. I now declare the hearing open.

NICOLE MAGURREN, Director Planning and Environment, Camden City Council, and

DANIEL STREATER, Manager, Certification and Compliance, Camden City Council, sworn and examined:

CHAIR: I welcome our first witnesses representing the Camden City Council. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Ms MAGURREN: No.

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

Ms MAGURREN: Only to thank the Committee for allowing us to speak in front of you today.

CHAIR: All right. I will start with questions. You have noted in your submission to the inquiry that there are many illegal brothels set up as massage premises. What is the incidence of that in Camden?

Mr STREATER: To date we only have limited occurrences of that. I can think of one current example that we have currently under investigation. There have been a couple in the past but they were before my time in this position.

Mrs MELINDA PAVEY: What happened to those people?

Mr STREATER: They were shut down with the cooperation of the building owner, as far as I recall.

CHAIR: To clarify that last answer, the council brought to the attention of the building owner that there was unapproved activity from a planning point of view that was taking place in the premises?

Mr STREATER: Again I will clarify I was not involved in these matters specifically. I was within the organisation, Camden Council, though, at the time. To my knowledge they were brought to council's attention by community complaints and council was successful in shutting the operation down by bringing the matter to the attention of the building owner. The proprietor of the business was a tenant and the building owner cooperated with council and terminated their lease, from what I understand.

CHAIR: In terms of the premises which is currently the subject of prosecution, have you attempted a similar means with regard to those premises—that is, contacting the building owner and seeing if they will take action against the tenant?

Mr STREATER: No.

CHAIR: What method has council adopted to deal with that activity?

Ms MAGURREN: We have currently got it under investigation. We have sent in a private investigator and engaged legal advice to assist in the process in terms of the enforcement action that is currently underway.

CHAIR: Have any decisions been made about how you will approach enforcement action in this instance?

Ms MAGURREN: On recommendation and advice from our solicitors we are issuing orders.

CHAIR: Could you explain to us any difficulties that your council has in cases such as these?

Ms MAGURREN: Yes—and Daniel can assist me. I guess there are a number of things for us, including being a council in itself in terms of community perceptions. The way that we are undertaking the investigation with a private investigator is obviously something that remains confidential to ensure that the practice, if it is a brothel, does not stop whilst the investigation is underway. In this particular example it is a site that is approved as a massage premises with development consent, so we have received a number of ongoing complaints from the community. When you are the council there is an expectation from the community that you will do something. It becomes problematic for council officers and councillors, because these investigations take

months. So whilst the council continues to receive complaints, the community thinks the council is doing nothing. It is difficult. We cannot say to them, "We are doing something", because it has to remain confidential. So that is one of the issues that we have got from the point of view of council officers and obviously councillors in terms of the community's perception of that.

Leading on from that in terms of the orders, when you issue the orders to stop the practice based on the fact that we now have evidence that it is being used as a brothel, the challenge is that we have a consent for massage use. If the operator then turns around and says, "Well, I have now complied with the order and stopped using it as a brothel", how does council check and regulate that that is actually the case? The only way to do that is again have a private investigator continue to go in and monitor the premises on an ongoing basis because there is a consent there for a massage use. The massage use could continue without end there. We are in the position where it is ongoing and if we get complaints again we need to send the investigator in again. The challenge for council is stopping the practice, particularly once there is a massage use that is approved there.

Mr STREATER: I will just add to Ms Magurren's comment. To add complexity to this issue, councils do have numbers of massage premises that are operated as home businesses so the principal use of a property may be a residence and the secondary use is as a massage premises and that is permissible under planning legislation, ranging from exempt compliance through to council local environmental plans [LEPs]. Even taking enforcement action and shutting down unauthorised operations as a brothel we still have situations—and the legislation does allow for this—where the premises still has a right to operate as a residence and it really muddies the waters between establishing the activities on the premises and limits our enforcement opportunities. An example would be that through the ordinance provisions there is an option available to us to cut power and water to a property. Obviously with residential premises we cannot do that. That is one of the other difficulties we experience.

CHAIR: I ask some follow-up questions about those two answers. Firstly, you said that premises can be approved as a massage premises. What is the regulatory process at the moment to obtain an approval to operate as a massage premises and, secondly, if activity outside of that approval is taking place on the premises, do you have powers of entry to inspect in addition to sending in what might be described as covert evidence gathering through a private investigator?

Ms MAGURREN: In terms of the approval process at the moment, it is a development application [DA] process in most cases, depending on the size of it, and they are often approved as a health consulting room or a massage use. As to the power of entry, yes, we do have power of entry and council officers do regularly inspect those premises. However, in a recent example that I can think of, when we sent in a number of officers to attend the site and do quite a thorough inspection, in cooperation with the operators, they did not collect any evidence that it is being used as a brothel, particularly when it is set up as a massage premises. It is very difficult for council officers, even with their training, to determine the difference.

CHAIR: When exercising your power of entry, I would imagine, given that a massage premises involves people being in various states of undress, that it would be difficult for your inspectors to actually walk into a suite while a massage is taking place, is that fair to say?

Mr STREATER: We are required to give notice to the proprietor or the owner as well, so we are required to give written notice before exercising a notice of entry, so normally they would arrange not to have clients there at that time.

CHAIR: What period of notice would you need to give?

Mr STREATER: I do not think it is specified in the legislation but normally seven days would be seen as normal practice.

CHAIR: Is that a notice where you say, "We give you seven days' notice that at any time in the next three months we will be entering your premises" or are you required to give specific details of when you will exercise your power of entry?

Mr STREATER: It is normal practice to give details of when you intend on exercising that.

CHAIR: So it is completely on notice and any activity that may be contrary to planning approval can be avoided when you make your inspection?

Mr STREATER: Correct.

CHAIR: I ask you about the use of home premises about which you gave some evidence. I have two questions. Firstly, is the approval process for operating home premises as a massage premises the same as you have just told us and, secondly, is it possible in your council area to operate sexual services with council approval from home premises?

Ms MAGURREN: In relation to the approval process you cannot have sex services from a home business in Camden.

Mr STREATER: Could you repeat the second question?

CHAIR: You said that it was possible to have massage premises approved under your planning instruments. Is the process any different to have a massage premises approved in a home as opposed to, say, a commercial premises?

Mr STREATER: There would be some limitations around the fact that it is a secondary use. There are some limitations around floor area and the number of employees that can be employed at the premises. There are normally some expectations that the employees at the premises would also be a resident of the premises. However, you can have additional employees.

CHAIR: What is the current regulation around massage premises from a council's point of view?

Ms MAGURREN: In terms of clarification, outside of what council would regulate.

CHAIR: Other than approving them, are any health or other checks conducted or any other regulatory requirements that take place from council with regard to the operation of those premises?

Ms MAGURREN: No, only in relation to compliance with whatever conditions are imposed on the development consent.

Mr ALEX GREENWICH: How many DA-approved sex service premises are there in Camden city?

Ms MAGURREN: We have one DA-approved brothel in Narellan.

Mrs MELINDA PAVEY: For how long has that been there?

Ms MAGURREN: At a guess, three years.

Ms MELANIE GIBBONS: Is it in an industrial area? Where is it located?

Ms MAGURREN: Yes, it is in an industrial area.

Mr ALEX GREENWICH: Do you say that someone is not able to use their own home premises for sex work?

Ms MAGURREN: That is right.

Mr ALEX GREENWICH: But they would be able to use their own home if they were an accountant or a travel agent?

Ms MAGURREN: Yes.

Mr ALEX GREENWICH: Would an accountant have to apply for a development application or some other planning instrument if they want to use their home for business?

Ms MAGURREN: In the most cases, no, but it would depend on the size. In most cases you can do it as an exempt development and you would not require development consent.

Mr ALEX GREENWICH: What is the rationale behind the difference in the treatment of these different industries whether it is an accountant, lawyer or sex worker? Why are sex workers treated differently?

Ms MAGURREN: That is a good question. For the council it is around the community's expectation in terms of sex premises, and probably in terms of the impact and uses. If I think of other uses, say, food shops and skin penetration uses they are separately regulated so there is that extra overlay on them. I would expect something like sex premises would require more regular inspections. The brothel that we do have approved has conditions on it in terms of more regular inspections by council's health officers, for example, for compliance with the guidelines. In terms of the use as sex premises that would be set up as exempt development, we would not know about that so there would be no checks on those ones.

Mr ALEX GREENWICH: Has council communicated or reached out to other councils—say, the City of Sydney or others—that do allow sex work to occur in a person's residential premise to ascertain whether there have been any residential or other impacts?

Ms MAGURREN: No.

Mr ALEX GREENWICH: How many complaints has council received about massage parlours for potential residential sex work?

Mr STREATER: I think there is only one massage parlour that we have heard evidence of, and I am not sure that we have heard any evidence that there are any residential sex workers being connected in Camden.

Mr ALEX GREENWICH: How many complaints have there been of sex work occurring on non-development application approved sex work sites?

Ms MAGURREN: Do you want to know how many complaints we have received around—

Mr ALEX GREENWICH: How many complaints did you receive about this massage parlour?

Ms MAGURREN: It is ongoing. I could not be sure, but there are a couple of things. One, we receive complaints from other legitimate massage uses in Camden who are getting calls from clients. I guess that is how probably initially council became aware of it in terms of calls from clients about their services. That was probably the first we were made aware of in terms of the range of services that were offered there. We received complaints from directly adjoining neighbours.

Mrs MELINDA PAVEY: Is it in a residential or commercial area?

Mr STREATER: It is a fringe area so it is residential, bordering on what is called our town centre support area basically. So it is where the central business district transitions to residential and there are some fringe uses with that.

Ms MAGURREN: We have interviewed some of the neighbours who all agree it is being used, in their view, as a brothel. That evidence is just based on the people entering the premises. There is an expectation—I guess, it goes back to the first point I made earlier. The neighbours think council is doing nothing about it; that we have approved a massage use, we know it is going on and have done nothing about it. The complaints were largely received, in this case, from immediate neighbours.

Mr ALEX GREENWICH: How would a person go about opening a sex work premise in Camden? What would the likely outcome be?

Ms MAGURREN: At the moment you would have to do it within the areas that would be approved as a brothel under the local environment plan. You would be required to lodge a development application. You would need to comply with council's development control plan for a brothel. I do not know what the outcome of that would be but it would be based on the development application. The one in Narellan was approved by the Land and Environment Court.

Mrs MELINDA PAVEY: What took it to that point?

Ms MAGURREN: The council refused it at a council meeting.

Mr ALEX GREENWICH: In that case it was a political decision of council that it did not want it there, and then it went to the Land and Environment Court and it was allowed?

Ms MAGURREN: That is correct.

Mrs MELINDA PAVEY: How long did that process take?

Ms MAGURREN: I cannot remember. It was approved about three years ago.

Ms MELANIE GIBBONS: Do you remember the council's reasoning for refusing approval of it?

Ms MAGURREN: No, I actually was not there.

Mr STREATER: No, I do not.

CHAIR: You cannot say whether it was a political decision?

Mr STREATER: The only thing that I could add—and I was in the organisation at that time but not in this position—was that some of the community feedback and objection, if you could say that, to the proposal was there was a proximity to some playing fields that are used by children, albeit not that close and within an industrial area, that was probably a contributor. I cannot say that was council's reasoning for refusing it but that certainly would have contributed to the public perception at that time.

Mr ALEX GREENWICH: It is alleged that sex work is occurring in a non-approved way at this massage parlour. Should that be found, your concern is that the council really cannot take any future action. Is there anything within council's powers to mandate that as, say, the massage parlour puts up a sign that reads "No sex work on premises"? Is the council able to basically regulate the ongoing use of an offending massage parlour?

Ms MAGURREN: Once the consent for the massage use is issued, all they have to do now is to comply with the conditions of the development consent.

Mr ALEX GREENWICH: If there is a breach and you have identified that an activity is going on that should not have been going on according to its development consent, what is in council's toolkit to be able to regulate that massage parlour on an ongoing basis?

Ms MAGURREN: Daniel, feel free to say something. We would need to follow the orders process through the Environmental Planning and Assessment Act in terms of non-compliance with the conditions of consent. That is what we were suggesting before—that if we issue orders and they comply with those orders, for example, they stop using it as a brothel and just only use the massage use, which is the approved use, they are therefore complying. If they continue just to comply that would be okay. The challenge for council is on an ongoing basis how does it continue to monitor? Does it wait for other complaints about the likely uses there, in which case in order to get evidence against that, we would have to do another investigation and that process would start again?

Ms JO HAYLEN: Have you received any applications for other brothels since the approval by the Land and Environment Court of the one in Narellan?

Ms MAGURREN: I am aware of one application that we did receive; however, it was withdrawn.

Ms JO HAYLEN: The council has not approved any other sex work premises in, for example, the life of this current council?

Ms MAGURREN: I have worked for council for the past three years; not in that time, no.

CHAIR: It is impossible to approve something that is withdrawn.

Ms MAGURREN: Yes, in that respect.

CHAIR: The question should be: Have there been any applications that have been persisted with that have been rejected?

Ms MAGURREN: No.

Ms JO HAYLEN: Further to that, the Land and Environment Court had to ultimately determine that previous application. Is it your view that the overriding view of the current make up of council is that brothel applications would not be looked on favourably in Camden?

Ms MAGURREN: I am not able to say what the current view of the council is.

Ms JO HAYLEN: In respect of your planning controls, what proportion of your area would be permitted for brothels? Is it industrial areas only that are allowed? If so, is there anything to prevent a clustering rule, for example, such as distance from existing sex work premises or how much land would be available for applications to potentially get to approval stage?

Ms MAGURREN: There is only a small area where brothels would be permissible within industrial areas because of the distance requirements. I could not tell you exactly how big that would be, but there are not a lot of areas that brothels would be permissible.

Ms JO HAYLEN: Do you think that might be a factor for small business owners seeking to acquire massage licences rather than taking the avenue of sex work premises?

Ms MAGURREN: I am not sure.

Ms JO HAYLEN: In your submission you talk about improved decision-making in relation to planning decisions and that the number and location of sex service premises be made in an evidence-based way. I am interested in what supports you think might be useful to councils, first, in developing those planning controls. For example, you are not creating a scenario where it is impossible to get a brothel licence because of the potential flow-on effects that we have discussed with massage parlours operating in a way that might not be appropriate. Second—and perhaps this a question for you, Mr Streater—do you think it would be useful if council had some guidelines on how to run particular operations when these complaints come forward? For example, the complaints might be about the nature of the visits to these premises, who might be visiting, when they might be visiting, and the hours of operation. Did you look at it in a staged process or did you go straight to your lawyers and seek private investigators in those cases?

Ms MAGURREN: In respect of our recommended options, we consider that a State policy would have more weight than a development control plan, for example, in respect of the Land and Environment Court. In terms of the planning legislation, it would probably assist all councils and even the industry if we were provided with some consistency about controls. In respect of enforcement options, we thought an option that would assist us would be a situation where there is approval for massage use and if we now have evidence that the premises is operating as a brothel that it would be good if there was some legislation that would allow us to track that use, track the approval from that operator. That is a suggestion because we are now in a position in this example that we have at the moment where we still have a development application [DA] approval for massage use.

Ms JO HAYLEN: If you were able to use orders to shut down that use, is it an issue of existing land use on the DA so someone else could come in and use it—a cafe, for example? Is that the problem?

Ms MAGURREN: Someone else or the same operator.

Ms JO HAYLEN: Under a different name?

Ms MAGURREN: Or even the same name. All they need to do is comply with the order and that is to stop using it as a brothel, which means we are no longer dealing with a brothel; we are back to the massage use. All they need to do is comply with the order and revert back to the massage use. That is why it would be an ongoing issue for us to monitor. It becomes time and resource intensive for councils to monitor one particular use.

Ms JO HAYLEN: You would like it to be within your ability to remove the DA for land use completely, as a penalty?

Ms MAGURREN: Yes, in respect of their consent.

Mrs MELINDA PAVEY: Approval.

Ms JO HAYLEN: Yes, remove the approval.

Ms MAGURREN: Yes, remove the approval because they have enacted it now by taking up the massage use, so it is valid on the land. Sorry, what was the other part of your question?

Ms JO HAYLEN: It was in relation to having guidelines on how you step through your investigations.

Mr STREATER: Certainly any guideline would be helpful. I speak from experience. The example that I gave you that is on foot at the moment is the first one I have been involved in. How to investigate is all new to me. It took a lot of research and so forth up-front. Our approach was a staged approach. Based on the complaints we were receiving, the evidence was largely circumstantial, and the evidence was largely around the times that people were visiting a premises, the gender of people that were visiting a premises, and the fact that it is a Thai massage facility people seem to make a connection, for whatever reason.

In terms of a staged approach, we obviously listened to complaints and conducted our own investigation and our own covert surveillance, although it was external, so our compliance team monitored the premises in respect of hours of operation and the issues that we could prove or disprove through an inspection regime. We certainly did need to seek the advice of our solicitor and pursue a more covert investigation to prove what services were being offered within the premises. In answer to your question, yes, any guideline would assist, particularly for councils and council officers who do not have a great deal of experience with these types of uses.

Ms JO HAYLEN: Further to that, Mr Streater, did you look at advertising? I am thinking about the other ways that you could try to establish the unauthorised activities. Did you look at whether there was any advertising beyond just the massage services for the premises and, when you made the inspections, were there condoms or other things that would indicate those activities?

Mr STREATER: Part of the early investigations undertaken by council officers included monitoring advertising and chat rooms. Some initial evidence was found. That probably assisted us in being able to realise that there was some legitimacy to the complaints and that we needed to pursue the matter further. To some extent that did occur.

Ms JO HAYLEN: If it was the case that you had all that circumstantial evidence, would it be helpful to prevent you having to spend a whole lot of ratepayers' money in employing private investigators? For example, if that evidence could have been assembled and assessed and hopefully had been enough to issue orders rather than going down the other path.

Ms MAGURREN: Yes, I believe it would.

CHAIR: Under the current law your advice was that that circumstantial evidence was not sufficient to issue an order.

Mr STREATER: Correct.

CHAIR: And that you needed to send in some investigators, covertly, to gather further evidence.

Mr STREATER: That is correct.

CHAIR: Please do not think that I am being unfair to you, Mr Streater, but on the assumption that this massage parlour is actually operating as a brothel, it is doing so as a consistent activity that is outside of the planning approval for those premises, and it is doing so in a concealed manner, in a deliberate manner to flout the legal regulation that applies to it. When you give your seven-day notice to inspect the premises, would it be fair to say that it is highly unlikely there would be any condoms or other evidence that sexual activity is going on in the premises?

Mr STREATER: Yes, it would.

CHAIR: Would it be fair to say also that the investigation of covert activity contrary to legal approval is not, on a systemic basis as a remunerative business, the usual sort of activity that you, as a manager of certifications and compliance, have to deal with on a day-to-day basis?

Mr STREATER: That would be correct.

CHAIR: It is more the sort of activity that is investigated by the Police Force?

Mr STREATER: Yes.

CHAIR: Who are familiar with concepts of circumstantial evidence and admissible evidence in courts of law and the like? Is that fair to say?

Mr STREATER: I think that is fair to say.

CHAIR: And it is probably not within the usual scope of legal advice that even council's solicitors have to give, because we are talking about an area of criminal law that is often the responsibility of either the police prosecution service or the Director of Public Prosecutions.

Mr STREATER: The only comment I could add is that the solicitors council has advice from on the matter that we are speaking about have significant experience in this area

CHAIR: They have advised councils previously on these sorts of prosecutions, have they?

Mr STREATER: From what I understand, yes.

CHAIR: Without going into too much detail, because I do not want to compromise your ongoing matters, if the message premises that you are now dealing with applied for approval to operate as a brothel in their location would they fall within council's existing planning instruments? Would they be able to get approval?

Ms MAGURREN: No.

CHAIR: Is the premises near schools, churches or other premises that are usually grounds for disqualification for the approval of brothels?

Ms MAGURREN: It is located near a number of residential premises, so that would exclude them from being permissible to be a brothel. The zoning is not correct either.

CHAIR: There are residential impact issues with regard to the premises that would exclude them from approval on normal planning grounds?

Ms MAGURREN: Yes.

Ms MELANIE GIBBONS: You mentioned that you had some distance restrictions on where you would approve brothels and how close they could be to each other. Do you know off the top of your head what that might be?

Ms MAGURREN: I do not know off the top of my head.

Ms MELANIE GIBBONS: You also mentioned that your council compliance officers would enter the approved brothel. Do you know what they are looking for when they enter and how often they attend?

Mr STREATER: I could not tell you how often. It is probably on a needs basis. Again, it is a very limited example we are dealing with. The sorts of things they would be looking for I guess would be condoms—

Ms MELANIE GIBBONS: In the one approved brothel that you have?

Mrs MELINDA PAVEY: Fire safety.

Mr STREATER: In the approved brothel I am not familiar specifically, but there would be standard health and fire safety type requirements that they would be looking for during the inspection.

Ms MELANIE GIBBONS: Do you have to give notice for that?

Ms MAGURREN: We would ordinarily, as a practice.

CHAIR: But a massage premises operating as a brothel would not be subject to the same inspections that an approved brothel would be subject to?

Ms MAGURREN: That is right.

CHAIR: If you had a tattoo parlour I assume it would probably be subject to more council inspections than a massage parlour operating as a brothel. Is that fair to say?

Mr STREATER: Correct.

CHAIR: What sort of inspections would you have at a tattoo parlour?

Mr STREATER: I believe they are quarterly and it is legislated for under different pieces of health legislation. It is under the skin penetration regulations, from what I understand. It is a similar regime to food premises and things of that nature.

CHAIR: A premises operating as a brothel without approval is actually subject to a very low level of any scrutiny whatsoever by local government.

Mr STREATER: Correct.

Mr ALEX GREENWICH: Obviously the questions we have been asking concern massage parlours and unapproved activity that may be going on in them. Would you say that a brothel is one of the harder legal businesses to get a DA for in the Camden Council area? We have heard that you have not had any DAs. Is it because of the restrictions that have been put in around not being near a residential area, there being no home-based work and being in an industrial area? Would you say it is a hard legal business to open in Camden?

Ms MAGURREN: In terms of the location, there are only a few areas where you can do it. That is fair to say. In terms of the controls in Camden, they would be very similar to controls in a lot of other local government areas. I could not really say if it is difficult to get approval because, to be fair, we have not had many inquiries for brothels to be established. I am not able to say whether or not it would be difficult to obtain the approval.

Mr ALEX GREENWICH: So far the issues are only occurring in one massage parlour. Is that correct?

Ms MAGURREN: At the moment, yes.

CHAIR: There is one approved one.

Mr ALEX GREENWICH: That was not my question. My question was in terms of the massage parlours that you are investigating, there is only one.

Mr STREATER: That we are aware of.

Mrs MELINDA PAVEY: Could you come back to us with the distance that is required between brothels in your local environmental plan?

Ms MAGURREN: Yes.

CHAIR: Thank you for your evidence 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?

Ms MAGURREN: Yes.

(The witnesses withdrew)

KERRY CHANT, Chief Health Officer and Deputy Secretary of Population and Public Health, NSW Health, affirmed and examined:

CHAIR: Thank you for appearing before the Committee to give evidence. Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Dr CHANT: No.

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

Dr CHANT: I did not prepare a statement so I would be happy to kick in to questions.

CHAIR: We have received evidence that the level of sexually transmissible infections [STIs] amongst sex workers in New South Wales is lower than the level of STIs in the general community. From a public health point of view there does not appear to be concern with STIs, at least in respect of that published material. Given that there is an element of the sex industry that is operating in premises that do not have approval for their activity and to some degree could be described as being underground, are you confident that those sex workers are being picked up in the statistics?

Dr CHANT: Yes. I think overall from my analysis of the levels of STIs I would agree that the level of STIs in the sex worker population in New South Wales is commensurate with the general population level of STIs. In some quarters, because of the very regular screening of sex workers, we have seen some studies report lower rates of STIs. I would also observe that some of the studies indicate that sex workers are very compliant with the use of condoms and it is actually lower compliance in their personal interactions, which perhaps puts them at risk of STIs as other members of the general community are.

The efforts and the settings that we have in New South Wales where there have been great efforts to remove the stigma associated with sex work means that people are willing to declare what they do when they go to sexual health clinics. I think the Committee has heard from Dr Anna McNulty, Dr Phillip Read and others about the fact that that is an important element. It provides a surety so people feel comfortable accessing services. So because of that, and the fact that our Sex Worker Outreach Project [SWOP] and our other services of outreach through our sexual health clinics do actually work in networks, it will pick up people who are potentially undertaking sex work in settings that are not approved brothels.

CHAIR: Dr Phillip Read from the Kirketon Road Centre did say, though, that there was some material that suggested the use of condoms was lower in massage parlours that were not approved as brothels, and that would suggest that they are at a high risk of contracting STIs as a consequence. Is the Department of Health concerned about that and is that an area that may require addressing?

Dr CHANT: We would certainly look at all opportunities to enhance engagement with people undertaking sex work. I am not familiar with what Dr Read is talking about there—he is probably talking about his particular experience in the setting of the Kirketon Road Centre. I am not aware of the documentation associated with that, but I would be happy to follow that up with Dr Read. We would be very happy to look at all options where there might be gaps in our reaching out to people undertaking sex work.

CHAIR: I have a question that dovetails in with the idea that the current system, with its lack of stigma and so on, has encouraged good health outcomes for sex workers and STIs. I believe that part of the regulatory environment in Victoria is a requirement that the sex workers obtain a certificate of examination for sexual disease—

Dr CHANT: Some form of clearance.

CHAIR: Yes, I think it is every three months. I think it operates in an environment where all the sex workers are registered. I am not advocating that our sex workers be registered, but I am wondering whether you think it would be helpful or unhelpful to have perhaps an environment where the owners or managers of brothels were responsible for ensuring, as are employers in other industries, the health, wealth and safety of their workers. They could be required to have some evidence of regular checking of sex workers for sexual diseases.

Dr CHANT: I think the use of condoms is probably the single level of significant protection for practising safe sex. It is important to know that in the current framework employers within brothels have those responsibilities for occupational health and safety. That is the framework we currently operate in. As the Committee would know, there is that guidance document, which is currently being updated, around health and safety guidelines for brothels. Clearly the managers of brothels, as employers, would have responsibilities to comply with those requirements.

I can provide the Committee with evidence about the frequency of testing. I apologise if the Committee is already aware of this, but it is worth restating. We have a network of publicly funded sexual health clinics across the State and we collect data on the STI testing and the HIV testing done. We collect data on the risk groups. We do this because our publicly funded sexual health clinics provide services to potentially marginalised groups that are tailored to the particular risk populations they have. It is pleasing to note that we have seen high rates of engagement with sex workers in our publicly funded sexual health clinics, and I note that sex workers also get testing through general practice.

We have had a general push around increased STI testing and HIV testing, and we have seen a commensurate increase in STI testing for sex workers. So I think we have good platforms of access. I do not have a great deal of concern that there are significant gaps. As I said, I think we always need to be vigilant and look for emerging issues. Again, I cannot overestimate the fact that people feel free to come forward without judgement and are willing to get tested, and this does create an environment where they are not worried if they have missed a test or that there is anything they might be criticised for because they have not complied. To my mind, that has been a very important setting that we have. Just as an example, in HIV we now have very compelling evidence that early treatment for HIV diagnosis is of benefit to the individual as well as of benefit to the community. We have a high rate of testing for HIV. We can do better.

But getting people into early treatment is probably the one thing from a public health perspective, as well as maintaining high levels of condom usage, that is really pivotal to us in ending HIV. Addressing any settings that would deter groups from coming forward for testing is very important. I believe my colleagues from ACON may have already covered some of this territory, so I apologise if I am repeating things. But we are seeing in the HIV setting in the context of men who have sex with men presenting quite late. We are still seeing people presenting quite late, particularly in the older age groups. So that just reinforces my general concern about where there might be stigma and discrimination. I do not think we can overestimate the impact it can have on health-seeking behaviour. From a public health perspective, I am very keen that any policy settings do not reinforce stigma and discrimination.

CHAIR: Certainly condom usage is the best preventative action that a sex worker can take in terms of STIs. But I suppose what worries me is that there is commercial pressure on the sex worker from time to time to not use a condom—they will be offered more money if they do not use a condom and so on. So it seems to me that it is desirable to have, as we do, a system that says that there will be condom use and that encourages condom use, and also regular STI testing for sex workers.

But as I understand it we do not have any legislative or regulated discipline around testing—it is essentially an individual, voluntary activity; and correct me if I am wrong—whereas in Victoria it is mandated. Therefore it would seem to me that it could be desirable to mandate some regular testing. I suppose the only question is: Would mandating create a stigma of the kind you have referred to that would then take things backwards rather than forwards? I am interested in whether you have any views on that. It seems to me that it could be a desirable discipline that is not currently within the system.

Dr CHANT: I probably would have concerns that mandating something does create perverse outcomes, particularly when we have data suggesting that we have high rates of testing and that the testing frequency is high. When we mandate things that does not mean those things happen. It is probably more important to have a service system that is non-judgemental and tailored to meet the needs we have, and has service elements for people whose first language is not English, so we provide interpreters. We may also have culturally and linguistically diverse health workers to help sex workers navigate our health system. To me, mandating sometimes does not achieve the policy outcome because you mandate for the group you know about and it is about creating an overall sense of engagement with testing. We still have a long way to go to get rid of the stigma and discrimination in all settings and we have to continue to challenge them, but the current settings have been quite positive to health outcomes.

CHAIR: What worries me is that at the beginning of your answer you said that the level of testing at the moment is very high, but we do not have accurate data for the number of sex workers and we know there is a number of premises that are not authorised brothels where sex work is taking place. How can you with any confidence—and I am not being critical—say that there is a high level of testing relative to the cohort when we do not know what the cohort is?

Dr CHANT: Because Health to some extent has positioned itself as a trusted organisation. We have not come in with a punitive, Big Brother-type, criminalisation intent and to some extent that has allowed us to work in partnership with and get into brothels. SWOP can get into brothels and our attitude has allowed our clinics to have high attendance of sex workers. Therefore, we can look at compliance and the frequency of testing. Whenever you create a register or a group that is known, you have to worry about the pool that is not known.

CHAIR: That is really what I am saying.

Dr CHANT: Whereas if you remove stigma and discrimination, we are encouraging frequent testing and encouraging frequent testing for younger people generally, whether they are sex workers or not. We are suggesting that with partner change we need to increase testing of sexually active people. We have high rates of STIs in our younger members of the community and we need generally to remove the stigma around STI testing. In the mainstream we are trying to get doctors to incorporate that testing into health checks. To some extent general practitioners are reluctant to raise sexual health, which is interesting. Although we think we have come a long way, there is still more to do to remove the barriers to a high overall level of testing of the community.

CHAIR: With respect, I do not think that is a complete answer to my question which was: How can you make a statement to the Committee that there is a high incidence of testing sex workers when as an empirical fact you do not know what the cohort of sex workers is so as to determine whether you are getting 40 per cent, 80 per cent or 100 per cent of the cohort?

Dr CHANT: I can cite a number of studies. For instance, in 2012, 83 per cent of brothel-based female sex workers reported they underwent regular health checks, the majority—53 per cent—through public health clinics or—

CHAIR: When you talk about "brothels", are you talking about approved brothels?

Dr CHANT: That would be either because SWOP is agnostic to the status of the brothel because it is looking to provide support to sex workers wherever they undertake their work. I can provide to the Committee a range of other statistics. In 2012, Sydney-based sex workers reported almost universal condom usage of 99 per cent for commercial vaginal sex encounters. However, 50 per cent of female sex workers use condoms inconsistently or never with their partners outside the work setting. This reflects the norms of community behaviour, which we need to improve by encouraging higher usage of condoms more broadly and higher rates of STI testing.

CHAIR: I really directed my question to testing for STIs, not condom use.

Dr CHANT: I can provide more statistics. In 2014-15, 13 per cent of the 37,546 HIV tests performed in New South Wales public sexual health services were of people who reported to be or had previously been sex workers. As I said, that has increased by 20 per cent from the 2013-14 data. There have been 15,457 occasions of service for STI testing and management in New South Wales public sexual health services delivered to sex workers in 2014-15 out of the total 162,766 occasions of service delivered for STI testing and/or management. From the data we have, our services are reaching sex workers. In addition, we know that sex workers are also accessing general practice and we are working with general practice overall to try to get out messages about testing. One of the concerns I have—and I go back to HIV—is that heterosexual transmission of HIV in New South Wales is much rarer and clearly men who have sex with men are the predominant target population. However, it is concerning that those with heterosexual transmission are presenting much later because they are not getting linked into the messages that you have probably seen on Oxford Street for rapid HIV testing and messages about testing engagement. It is really imperative that we lift the overall rates of sexual health screening in a general population sense.

If you are asking me where I want to invest my resources and efforts to control the mortality and morbidity associated with STIs and HIV, I will say it is towards men who have sex with men. I am also

concerned about people who have travelled overseas to higher prevalence countries and undertake behaviours they may not undertake in New South Wales. Those people are clearly at risk, and in our heterosexual population at significant risk. With sex workers I am vigilant and I have to be vigilant, as I am with injecting drug users because although we have low levels of injecting drug use—in fact, one of the lowest incidences internationally—it is important to learn lessons from other jurisdictions where there has been a removal of harm-minimisation processes such as needle syringe programs. In such cases there has been rapid amplification in the context of injecting drug users and that provides a foray into the general population.

In relation to gonorrhoea and syphilis, again it is the category of men who have sex with men who are my target population because of increasing incidences in that population. Whilst sex workers are on my radar and a priority population for our services, from a policy program perspective there are other things I need to do to end HIV or reduce mortality and morbidity.

Mrs MELINDA PAVEY: In evidence last week from Deputy Commissioner Kaldas, he said he had phoned his local area commanders who had estimated there are about 360 premises offering sex services across the State and yet, from memory, only 130 are licensed and have the appropriate planning approvals to operate as brothels. Are we reaching as wide a community of sex workers as we should be reaching? This relates to the Chair's questions: Are we getting to the population we need to care for? I ask you to consider how Victoria handles this through its different legal framework. Do you have any evidence from your contact with Victorian colleagues about how that system reaches out to sex worker populations?

Dr CHANT: My apologies, I have not had a chance to talk to my Victorian colleagues. I am happy to take that question on notice, undertake a discussion with them and provide an answer. We are watching to see whether sexual health clinics are meeting those needs. You have probably heard evidence from sexual health clinic directors, who are passionate about meeting the needs of vulnerable communities. On that level, publicly funded sexual health clinics are focusing on the higher risk groups.

The Sex Workers Outreach Project [SWOP] provides an excellent service. We provide it with funding of \$1,193,900. I can provide the Committee with the key performance indicators we have in the contract with SWOP. In addition, a number of local health districts have augmented their services for sex workers. For instance, in south-western Sydney, Liverpool sexual health clinic also provides an outreach service to Campbelltown. There is a longstanding health promotion program there, employing designated health education officers to deliver outreach to brothels, in partnership with the sexual health clinic and SWOP, who provide the bilingual peer workers.

Liverpool Sexual Health Clinic has one clinic a week where there are designated interpreters available. In addition to the ministry's funding of SWOP, south-western Sydney provides funding for an additional shift a week to do outreach to street-based workers on Canterbury Road, in the Bankstown area. Sydney Sexual Health Centre has bilingual Thai and Chinese speaking health promotion officers. They are employed as part of the multicultural health promotion project to provide outreach and personalised health education without the need for an interpreter. Sydney Sexual Health Centre has provided interpreter assisted language clinics for Thai sex workers twice a week and once a week for Chinese speaking sex workers since 1991 and 1994 respectively. Our sexual health clinics form a cohesive network and meet regularly. We also meet regularly with SWOP. That intelligence sharing across services allows us to identify gaps. Can we do more? We can always do more, but we are very committed to providing high-level in-reach services.

CHAIR: I would like to follow up on Mrs Pavey's earlier question that you undertook to discuss with your Victorian colleagues. The Committee has been told that the public health outcomes for sex workers in Victoria and New South Wales are similar. It would be interesting to know whether you can verify that that is the case. If you would look at their data and our data and confirm that statement or identify the differences, that would be helpful.

Dr CHANT: We would be happy to do that.

Mr ALEX GREENWICH: Dr Chant, would you like to see the population who do not engage in sex work tested at the same level as people who do engage in sex work?

Dr CHANT: I would like evidence-based adherence to the recommended testing frequency. The Australasian Society of HIV Medicine has put out guidelines for testing, and I would like to see them followed. Sometimes testing is more frequent. For men who have sex with men, depending on their risk profile, we

suggest frequent testing because we want to get early diagnosis and interrupt transmission. We need to lift the level of screening for sexually transmissible infections in the general population. We have had feedback that general practitioners are reluctant to raise STIs in consultations, as they would diabetes and diet. We need to do better at integrating that. What has been really pleasing is the work we have done with the Royal Australian College of General Practitioners and General Practice NSW. That has been interesting because we have raised the level of testing for HIV in general practice. It has shown that doctors who are not s100 prescribers, which are our GPs who specialise in HIV, have identified the majority of new HIV diagnosis in the last quarter. I can make the report of that quarter available to the Committee.

Mr ALEX GREENWICH: That would be great. Based on NSW Health data, would you say that sex workers engage in safer sex practices than non-sex workers in terms of condom use, safe sexual practice and regular testing? How does the cohort of people who are sex workers compare with the cohort of people who are not?

Dr CHANT: From the data we are seeing a difference in how they practice in their work as sex workers, as opposed to when they are not working.

Mr ALEX GREENWICH: I want to compare sex workers to people who are not engaged in sex work. I am interested in the data on condom use in the general population versus condom use by sex workers and whether there is a greater prevalence of safe sex practices amongst sex workers versus the rest of the population.

Dr CHANT: When sex workers undertake their work as sex workers, they have much higher compliance. They are motivated to be tested more frequently because they do not want to transmit to their loved ones or others.

Mr ALEX GREENWICH: The Committee has heard evidence of one instance where it was proved that sex services were being provided in a massage parlour. It was in Hornsby and the type of service that was provided was a hand job. Is there any risk of an STI transmission from providing a hand job?

Dr CHANT: With appropriate handwashing, probably not.

Mrs MELINDA PAVEY: As long as there are no cuts in fingers.

Dr CHANT: That would be a much lower risk activity.

CHAIR: Oral sex is more of an issue.

Dr CHANT: Some STIs can be transmitted by oral sex. It is very different.

CHAIR: Particularly if it is oral sex without a condom.

Dr CHANT: Yes. That could lead to oral gonorrhoea. There are risks, but a hand job would be a lower level risk.

Mr ALEX GREENWICH: Would you argue that further regulation of the sex work industry would help or harm the health outcomes of sex workers?

Dr CHANT: From the evidence that I have given to date, I would be cautious of any policy settings that added to stigma and discrimination. One has to be very careful to check how a policy will be implemented and whether it will have any perverse incentives. From a public health perspective, the key is for sex workers to be willing to be tested more frequently. Doctors need to feel more comfortable about explaining to sex workers why they might need to be tested more frequently. Frequent testing is the key to early detection, diagnosis and treatment, and effective prevention. It also allows us to engage with them on condom use and to provide social support—to talk about rights and responsibilities and what the requirements are for a safe working environment.

CHAIR: Dr Chant, if it is done in a way that would not stigmatise sex workers there could be some benefit to regular testing. It facilitates earlier detection, which is the favourable public health outcome.

Dr CHANT: The issue is getting false assurances from particular policies. How do you know whether someone is a sex worker? How do you keep track of their tests and issue a clearance? Does the policy create a barrier, in that someone who was not tested at the three-month mark fears that they will get into trouble, so they further delay getting tested? I suppose it is really about making very clear the benefit and how it would be implemented. I would be very happy to explore with Victoria some of those implementation issues. But I am not quite sure about mandating it. My experience is that when we mandate things it does not necessarily mean that you achieve a better policy outcome—just from experience in other settings.

Mr ALEX GREENWICH: So is NSW Health in any way concerned about the testing rates among sex workers in New South Wales?

Dr CHANT: That is not a particular concern. As I said, it is important that we keep an eye on all of our priority populations. As you know, there is the blanket overall, but there are always pockets of concern. There may be interactions with a sex worker injecting drugs and other things and clearly that is an area we have got to focus on. We have a range of services that provide support for people that, perhaps through other complexities such as drug and alcohol use, may be less compliant or have issues. It is about providing holistic care to enable them to have good health outcomes.

Mr ALEX GREENWICH: So NSW Health currently would not feel the need to do a public health campaign directed at sex workers to test? You do not think there is currently that need?

Dr CHANT: I think we are achieving that. We are just finalising an STI strategy for the State—clearly sex workers will be in that—but, to some extent, getting higher rates of overall testing at a population level for our heterosexuals and also removing any barriers. If someone is coming into a doctor's surgery and saying, "I want a test", for the doctor to be sort of welcoming of that and not saying, "Oh no, you are not at risk". It creates the appropriate setting we want to see. We also test people and offer testing in the context of pregnancy-related services and antenatal services, and that is obviously very important as well. It is an opportunity to get a sort of universal platform of testing. So I think there are continuing opportunities for us to enhance testing, but it is more about a population level testing. I think I outlined my priorities for things I needed to do.

Ms MELANIE GIBBONS: Your submission from the Ministry of Health contains the statement that there is no requirement for councils to consult with public agencies such as Health when they are assessing a development application for a brothel. Do you think that would be a benefit, if councils did consult with Health before assessing a brothel?

Dr CHANT: The brothels and health guidelines are being reviewed and I believe that some interim guidance update has been provided. Once this Committee's recommendations have been considered, we can then update that. Councils usually value documents that they can refer to in their considerations and that document may be a bit easier for councils to use in the way they process development applications. We have had experience in other sections that that is the way council likes things. But we would be happy to also support councils if they wanted any briefing, for instance, to council's members around the evidence around STIs in sex workers or any other policy settings. It may well be that we could strengthen our educative response to councils about the current setting and what the risks are.

Ms MELANIE GIBBONS: That is probably a good thing for councils to have offered to them; that is probably beneficial to them. But should they be coming to an agency like Health before assessing a development application, do you think? Would they learn anything for each individual application?

Dr CHANT: I am not sure that they would learn anything for each individual application. I think that when the document is rewritten it may be useful to flip it over and say: What does council need to have that would help them in making those assessments? But certainly strengthening the background information on the status of the health of sex workers, the risks associated with brothels and concerns that the community has, and perhaps what are the risk mitigation strategies that need to be put in place would be appropriate.

CHAIR: Because that would help them. They may be able to have conditions of consent relevant to public health outcomes and inspection regimes.

Dr CHANT: They would generally reference those guidelines, I presume, in a consent document indicating what people would be required to do. So I think that document is a pivotal document that needs to be updated. SafeWork NSW is the owner of that document but Health has a significant impact and can certainly

provide input. We can certainly look at whether there are issues that councils have raised about strengthening that document.

Ms MELANIE GIBBONS: And that is being updated at the moment, did you say?

Dr CHANT: An interim guideline, a guidance, is being developed and then I think the plan is that once this Committee has formed its recommendations and considerations that that document will be revamped.

Ms MELANIE GIBBONS: I would be interested to see what is out there at the moment.

Document tabled.

Mr ALEX GREENWICH: Is that document produced in multiple languages?

Dr CHANT: I would have to take that on notice. I do not think that it is. It is more written as a bureaucratic document that covers sex workers.

Ms MELANIE GIBBONS: As opposed to one that would go out to the community?

Dr CHANT: Yes.

CHAIR: Mental health is an issue that is sort of catching up to more science-based medicine and is getting a lot of prominence at the moment. We have had some submissions referring to the mental health of sex workers and studies around that. Are you familiar with any New South Wales study that has been conducted in relation to the mental health of sex workers?

Dr CHANT: Off the top of my head no, but I would be happy to follow that up.

CHAIR: There are obviously journals and articles of different veracity and so on. We have received a submission from the Coalition Against Trafficking in Women, Australia, which refers to a study of 854 people currently or recently in prostitution in nine countries, which found that 68 per cent met the criteria for PTSD, which was a similar rate to combat veterans. It is footnote No. 7 in their submission. Would you be able to have a look at that article and give us some idea of its veracity?

Dr CHANT: Yes, and it would also be interesting to look at what was the setting for the sex work in each of the countries from which those individuals were drawn. Because I have certainly got some evidence that STIs and HIV in sex workers is certainly higher in some parts of the world.

CHAIR: Indeed, and their conditions may not be comparable. However, we have heard evidence that there are a range of environments that sex workers operate in in New South Wales as well, from street workers to large establishments, well-run, organised establishments.

Dr CHANT: I would be very happy to look at that and get some advice.

CHAIR: I would be interested if you could give us any assistance on whether that is an issue that we should be considering. Dr Chant, thank you very much for appearing before the 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?

Dr CHANT: Yes.

(The witness withdrew)

(Short adjournment)

MARILYN JUNE ROSS, Senior Sergeant, Sex Industry Coordination Unit, Victoria Police, and

RICHARD KEVIN FARRELLY, Sergeant, Sex Industry Coordination Unit, Victoria Police, before the Committee via teleconference, sworn and examined:

CHAIR: Good morning and thank you for attending this public hearing of the Legislative Assembly Select Committee on the Regulation of Brothels. 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 that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public hearings. Copies of the guidelines governing coverage of proceedings are available. I now welcome representatives of the Victoria Police Sex Industry Coordination Unit, Senior Sergeant Marilyn Ross and Sergeant Richard Farrelly. Thank you for appearing before the Committee today by telephone 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?

Ms ROSS: No.

Mr FARRELLY: No.

CHAIR: Senior Sergeant Ross and Sergeant Farrelly, you should feel comfortable to answer whichever questions you think it is appropriate for either of you to answer. At the outset, I offer you the opportunity to make an opening statement if you would like to before the commencement of questioning.

Ms ROSS: Thank you, we would appreciate it if we could make an opening statement.

CHAIR: Please go ahead.

Ms ROSS: Firstly, I would like to say good morning to the members of the Committee. Thank you for the opportunity to speak at your inquiry. Sergeant Farrelly and I hope that the information that we give you will be of assistance in achieving the goals of the Committee. We have read the terms of reference and believe we can provide information and even some considerations which will be of benefit. I am the senior sergeant in charge of the Sex Industry Coordination Unit and I have been in charge of the unit since it was created back in March 2012. Sergeant Richard Farrelly, who manages the members of our unit, has been at the unit for almost two years. We are on the front line in that we are actually the ones who go into the licensed and illegal brothels and work with other law enforcement agencies, government agencies and non-government organisations.

I will start by giving you some background into how our unit came about, what our role is, what the sex industry in Victoria actually looks like and our relationship with the Business Licensing Authority, which is the regulatory body down here in Victoria. In August 2009 the Parliament of Victoria requested that the Drugs and Crime Prevention Committee inquire into people trafficking for sex work. As a result of this inquiry, the Government committed to a number of recommendations in relation to illegal sex work and the clarification, strengthening and enforcement of relevant laws. These included establishing a multi-agency illegal brothel task force and passing legislation to toughen asset confiscation laws relating to illegal sex work crimes and ultimately making Victoria Police the lead agency for enforcement to ensure that appropriate attention is paid to the removal of criminal elements.

In response to these recommendations Victoria Police did two things. Firstly, they established the Victorian Sex Industry Strategic Management Group. This group is a multi-agency group with representation from Victoria Police, we are actually the chair of the group; the Australian Federal Police [AFP]; Australian Border Force; Business Licensing Authority; Consumer Affairs Victoria; the Department of Health; the Municipal Association of Victoria, which is the councils; and the Australian Taxation Office. The second thing that Victoria Police did in response to the recommendations was to establish our unit, the Sex Industry Coordination Unit, so that we had a focus on the sex industry. That occurred on 5 March 2012.

The role of our unit is to protect vulnerable people from exploitation. That is our number one role—that is of course people within the sex industry. It is also to identify illegal brothels and/or illegal activity that is associated with the sex industry, coordinate and strategically manage intelligence and information, develop strategies to address any identified trends, develop protocols and procedures to facilitate the collection and sharing of data and intelligence with other stakeholders, and provide subject matter expertise to our own

members of Victoria Police and to other stakeholders. We also proactively identify, record and educate our members on human trafficking.

In relation to human trafficking, as I know this is mentioned in your terms of reference, it is estimated 60 to 70 per cent of human trafficking that occurs in Australia is happening in the sex industry. Our members have been trained by the Australian Federal Police, who are the lead agency for enforcement, in how to identify human trafficking indicators. Our unit has proactively taken on human trafficking as part of our charter. Our unit has developed the Look a Little Deeper human trafficking information and awareness package, which is now being rolled out to our members. The AFP, who assisted with developing the package, have now taken carriage of this and are in the process of rolling it out to the other States and Territories. There has also been interest in this product from other law enforcement agencies in Australia and also overseas. I have sent through a PowerPoint to the Committee which gives you a summary of that human trafficking package.

CHAIR: Sorry, can I just stop you there?

Ms ROSS: Absolutely.

CHAIR: We are having trouble with the sound. If you are reading from something which has been prepared, we may ask you to send that through to us in due course for Hansard purposes. I am finding what you are saying very helpful; I am taking furious notes. I will get you to continue in a moment when we have worked out the problem with the sound recording.

Ms ROSS: No worries at all.

CHAIR: We have rectified the problem.

Ms ROSS: That is fine.

CHAIR: You said there had been interest from overseas?

Ms ROSS: In the package that we have made, the "Look a Little Deeper" Human Trafficking Information and Awareness Package?

CHAIR: Yes. Could you continue on from there, please?

Ms ROSS: Absolutely. I actually sent through for the Committee just this morning a PowerPoint—it was just shortly before we came in here. It gives you a summary of the package. They are the duties, basically outlined, of our unit. As can be seen, a lot of our role is around protecting sex workers and gathering information and intelligence that relate to criminal activities and sharing that with other law enforcement agencies and regulatory authorities. We also work closely with the non-government organisations so that we have referral agencies on board to provide assistance to vulnerable persons, and "vulnerable persons" for us can mean underage but it can also mean persons who may be victims of human trafficking.

I will now just talk about the sex industry in Victoria and what it basically looks like here to give you a bit of a picture. You can say that it is mainly divided into two parts. There is a licensed sector and then there is the illegal sector. I will talk about the licensed sector first. Our licensed sector here includes licensed brothels, of which there are currently 90 across Victoria. There are also around 650 what they call sex work exempt, which are people who provide an escort service; so there are 650 of those. The licensed brothels and those sex work exempt persons have gone through the regulatory system, being our Business Licensing Authority, and have had themselves legally licensed. They pay their annual fees and they comply with the legislative requirements.

The licensed sector is legislated here by the Sex Work Act 1994 and the Sex Work Regulations 2006. The Sex Work Act 1994 actually has the objects of the Act. I will just summarise them for you because they are listed in your terms of reference and it helps to cover it for you. In summary, the objects relate to protecting children from sexual exploitation and coercion; lessening the impact on the community and community amenities of the carrying on of sex work-related activities, ensuring criminals are not involved in the sex work industry; ensuring brothels are not located in residential areas or areas frequented by children; ensuring that no one person has an interest in more than one brothel; maximising protection of sex workers and their clients from health risks; maximising protection of sex workers from violence and exploitation; ensuring brothels are

accessible to inspectors, law enforcement officers, health workers and other social service providers; and promoting the welfare and occupational health and safety of sex workers.

In summary, in the licence space Victoria Police is the lead agency for enforcement around criminal activity. The Business Licensing Authority is the regulator. Compliance sits with Consumer Affairs Victoria and the councils still have a role in enforcement but this is around the Planning and Environment Act and is about having the correct permit, et cetera, to set up a brothel in a local government area. I will now give you a brief overview of the illegal sector. The illegal sector presents in a number of different ways. Down here we have street prostitution, online advertising, massage shops which offer sexual services, karaoke bars which offer sexual services, and hair and nail services which offer sexual services.

The majority of work in our unit in the illegal sector is around complaints received about massage shops offering sexual services. We know there is a perception that consenting sexual services at a massage shop is a victimless crime but this is not the case. Our unit has identified issues or received the following information in relation to massage shops believed to be offering sexual services, and I might point out that those sexual services range from masturbation through to full sexual services. We have had reports of underage people working in massage shops; reports of sexual assaults occurring on staff; reports of physical assaults occurring on staff; location of unlawful non-citizens, which then raises concerns for us regarding human trafficking and abuse of students on visas; health risks and poor health practices—we can give examples if required but we have closed down a couple of places, one of which was using the same towels for people for in excess of three days—exploitation of human rights; and crossover between the licensed brothels and the illegal sectors. That includes our licensed brothels crossing over with massage shops, karaoke bars and the nail and hair salons.

There is no regulation at all in Victoria around massage shops. The lack of regulation means that anyone can open one of these businesses. No massage training is required. There are no health requirements which need to be met. I will just mention lastly about our relationship with the Business Licensing Authority, the regulators here. Our unit has a very good relationship with the Business Licensing Authority. We liaise with them on a weekly basis. It is of vital importance that Victoria Police and the Business Licensing Authority work together to keep criminals and criminal activity out of the licensed sector. It is effectively a large cash business and cash businesses attract criminals. Working closely with all the relevant agencies, including the Business Licensing Authority, Consumer Affairs Victoria, the Australian Federal Police human trafficking team and Australia Border Force, is key to the work that we do in achieving successful outcomes. Thank you. That is the completion of our summary.

CHAIR: I am particularly interested in the comments you made around the massage sector as one of the areas of the illegal sector in Victoria. Is your unit responsible for investigating and prosecuting the unlawful sector or is that a responsibility which devolves to the local area commanders?

Mr FARRELLY: If I can answer that one. The massage sector here—on our books we have intelligence of about 400-plus massage shops suspected of being illegal brothels. The sex industry coordination unit is quite small but we have created a base of subject matter expertise. Having said that, we do investigate some that may have, if you want to use the term, continuing criminal enterprise, if you like, but we will push them out to the local area command to investigate. The responsibility still lies with the local areas with regards to investigations into the sex industry, but our unit will still do some investigations—although they will be limited mainly due to capacity.

CHAIR: Is your unit more concerned with systematic criminal activity as opposed to one-off operators?

Mr FARRELLY: That is our main concern. That is absolutely right; a coordination aspect mainly. The majority of intelligence for the sex industry comes to our unit and we have an intelligence analyst who will collate the information, package it all up and then forward it out to local detectives, if you like.

CHAIR: How many people are in your unit?

Mr FARRELLY: At the moment we have Senior Sergeant Ross, myself and four sworn police members.

CHAIR: They are four police officers?

Mr FARRELLY: Yes, sorry four police officers.

CHAIR: Is it fair to say that you receive intelligence from a number of sources, including the Australian Federal Police, Immigration, Border Protection agencies and from members of the public?

Mr FARRELLY: Yes, absolutely. Government agencies will provide a great deal of information but a lot of the information we get also comes from places like Crime Stoppers hits, police members, members of the public. A lot of the information comes across as anonymous so it becomes a little bit difficult to actually investigate but we will certainly give it our best shot. Not many people really sign up for anything in the sex industry because they are really talking about their sex lives and it is quite private. A person, particularly in the illegal sector, or a dozen people, might report that there is a massage shop providing sexual services down in the suburbs somewhere but no-one wants to put their name to it, if you like, and actually stand up in court to give the evidence. As you can appreciate, that makes our job a little bit more difficult so we have to find other policing avenues, if you like, whether it be surveillance and other covert methods; it depends on the investigation strategy.

CHAIR: In relation to sex trafficking, there are particular jurisdictional issues between the Commonwealth Government, its police service, Immigration and so on and you at a State level. A benefit of having your unit is a co-ordination and a point of contact between the Federal agencies and the State agencies. Is that right?

Ms ROSS: Yes, that is exactly right. We work very closely with the Australian Federal Police Human Trafficking team—and that is vital—and also the Australian Border Force.

CHAIR: In relation to human trafficking in sex work, what is the extent of the problem as far as you have been able to determine in Victoria?

Ms ROSS: The Australian Federal Police is the lead agency and numbers are extremely difficult to get because we know that it is under-reported. It is very difficult to get persons to actually report the matters to the police. We have a lot of problems there. The size of the problem is difficult to assess, if you like, in both the licensed and the illegal sector. If we go in to licensed brothels, for example, we will pick up on indicators of human trafficking but the sex workers will not report and that makes it very difficult for us because we require a signed statement to get an investigation underway. Obviously we would require a victim to speak in court. We know that it is going on but being able to say exactly the amount is incredibly difficult. The Australian Federal Police may well be in a better position to help you in relation to statistics. I suppose I would generally say we believe that there is a small number of human trafficking occurring in both the licensed and illegal sectors.

CHAIR: To put in context the difficulties of discovery in the human trafficking of sex workers, is it correct that at least for some sex workers who are the subject of coercion there are threats made to their family and other close people to them in their country of origin and they have a reluctance to come forward to assist the police because of those matters?

Ms ROSS: Yes, you are exactly right. Some of the barriers that we have got to reporting are obviously language, cultural differences, fear with them generally but there is also fear of police and authorities because it may well be that the police were involved in some of these other countries. There are threats from traffickers and that may well be in Australia or overseas as you have mentioned. Sometimes they do not even see themselves as victims because they think things are so much better here so they will just live with it and do not identify as a victim.

CHAIR: In relation to unlicensed premises that purport to be offering massages but are offering sexual services in reality in Victoria, this Committee has received evidence that one premise of a similar kind in New South Wales has a website that shows it has 29 other premises affiliated with it. Although the Committee does not have evidence in relation to the other 29 sites, it is probably not a great inference to draw that similar activity may be occurring at all of those different locations. Do you have evidence in Victoria of similar groups of unlawful massage premises operating in a similar way?

Mr FARRELLY: We do. We have done a number of investigations over the past two years or so of those, if you want to use it as a person at the top of the tree, or two people at the top of the tree, with five massage shops that operate, say, within the same suburban area, if you like. They will rotate the girls through the shops depending on the business and they will have a turnover of, say, between the five shops about half a

million dollars in 12 months. There is a lot of money going through and there is a connection. There is also another one that we investigated that was certainly in another part of metropolitan Melbourne that again with one gentleman controlling five massage shops that were suspected of providing sexual services. We do see that type of thing. We certainly have not seen it on a scale of 29 connected but that certainly would not surprise us.

CHAIR: Franchising is a particularly effective business model and it does not usually observe jurisdictional boundaries like State borders. Do you have any information to suggest that some of the groups that are operating in Victoria may also be operating in New South Wales?

Ms ROSS: We do not at this point in time. However, that would not be beyond what could be going on because in the licensed sector we have sex workers rotating from the Sydney brothels down to Victoria and vice versa, going up and back. Certainly that could be possible. We have not seen it yet.

CHAIR: In respect of the unlicensed massage sector in Victoria, are there any ethnic or other characteristics which you have observed?

Mr FARRELLY: Yes. We use the term "sex worker" as a generic term. The majority of women who perform masseuse services are of South-East Asian origin. Some have an eastern European background and there is the odd South American. There are some Australian Caucasians but they are few and far between. South-East Asians are the main employees. When we speak to them a lot of them say that they are on a student visa. With regard to them working outside of their student visa conditions, without constantly monitoring those people we cannot identify if they are breaching their visa or being exploited without them saying so.

CHAIR: Is there any evidence of criminal gangs from those areas being involved in the ownership and operation of the businesses?

Mr FARRELLY: There will be criminal enterprises. There are five massage shops controlled by one or two people that we would say are involved in organised crime. When it comes to outlaw motorcycle gangs and other organised crime, an Asian syndicate—is that what you are talking about?

CHAIR: Yes, anything that can give us an idea of the extent of criminal activity involved.

Ms ROSS: If you are looking at the illegal sector, you have a lot more smaller groups running a number of shops. In respect of organised crime, you would be looking more at money laundering and things like the abuse of the visa system for students. If you go across to the licensed sector, we definitely know that we have outlaw motorcycle gangs involved and also Asian syndicates operating there.

CHAIR: That is despite the fact that you have a fit and proper person test for the ownership or management of licensed premises?

Ms ROSS: Yes, that is right. One of the things that is believed to be happening down here—and I say "believed to be" because some of this, as Richard said before, is forwarded to us anonymously, but we believe it to be the case—that a person will get the licence, be it for a brothel or as a sex work exempt, and they will be someone who has no prior criminal history but in fact the person who is running the premises is a member of an outlaw motorcycle gang or belongs to and is running an Asian syndicate.

CHAIR: Does your unit or the police force try to investigate and establish that, or is it too opaque for you?

Ms ROSS: As Richard said before, because we are six in our unit we will give as much information in the form of intelligence as we can. We would feed something like that up to one of our crime units and that would be, for example, Task Force Echo, that operates down here. Their job and their main focus is on the outlaw motorcycle gangs. That is what they do. We work closely with those other departments within Victoria Police to feed it up to the detectives to take on those sorts of things. We also work closely with the Australian Federal Police, the human trafficking team and Australian Border Force because a lot of those things cross into all of our jurisdictions, if you like, and we need help from each other.

CHAIR: I think you said your unit has been operating since 2012.

Ms ROSS: That is correct.

CHAIR: Has there been any review or external validation suggesting that it is desirable to maintain your unit because of the achievements it has made?

Ms ROSS: There is a review going on at the moment, or an intelligence assessment, but definitely they will be keeping our unit because of the information that we are receiving. Also, because it is now legislated that Victoria Police will be the lead agency, we are 100 per cent sure that we have to focus on this area and that ensures that we can feed information to our detectives and to other agencies.

CHAIR: It is being considered a valuable policing strategy to have a unit of your kind?

Ms ROSS: Yes, I suppose. We will say yes.

Mr FARRELLY: Yes.

CHAIR: You would say yes to that, would you not?

Ms ROSS: Definitely. That is why they have kept us. They are deciding where we will fit within the structure. They may well move us across to crime at some point.

CHAIR: I am going to hand over to Ms Haylen, who has some questions for you.

Ms JO HAYLEN: I want to briefly go to the instances that you raised where the licensed holder is, for want of a better word, a "front" for another criminal entity. It goes to your comment how your work is placed within a criminal context. Am I right in saying that the licence and the licensing regime does not assist you once it becomes clear that money is being funnelled through gangs and/or motorcycle gangs are in operation so that your work then moves beyond the framework of the licensing regime?

Ms ROSS: It does, but we still work very closely with the regulators, so the Business Licensing Authority [BLA] and Consumer Affairs Victoria help us to get or remove any criminal activity that we can. I will give an example and I will not name any specific venues. We had a situation where we found that a member of an outlaw motorcycle gang was an approved manager at a licensed brothel, which is why I say it is important that Victoria Police works with the Business Licensing Authority in the first place, because that would never have happened had we had our group and were sharing intelligence and information. The Business Licensing Authority played a big part in working with us and with Task Force Echo to have that person removed from the licensed sector.

Ms JO HAYLEN: How many instances do you know of where your information was successfully fed back and the licence, therefore, was removed?

Ms ROSS: That is the one that I know of in that particular instance where someone had some sort of licensed involvement, if you like. With the other ones it tends to be things like the sex work exempt. We will have a number of escorts and we know that they are being controlled by someone. We have had information given to us that one lot were controlled by the outlaw motorcycle gangs but the other lot were controlled by the Asian syndicate. Now, the BLA works closely with us. It does what it can to provide any information that it can. We will obviously go about doing our police investigations and work on any persons believed to be involved, and that is when we have to bring the other agencies in as well.

Ms JO HAYLEN: Can you tell me what percentage of the sex industry in Victoria you think is currently illegal, acting outside the licensing regime? Are you able to put a number on that?

Ms ROSS: It is extremely difficult. I have talked mainly about the massage shops but the other issue for us is the online thing. Anyone now can get on the internet and offer sexual services. That is another area that is extremely difficult to police. If you take that on board as well as the massage industry and some of the issues that we have with the karaoke bars it is pretty impossible for me to give a percentage.

Ms JO HAYLEN: It is fairly extensive in your mind. Do you think it would be a larger proportion than the licensed or legal proportion?

Ms ROSS: Yes, definitely.

Ms JO HAYLEN: You have indicated that your team, while effective, is quite small and working with other sections within the police force. What level of resourcing do you think would be required if you were to effectively combat that illegal section of the industry?

Ms ROSS: We are probably a bit lucky. Where we sit at the moment we are able to get hold of resources when we need them. But in terms of actual resourcing, I think that you need a unit that has enough people to work on the licensed side and a focus on the illegal side. It would probably be in the vicinity of 12 members, I would imagine, and then getting assistance as required from other areas.

Ms JO HAYLEN: It seems to me that if you were to get additional resources you would be focusing them on the illegal section rather than the licensed section. Am I right in saying that the licensing regime is not effective in its current state at covering elements of the sex industry in Victoria?

Ms ROSS: Can you repeat that?

Ms JO HAYLEN: Your estimate is that you would need significantly more resources, perhaps a doubling of your unit, to deal with the illegal section. Would I be right in saying that in its current state the licensing regime is not effective in combatting the illegal elements of the sex industry in Victoria at this time?

Ms ROSS: Doubling would help us but it is important to remember that we are just a coordination unit so we will triage out all the major jobs and they will go back out to the local areas for them to investigate. Even if we did have 12 it still would not be enough when you have 400-plus of these places that can open and close very quickly. In terms of the licensed area, I think it is pretty good in terms of the Business Licensing Authority and what we can do with the Sex Work Act around the licensed sector. What we are probably missing and where we think we could improve is getting some legislation around the massage shops and a lot of the online content so that we can start to charge some of those people.

Ms JO HAYLEN: Do you have any statistics about how many massage parlours or brothels have transitioned from acting illegally to the licensing regime as a result of any of the work that you or your colleagues have been involved in?

Ms ROSS: We have around 450 plus massage shops that have been reported to us as offering sexual services. I need to point out too that obviously there are massage shops down here that are doing the right thing, but we have got 450-plus on our books at the moment. In terms of the illegal going to the licensed, I would say it is possibly the other way around. I think that is what may well happen. We deal with a lot of licensees and their major gripe is the massage industry and the fact that it is taking away business from them. We know that their feelings are why is it that they are doing the right thing and paying their fees and doing everything they are supposed to under the legislation but then we have these massage shops just opening up and they are allowed to basically do what they want.

Ms JO HAYLEN: Your evidence is that the compliance elements of the licensing regime are forcing people into non-compliance—into acting as massage parlours and shops rather than licensed brothels?

Ms ROSS: No, the licensing scheme is not doing that. It is just because if you are opportunistic it is very easy to go and start a massage shop; why would you bother going through the licensed scheme?

Ms JO HAYLEN: It is more the competition element of the brothels wanting to run the show rather than the licensing itself. It is the small business owners, for want of a better word.

Ms ROSS: Yes. Our Business Licensing Authority, Consumer Affairs Victoria, is pretty good down here I think. What makes it hard and why the licensees are getting quite cranky is because of the fact that there is no regulation around the massage industry. Anyone can just start one up. Some of them have even had their workers go and start working at some of the massage shops.

CHAIR: We have had a similar problem with Uber drivers and taxi drivers in a different context.

Ms ROSS: Exactly. It is the same sort of thing.

CHAIR: You said that you would like some legislation or legislative support to assist you in dealing with the unlicensed massage shops. There seems to be particular problems with establishing that these places are operating outside of the law given the nature of the activity. Could you share with us some of your views as to the problems of proof and how they could be overcome?

Mr FARRELLY: We have done quite a number of investigations on illegal brothels. The biggest issue we have is the knowledge of the owner. Say you have an owner of XYZ massage shop and their staff are providing sexual services to their customers that come in. What will happen is the client will go in and pay his \$50, for example, for a half hour massage and then go into the room to get that massage. During the massage the masseuse will say, "Do you want extra?", or do a gesture or whatever form it takes. That will be an extra \$30, for example, but that \$30 exchange will take place within the room.

The owner of the premises who is, for example, behind reception is basically saying, "I don't know what goes on behind closed doors. It must be a rogue operator", for want of a better term. They can distance themselves and say, "I didn't have any knowledge that sexual services were being provided at my massage shop." Trying to prove they had knowledge is quite difficult. We can pull over as many clients and do as much surveillance as we like on the massage shop, but we still need to prove that the owner had knowledge that sexual services were being provided. Some of our investigations can just stop dead in their tracks through not being able to establish that knowledge element.

CHAIR: One of my thoughts was whether you could mandate that the financial transaction has to happen at the reception on the way in to try to control it in some sort of more transparent fashion.

Mr FARRELLY: Because it is such a cash business you would almost have to have, for example, deeming provisions or a vicarious liability provision in the legislation to say, "Well, too bad, you take responsibility for the actions of your staff." We certainly do not have that down here and it would be a nice thing for us to have—basically, that there are almost reverse onus provisions, if you like.

CHAIR: It would certainly put a lot of pressure on the owners to try to ensure that that is not taking place in their premises.

Mr FARRELLY: Exactly; that is right.

CHAIR: In New South Wales councils have employed private investigators to go into these premises and have sexual contact with the workers. I assume that, in a policing environment, Victoria Police do not expose police officers to that sort of evidence gathering?

Ms ROSS: No, certainly not.

CHAIR: Do you use private investigators?

Ms ROSS: No, we do not. We know that the councils do but we do not.

CHAIR: So Victorian councils do but the police force does not?

Ms ROSS: Yes, some of the councils still do. But we have had advice that we are not to do that and we do not employ private investigators. We certainly have ways that we use to investigate these places, but we would be reluctant to broadcast those. We have such limited options available to us that if they got out into the community then those options might close down as well.

CHAIR: What would be the practicality of having some sort of compulsory closed-circuit television [CCTV] in the massage suites recording what went on? It could be made an offence to destroy that footage or tamper with it in any way. Would that one way to get evidence?

Mr FARRELLY: Yes, to be quite honest that would be brilliant. But I dare say a lot of the stakeholders would have issues with that with regard to the privacy of the client. It would certainly put off a lot of clients going into certain massage premises. I suppose what needs to be understood is that massage shops are a pop-up industry. You might have one that opens up for a week and does not actually comply with anything. Some councils in Victoria do not have a requirement that they have a permit to operate as a massage shop. So they may operate for a couple of weeks or a month and then shut down and move somewhere else. So trying to

keep on top of something like the closed-circuit television in each room that you have suggested could be difficult. Having said that, it would be great for evidentiary purposes.

CHAIR: Are you free to share with us any ideas on evidence gathering which we may not have thought of?

Ms ROSS: We certainly could but, as we mentioned earlier, we would not want that getting out.

CHAIR: Is it something we could maybe get confidentially?

Ms ROSS: For sure.

CHAIR: We might try to get that in writing, subject to us keeping it confidential.

Ms ROSS: Absolutely, that would be no problem at all. We have had quite a bit of success. Sergeant Farrelly spoke earlier about the case where there were two people running five premises. We employed a number of techniques there and that is why we were successful. Getting back to the harms coming out of those places, that was a place where we know they were very much exploiting the workers and treating them very badly. They would end up going home with only about a third of their wages because the managers would fine them for everything—leaving a power point on or doing this or that. The managers would tell them to make sure they washed out the tissues which men had ejaculated into. As I said before, the towels would be lying on the tables for days on end. So when someone did go in for a genuine massage they would be lying on those towels. We also had doctors contact us to say that they have had a number of men presenting at their clinics with sexually transmitted diseases [STDs] that they have picked up from these massage shops.

CHAIR: Some of these industrial practices are of a kind that you would not have in any other workplace in Australia. Has the Australian Council of Trade Unions [ACTU] been involved at all in trying to deal with the fines and the other work conditions?

Ms ROSS: The problem we have had is that some people want to remain anonymous. We have even gone and met with people and talked with them. They will tell us things but they will say that there is no way that they are going to take part in any prosecution. It is a bit of a shame. We do speak to Fair Work Australia in relation to some of those things and get WorkCover involved. But we have not spoken to the ACTU.

Ms JO HAYLEN: Getting down to the nub of this—and I do not want to detract at all from the human trafficking and other really important work that you are doing to try to eradicate the criminal element—I guess the fundamental difference between the way that the Victorian system works and the way the New South Wales system works is that in New South Wales we have a system of decriminalisation. Do you think it would be the case that the workers you are talking to—in the circumstances you have described, which sound quite horrific—would be less reluctant to confirm the actions of their bosses, whether it be around the fines or concerning health risks, if what they were participating in was not a crime?

Ms ROSS: We know, from speaking with some of the sex worker groups, that there is some reluctance to report crimes if sex workers are doing the wrong thing—for example, if they are not licensed and they are working from home. They are reluctant to report. So possibly they would, but I think probably the biggest thing is their fear of having to get up in court and speak against the person who has been harassing them or threatening them. There is a real fear around that.

Ms JO HAYLEN: Any sort of employer-employee relationship would have those difficulties, but I guess the additional element here is the element of criminality—the actual act that these employees are participating in is one which is criminal in Victoria.

CHAIR: Only in unlicensed premises.

Ms JO HAYLEN: These workers may not be exempt.

Mr FARRELLY: In addition to that, a lot of them will not report because, for example, they are on student visas and they are told that if they report anything to the police or if the police find out about it then the employer will tell the immigration department that they have been working in excess of their allowable hours or breaching their visa conditions. So a lot of them face threats and have been made fearful so they are reluctant to

really sign up to anything or tell us anything. Even if they did tell us something, it would be on a very limited basis. If police start asking the harder questions—for want of a better term—with regard to what exactly is going on then we do not tend to get the detail.

CHAIR: And that would be the case whether it is a licensed premises or not, would it not?

Mr FARRELLY: Yes, it is the case. So even if we take out the element of fear they tend to be a bit light on detail. It may be because of the stigma of working in the sex industry, and that is still attached to the sex industry in Victoria. It will be a long time before it is seen as a serious profession by the majority of the community. They certainly are light on detail with a lot of the information. So you tend to have to probe, and the difficulty in doing that too much is that they just shut down.

CHAIR: We are running out of time, but I have one final question. Earlier you were asked by Ms Haylen about registration of premises, whether they are licensed or unlicensed, and the utility of having licensing. In the context of organised crime being involved in the ownership or management of premises operating in the sex industry, I assume the fact that you require the owner and the manager to be identified formally under a licence system is of enormous use in terms of being able to establish whether there are links to organised crime. In New South Wales, because there is no similar system, you can nominate anyone from time to time as being the owner and the licensee and there would be no formality about that information. Is that the case?

Ms ROSS: Absolutely, and it makes our job so much easier. One of the things that we hope to get added to the legislation, as it were, is that people working within brothels have to give their details to the police. We have situations where we have gone into brothels and the cleaner suddenly seems to be running the show. There is no requirement for the people to give their details to the police, and so with some of the people we believe are standover people, unless we are able to get their details, it makes it very difficult. The other good thing is that by having the licensee and approved managers having to go through the whole regulatory thing they also have to give their associates and go through all that.

CHAIR: Thank you very much for appearing before the 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 except where we indicate that a part of your reply will not be made public, as we have discussed. Would you be happy to provide a written reply within five business days to any further questions, observing that confidentiality? You should feel free, if you believe any of your further answers should remain confidential, to identify them and we will respect that.

Ms ROSS: Yes.

Mr FARRELLY: Yes.

(The witnesses withdrew)

(Luncheon adjournment)

JESSICA MEGARRY, Member, Executive Committee, Coalition Against Trafficking in Women, Australia, affirmed and examined:

CHAIR: Good afternoon. Thank you for attending this public hearing of the Select Committee on the Regulation of Brothels. For the benefit of the gallery, I again note that the Committee has authorised the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing coverage of proceedings are available. Ms Megarry, thank you for appearing before the Committee today to give evidence. Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Ms MEGARRY: No.

CHAIR: Would you like to provide any additional information on the capacity in which you are appearing?

Ms MEGARRY: I am a PhD candidate at the University of Melbourne. I am appearing as a member of the Executive Committee of the Coalition Against Trafficking in Women.

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

Ms MEGARRY: Yes. Thank you. Extensive research by our organisation over two decades has shown that both the Victorian system of legalisation and the New South Wales system of decriminalisation of prostitution are failed policy approaches. Both have been ineffective in targeting sex trafficking, increasing the safety of prostituted people or reducing the involvement of organised crime. Both decriminalisation and legalisation fail to offer sufficient protection for prostituted persons and the wider community. In New South Wales, news reports from this year show that, despite decriminalisation, illegal brothels, under the guise of massage parlours, are increasing and sex trafficking is a serious problem. The abuse and exploitation of women through visa irregularities is another ongoing problem. It is the same in Victoria, where the legalisation of prostitution effectively means that the Government is profiting from the commodification of women.

In the global context, it is becoming more difficult for Australia to make the argument that it has progressive policy on prostitution. The Nordic model, which has been adopted in Sweden, Norway, Iceland, Northern Ireland and Canada, is a legislative approach that recognises that prostitution is a form of violence against women and, broadly speaking, undermines women's equality. In 1999, Sweden adopted this model, in which the problem of prostitution is seen as the demand. That is a big paradigm shift. Women in prostitution are seen not as the problem but as the victims. The Nordic model is the first legislative approach to address the root causes of prostitution of human beings—that is, the demand from men who assume the right to purchase prostituted persons.

This law recognises that prostitution is a highly gendered industry in which the bought are largely women and the perpetrators are largely men. In other forms of violent acts, the perpetrators are punished. If the New South Wales Government were to implement this change it would be a progressive step for women's rights. The Swedish prostitution law was passed as part of a general set of laws against violence against women and is clearly understood in that framework. Under the Nordic model, the existence of the sex industry is incongruent with women's rights. The Nordic model directly addresses the demand for prostitution by criminalising sex buyers and third parties who profit from prostitution, while simultaneously protecting the victims and survivors of prostitution and trafficking.

The Coalition Against Trafficking in Women [CATWA] advocates that all penalties should apply to pimps, brothel owners and buyers of prostituted persons and that no penalties should apply to prostituted persons. To this effect, on page eight of its submission CATWA recommends that, at a bare minimum, the existing legislation be altered to raise the maximum penalty for causing or inducing prostitution, which is currently set at 50 penalty units or imprisonment for 12 months. CATWA further recommends that the penalties for soliciting clients by prostitutes be removed from the legislation. When sex buyers risk punishment, demand is decreased and the profitability of local prostitution markets is undermined. Without these markets, the trafficking of persons for prostitution can no longer be facilitated in the local context.

Of all the strategies available, the Nordic model is the most effective for countering the demand for prostitution. It is victim friendly and education based. Most importantly, research shows that it works. The adoption of the Nordic model would send a strong message that violence against women, in the form of prostitution, is unacceptable in the eyes of the New South Wales Government. CATWA notes that the Nordic model addresses the health challenges related to prostitution, as it includes the development and funding of comprehensive exit programs that assist prostituted persons to overcome trauma and exit the industry.

Page five of the CATWA submission cites a study of 854 people across nine countries who met the criteria for post-traumatic stress disorder. The CATWA submission also refers to research showing that women often find it difficult to exit the industry, even if they strongly wish to do so. In terms of social challenges, the Nordic model addresses the problem of sexual and physical violence towards women in prostitution. CATWA draws to the attention of the Committee a recent study by Melissa Farley and Neil Malamuth in the *Journal of Interpersonal Violence*, published online on 31 August. It compares the attitude of sex buyers with that of men who do not buy sex. The research found that men who buy sex are more likely to report having committed rape and other aggressive sexual acts. It said:

Our findings indicate that men who buy sex share certain key characteristics with men who are at risk for committing sexual aggression. Both groups tend to have a preference for impersonal sex, a fear of rejection by women, a history of having committed sexually aggressive acts and a hostile masculine self-identification. Those who buy sex, on average, have less empathy for women in prostitution and view them as intrinsically different from other women.

Whether prostitution is a job or sexual abuse has long been debated. The new findings support the view that prostitution is more like sexual abuse.

This research supports the view of the Swedish Government, which has named prostitution as both a site for and a cause of gender inequality, and links prostitution to broader trends of male violence against women. Additionally, on page four of our submission we note that there is evidence that the Nordic model has significantly reduced the problem of human trafficking. It is also important to note that trafficking abuses continue to exist in both legalised and decriminalised systems, and we have included examples of these on page six of our submission.

To conclude: CATWA also recommends that, as a matter of urgency, a special police task force be established to work with immigration officials to investigate these abuses in the sex industry and also that women working in brothels whilst they are on tourist visas should be afforded protection while any further visa issues are resolved. I want to emphasise here that women should be completely decriminalised. Further, we recommend that the Government establish programs that address the links between sex trafficking and prostitution. When the buyers risk punishment, the number of men who buy prostituted persons decreases and the local prostitution markets become less lucrative. Traffickers will then choose other and more profitable destinations.

The recent TIP report—which is the Trafficking in Persons report issued by the United States Government—lists Australia as a destination country for women and girls subjected to sex trafficking. We also recommend the funding of education programs that address sex buyers and the issue of demand. This would support the provisions set out in the United Nations preliminary protocol, which Australia ratified in 2005, which explicitly compels signatories to adopt legislative models as well as social and educational programs to discourage the demand for prostitution. Thank you.

CHAIR: I want to begin by just understanding your organisation a little bit better. You say that you have a category 2 consultative status with the United Nations Economic and Social Council. I am not quite sure what that means. Could you explain what that means?

Ms MEGARRY: We are an international organisation of which CATWA is the Australian part. To that end, we report to CATWA International and they have the consultative status. I do not have direct experience with that.

CHAIR: How many members do you have in Australia?

Ms MEGARRY: We have an executive committee of eight members at the moment.

Mrs MELINDA PAVEY: How many members generally?

Ms MEGARRY: We do not so much have a membership in terms of people do not pay fees to join or that kind of thing. We have a list of people we communicate with, which I would estimate to be around 100 people. There is not a formal membership.

CHAIR: In respect of your advocacy of the Nordic model, was your international organisation involved in the development of the Nordic model or does it simply, in a derivable sense, see it as being a desirable model in this area?

Ms MEGARRY: I am not sure if members of CATWA International were directly involved in consulting with the Swedish Government, but we are definitely an applicant for that approach.

CHAIR: In respect of countries like Canada and Northern Ireland, have they instituted the Nordic model throughout their jurisdictions?

Ms MEGARRY: From my understanding, Canada has implemented it to an extent—it is not the full adoption of the Nordic model—and Northern Ireland, which was, again, a recent adoption; it is my understanding it has adopted the Nordic model.

CHAIR: What is the extent to which Canada has adopted the Nordic model?

Ms MEGARRY: I would have to get back to you on that.

CHAIR: I want to ask you about a couple of other aspects of your paper. You say that a special task force should be established to work with immigration officials to investigate visa abuses in the sex industry. I do not know if you were here before lunch but we heard evidence from the Victorian unit of that police force. Are you advocating something similar to that or are you advocating something different to the Victorian unit?

Ms MEGARRY: Would you be able to explain to me what they said earlier?

CHAIR: I hope I am summarising this correctly. They seem to have a unit of about six police officers who liaise with the Federal Police and other agencies and who receive intelligence about sex trafficking, amongst other things, and then they feed that information back to local area commands to investigate further or to implement. Is that the kind of model that you are looking at? I would be interested in what you are envisaging.

Ms MEGARRY: The worry of CATWA is that when people are pulled up on a visa issue, what happens to the women involved there. So yes, it is something like the Victoria model, but also to make sure that those women are being looked after and do not incur further harm as a result of changes to their visa status.

CHAIR: Given that your organisation is particularly focused on the trafficking of women in Australia, can you give me your views and the evidence to support them about the extent of trafficking in Australia, with a particular emphasis on the sex industry?

Ms MEGARRY: From the point of view of our organisation it becomes difficult because there is difficulty in proving that a woman was trafficked for prostitution. That being said, we have been identified as a locus of this by a number of studies, which—

Mrs MELINDA PAVEY: Could you identify those studies?

Ms MEGARRY: The United States—

CHAIR: It is footnote 14 on page six, the US Department of State Trafficking in Persons Report.

Ms MEGARRY: That is correct.

Mrs MELINDA PAVEY: That is one.

CHAIR: That is the 2015 report.

Ms MEGARRY: That is the 2015 report, that is correct.

CHAIR: Given that I have not read that report yet, would you be able to summarise the evidence in support of that proposition?

Ms MEGARRY: Unfortunately, I would have to get back to you on that.

Mrs MELINDA PAVEY: You said there were numerous studies.

Ms MEGARRY: I am not sure off the top of my head, but I would be able to provide you with that.

CHAIR: We have obviously read some of the newspaper articles where there have been a small number of prosecutions for sex trafficking in New South Wales. Do you want to flesh out any additional information or anecdotal evidence or whatever you think might be helpful to assist us to understand the extent of sex trafficking in New South Wales, in particular, or Australia in general?

Ms MEGARRY: In my response to that I would point you to some of the other submissions to this inquiry. The Collective Shout organisation, from what I have read, talks a lot about what they call the Asianisation of brothels in New South Wales and also points to research which shows the number of women from the Asia-Pacific region that are working in these brothels. The concerns with that are often very low levels of English, which raises questions about how they can negotiate what is actually happening in those brothels.

As I was saying, because it is so difficult to prove somebody was trafficked—it does not follow a very particular script—it becomes difficult for us to ascertain what went on there. So in that sense we do not have great numbers or great statistics on what the rates of this actually are. However, if you look at the sheer number of Asian women that are in these brothels, who come from countries where it could be quite difficult to establish a visa, a pathway or a way to find the brothel they are going to work in, you have got to start to ask questions about who else is involved in that process.

CHAIR: I appreciate that this is a difficult area, but does your organisation have any ideas on how we can better get information or investigate the incidence of this sort of activity?

Ms MEGARRY: Our organisation is a very small non-government organisation, as I have already expressed. I think things need to be done around that, and what really needs to be done is around addressing the demand, because what we do know is that when there is demand this kind of thing becomes attractive to traffickers.

Ms JO HAYLEN: Thank you for your time, Jessica.

Ms MEGARRY: You are welcome.

Ms JO HAYLEN: Some of the issues you raise I am very sympathetic to. Some of them go to values about women's rights. I would call myself a feminist. Would you call yourself a feminist?

Ms MEGARRY: Yes; absolutely.

Ms JO HAYLEN: Do you not think some of the fundamental principles of feminism are about a woman's rights to choose what her direction in life is, what her occupation is?

Ms MEGARRY: Yes; absolutely. And I think often with these debates and what hopefully came through in the testimony I gave is that it is often boiled down to the issue of a woman's choice and a woman's right to do whatever she wants. However, if you look at it, basically, when all else fails for men they do not turn to prostitution. This is a highly gendered industry that plays into sex role stereotypes—the issue of the subordination of women and male dominance. I think it is very important to see all of that as connected. If there was not a climate in which men had the right to buy women—

Ms JO HAYLEN: Do you not think, though, fundamentally, if women are choosing to be a part of the sex industry, regardless of what type of sex services they are providing, that that is their right—that they should have the choice to do that? My issue with the Nordic model, I guess, is that it presumes some other evidence base that I do not think has quite been proven for our Committee yet, but it also means that you are taking away that right. Because, for want of a better phrase, the industry dries up if you make it illegal for the client.

Ms MEGARRY: Yes. That is why one of the key aspects of the Nordic model is dealing with exit programs and having supports in place for women to exit the industry. Because the prostitution itself is seen as a fundamental violation of women's rights and as a form of violence against women. It is very clearly understood that no penalty should be attached to those women involved, but also that they need to be supported in exiting the industry.

Ms JO HAYLEN: Sure. I guess one thing that does not sit in a common-sense view of these things, though, is that prostitution has been long referred to as the oldest profession in the world. Regardless of the framework that you put in place, do you not believe that that demand from men would always exist?

Ms MEGARRY: That kind of argument plays into ideas about men's sexuality being uncontrollable and does not see the social construction around sex as a social act, which happens in a social context. In particular in Victoria, where you have legalisation, that is a social context where there is a booming strip club industry and all these kinds of things as well. Sorry, I forget the earlier part—

Ms JO HAYLEN: I guess I have put to you that regardless of the structures that you put in place—

Ms MEGARRY: Oh, that it would always exist?

Ms JO HAYLEN: That that desire, natural or unnatural or whichever way you want to frame it, whether you have a moral view about that or not, is always going to exist. You are a feminist; I am a feminist. Would you not prioritise a woman's right to choose her destiny and her sense of employment? In this context perhaps your aims do not align with the Nordic model.

Ms MEGARRY: I think the aim of the Nordic model is to eradicate the implicit violence against women in the sex industry, which is a position that CATWA comes from. It is not a question of moralising sex or who should do what with whom; it is a question of addressing the inherent power relations in the sex industry, which I think are very visibly apparent. In terms of it being the oldest profession, that is an argument that is very commonly made as to why we actually cannot address the buyers or talk about the demand. The choice is always a woman's choice. Men have choices in this as well and they can make the choice not to buy sex, which is why the educative angle of the Nordic model is so strong. It is really about social change rather than harm minimisation. The legalisation and decriminalisation debates that we have in this country are based on harm minimisation policies, which have not been effective and that fundamentally ignore the fact that prostitution is in and of itself a form of harm.

Ms JO HAYLEN: So your focus and your motivations of your organisation are fundamentally moral ones then?

Ms MEGARRY: No, it is not; it is about social equality. There are a lot of other organisations—I could supply you with a list—that support this kind of thing. It is not moral in a religious sense. It is an issue with how violence against women is allowed to flourish in societies, it is connecting the fact that you can buy women in prostitution to the fact that we have huge levels of domestic violence in this country and it is about seeing all these things as interrelated, because prostitution does not just exist as one thing. It has further social implications.

Ms JO HAYLEN: With all due respect, I do not think your report or any evidence that we have received to date has proven any links between those particular industries and those social outcomes. I think we are going to disagree on a number of issues here, Jessica. I have one final question for you. How is your coalition funded in Australia?

Ms MEGARRY: By donations, and we basically do not have a lot of money.

Ms JO HAYLEN: Sure. Where do those donations come from?

Ms MEGARRY: Those donations come from members of the public. On our website we have an option to donate. I am not involved with the treasury aspect and I think it would be confidential where it comes from. We are talking a couple of hundred dollars. This is not big money.

Ms JO HAYLEN: So you are a very small organisation that receives donations primarily from the public.

Ms MEGARRY: Yes, and we pay membership fees as part of the executive committee.

Ms JO HAYLEN: Okay. Thank you for your time.

Ms MELANIE GIBBONS: One of CATWA's recommendations is that women on tourist visas be afforded protection whilst other visa issues are being resolved. What kinds of protection would you be looking at there?

Ms MEGARRY: Recognising that women in prostitution sometimes turn to that industry because of financial hardship; if we are talking about student visas and students who might be found to be in breach of their visa conditions, recognising the inequality in that situation; recognising that, when you have a prostitution industry, that option becomes available to women; and just making sure that they are not punished in that sense.

Ms MELANIE GIBBONS: Can you also briefly elaborate a little on the comprehensive exit programs for women wanting to leave the industry? Our Committee has heard about the difficulty that some women who may want to leave the industry face trying to find future occupations. Would that be part of your exit programs? What kinds of opportunities would be involved there?

Ms MEGARRY: That would definitely be part of the exit strategies. I would be happy to provide you with more information on what some of the—

Ms MELANIE GIBBONS: Yes—if you have any other ideas so that those opportunities are available for women that want them—because I think that is a tough one for women who do choose to leave the industry.

Ms MEGARRY: Also we do recognise how difficult it can be for women to leave the industry for economic problems, for issues attached with the way they are viewed by other people, having been in prostitution.

Ms MELANIE GIBBONS: Thank you.

CHAIR: I ask a concluding question. You refer to a study of 854 people currently or recently in prostitution across nine countries with a 68 per cent post-traumatic stress disorder [PTSD] finding. I have not read the article that you refer to. Do you know the nine countries that were involved?

Ms MEGARRY: No, not off the top of my head, I am sorry. I could find that out for you.

CHAIR: Do you know whether the article finds that they had PTSD symptoms before they started working in the sex industry or whether that was a consequence of working in the sex industry? What was the connection?

Ms MEGARRY: I would like to read that article again before I responded to that, but I imagine that Farley is arguing that it is from their experiences in the sex industry.

CHAIR: We might direct a number of written questions to you so you can take those on notice. Thank you for appearing before the Committee today. The Committee may wish to send you additional questions in writing the replies to which will form part of your evidence and will be made public. Would you be happy to provide a written reply within five business days to further questions?

Ms MEGARRY: Absolutely.

CHAIR: Thank you very much.

(The witness withdrew)

SAUL ISBISTER, President, Touching Base, private sex worker,

RACHEL WOTTON, Co-founder and committee member, Touching Base, sex worker,

JULIE BATES, Member, Touching Base, private sex worker, and

FLEUR DE LYS, Committee member of Touching Base and private sex worker, affirmed and examined:

CHAIR: I welcome representatives of Touching Base, Mr Saul Isbister; president and public officer, Ms Rachel Wotton, committee member—and Ms Wotton has provided a supplementary submission No. 136A; thank you, Ms Wotton—Ms Julie Bates, member; and Ms Fleur de Lys, committee member. Thank you for appearing before the 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?

Ms de LYS: No.

Ms BATES: No. I am also a planning consultant for the sex industry and have also been a researcher on the Law and Sex Worker Health Project under the tutelage of Professor Basil Donovan of Kirby Institute.

Ms WOTTON: No.

Mr ISBISTER: No.

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

Mr ISBISTER: As we are all appearing and have been given speaking rights we will be making a brief opening statement. Thank you so much for allowing Touching Base the opportunity to testify today. Over the past 15 years Touching Base has been humbled to have played an ongoing role in a remarkable transformation in the way that sexual expression of people with disability is now being supported by the disability support sector, not just in New South Wales or across Australia but around the world. In keeping with the broader focus, I would like to temporarily pull you back from the details of the matters you have been dealing with to consider a framework and lenses through which to review, reflect on and assess the evidence presented before you about the realities of the current complex and contorted legislative and regulatory landscape and its effect upon the capacity of the sex industry to comply.

I respectfully request that you seriously ask yourself if the arbitrary inconsistencies between the 152 primary LEPs regulating the sex industry and the haphazard application and enforcement of current law simply could have been avoided if decision-makers had better applied basic principles of law, had regard to the intentions of overarching laws and had developed regulations in strict accordance with the seven principles of better practice regulation as outlined by the Office of Better Regulation, which will be receiving your report. The first lens, broadly speaking, is the general intention of the Environmental Planning and Assessment Act zoning laws, that is, to enable the orderly cohabitation of compatible land use and developments regulated in accordance with the level required to minimise negative environmental and amenity impacts.

Secondly, I suggest you must take into account, as we did on the Sex Services Premises Planning Advisory Panel 2002-2004: Do current laws and regulations adhere to the primary town planning principle of equity and do they reflect that morality is not a relevant consideration when determining the permissibility of sex industry premises? Thirdly, are they consistent with the carefully designed framework of the reforms that decriminalise sex work in 1995? Politicians at that time provided an elegantly simple and cost-effective complaints-based system of regulation.

There was no anticipated requirement for local councils to consider DA applications, let alone to demand them, and clear limits were set on who could be considered a legitimate complainant. The intentions that guided those reforms are now reiterated in the current Government submission to this select committee, which states "objectives of any regulatory system for brothels should be the protection of residential amenity, protection of sex workers and safeguarding public health". But the current Government has curiously dropped the objective of eliminating corruption opportunities that was the primary reason for the reforms in 1995. In fact the word "corruption" is nowhere to be found in the current Government's submission to this inquiry.

Fourthly, and perhaps most importantly—and you will be interested in this bit—I ask that as part of your deliberations you have regard to section 4 of the Commonwealth Human Rights (Sexual Conduct) Act 1993. This Federal law expressly recognises the rights of consenting adults in Australia to engage in lawful sexual activities in private, free from arbitrary interference from all levels of government. In the context of this national law, which incorporates protections provided under article XV11 of the International Covenant on Civil and Political Rights, Australia's domestic laws and regulations must be reasonable, necessary and proportionate to the conduct the legislation is aimed at.

To the extent that a State law is inconsistent with this Federal law, the State law is invalid under section 109 of Australia's Constitution. I do hope you will take these overarching considerations on board before you begin developing your recommendations. We hope that you will take our advice to simplify the situation and, like good Liberals, avoid at all costs any temptation to add more layers of unnecessary red tape that could only add further confusion to many already bewildered local council staff.

CHAIR: There are only three of seven good Liberals—

Mr ISBISTER: If you read the principles of the Liberal Party, most of us would agree it is not the way they are applied. Just before I hand over to Rachel Wotton for her opening statement, I note that we could spend days rebutting factual errors in the submissions, and testimony of local councils if we went through them one by one. I will reserve my observations to just two statements made by the Local Government Association. Someone on the team who wrote that submission deserves a nomination for a writing award in romantic fiction. They insult our intelligence by preposterously proposing that local councils ban brothels to industrial zones in order to "provide privacy for the user". Geez Louise, pull the other one, you know, really!

The Local Government Association then further makes the claim that "home occupation (sex services) are usually permissible in most residential zones." As our recent up-to-date research undertaken with the University of Technology certainly shows, this statement is so far removed from reality it would, frankly, have to go into the category of fantasy and fairy tales. How could the peak body for local councils get it so wrong? I suggest you ask them that this afternoon when you get the opportunity to talk to them later.

CHAIR: What is the name of that Commonwealth Act?

Mr ISBISTER: Yes, I can almost quote it. It is the Human Rights (Sexual Conduct) Act 1993.

Ms WOTTON: I might not be so humorous. My name is Rachel Wotton. I have been a sex worker for more than 21 years now. I started off in full service brothels, and I have spent many years working in massage parlours. I have worked in Australia and also overseas, and now predominantly I work from my own home, which I bought through the proceeds of my sex-work dollars. I do some outcalls to some clients' homes and hotels when I choose. For the record, I see clients of all genders, not just men. Decriminalisation affords us the right to say "yes" but also the right to say "no", to choose whom we would like to provide services to, without fear of persecution, the threat of criminal record, standover tactics or blackmail.

I was the subject of a multi-award winning documentary called "Scarlet Road", which I hope you have all watched by now, which highlights my work with two of my clients with disability, as well as the work of Touching Base. It also highlights sex workers from all around the world supporting decriminalisation in New South Wales and speaks about the harmful effects other regulatory models have on us, our clients, our families and our friends. Decriminalisation supports both the diverse range of sexual services that can be negotiated openly and provided by sex workers as well as accommodating the location specific to both the sex worker and the clients' needs and circumstances. This includes people with disability as well.

It has been wonderful to see that at least 11 clients of sex workers, both male and female, have taken the time to write submissions to this Committee to support decriminalisation and the sex workers' voices. Private sex workers need to be treated equally as other home-based enterprises, as per our submission. As a private home-based sex worker, it is absolutely insane that from my own home I can work quietly, privately and anonymously with full authorisation from the City of Sydney without even having to inform them and, yet, if I had bought a house a mere 200 metres away, across the road in Marrickville Council, that I would be deemed illegal and could be right back to square one with the real fear and threat of corruption, standover tactics and now even private investigators trying to entrap me.

As this Select Committee appears to have a huge focus on massage parlours, I wish to remind members that I was the lead author of *Sex, Work and Massage*, which you have, that was funded by the Attorney General's Department and the Crime Prevention Division in 2000-01. I trust the full Committee has read both the final resource and the final report. I have also tabled the full detailed statistics pertaining to the Summary Offences Act 16, 17, 18 and 18A, which you have asked other people who have presented here, but I seem to be the only who has taken the time to get them and have provided them for you.

I truly believe that if the Attorney General's Office had acted upon my recommendations 14 years ago, and the planning department had endorsed and supported the guidelines in 2004 that we would not be wasting so much time and money being here today. I have extensive experience working in massage parlours and still to this day offer adult massage, and it covers about half my business. I am happy to answer any further questions about the massage sector you may have. I would also like to table a document within the next five working days with detailed answers to the questions you have raised so far during this inquiry and whatever else you may raise today in regard to massage parlours. I have the full list of questions so far here for you.

Decriminalisation allows us to be able to start trusting the police enough to report crimes committed against us or other people, and we would like that to remain so and keep them out of our regulations—and our bedrooms. If you want real solutions for real people then we have presented a whole range of fiscally responsible, easy to implement solutions that all key stakeholders can openly embrace and support. You should continue to be led by the original intentions and principles of decriminalisation. While different political parties are represented on this select committee it is imperative to remember that it was through strong leadership and a bipartisan vote in 1995 that decriminalisation came to be.

Ms BATES: My mother said that I did not have a sense of humour—she has gone to God—but had she been here today I think she would have agreed that I do. The benefit of me being here today is the breadth of my experience as a paid consultant for the sex industry for the past 15 or so years. I was also the first sex industry liaison officer [SILO] appointed to a local council, that is, the former South Sydney Council from which the City of Sydney has picked up the first policy that was developed around the sex industry, and of course, has since expanded upon that. I have conducted more than 15 or more DAs in this time.

I have assisted other town planners. I have also worked in other areas of compliance and problem-solving, trouble-shooting if you like, for the sex industry. I was also a researcher on the Law and Sexworker Health [LASH] project, as I said. One of the things I want to pick up from where Professor Donovan left off the other day is that when we went into the industry we randomly selected 20 brothels within a 20-kilometre radius of the central business district. We did not determine, we did not seek to know nor did we care whether they had development consent or not. We simply knocked on the door, and as one does, we got in and we were well received.

So we do not have a system, like they have in Victoria. We went down to Victoria to conduct that research and we had great difficulty. The only brothels we actually got into there were the licensed ones because they are the only brothels that the funded sex worker organisation gets into. They are mandated to go into licensed brothels only. Thanks very much for the opportunity to speak. There is no greater evidence that can be presented to an inquiry such as this than the lived experiences of those involved. We can truly testify to the benefits of decriminalisation but, importantly, from a planning perspective, what I call the structural inequality and the impediments experienced under the current regulatory regime.

The problem is not bad brothels, or bad brothel owners, or massage parlours, or bad operators deliberately flouting the laws. From my considerable experience it is the unreasonable and restricted planning controls and processes councils have put in place to thwart the planning process. Councillors' determination—as I have seen in so many cases of sex services premises—of development approvals [DAs] that come before them rarely consider their merits, and emotion, moral argument and re-election prospects are allowed to guide the decision-making process. While these attitudes, prejudices and processes are allowed to continue, there can never be a level playing field for the sex industry land use in New South Wales. I am afraid and disturbed by the fact that many sex workers and operators are still unable to gain from the broader benefit of decriminalisation.

Massage parlours—also known as brothels—have always been and will always be a commercial activity largely found above shops, in commercial strips and local business zones right across New South Wales and are totally unsuited, given the predominantly female workforce, to the dangerous and isolated environment of industrial zones. For the record, I would like it noted that the majority of local environmental plans [LEPs] made since late 2008 are quantifiably unnecessarily restrictive. For many years—despite the best intentions of

my colleagues, the Sex Services Planning Advisory Committee and the guidelines that they sweated blood, sweat and tears over—councils have been largely left to their own devices when developing planning controls for the local sex industry, and therein lies the problem.

Without guidance, broad-based discrimination has been allowed to flourish across the majority of local government areas. Added to this is the further manipulation of planning controls by developing, and giving greater weight to, the development control plans [DCPs] over local environmental plans, which is a statutory document—the law. As an example, Sutherland Shire Council, in its submission to the New South Wales Standing Committee on State Development in April 2009, described how many councils—including themselves—used their development control plan to overcome LEP provisions they do not like. In an article published in the *New Planner* issue for December 2011 in responding to the frustration of LEP provisions created by councils, Richard Smyth, who was here earlier today, director of Smyth Planning, stated:

This sort of frustration of LEP provisions, through the DCP has been going on for many years... Some councils that want to make things really difficult make new a DCP or a new chapter in the DCP for a single use such as a brothel or prayer hall. It is hoped that the new Act [Environmental Planning Assessment Act 1979] will see provisions to prevent this unfortunate practice that many councils use in their DCP to prevent uses they do not like where the LEP might permit them.

I would like to tender a copy of the instructions and guidelines from the Environmental Planning and Assessment Amendment Act, which talks about how not to give excessive weight to a DCP over the guiding document, the LEP. There will be no real policy outcomes or benefits for anyone when it is purely about playing politics. From my position, that is what I see all the time. I have already tendered case studies, so you can look at those. They are experiences of a number of my clients, so I will leave it with you to decide whether the treatment has been reasonable, just and proportionate. The negative messages out of these experiences might send a message to others who are contemplating establishing sex services premises.

Finally, decriminalisation enables operators to embrace or realise their rights and responsibilities, if given the opportunity. I work for many operators of sex services premises and for sex workers. It has enabled access to services and decreased social stigma, and raises our voices and enables us to articulate our needs. What we should be focusing on is not more enforcement and how we can catch out another hand job up in Hornsby, but making sex work safe. Overregulation and licensing with or without registration has only one outcome, and that is to diminish the power sex workers have over our lives and livelihoods. It increases the conditions of vulnerability and potential for corruption. Make sex safe or unsafe; it is your choice.

Ms de LYS: I have been a sex worker for 10 years and have been on the Touching Base committee for three years. I am speaking today in my role as a committee member of Touching Base and also as an individual private sex worker. I have worked in brothels, massage parlours and dungeons in Australia and overseas, and I have done street-based sex work. As a sex worker I have lived experience of the overwhelming positive impacts that decriminalisation has at personal and professional levels. In my early years in the sex industry in Victoria I worked under an oppressive sex industry licensing framework—working legally as a private sex worker in Victoria means registration. To the best of my knowledge, it is utterly impossible to get off the register, even if you die. Licensing and registration creates a world of problems for sex workers and I would be happy to provide a written statement to the Committee in the next week outlining those problems.

I once worked at a massage parlour in Sydney, thinking I would make an awful lot of money offering full service. For anyone not familiar with the terminology, full service in this instance refers to oral sex with a condom on the client, and penis in vagina sexual intercourse, also with a condom. The client is allowed to orgasm once. This is a surprisingly important detail. So I was working in the massage parlour thinking I would cash in by offering full service to clients for a sneaky extra charge instead of the usual hand job. Much to my dismay, not a single client took me up on my very generous offer and I quit after a week because I was so sick of giving hand jobs. I was not aware whether the massage parlour had a DA or not. At the time, I did not even know what a DA was.

Finally, on behalf of a wider group of my peers, I would like to identify the four areas we believe the select committee should focus on to find solutions to the issues raised in this process by a vocal minority of councils. The first is zoning. Allow sex services premises in commercial and mixed-use zones, where appropriate, and also remove the definition of "home occupation sex services" from the standard instrument LEP to stop the current practice of local councils banning us. The second area is definitions. Remove home-based sex workers from the definitions of a "brothel". Thirdly, update the 2004 Sex Services Premises Planning Guidelines. Fourthly, promote delegated decision-making to local councils to de-politicise the development approval process. We suggest the Committee saves time by looking for solutions where sex industry planning

and enforcement is working, such as City of Sydney in regard to zoning, and Marrickville Council in regard to enforcement actions, but obviously not Marrickville Council in regard to zoning. My final point is: No-one has ever died from an unapproved hand job.

Ms MELANIE GIBBONS: Before we continue, can I pick up on one comment?

CHAIR: Yes, please.

Ms MELANIE GIBBONS: I do not believe to it to be a conflict of interest, but I should mention, Ms Bates, that I was on Sutherland Shire Council in 2009 when that DA went through. I do not see it as a conflict of interest, but I feel I should be up-front.

Ms BATES: Thank you.

CHAIR: Thank you very much. In your paper you identify that ground-floor locations in local government areas are largely not permitted to operate as sex service premises. For the purposes of servicing disabled clients, does that mean you tend to provide services in their home or how do you service them?

Mr ISBISTER: This has been an ongoing issue for many clients with disability, particularly those with mobility issues, obviously. Even though a brothel may be upstairs, it does not mean that they cannot cater for some people with disability such as people who are blind or people who do not have mobility issues. In fact, if you watch the documentary *Scarlet Road* you will hear the story of a mother who carried her son upstairs so he could get access to services. That is not the first time I have heard of that happening. That is considered to be an extremely undignified process for people with disability. People will still attempt to access premises, even if they have those types of obstructive barriers, but it creates large problems for them. My colleague Ms Wotton would like to speak.

Ms WOTTON: The thing with decriminalisation is that it gives people options. Some people with disability may be 55 years old and still living at home with their parents because they have adapted their house to best meet their needs, so they want a bit of privacy—just like all of us here would. Some people want to seek services from sex workers that may be in a sex worker's own home, a motel or a hotel, or they want to go to a sex services premises just like other clients. So we should be able to provide options. The reason why councils often have not allowed ground-floor access is because of the ridiculous "What about the children?"

You cannot just walk into a sex services premises. You have to ring the doorbell. Obviously if someone is below the age of 18 they are not going to ever be able to get access. It is not an open-door policy. The reality is that some of us provide services to clients in their own homes. If they need an electric hoist then we may need to go and see them. But some people who do not have such mobility issues will come to see us. Or if there are no sex services premises in their area then sometimes clients have booked a hotel or a motel and we will meet them there. Their carer or their support staff can give them the normal shower facilities and have them really comfortable in bed and we can come and meet them. Does that answer your question?

CHAIR: Yes, thank you.

Mrs MELINDA PAVEY: Tell us what you think about the Swedish model that is being supported by some jurisdictions.

Ms WOTTON: It is ridiculous. You should look at the fantastic report that was written by Bob Wallace from the Prostitution Licensing Authority [PLA] in Queensland. I have worked in Sweden and it is abhorrent. It does not support us; it treats us as victims. Can you see a victim here at this table, or in any of the other sex workers who have already presented to you? We are independent. We have autonomy over ourselves. I would be happy to speak to you more and present stuff around the Swedish model. But, honestly, there is so much evidence. There are so many YouTube clips. Look up Pye Jakobsson from Rose Alliance, the sex worker organisation in Sweden. There has been research done. It should not even be on the table or mentioned.

Ms BATES: In Australia we had a measure of how things were before. The Law and Sexworker Health [LASH] project has been going on now for over 10 years. We knew the state of the industry and we knew the size of it. We knew what it was like before decriminalisation and we can measure the improvements. Unlike Australia, in Sweden there was no measure and no standard. Nobody had any idea of the numbers of street-based sex workers or those who worked from home in Sweden. Whatever they say about decreasing the

industry in size, that is without any bearing on any fact whatsoever because there was no research done beforehand to give you a benchmark of the industry.

Ms WOTTON: I think what people do not realise is that we like our clients and that clients should not be treated as monsters. I pay my mortgage and we pay our rents from our ability to do our jobs. Even on that very fact alone the Swedish model has got it completely back-to-front, upside down and completely wrong by treating us as victims and treating them as evil monsters. Go back to *Scarlet Road* and tell me that John or Mark, who have multiple sclerosis or cerebral palsy, are raping me. It is absolutely abhorrent. We should not waste time speaking for a moment more about it.

Ms de LYS: The Swedish model means that clients are unwilling to share information that would help us screen them to determine whether or not they are someone we would like to see. Clients in Sweden do not want to provide the sort of information that sex workers would use to screen them because they are worried that the person is not a sex worker but a police officer posing as a sex worker in order to entrap the client. That is another consideration.

Mr ISBISTER: The final point I would make in regard to that question is that many people with disability, because of the nature of their disability, lead foreshortened lives. In the last three years since *Scarlet Road* has come out, John Blades has died. Mark Manitta has died. And Gary Fulcher, who had been an MC at our last two public events and was a wonderful man—a psychologist who had suffered incredible burns and then became a counsellor for other people who had received burns and worked for the Multiple Sclerosis Society—has also died. We have also had clients who have been referred to us, and there is reference to this in the Northcott submission, where people who, due to the nature of their progressive disease, are going to die perhaps before they even reach the age of 20. When we are talking about criminalising clients, let us keep in mind that for some of these people the opportunity to access sex workers is something which they consider a blessing. I think to demonise them is an insult to all of us.

Mrs MELINDA PAVEY: Ms Wotton, I agree with what you said: You certainly do not come across as victims. But that is not always the case, and that goes for any industry. Do you have any views on the changing nature of the industry? I will ask you first, Ms Bates. You have worked both pre and post 1995. What is the best way forward to ensure that we do not have victims and we have a strong system supporting women, men and their choices?

Ms BATES: We should retain the current regime of decriminalisation with reasonable regulation of sex industry land uses. I personally have a number of prostitution-related charges. They are probably off the record now because they were 15 or 20 years ago; nevertheless, I had to live through that process of being a criminal and being brought before the courts. It is a horrible place to be. When the police were my regulator they could never be my protector. What I see now is if somebody is being stood over or is being coerced or whatever, first of all, they can go to the Sex Workers Outreach Project [SWOP]. They can also report incidents that have occurred to them, either poor work practices or they might have had an ugly mug incident. Then they can go to the police and they can expect equal treatment.

Before decriminalisation you did not go within cooee of the police because they simply could not be trusted. You could not trust them because one day they are arresting you so how could you be sure that the next day they are really going to take your claims seriously? Decriminalisation has raised our voices. It has empowered us. In all my years I cannot see another regime that can protect our human rights any more than we have in New South Wales and in New Zealand.

Mr ALEX GREENWICH: Ms Bates, we have heard from councils, including Camden Council this morning, Hornsby Shire Council and others. For better or worse, the council staff struggle with this sector. We have heard from public health experts who talk about the low rates of sexually transmissible infections [STIs]. We have heard from sex workers who talk about how empowering the system is in New South Wales. We have heard from groups who say that the police and sex workers have a really good relationship in terms of sharing information. The issue seems to be with councils. You have had a lot of experience in dealing with councils. How do we deal with what can be described in some of cases as an unhelpful, adversarial relationship, potentially from both sides? How do you see us mitigating that adversarial relationship between sex work premises and councils?

Ms BATES: If I had one wish it would be that we would revisit the Sex Services Premises Planning Guidelines and that they will be taken seriously this time. They need a small dusting off and a bit of a review.

I would suggest that you set up an expert panel to review and revise those. As I said, reforms happened without any instructional guidance to councils so they were left floundering. They were left in the dark. They were left with the old kind of concept of the criminality of sex work, which there was because it was an illegal activity.

So they needed some help. I have to say that I have worked very effectively with council officers across New South Wales. In all but two of my development applications over those 15 years I have received recommendation for approval. It is all about location, location, location. We try to select sites that meet the requirements, so you can tick the boxes. A lot of councils, as in the case of Camden Council, might permit a sex services premises within two of their industrial zones. But they are even further corralled away in the land coloured pink on the map, and then you have all of these other hurdles to jump through. So getting a recommendation for approval does not help you when you get to a council meeting. It is very rare that council officers can make decisions at that level. So it is up to the councillors, and that is when everything goes belly up.

Mr ALEX GREENWICH: You mentioned in your introductory statement safety risks with locating sex work premises in industrial areas. Could you please elaborate on that?

Ms BATES: I can share the experience of one of my clients. In an outer western council area they permitted brothels to be in a particular zone. But, once again, they were corralled. If you look at the maps you can see that there are dark-edged lines. So there is an industrial zone—where there is mechanical work, car crunching and wrecking, and other things going on—but brothels are not even considered good enough to be in that zone. They are corralled even further. Then there are issues around separation distances and location controls. My client lodged an application that met the principal objectives of the planning controls. It was refused at a council meeting.

My client managed to find the money to take it to the NSW Land and Environment Court—and, by the way, that can cost anywhere up to \$50,000; meanwhile you still have to secure a site and pay dead rent money. If you win at court you then have to set the premises up; in an industrial zone you have to turn an aeroplane hangar in which you could land a Boeing 747 into a brothel. It is ridiculous. My clients were women. A lot of my clients are women—a lot of my clients are women who have been sex workers themselves and who may now be getting on. They have somehow managed to scrape together a few bob and they want to run their own shop. Setting up this place cost my client every single cent they could muster.

We won at the Land and Environment Court. So they set about running the business. But come seven o'clock at night, even with an Alsatian dog in the garage, they were too scared to be out there. So as a condition, councils often add the fact that you have to have security guards. They know that they have put you in a place that is so damn dangerous that you have to find more money, on top of your other security measures, to employ a security guard, because it is mandated in the conditions of consent. So there are more costs involved. It is not a licence to print money; it is a hard slog. So these women had to sell up probably within seven months—at a loss. That was their experience.

Mr ISBISTER: Just to add to that, when the process in the disability sector began to deinstitutionalise the care of people with disability the concept of group homes was brought to the community. So many people in the community had fears around people with disability that councils were rejecting their zoning in their natural locations. So in the end a State Environmental Planning Policy [SEPP] had to be created in order to force councils to accept that people with disability are equal members of our society and have the right to exist within the same zones as other people. I would just ask respectfully that the Committee consider treating sex workers with the same regard as you do other members of society.

Mr ALEX GREENWICH: Ms Wotton, in the SWAM report one of the recommendations is the development of a terminology guideline for both therapeutic massage therapists and the sex industry. We have heard from a lot of different groups that we can have, say, in the City of Sydney erotic massage parlours and we can have in the suburbs massage parlours where unauthorised sex work may allegedly be occurring. How do you see us defining it so that it is quite clear to the local community, which is important, quite clear to the clients and quite clear to the people who actually work in those massage parlours? How do we define the different uses to make sure that there is transparency?

Ms WOTTON: I would like to be on that expert panel to be able to write it. Even in the first two days of the oral presentations before this inquiry it was disturbing to see that people from councils were using the wrong terminology. There was a question asked, "So massage parlours get a development application?" And the council officer, I think they were from Hornsby, said yes. So you can see already that the wrong terminology is

used all over the place. Everyone is using the same words, but everyone has different ideas about what they mean. Once again, it is about going back and revisiting the guidelines. There were very clear definitions there—

Mr ALEX GREENWICH: So these are the guidelines from 2004?

Ms WOTTON: Yes, these are the 2004 sex services premises planning advisory panel guidelines. As the Committee will see from the recommendations I did for the sex worker massage resource, the final report in 2001, we need clear definitions—because you do not know what you do not know. Before 1995 all sex industry premises had to hide behind hairdressing salons, saunas, spa places and massage places. There was no public announcement when decriminalisation suddenly came in. There has been no real, genuine attempt by the Government to publicly share this information openly and honestly with the public. These are such loaded terms: prostitute, brothel and massage parlour. By the time the application gets to being voted on by the councillors of course people have these knee-jerk reactions. They have no idea.

I always laugh when people say, "Clean up your room, it looks like a brothel," because in fact all the brothels I have worked in, including my own house, have been immaculate. It is about working with the industry. As Janelle Fawkes from the Scarlett Alliance said on the second day of hearings, we have a unique situation in New South Wales where the sex industry is willing and able and wanting to embrace the fact that it is a legally recognised occupation. It is now a planning issue; the police are no longer knocking on our doors wanting their cut of our money. So clear terminology guidelines are needed, and in multiple languages.

We have to go back to the beginning. In 1995 there were three main areas involved. First of all there was health. They picked up the ball and ran with it. They worked hard to produce resources around sexual health in multiple languages. Secondly, WorkCover made resources as well in multiple languages not just in English. There were workshops, resources and a video. Thirdly, local councils were involved. And what happened? There was a massive void, and that is where we still are today. When you have a void you have blackness and darkness and then corruption, which we have already heard is happening. There is miscommunication and all the problems of power inequality that have come from councils.

We need to revisit and update the guidelines. Further to that, as we said in our submission, there needs to be rolled out really good education workshops run by key stakeholders—that is, us; and we are very good at running workshops—so that all the councils know and are on the same page. We need to get the definitions right, because if people are talking about massage and one person is thinking one thing and another person is thinking another then we are going to keep having this issue. One of the questions I have, which I will submit to you later, is from somebody asking the other day why women who work in massage parlours identify as massage workers? When you work in a massage parlour you are a massage parlour worker because you are just choosing to give hand jobs. So we have to be clear about this. I think that is a good starting point, and the guidelines are where we start.

Mr ISBISTER: I note briefly that one of the critical problems we are facing is something that happened back shortly after decriminalisation. The "Minister for brothels" at the time, though he did not want to be known as that, was Craig Knowles, the Minister for Planning. His department was developing guidelines and had got to the point where those were within weeks of being released. But my understanding from the documents I have received through the planning department making them available to me is that his signature was on a bit of paper with the words, "Get this sorted out soon. I do not want to spend any more time on it."

The obstacle at that point was the home-based sector and they decided that they could not come up with a solution that would be palatable to local councils. At that point Craig Knowles put out the unilateral decision that councils may prohibit brothels and only permit them in industrial zones. That has been echoing through since 1996 as a part of the problem. Since then it has been acknowledged as a problem and the guidance from Government has changed since then. Unilateral decision-making is known to be poor policy development and this is what has often led to the situations we find ourselves in now.

Ms MELANIE GIBBONS: We have asked this of every other group appearing before this Committee: How many members does Touching Base have?

Mr ISBISTER: We have approximately between 80 and 90 current paid-up members in regard to individual members, but we also have up to 14 affiliate members, which includes organisations such as People with Disability Australia Inc, Family Planning, Cerebral Palsy Alliance—all of which are very large service providers—along with some accessible premises that have come on board. We run a referral list that has sex

workers and accessible premises. Some quite amazing premises have been built with fantastic facilities for people with disability.

CHAIR: Are those 80 people who are your members, not the affiliate members, a combination of sex workers and clients or are they mainly sex workers?

Mr ISBISTER: We do have more sex workers than clients on the committee, that is undoubted, but we also have a number of other open members. We do not restrict our membership to sex workers and people with disability. However, in our constitution the majority of positions on our committee must be held by sex workers and people with disability, and the positions of president and vice president are reserved for members of those communities—in order for us, under the principles of empowering marginalised communities, to direct the direction in accordance with our needs, not other people's organisational needs.

CHAIR: How many people are on your committee?

Mr ISBISTER: We have nine members on our committee. We have a capacity for up to nine and currently we are two short, but we have just found a new woman with a disability, a spinal cord injury survivor, who is coming on board.

Ms WOTTON: Alister, you could become an individual member of Touching Base. We accept everyone as long as you are paid up and follow the aims and objectives.

CHAIR: I hope you will not be offended if I do not take up that offer.

Mrs MELINDA PAVEY: An area of great community concern is the idea that women are being trafficked and held against their will and that brothels are being used as a cover for organised crime. Would you share with us any knowledge you have of these circumstances across the industry now and in the past?

Mr ISBISTER: I have been working in the industry for more than 20 years here and in New Zealand, and through all those experiences I have never personally met a person who has been trafficked. You can take on board the fact that as sex workers, particularly sex workers in Touching Base, we are compassionate whores, I guess you could say. But we are not compassionate just to meet the needs of our clients; we are also compassionate about the working conditions of our peers. It is just as disturbing to us if we hear that someone is being held without their consent or they have other negative circumstances arising from the conditions of their work. However, the overall evidence is that this is far more inflated in the media than we meet in physical reality.

CHAIR: Do you have on your executive anyone from South-East Asia or Eastern Europe?

Mr ISBISTER: We do not at this point. However—

CHAIR: It is fair to say that New Zealand is not really the likely location of sex trafficking in Australia.

Ms WOTTON: I would like to say that there is no-one from South-East Asia on this Committee either. I am not sure why you are asking about the demographics.

CHAIR: I do not think it suggests that members of Parliament are being sex trafficked. That is not the evidence at this stage, but—

Ms WOTTON: I think we need to support Scarlett Alliance.

CHAIR: We need to focus on what the evidence is.

Ms WOTTON: We need to go back to Scarlett Alliance's submissions not just for this Committee but over the years and with the alliance's migration project officers and peer sex workers who are employed. There should be more paid positions in the sex worker organisations around Australia to best meet the needs of people whose first language is not English. I have worked in countries where I do not speak the language and it is really not difficult to negotiate safe-sex practices and my work when neither I nor my client speaks the same language. We need to get off the table that just because English is not someone's first language, it does not mean—

Ms BATES: I have had that experience, too.

Ms ELENI PETINOS: With all due respect, we are talking about the trafficking of people, not people who do not understand what is happening. I think you are getting off the point of the Chair's question.

Mr ISBISTER: The reality is for people who are sex workers and would like to come to work in Australia, there is no capacity for them to lawfully gain a visa to do that work, yet for many people around the world economic migration happens to better their circumstances. My understanding is that most of the workers considered to be trafficked have in fact come to Australia entirely of their own will, but they have not been able to get a lawful process to do that, hence the problem.

Mrs MELINDA PAVEY: We have not addressed the issue of organised crime.

Ms de LYS: I have never—

Mrs MELINDA PAVEY: Ms De Lys, do you want to say something on sex trafficking?

Ms de LYS: No, I was going to comment on organised crime, although on sex trafficking, if it was a systemic issue as the media leads us to believe, sex workers would be the first people getting support services for the trafficked people.

CHAIR: But there have been criminal prosecutions. It is not a fantasy; there actually have been cases proved beyond reasonable doubt in a court of law. We are not talking about some sort of made-up problem; there is an issue.

Mr ISBISTER: Considering that there are 200 brothels within 20 kilometres of the central business district and an estimated minimum 200 other brothels operating in New South Wales, I do not think we can consider that this could in any way be a systemic issue because there are not that many cases in New South Wales.

Ms WOTTON: Can I bring your attention to something that happened a few years ago in Sydney. They did a systematic sweep of restaurants, including Doyles, which is a very well-known seafood restaurant, and they found quite a number of people who either did not have the correct documentation or had been forced to work 12 to 16 hours out the back washing dishes or cooking—

CHAIR: [REDACTED].

Ms WOTTON: When we look at the number of people who have gone through the court system for sex trafficking compared to the amount of people got caught up in the restaurant raid, we are not having a select committee trying to shut down all restaurants and saying all restaurants are really bad.

Ms ELENI PETINOS: We are not looking at shutting down the industry. We are trying to protect the people who may be vulnerable.

Ms WOTTON: Exactly; and how did they do it in the restaurants?

Ms ELENI PETINOS: From the responses that have been given, very honestly I feel that the representation given at this point in time is that because none of the people present feel it is an issue, you do not really want this Committee to investigate the trafficking of people any further. As a compassionate organisation, I would expect you to be concerned about all people even if they are a minority in the current situation.

Ms WOTTON: We are, but this is the first time I think that the trafficking of people has been brought up. What happens is there is always a slippery slope within a millisecond. Of course we care, as we have said, about anyone who is forced to do anything. I care about people at the back of Doyles and other restaurants being forced to cook or clean for long hours and not getting paid enough. But there is always a slippery slope to make these things about sex trafficking victims. We need to go back to the evidence you have already had time and time again from Scarlett Alliance, the peak Federal sex worker organisation that we are all members of, and go back to that research and testimony. I guess we are all annoyed about it, because at which point will you start believing and hearing our voices and the research that goes with them?

Ms ELANI PETINOS: So you are saying that we are not listening?

Mr ISBISTER: The point is that the demographic that Touching Base serves is sex workers and people with disability who give consent. You have a valid concern, and we are also concerned about the few occasions when those circumstances occur. Scarlet Alliance and Jules Kim from their migration project are by far the best people to respond to those questions.

Ms BATES: Could I add a point about the research on coercion or sex trafficking?

CHAIR: Very quickly, please.

Ms BATES: I suggest you go to the Salvation Army, which has the statistics and will clearly tell you that the largest number of women who are being held against their will, coerced or trafficked in this country are here under forced marriage. The other group of people who are here in unhealthy circumstances are those working in factories and the farm sector. Sex workers make up a very small number. I can provide the Salvation Army contacts to the Committee.

Ms MELANIE GIBBONS: Your first recommendation is that councils allow sex service premises in commercial and mixed use zones within the local government area. I notice you have added the words "where appropriate". Where would not be appropriate? What locations should sex service premises not be located in?

Mr ISBISTER: Industrial zones are clearly unsuitable. I do not know how many times I have seen reports of brothels being robbed in industrial zones.

Ms MELANIE GIBBONS: I am referring to commercial and mixed use zones. I understand the issue with industrial zones.

Mr ISBISTER: The reality is that a large number of sex service premises already exists in commercial and mixed zones.

CHAIR: Would you reverse the current arrangement? Would you say that it is okay to have them close to schools, churches and residential areas but not in industrial areas, where a lot of councils now want them?

Mr ISBISTER: Absolutely. The question that really has to be asked is: After 20 years of decriminalisation, can you provide any evidence of children being harmed from the location of brothels?

CHAIR: Under the current laws, brothels are not supposed to be near those premises.

Mr ISBISTER: They are already there. They already exist in commercial and mixed use zones across most of the local council areas. None of them is reporting amenity complaints about those commercial premises.

Ms BATES: In the City of Sydney, which has probably the biggest sex industry in the Southern Hemisphere, the majority of sex services premises are in residential buildings. We all have sex in our homes. We have all had sex. We have children.

Ms MELANIE GIBBONS: You are being flippant. I am looking for an answer. In the submission, where you talk about commercial and mixed use zones, you have added the words "where appropriate". Where is not appropriate?

CHAIR: In commercial and mixed use zones.

Ms WOTTON: That is micromanaging. We would need a further conversation about that.

Mr ALEX GREENWICH: Would you take that on notice and flesh it out? I have additional questions to put on notice.

Ms MELANIE GIBBONS: You have given the Committee a lot of your time. I am sure members will have more questions on the information you have provided.

Ms WOTTON: We would be delighted to add to the list of questions.

Ms MELANIE GIBBONS: Thank you.

CHAIR: Thank you for appearing before the 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 to any further questions within five business days?

Mr ISBISTER: Yes, providing that they are within the ambit of what we are able to provide.

CHAIR: You should feel free to say, "I do not feel qualified to answer this question," or "I cannot further assist you." That is an appropriate response. The Committee is not asking you to do something you are not comfortable with.

Mr ISBISTER: That is good to hear. Frankly, we are all exhausted from wanting to put together the best information that we can. The interests of sex workers are perfectly aligned with the Government's preferred outcomes. There is no division between what we think and what the Government thinks.

CHAIR: That is for us to decide.

Mr ISBISTER: I mean according to the Cabinet submission.

Ms WOTTON: Would you like a copy of the questions about massage parlours that I am going to answer, so that you can add to it?

Ms MELANIE GIBBONS: That would be helpful. Thank you.

CHAIR: Thank you very much for your evidence.

(The witnesses withdrew)

NOEL HENRY BAUM, Director, Policy, Local Government NSW, affirmed and examined:

JENNIFER DENNIS, Senior Policy Officer, Planning, Local Government NSW, sworn and examined:

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

Mr BAUM: I am happy to tender our statement, to save time.

CHAIR: Thank you. If there is anything in the written statement that you would like to emphasise to the Committee, please do.

Mr BAUM: Local Government NSW are happy to be here and to give what evidence we can to assist the inquiry. Our position is made clear in the submission. On the whole, Local Government NSW, based on feedback from our members, supports the current system, except where there are problems with unapproved sex services premises. That is where our members tell us that they have the greatest difficulty. That is their number one complaint. After hearing the evidence of the previous witnesses, we would probably support what they said about definitions. A lot of work needs to be done there, because over the past 20 years definitions have drifted. That is a sufficient summary of our position.

CHAIR: Ms Dennis, was there anything that you wanted to add before we open up for questioning?

Ms DENNIS: I suppose we are here more in the capacity of planning issues; that was the focus of our paper. Councils do permit sex premises—they are required to permit sex premises across their local government areas. The debate is around the scope and the location, because that is really where the argument is or where the difference of opinion may be. But communities are different on this, depending on their location and their sensitivities around this activity, so we have a very relevant discussion about where those locations are considered to be discreet or appropriate. I think that is the nub of the planning issues.

But the law itself is quite robust. The definitions in the LEPs are well considered, but we all agree there is a definition around massage parlours, and that is very problematic for everybody, whether it is or is not, or what it is. We agree that that is problematic. But the changes that came in under the LEP in 2005-06 were mandated on councils; councils have adopted those definitions, which are sex service premises—which means a brothel—or there are sex premises called home occupation sex services; they have to be applied. The debate is where are they applied and where do the zonings allow those activities, and that is where the debate is.

CHAIR: I will kick off with this question: There has been a bit of interest in home-based sex services and the planning laws around those. The starting position is that, perhaps with the exception of the City of Sydney and maybe somewhere else, but not very many local government areas, you need a DA to work from home if you are a sex worker. I think it is fair to say that we have not heard any evidence of any high degree of either applications or the granting of approvals to work from home. But equally it would seem that if people are working from home in the sex industry—and they no doubt are—there does not seem to have been, to my knowledge, any instance of local councils seeking to enforce breaches of the planning law around home-based sex work as opposed to massage parlours, where there seems to have been most local government activity. Is that a fair summary of the position, or have I missed something?

Ms DENNIS: That is actually probably a good observation. I think the purpose of the home-based definition of sex services in 2006 was actually to enable more clearly what would be considered as what is called a bona fide home occupation. I think councils have been concerned about making that permissible across all residential areas; hence, only a couple of councils, as you say—to my knowledge anyway—have made what is called self-development. They are permissible, from what I read; they become fiscal but they need DA consent. Reading the submissions from Touching Base, I think it was, they say the industry itself does not really want to apply for a DA. I do not know whether that is true. I just read that.

CHAIR: We have heard similar evidence in respect of Victoria, too, in fairness. I think one of the sex workers in Victoria said that if a sex worker was renting premises then they would need the consent of the owner to apply for a DA, but that would be likely to cause their eviction from their premises—it was unlikely to be supported by the owner. So therefore, as a practical matter, unless the sex worker owns their own premises

and is willing to go through a DA process they are unlikely to apply for an approval and so therefore work without planning approval.

Mr BAUM: I just add that in terms of the feedback from our members, they seldom raise this as an issue in the way that they raise other things.

CHAIR: That is my understanding. I think we are in agreement; I think that is common ground. Would it be fair to say that your members would not be encouraging any particular change to the law in respect of that particular issue from the current position, because it seems to be operating in a manner where people are not complaining one way or the other?

Mr BAUM: I should take that on notice, but it is probably a fair observation. I am happy to come back if we have any other evidence on the books. I did not actually cover that in our submission.

CHAIR: If you could take that on notice and make inquiries. The other thing that I put to Camden Council this morning was that enforcement of covert systematic conduct such as the operation of a massage parlour where sex services in addition to massages are being provided is not really within the usual skill set of local government in the sense that it really requires complex questions of circumstantial evidence, evidence gathering and concealed conduct, which is difficult for anyone to establish and particularly non-professional policing such as council workers. Is that a fair proposition?

Mr BAUM: I think that is essentially one of the points in our submission, that this sort of work is not and cannot often be done by council staff, so they are, in fact, hiring in other investigators and do not like doing that. I think that is quite clear from the feedback that we have from our members.

CHAIR: The other point you raise in your paper is that it is quite a resource-hungry exercise, if I can put it that way, for councils to have to do that.

Mr BAUM: Correct. Again, that is what our members keep telling us, that it gets very expensive. We have heard figures bandied about like \$60,000 over two years and those sorts of figures.

CHAIR: You then say in your paper that you would prefer to transfer the responsibility for that enforcement role—this is on page 3 of your submission—to the New South Wales Government and you leave it rather Delphic as to the way in which that would then be enforced by the New South Wales Government. You no doubt did that deliberately.

Mr BAUM: Correct.

CHAIR: Do you have any views that you wish to share with us—and if you do not then say so—as to how you think that would be best done?

Mr BAUM: Why we left it and why we are quite agnostic on the matter is we know there are different views amongst our members and in the short time frame we simply had not canvassed any sort of consensus opinion. I certainly know that some councils have suggested things similar to licensing laws; some have suggested civil registration systems like boarding houses. It is just about councils not being required to actually prove that a business is a sex services business.

CHAIR: Can I probe you on that? When you said "licensing" I understood you to mean liquor licensing. Is that what you intended to— ?

Mr BAUM: Yes. That is what our members have said to us.

CHAIR: Then you said boarding houses. In respect of liquor licensing I think I am reasonably familiar that: There is an interplay between the licensing authority, local government and the police and there is a coordination of different agencies in terms of the licensing function and the enforcement function. You also mentioned the licensing of boarding houses. Could you just explain to me how that operates, because I am less familiar with that, and what you intended to mean by some of your members advocating a similar system there?

Mr BAUM: I would have to take that on notice, but that is something we noticed in our review of the submissions to you.

CHAIR: If you could take that on notice.

Mr ALEX GREENWICH: We have heard from lots of groups. We have heard from health, police, sex workers and individual councils. It seems the police and sex services premises have a fairly good relationship. It seems that health and the sex work sector has a really good relationship. It seems that there is a relationship of tension between local government and the sex work services sector. Why do you think that is and how do you think that can be improved? I am not talking about Local Government NSW; I am talking about individual councils such as ones that have made submissions.

Mr BAUM: My understanding—again, this is just based on feedback from our members—is that the tension is around the unapproved premises, not the approved premises. So it is about councils not feeling appropriately cast in a role that they cannot perform properly and feeling pressured by their communities to deal with something that they find impossible to deal with. That is the main sort of feedback we get. To go beyond that to try to answer your question I would be speculating.

Mr ALEX GREENWICH: Does Local Government NSW sit on any panels or stakeholder groups with SWOP or the Scarlet Alliance, or any other sort of sex work groups?

Mr BAUM: No.

Mr ALEX GREENWICH: Would that be something that you think Local Government NSW could find beneficial? Particularly, say, if there were a review of planning guidelines, you have obviously got both the key stakeholders in this.

Mr BAUM: I think we would say: "Absolutely. We should be involved." Although I was not directly involved, I do know the work of the panel in the early 2000s. Our predecessor organisations enjoyed quite a good relationship then and I think would now in terms of actually dealing with new legislation, new guidelines or new definitions.

Mr ALEX GREENWICH: The Chair raised the issue of home-based sex work and I think Ms Dennis made a point about the specific definition for sex work rather than accounting or interior design being imposed on councils. Is it your view that your membership feels that that has been an imposition on them to manage and that it is something they potentially did not want to manage and would have been happy just letting happen? What would you say to that?

Ms DENNIS: Councils are a conglomeration of individuals and the council speaks for all of council on any of these decisions. However, definitions—and not only this particular definition—are always robustly discussed and not from the point of view of the sex industry per se but just the robustness about whether council can enforce that definition. The definitions are in the local environment plan [LEP] if you want to look at them, because they cover all activities—and we have talked about hairdressers and tattoo parlours and all sorts of things. The issue is trying to come up with a definition that you actually can police. So it is not always a definition that is the dilemma; the dilemma is how you come up with a good definition for a massage parlour when someone has to go in and work out what that is compared to a sex premises. These are always difficult, but, by the way, this is not the only difficult definition. Definitions end us up in court on many, many things, of which this is only one.

CHAIR: It is the lifeblood of the legal profession.

Ms DENNIS: Yes. Unfortunately the Hornsby case, which you are probably familiar with, has probably made this very problematic for councils because of the way the definition was interpreted in the court. Councils would not accept that interpretation, but that is the way the court has done it.

Mr ALEX GREENWICH: In terms of concerns for Local Government NSW, how would you rank concerns around sex service premises?

Ms DENNIS: I do not think councils are nearly as worried about this issue as I am hearing from the previous people. I think councils are very pragmatic about this issue. I think communities are sensitive about this issue, but councils get told about community sensitivities when something is happening next door. The issue is, when they are illegal—and this is true of any activity, not just this particular activity—a neighbour will find

that a very good excuse or reason to tell council. This is common practice in council. We get told a lot of things about illegal uses or activities that are not approved. We are then required by law to follow that through. I have been told that it is the legal brothels that tell on the illegal activities, by the way—not necessarily residents. But I do not know. I cannot tell. I just know—

CHAIR: Competition is a strong motivating force.

Ms DENNIS: People who have gone down the route of getting the development application [DA] consent and making sure that that is all done properly obviously must be a little bit peeved about the others that did not do it. Obviously we get complaints for every sort of reason, but it is not for us to judge those questions. We judge an application on the law, on the definition and on what we think the facts are. We try to stay neutral on the values around it. Where councils practically apply the law, which I think they endeavour to do, they make good decisions. I think the debate, as I said, is not around the law per se, because sex premises are personal use; the debate is the scope and the location, which I think you were pointing to earlier. And where do we find that balance in our communities around that?

Ms ELENI PETINOS: If I may pick up on a point you have just made, the evidence given to this Committee by several councils is that they do not receive a great number of complaints in this area. Is it possible that the reason that the complaints are not being received by council is that the brothels are currently being kept in industrial areas away from residents' homes?

Ms DENNIS: I do not know. I cannot answer that. There could be a lot of reasons why you do not get complaints. It could be that they are in commercial areas too, by the way. It may not be that; it may be that they are in commercial zones—which is what Randwick said. They said they were in commercial centres. Willoughby also has them in commercial centres and they do not get objections that badly. So it is not just whether—

Ms ELENI PETINOS: But the nexus is just staying away from people's homes?

Ms DENNIS: I am not sure. I do not have that level of information. But mostly people have complaints where they see it, experience it or whatever. So it may not be that it is next door. I do not know. I cannot comment on that. I am sorry.

Ms JO HAYLEN: Going to the difference between the unapproved and approved premises and the levels of complaints between them, how do you think we can get to a scenario where we have more approved rather than unapproved activities? We have heard over the past couple of days of evidence that it ranges from potentially approved premises complaining about unapproved premises and therefore they may be operating in zones that are in areas where they cannot get approval to operate. How do we fix that scenario? Because it seems to me that there are actually a lot of people who would seek to get approval, but have had difficulty getting approval—maybe the zonings are restrictive and/or people have had to go to the Land and Environment Court to get approval. I know it is a very complex issue, but I was wondering whether Local Government NSW has a broader view about how we reduce the number of unapproved premises operating, and therefore the level of complaint and therefore the imposition on local government to regulate or to enforce those issues.

Mr BAUM: I know we have certainly not discussed that in that way. That is something we really would have to take on notice and just try out with a number of councils to see if people can see a clear way through that, because my suspicion is it will be council by council in that there will be unique things involved. But we are happy to have a look at it.

CHAIR: Your body represents councils all across the State in respect of which there is a huge diversity of areas, socioeconomic groups et cetera.

Mr BAUM: Yes, 152 councils.

CHAIR: So I assume it is very difficult to have a one-size-fits-all, given the diversity of your areas that you represent.

Mr BAUM: It is, although a question of process about how you move from where you are to where you want to go is a conversation we could have with councils. It would take some time.

CHAIR: Well, if they could all agree on where they want to go. That is the issue, is it not?

Ms DENNIS: Can I answer that, though? We do get complaints about approved sex premises but we do not do anything about it so do not assume that those complaints are the only complaints we get; it is just that the complaints we are most worried about or that we have to action are the "not approved" because by law we have to. It is not our decision; it is by law. Where it is complicated is we have a legacy issue, which is the inner-city issue that is common in a lot of other activities where a number of sex premises would have been approved under existing use rights.

That would have been before the current LEP—and the two definitions we just talked about do not apply because since 1995 this industry has been decriminalised and consents are being given under LEPs and previous zoning requirements. That complicates matters, but I am just letting you know that it is not so simple always to know what is approved and what is not approved. Therefore, you have also sex premises located in locations that probably under new zoning laws you prefer not to have them located there, so it is quite complex. No-one pretends this is easy to unpack, so you have the legacy of history.

Ms JO HAYLEN: In your experience of speaking with your membership is there a common thread between those councils that are having difficulty dealing with unapproved premises, levels of complaint and associated costs for those councils and councils that do not? Is there anything you have identified between those groups of councils, be it in their LEPs, DCPs or compliance approaches?

Mr BAUM: I do not think we could say definitely yes or no on that one. The complaints are what they are and they tend to be around costs and evidence, but does that say anything about their LEPs? I am not sure.

Ms DENNIS: Some of our councils say that because of decriminalisation the issue is more alive and it was more underground, and councils did not do anything about it. Councils are now in the position of having to give approval or not, so that means this issue is now more alive. Just to give you the background on the LEPs, the new template and all these definitions only came through in 2006 and so this is all new law and we are evolving to a new place and space about how to resolve the issues between what is permissible and what is not. This is all new space for many councils. Most councils have only just presented their LEPs in the past couple of years, so hence you have all of a sudden a lot of activities, too, that are not in the right locations or they have not sought DA consent. Who knows? We cannot tell. I only hear what other people tell me, that people do not want to put a DA in sometimes or do they not want to put it in because they do not think they are going to get it. I do not know.

Ms JO HAYLEN: What guidance have you provided your member organisations to deal with complaints and compliance? Do you have a guiding document, for example, to assist the compliance teams in seeking evidence of non-permitted activities?

Mr BAUM: Simply no. Those who seek that advice seek that advice from our legal officer who does what he does but I cannot tell you how he does that. Clearly he gives the advice though.

Ms JO HAYLEN: We have heard from lots of different councils that have had very different approaches. Do you think broadly it would assist if there were a guiding document for councils when—you are right—they have to deal with these complaints and if there was a consistent method rather than a scenario where councils had to pay significant court costs and/or other private investigator costs; if as a first step there were a set of guidelines so that they could avoid that where possible?

Mr BAUM: In terms of best principles we would agree with that and we do that in many, many other spaces for many other planning and many other functions in local government. I suppose the reason that we are not at that point is that whilst there is an undercurrent and a source of discontent, it has not got to the point where everyone has been demanding that, but I am sure we would welcome working on it.

Ms DENNIS: We would also see it as one of many illegal uses, by the way. I know this Committee is thinking about this issue. This is common. There are many, many illegal or unauthorised—we call it unauthorised because it may or may not be illegal by the way—unauthorised, no DA consent. Then we have to investigate whether it needs it or does not. Then we have to work out whether it complies or does not. There is a lot of pre-work you have to do to work out if it is legal or not; whether it needs consent. That is where it is muddling, but so is it in many other types of activities and that is why answering these issues is not straightforward for council and why they have different approaches too. The issues are very different in inner

city areas to suburban areas. The locational sensitivities are very different. You cannot necessarily write a general policy document to solve all that because they are quite different.

Ms JO HAYLEN: Relative to the unauthorised uses and illegal activities that your councils deal with in terms of the amount of time it takes up for your policy officers or legal officers, what is that percentage? Is it a big or small issue or does that fluctuate?

Mr BAUM: For Local Government NSW it is high profile from time to time. It is not something that has my policy staff in planning working on constantly. It is something that every three or four months our legal officers would be giving advice on. It is not up there with the top issues that we are dealing with on an ongoing basis but when it is high profile it is high profile.

CHAIR: Would it be fair to say that when it occurs it is more complicated and resource draining than other issues that come up, so there might be a disproportionate resource requirement to, say, prosecuting a restaurant for breaching the health rules with regard to the preparation of food?

Mr BAUM: Again, not so much from our point of view but certainly from our members' point of view. That is what they say.

Ms MELANIE GIBBONS: Our time in Victoria showed us that having registered sex premises has not stopped the massage places popping up and offering more than just massage, so it has not solved that issue. Is there a way that we at a State level could support local government, without cost shifting obviously, to try to solve that problem? Is there some way we could support you in stopping those popping up next to schools where they would not otherwise be approved if they were offering that service?

Ms DENNIS: I think you are right, the massage parlour seems to be quite a tricky space and it would be good to work with the industry to work out what is a practical approach for encouraging those activities in the spaces and places that everyone agrees to be the better place to be, wherever that is. As Mr Baum was saying, Local Government NSW would rather concentrate on being positive and proactive. Yes, at times this all ends up in court, but we would rather try to avoid the problem in the first place, so whatever policies we could constructively develop that everybody thought was a reasonable way to go would ideally be the best way to go. It would save everyone a lot of pain.

Ms MELANIE GIBBONS: Do council enforcement officers feel that they have enough access to different premises, in your opinion, because each council is different and each circumstance is different?

Ms DENNIS: I cannot answer that specifically at all. I can just say that the whole issue of enforcement is really quite problematic but that applies not just to the industry, though this industry has its tricky bits to it that are hard to get evidence about—everybody agrees with that. But there is equally actually quite a lot of other activities that are hard put to get evidence about too. This is probably a thorny area for local government. Enforcement is a cost on council and if we can avoid those costs we will do everything we can. The problem is if our community see we are not following up on something that in their eyes should not have been approved or has not been approved then we are under this pressure to follow the law so that is the dilemma that council sits with.

Ms MELANIE GIBBONS: Notwithstanding that is time consuming sometimes as well?

Ms DENNIS: It is incredibly time consuming and resource consuming, but it is an equity issue and fairness across all our communities. We have got to balance those out.

CHAIR: We have run substantially over time. 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. Are you happy to provide a written reply to any further questions within five business days?

Mr BAUM: Yes, although I am without the legal officer at the moment so I am not sure if five days is possible.

CHAIR: If you require further time, please let the Committee staff know.

(The witnesses withdrew)

(Short adjournment)

PETER JOHN DUNPHY, Executive Director, SafeWork NSW, sworn and examined:

CHAIR: Good afternoon. Thank you for attending the public hearing of the Select Committee on the Regulation of Brothels. May I again remind everyone to switch off their mobile phones. For the benefit of members in the gallery, I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public hearings. Copies of the guidelines governing coverage of proceedings are available. Would you like to make an opening statement before the commencement of questions?

Mr DUNPHY: SafeWork NSW, which most people will remember was formerly WorkCover, is the regulatory authority for work health and safety in New South Wales. We regulate all workplaces. Under the work health and safety legislation all workplaces, all hazards are covered, so it is an all-risks approach. Under the legislation there are general duties in respect of people conducting business or undertakings and there are health and safety duties for workers, visitors and the public who may be at a workplace. The legislation that we administer is national legislation, so it is a nationally consistent approach with which we will comply with other jurisdictions, and that is coordinated and facilitated through our membership of Safe Work Australia, which is the governing body that looks after the regulatory framework for work health and safety.

CHAIR: Am I correct in saying that the Work Health and Safety Act requires an occupier to ensure the health and safety of people at that place of work?

Mr DUNPHY: That is correct, yes. We have obligations for people conducting a business or undertaking or people who may be in control of a place of work where work has been undertaken and there are obligations for employees and others at that place.

CHAIR: We have received evidence that most of the sex workers within sex work premises are not employees of the operator of the premises but operate what you may call independent contractors. The fact that the sex workers are at a place of work, which is controlled by the occupier, means that the occupier or the brothel operator has obligations under the Work Health and Safety Act, correct?

Mr DUNPHY: That is correct. When the national legislation was introduced, when introducing new duties we moved away from just employee worker arrangements and now the general duties refer to a person conducting a business or undertaking. It was specifically designed to try to capture worker relationships and different forms of employment that are non-traditional forms, which may not have been picked up in earlier legislation.

CHAIR: There is potential for harmful activity to take place within sex work premises. Has your authority or the WorkCover authority which preceded it ever prosecuted any sex work business for practices which endangered the health, wealth and safety of people in the premises?

Mr DUNPHY: Not to my knowledge. I might take that question on notice. I would be happy to confirm fully, but my understanding is that there has not been a case. We take a risk-based approach in respect of how we administer the work health and safety legislation. In respect of our high-risk industries, brothels or the sex worker industry is not an area that has shown up in our workers compensation incidents or claims to be a high-risk area. It is certainly not an area that we have seen as a priority industry.

Having said that, we do compliance work and members of the public, workers, or the owners of the facilities can request the assistance of inspectors. We routinely visit based on complaints or if doing drug compliance inspections with other agencies such as local government. It is not that we do not take action in respect of the facilities, but it will depend on whether there is a significant issue, which would require us to do that, and we certainly take a proportionate approach. So most of our work is advice and assistance and where we see the need, we would escalate that to a higher level of enforcement activity.

CHAIR: To unpack that last answer, does your organisation compile statistics based on calendar years or financial years?

Mr DUNPHY: We do both. We provide statistics. One of our duties is to provide data in respect of workplace injuries and illness, so we provide injury data in terms of statistical bulletins but also in terms of the annual report and the information we provide.

CHAIR: It may be close to the end of the most recent financial year, so last calendar year how many inspections of sex work premises did your authority undertake?

Mr DUNPHY: I would need to take that on notice and provide you with that information to get the specific number of those. As I said, we target high risk and because the industry is not a high-risk industry in respect of work health and safety. We certainly would not be targeting that in a proactive way, so it is more likely that if we were doing visits it would be because of complaints or requests to assist or joint activities with other regulators.

CHAIR: Do you base your statistics on whether an industry is high risk or not based on claims under the workers compensation insurance?

Mr DUNPHY: That is certainly a component. As a risk-based approach, we use the historical data for where the hotspots are in respect of fatalities, serious incidents and workers compensation claims, but we look more broadly. We will look at other avenues when trying to identify if there are other areas. Another area we might look at is hospital admission data. We also look at information that our stakeholders may have, so we work with unions and employers to see if there are particular issues that come up through their membership.

CHAIR: Is the operator of a brothel obliged to have workers compensation insurance for all of the independent contracting sex workers that work within the premises?

Mr DUNPHY: It has a different definition under the workers compensation legislation. So what it is under work health and safety and workers compensation is different to SafeWork NSW. From my understanding you need to be a defined worker to have a workers compensation policy.

CHAIR: But if you look at at-risk industries based on the workers compensation claims, when you say it is a not a high-risk industry it is relevant to understand whether there would be claims under workers compensation because the workers may not be insured under workers compensation and therefore it would be impossible for any claims to be made. Correct?

Mr DUNPHY: It is certainly the case that workers compensation will not pick up every workplace.

CHAIR: Is it likely to pick up sex workers? Have you turned your mind to whether they would be able to make a claim under workers compensation insurance and therefore show up in your statistics?

Mr DUNPHY: If there was a workers compensation policy and they were eligible, or even if there was not and they were eligible as a worker under the workers compensation legislation, they would be eligible to do that.

CHAIR: I know they would be but I am asking you if you have looked at whether they are for the purposes of the operation of a brothel and therefore whether they would show up in any of your statistics?

Mr DUNPHY: I cannot tell you definitively whether there are specific—

CHAIR: Is that something you could look at?

Mr DUNPHY: I would be absolutely happy to identify that and provide that information.

Mr ALEX GREENWICH: The Government submission talks about the Health and Safety Guidelines for Brothels, which were established in 2001. It also talks about WorkCover surveying sex premises from time to time to monitor compliance. Can you take us through how often that monitoring is done and what the rate of compliance is?

Mr DUNPHY: As I said before, we would not be proactively targeting the industry unless it fell within a targeted area that we wanted to particularly focus on. Routinely we would be more likely to be involved if there was a serious incident, if there was a complaint or if there was a request for service in terms of somebody asking us to go in and mediate an issue at a particular workplace. In those circumstances we would attend, follow up and investigate those matters. We have not seen a significant number of compliance issues in these workplaces. We deal with a range of workplaces. As I said, we work with all workplaces. This is certainly not one that has been on our radar for any significant work health and safety issue.

Mr ALEX GREENWICH: You deal with workplaces regardless of the requirements for workers compensation insurance coverage?

Mr DUNPHY: That is right, yes. We work quite independently of the workers compensation system. Every workplace and every hazard is covered under the work health and safety legislation, so it has a broader remit than under workers compensation. We visit all workplaces no matter what type of workplace it is or what type of industry.

CHAIR: But I think you have said that you focus on the industries that have a high level of claims under workers compensation insurance. Is that right?

Mr DUNPHY: We have a risk-based approach. As a responsive regulator we need to target our resources to make sure we are focusing on the most important risks and that we are preventing those from occurring. We have a real focus on trying to make sure that we are having the biggest impact we can with the resources that we have.

CHAIR: Is that a yes to my question?

Mr DUNPHY: Could you ask me the question again?

CHAIR: I said you target your inspections based on the industries that have the highest rates of claim under the workers compensation legislation.

Mr DUNPHY: We certainly do use that as one of the indicators of our risk base.

CHAIR: What are the other indicators?

Mr DUNPHY: They would be our own enforcement intelligence. That is where we have gone out to workplaces based on complaints, fatalities and serious incidents. It is also where we have got feedback from our stakeholders and where issues may have arisen where we have identified particular issues that may not have shown up in the workers compensation data. It is also high consequence, low frequency. We know that there are some risks that will not show up in the workers compensation data and we do need to target those particular areas. For instance, we have a program for major hazard facilities. We do not get many major hazard events occurring but, because we know that is a very high-risk area, it is an area that we target.

CHAIR: In order to ensure the health, wealth and safety of a worker working at height in the construction industry it is a common requirement that the worker has a safety harness. If the employer allows a worker to work at height without a safety harness the employer has committed an offence under the Work Health and Safety Act. Correct?

Mr DUNPHY: That is correct.

CHAIR: In the sex industry there are pressures put upon sex workers, for example, to work without a condom because some clients will pay more money for that sort of activity even though it increases the likelihood of the sex worker contracting a sexually transmissible infection [STI]. You would agree with me that it would be a breach of the Work Health and Safety Act for a brothel owner to allow that to occur?

Mr DUNPHY: That is correct.

CHAIR: How does your authority enforce that obligation on the operator of the business?

Mr DUNPHY: We do that through promoting information about what is required. I think you may have mentioned before that we have worked with the Department of Health to develop guidance material for the sex industry. In that we have identified some key risk control measures and practices that we would require. And we identify what the key risks are. We know that in the sex industry the key risks are around violence in the workplace and sexually transmitted infections. It could be around specific injuries and it could be around manual handling issues. It could also be around the plant and equipment. We have identified with the Department of Health the key risks within the sex industry and the key practical controls that operators of the

facility should have in place. That would include things such as ensuring that there are safe sex practices for the work that they are doing.

CHAIR: Has SafeWork NSW or the WorkCover authority which preceded it ever commenced proceedings to prosecute an operator in the sex industry?

Mr DUNPHY: Again, I would need to take that on notice and confirm if that was the case.

Mr ALEX GREENWICH: The Health and Safety Guidelines for Brothels is a document from 2001. Do you feel that the guide is getting to the point of being out of date and are there plans to update it?

Mr DUNPHY: We are in the process of revising it. We recognise that since then the legislation has also changed in terms of the work health and safety legislation, so we are looking to update it to reflect the new requirements. Obviously, if there is other newer information we would want to make sure that it is the most current.

Mr ALEX GREENWICH: What is the interaction of SafeWork NSW with groups such as the Sex Workers Outreach Project [SWOP] or Scarlet Alliance? Are they groups that you consider as stakeholders when forming a document like this?

Mr DUNPHY: Whenever we are doing an industry-based document we would like to see who are the key stakeholders and the key industry participants so we can make sure that we involve them in it. That would be typically the approach we would take.

Ms MELANIE GIBBONS: What do your investigators look for when they enter a premises?

Mr DUNPHY: There are a couple of things. We are specifically looking under the provisions of the work health and safety legislation. There are consultation provisions in the work health and safety legislation. That involves making sure that there are some forms of consultation in the workplace, whether that is a health and safety representative or whether there is a need for a committee and whether arrangements have been set in the workplace. Then there is also the more specific risk controls and what is being carried out in the workplace in terms of those controls. We would be looking at the systems of work and making sure that controls around the key hazards, which I mentioned before, are in place.

We would certainly also be checking to make sure that there was an incident notification system and that there were appropriate amenities in the workplace in terms of toilet facilities, showers and drinking water, and amenities for breaks. We would be looking at those and also at first aid facilities. We would also look at emergency preparedness—so preparedness for fires and knowing how to evacuate should there be an emergency. We would look at things around both the prevention of violence and what systems are in place to control and to actually monitor those sorts of things.

Ms MELANIE GIBBONS: Do your investigators actually get to talk to the workers when they are there?

Mr DUNPHY: Yes, our inspectors will routinely talk to both workers and management and, if there is one, a health and safety representative or a member of the work, health and safety committee.

Ms MELANIE GIBBONS: Do they have the opportunity to talk to the workers separately—that is, one on one?

Mr DUNPHY: Yes, they can certainly do that.

Ms MELANIE GIBBONS: Is that the case more often than not? If they entered premises and wanted to talk to the women, is it more often than not the case that they would do that one on one, or is that an unusual circumstance?

Mr DUNPHY: In most workplaces the typical principle would be to give them the opportunity to talk to workers separately. It may not be one on one; it might be as a group. Certainly there would be an opportunity to get the views of workers separate from the employer or from the person conducting a business or undertaking [PCBU].

CHAIR: The WorkCover inspectors operate in a very formal fashion because they could be gathering evidence for a potential prosecution. So they tend to take notes of their meetings and they tend to act very formally when they go into premises, don't they?

Mr DUNPHY: That is true, but we try to break down some of those barriers. Certainly we know that people think of us as mainly doing enforcement activities, but actually the majority of our visits are advisory. So we do try to break down those barriers and to be as informal as possible. If it is in relation to a complaint then certainly we would be taking records. But if it is an advisory visit then it would be an advisory visit and it would be a very different arrangement—we would not be taking notes in those circumstances.

Ms MELANIE GIBBONS: To your knowledge, has a worker in this industry ever sought the assistance of one of your investigators?

Mr DUNPHY: Yes, I believe that to be the case; but I would like to take that question on notice to confirm that. I am not too sure of the source of all of our complaints, but I know that we do visit sex premises because of complaints, and often those originate from workers.

Ms MELANIE GIBBONS: If you could provide any advice on notice on that, it would be helpful.

Mr DUNPHY: Yes.

Mr ALEX GREENWICH: This is another question you may need to take on notice. I think it would be of value to the Committee if you could provide information on visits to sex work premises and rates of compliance—that is, how many visits are made and the rate of compliance. I think that would be quite valuable for us to know.

Mr DUNPHY: Yes, I am happy to do that. In terms of the rate of compliance, what we can tell you is for each notice what sort of outcome arrived from it. We do a range of things. Often there will be notices and often there will be an inspection report so we can tell you what the outcome was.

CHAIR: We have heard from local government authorities that this is a particularly difficult area in which to get evidence for noncompliance. I assume that in your space of the Work Health and Safety Act it is equally difficult?

Mr DUNPHY: I do not think it is any more difficult than in the many other industries that are transient in nature and where sometimes it is difficult to get access to workers because of their hours of work.

CHAIR: It is a bit easier to gather evidence on whether someone is not wearing a harness on a building site than whether someone is not wearing a condom in a brothel though, isn't it?

Mr DUNPHY: Yes, but it is not that different I guess to somebody making an accusation of bullying against someone else—evidence is always a matter, and we deal with that on a daily basis.

CHAIR: Some evidence is easier to compile than other forms of evidence.

Mr DUNPHY: Yes, that is absolutely true.

CHAIR: Would you agree with me that in the sex industry it is particularly difficult?

Mr DUNPHY: I am not familiar enough with the level of difficulty. But I would assume that you are right and that, as you say, there are different levels and different barriers to getting evidence in certain circumstances. I might add that gathering evidence is a small part of the work that we do. A lot of our work is done through persuasion and motivating workplaces to do the right things. So we work with them to try to get them on track.

CHAIR: Is your authority involved in education in this space? Or is that done more by the Department of Health, the Sex Workers Outreach Project [SWOP], and other quasi- and actual government organisations?

Mr DUNPHY: I think we realise the limitations. We do advise for all industries. But one of the things we have realised is that often it is best for information to come from peers via peer to peer support. So it is better to find people in the industry to talk to their peers and send messages. We certainly do that in some other areas where we know it is very difficult. A good example is in the farm sector. We know that farmers will not necessarily listen to a safe work inspector, but they will listen to another farmer. So we certainly try to use other avenues such as getting industry players, representatives and those types of people to assist us in messaging.

CHAIR: Particularly after some of the comments made by the High Court in the Kirk case, I imagine, for the farming sector.

Mr DUNPHY: Actually we have a very good relationship with the farming sector now and work very closely with NSW Farmers.

CHAIR: I think it would be of assistance if you could provide us with some of your statistics. I would be interested if you could give us any information about the interaction of SafeWork NSW with SWOP and some of the other peer support groups so that we can understand how your authority is operating in this space. I do have one other question. I think in one of your answers you made reference to the Work Health and Safety Act and the changes from the previous Occupational Health and Safety Act.

My understanding—and I am really just asking you to either agree with me or to correct me if I am wrong and tell me why I am wrong—of the relevant legislative change from the Occupational Health and Safety Act to the Work Health and Safety Act is that under the Occupational Health and Safety Act if you failed to ensure the health, wealth and safety of workers it was a strict liability offence, but there was a defence under section 54, I think it was. So if you could show that it was not reasonably practicable to comply with that obligation, there was a defence. But now under the new Work Health and Safety Act an element of the offence that has to be established is that you could reasonably and practicably comply with the obligation. Do you agree with that?

Mr DUNPHY: It is true that under the new legislation the "reasonably and practicably" is actually in the duty whereas under the other Act it was a defence, yes.

CHAIR: For the relevance of us understanding any statistics that you can give us in terms of prosecutions, inspections and the like, other than that difference for all substantive purposes in terms of the sex industry the legislation would have very similar obligations on the operators of brothels or other premises in the sex industry?

Mr DUNPHY: That is correct. While the general duties have been recast and have been broadened to the person conducting a business or undertaking rather than an employer, they are still pretty much the same duties in terms of ensuring work health and safety.

CHAIR: But under the previous Act, the Occupational Health and Safety Act, there was still an obligation that you would ensure the health, wealth and safety of anyone who entered your place of work.

Mr DUNPHY: Yes, that is right

CHAIR: So it still cast an obligation on people who controlled a place of work, under the Occupational Health and Safety Act, to ensure the health, wealth and safety of all people who operated within it—which would include sex workers within a brothel even if they were independent contractors. Is that correct?

Mr DUNPHY: Yes, that is correct. Probably the key difference is that the consultation requirements have been broadened because they now apply to all of those. So you need to consult with contractors and anybody else who is in the workplace. Under the old occupational health and safety legislation it was an obligation between the employer and the employees.

CHAIR: Could you just run that by me again so that I understand what you are saying?

Mr DUNPHY: Under the former legislation, the Occupational Health and Safety Act, the employer had a duty of consultation. In terms of setting up consultation arrangements that duty was between the employer and the employees. Under the Work Health and Safety Act the duty is that the person conducting the business or

undertaking has to set up consultation arrangements that consider not only the employees or the workers but also others who are at the workplace as well.

CHAIR: But those consultation obligations are separate from the obligations to ensure the work health and safety?

Mr DUNPHY: That is right, yes.

CHAIR: I just wanted to make sure of that. We have no further questions. Thank you for giving evidence 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 to any further questions within five business days?

Mr DUNPHY: Yes, I would.

(The witness withdrew)

COMMANDER GLEN DUNCAN McEWEN, Manager, Victim Based Crime, Australian Federal Police, affirmed and examined:

DETECTIVE SUPERINTENDENT STEVEN JOHN MEWBURN, National Coordinator, Counter Exploitation Crime Program, Australian Federal Police, sworn and examined:

CHAIR: I welcome representatives of the Australian Federal Police, Commander Glen McEwen and Detective Superintendent Steve Mewburn. Thank you for appearing before the Committee to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses in the hearing process?

Mr McEWEN: No, we are happy with the process.

CHAIR: Commander McEwen, for the Hansard record, please state your occupation and the capacity in which you are appearing before the Committee.

Mr McEWEN: I am the Manager of Victim Based Crime with the Australian Federal Police. My command focuses on investigative and preventative measures relating to Commonwealth crimes against a person. From a crime focus point of view, that includes human trafficking, child protection, people smuggling and preventative measures focused on those crime types.

CHAIR: Detective Superintendent Mewburn, for the Hansard record, please state your occupation and the capacity in which you are appearing before the Committee.

Mr MEWBURN: My title is the National Coordinator of Counter Exploitation, which is under the portfolio of Victim Based Crime. My primary responsibility is investigation and prevention of crimes against a person, particularly in relation to people smuggling and human trafficking.

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

Mr McEWEN: No, we are happy to take questions.

CHAIR: Sex trafficking is obviously very difficult from a policing point of view. I assume that the Australian Federal Police [AFP] works with a number of Federal agencies in this space. Could you give us an idea of the way in which the AFP interacts with other Commonwealth agencies with regard to sex trafficking and the involvement of any organised crime within sex trafficking?

Mr McEWEN: If we start at the Commonwealth level, the Australian Federal Police is the primary law enforcement agency for the Commonwealth. We are charged with the investigation of crimes against Commonwealth law. In relation to human trafficking, we work with a number of Commonwealth agencies. We term that a whole-of-government approach and we do that on a range of issues. In relation to human trafficking, we work very closely with our colleagues in what is now known as the Australian Border Force, which is an amalgamation of the Department of Immigration and Border Protection, and the former Australian Customs Service. We also work with the social services department. I believe in relation to human trafficking five Federal departments are involved, represented by four Ministers.

The first is the Hon. Michael Keenan, the Minister for Justice, who looks after the Australian Federal Police and the Australian Crime Commission and the like. The second is the Hon. Julie Bishop, as from the foreign affairs point of view we work with the Department of Foreign Affairs and Trade due to the international nexus of trafficking into Australia. The third is the Minister for Social Services, the Hon. Scott Morrison, the support services provider to traffic victims. The fourth is Senator Michaelia Cash in her role as Minister Assisting the Prime Minister for Women and as the Assistant Minister for Immigration and Border Protection. From a Federal perspective, there is quite a degree of interest and involvement.

CHAIR: Following up on that answer, is the Australian Federal Police the lead agency? Who is the lead agency on sex trafficking?

Mr McEWEN: When we talk about "lead agency", that could be considered quite complex. The Attorney-General's Department is—

CHAIR: I do not mean to get you into trouble with this.

Mr McEWEN: No, no. The Attorney-General's Department is the owner of policy. When you look at policy settings driving outcomes of Government, I could suggest that this is in the Attorney-General's Department. Of course, the Australian Federal police has the lead in relation to the investigation and prevention aspects and, extrapolating from there, Social Services in relation to the support packages for victims and so on.

CHAIR: I know no two cases are the same, but in a typical case investigated by you in relation to sex trafficking, how would the information come to you? How is it initiated and how do the agencies work together?

Mr McEWEN: There are a number of ways, as you would appreciate, in relation to a policing organisation, and there are many ways that information is provided. In relation to human trafficking, the community has provided information. Of course, the NGOs are extremely critical in supporting our endeavours. It is vast. The majority would be referred by non-government organisations. Having been personally involved in investigating this 10 years ago, I recall that customers made complaints on behalf of potential victims and we made inquiries in response.

CHAIR: An issue the Committee has to come to grips with is the three different tiers of government operating in this area of regulation. I think I am right in saying that sex trafficking is an offence under the Commonwealth Crimes Act and the New South Wales Crimes Act.

Mr McEWEN: That is my understanding.

CHAIR: That may not be the case in all States. I do not know whether all States have a State-based provision similar to that of New South Wales. If there is an instance of alleged sex trafficking in New South Wales, does the Australian Federal Police devolve responsibility to the NSW Police Force? Would you explain how the different police forces and Government agencies work together in that circumstance?

Mr McEWEN: The Australian Federal Police would be responsible for matters that breach Commonwealth law. There are a number of sections in the Commonwealth Criminal Code Act 1995 where offences are prescribed. Division 270 of the Criminal Code criminalises slavery and slavery-like practices such as servitude, forced labour and deceptive recruiting. Division 271 of the same legislation outlines specific offences for trafficking in persons. That covers trafficking for the purposes of sexual exploitation and trafficking in all other forms, including trafficking of children and organ trafficking. Where there is an international nexus to Australia, the Commonwealth's primacy comes into play.

CHAIR: Let us look at this sequentially. If you have information that children or sex workers are being trafficked into Australia, does your jurisdiction end once they have passed through the airport and gone into the community or started work in a brothel, if they are a sex worker? Would that then be a matter for the NSW Police Force or would you still have involvement?

Mr McEWEN: The AFP probably would be considered the specialised agency to conduct that sort of investigation, but one agency cannot do everything, so we rely on our partnerships with State and Territory Police.

Mr MEWBURN: I will add a point about the transitory process. If people are being trafficked from overseas into Australia for that reason then that would be our remit. If they came to Australia for any other reason and were trafficked afterwards, the speciality may change.

CHAIR: It might be difficult to make the overseas connection.

Mr MEWBURN: It can be.

CHAIR: In that case, the NSW Police Force probably would take control. If they had evidence that a person was being held in servitude in a brothel in New South Wales, that evidence might be easier to establish than an international connection that might involve the Federal Police.

Mr McEWEN: When a victim who is working in the sex industry has been trafficked for the purpose of sexual exploitation, the usual practice of our adversary is to use deceptive recruitment: Australia being an island, there has to be a voluntary element to coming to Australia. There are offences to cover that deception. Then there is the offence of the deprivation of liberty or freedom of movement. That is within the country and out of the country. It includes the confiscation of passports and control of those individuals. A typical immigration visa status check to establish the identity of persons within a premises would identify whether an international nexus exists.

CHAIR: In 2013 there was a prosecution for sex slavery in Willoughby. I think "diamond" was part of the name of the brothel. Was that an Australian Federal Police prosecution or a NSW Police Force prosecution?

Mr McEWEN: I am not familiar with that. I know that in New South Wales in 2013 there was a sentencing of a foreign national in relation to 11 victims. I do not have the detail on whether that was in Willoughby.

Mr MEWBURN: I do not have that detail either.

CHAIR: Could you tell us about that case?

Mr MEWBURN: I do not have the specific details. There was a female offender and 11 victims.

Mr McEWEN: I could give you a general scenario based on experience, if that would assist.

CHAIR: Yes.

Mr McEWEN: I will use Thailand as an example—not for any particular reason but because I personally investigated such matters a decade ago. The scenarios are still relevant today. In a Third World country, people are looking for greater opportunity elsewhere. In communities, and even on education campuses, there are people in the background who are looking to exploit people who have the desire to improve their life and the life of their family, and move to another country to work legitimately. In the case to which I am referring, a young lady was recruited in Bangkok to travel to Australia to learn the trade of hairdressing. She was provided with certain advice and the wherewithal to apply for a visa to travel to Australia to undertake an apprenticeship. There are sponsors, if we can call the overseas facilitators that, who provide information to the person to provide to the Australian embassy.

People usually arrive in Australia in a group. On arrival they are introduced to the main contact in Australia. Unfortunately, that is usually when the exploitation starts. Their passports are taken from them. They are told that they are here to provide sexual services and that they will not be paid because their travel has been paid for by the facilitators in Thailand and there is a debt to be repaid to the organisation. These people usually work very long hours. There are a large number of clients for them to service to eliminate the debt. They are rarely in a position to ever pay off the debt. They either live in the premises where they work or are conveyed to and from it. They are always under the control, physical or otherwise, of that particular organisation or group of people. Their ability to interact with the community is limited. They cannot choose their food. They do not mingle with the community or see anybody. They are working in a group of other exploited people. That is a general overview of a scenario.

Mr ALEX GREENWICH: Is there a State or a Territory where those scenarios happen more than other States?

Mr McEWEN: I do have figures in relation to what we have experienced. Figures or data are always quite inaccurate to a degree because you only know what you know and, as you would appreciate, when the human element is involved in anything like this there are different perceptions on who is exploited, who is not, who is willing to come forward, et cetera. I have got the figures here for Australia-wide. If we look at sexual exploitation investigations that were conducted for the financial year 2014-15, there were 24 Australia-wide; that translated to being six in New South Wales. I would suggest that it is probably our experience that it is predominantly on the east coast and that is, obviously, for the tourism aspects and the general nature of people travelling to Australia is usually to the east coast—that is where the greater numbers go.

Mr ALEX GREENWICH: The breakdown is of particular interest to me because Queensland, New South Wales and Victoria have very different systems in terms of sex services premises. We have heard of a

two-tier system in both Queensland and Victoria where there is more likely to be running unauthorised or illegal premises. I am just wondering about the breakdown of sex trafficking in those different States and any links to the different models that occur in those different States.

Mr McEWEN: It would not be a focus of the AFP when we investigate such matters to be overly familiar with the different State-based regimes because we are looking at a Commonwealth law which is applied somewhat differently. So our requirements to satisfy the elements of the offence would not invoke or be any assessment of a local arrangement, it would be fair to say.

CHAIR: But would you be interested in structural aspects of a particular State's sex industry, which may or may not promote breaches of the Commonwealth law? Or are you just more focused on there is a breach or there is not a breach of the Commonwealth law? I think that is really what Mr Greenwich's question was getting at.

Mr ALEX GREENWICH: It was, Chair. The person who has potentially been brought here in a sex trafficking capacity, in Victoria by being an unregistered sex worker that sex worker has also broken Victorian law, therefore the person who has brought them here has another level of authority—they are not as likely to go to the police as potentially they may be here in New South Wales where it is not illegal to be a sex worker. I am particularly interested in that—

CHAIR: Or, alternatively, if I may say, Mr Greenwich, in Victoria, whether it is effective or not, you have to be a fit and proper person to own or manage a brothel, whereas in New South Wales there is no such requirement. So I suppose what we are trying to understand is if there are any aspects of the differences between New South Wales and Victoria which either encourage or discourage or are neutral towards this issue.

Mr ALEX GREENWICH: Yes, essentially make those States a more prevalent destination for this type of activity.

Mr McEWEN: I understand the point of your question. Of course, representing the AFP, we do investigate Commonwealth law but, of course, any environment that is regulated or provides a system of checks and balances would benefit the community. Having free and open access to workers in whatever sort of regime that you would be looking upon would be something again because it is that personal interaction. Being reliant upon third party notifications has a degree of caution around it because you cannot rely on those people. We have had instances when there have been compliance checks where it is the interaction with the authority, be it local, State or Federal, where their claims have been known. We would suggest that that free and open access to workers as opposed to the representative of the particular company or premises would obviously assist law enforcement in their endeavours.

Mr ALEX GREENWICH: Specifically in New South Wales in what industries, in your experience, is sex trafficking most common? What industries or in what scenarios is it the most common? Is it sex services premises, is it people who marry someone overseas, is it hospitality—is there a sector which you feel stands out more than others?

Mr McEWEN: From a sexual exploitation point of view it would be fair to say that the experience of the Australian Federal Police is within the sex industry, in the provision of sexual services.

CHAIR: So brothels, massage parlours, those sorts of premises?

Mr McEWEN: Yes.

Mr ALEX GREENWICH: Would you be able to provide statistics on that?

Mr McEWEN: We could certainly take that on notice.

CHAIR: When you gave us the scenario of the Thailand worker who comes to Australia under a student visa and then is subjected to servitude to work in the sex industry, I assume that in the cases where you have been able to establish that that has taken place, the environment around that servitude is obviously the environment of an organised criminal activity taking place in a repetitive and systematic way in breach of Commonwealth and State laws.

Mr McEWEN: Yes.

CHAIR: Does that mean that we are talking about, for example, triads or organised motorcycle gangs or sorts of criminal organisations which are breaching the law in other respects, such as drug distribution and so on, or is it a particularly focused activity? Can you give us some sort of idea?

Mr McEWEN: We need to be careful about the term "organised crime" because that is a very broad definition. When I agreed with your question relating to organised crime, yes it is organised crime because, as you would appreciate, working between two jurisdictions and being able to move people from one country to another requires an element of organisation. When we start talking about well-established organised criminal networks such as the Chinese triads, outlaw motorcycle gangs, et cetera, from an Australian Federal Police point of view we have been dealing with elements of smaller organised criminal groups. But that is not to say that that is not prevalent elsewhere. Of course, the AFP has visibility on certain aspects but not everything in totality. So I would trust in our other Federal colleagues, particularly our State colleagues, and even our local authorities to be able to provide a broader understanding of that. But I would just like to stress that yes it is organised but not Hollywood style.

CHAIR: That is helpful.

Mr McEWEN: Opportunistic perhaps is more that we have dealt with over the time.

CHAIR: Does that mean that in the cases that you are familiar with you have not seen so much other criminal activities associated with them, such as drug distribution and so on, that it has been more focused on the human sex trade? Or have you?

Mr McEWEN: Again, there are certain sections around drug use and the provision of sexual services. There have been instances of that, yes. Is it prevalent? Again, I would hate to be placed on the record to suggest that the AFP says it is prevalent; I would be cautious of that. But definitely the possibility is there and the potential, absolutely.

CHAIR: Can I just ask another question about the coordination between different agencies? We heard some evidence this morning from the Victorian Police's Sex Industry Coordination Unit. I believe that they have a good working relationship with the Australian Federal Police.

Mr McEWEN: That is correct.

CHAIR: And that they would be your principal point of contact if you are working with the Victorian Police on a Victorian-related matter?

Mr McEWEN: Correct.

CHAIR: I do not believe there is a similar body in the NSW Police Force at the moment. So when you have to work with the NSW Police is there an established protocol?

Mr McEWEN: Yes, there is; be it formal or otherwise. We work, of course, very closely with NSW Police on a range of issues. As part of my command, as I mentioned in my opening address, we focus on Commonwealth crimes against the person. That moves into the Sex Crimes Command within NSW Police. I have a very healthy, respectful relationship with my colleagues there from the assistant commissioner level down. So when we are talking about matters involving sexual servitude my teams would engage with the Sex Crimes Command within NSW Police State Crime Command—yes, absolutely.

CHAIR: But the Sex Crimes Command in New South Wales is the body that deals with all sexual offences in New South Wales—sexual assault—

Mr McEWEN: That is the higher end detective investigative work, yes.

CHAIR: I should have asked the Deputy Commissioner of NSW Police this, but I did not, so if you do not know, just say so: Do you know whether they have within the Sex Crimes Command a particular section similar to the Sex Industry Coordination Unit in Victoria Police?

Mr McEWEN: I would have to say no, I am not aware at all.

CHAIR: All right. We can follow that up with the appropriate people. I just thought you might know.

Mr McEWEN: No. Thank you.

Mr ALEX GREENWICH: What is your interaction with the sex work sector within New South Wales like? Is it a relationship where you get information from them and have a good working relationship with them where they may report incidences to you? How would you describe your relationship with the sex work sector in New South Wales?

Mr McEWEN: Are we talking about organisations—

Mr ALEX GREENWICH: Like SWOP or Scarlet Alliance.

Mr McEWEN: Scarlet Alliance, Project Respect, Anti-Slavery Australia, et cetera—yes. My understanding is they are long and enduring relationships. Again, going back a decade those organisations were people I was dealing with. My understanding is we continue to have that. Obviously at times there are differing points of view, but enthusiastic discussions are quite useful and helpful so everyone puts their perspective and points of view across. My advice is it is extremely respectful and worthwhile.

Mr ALEX GREENWICH: Would you consider them a stakeholder in your role of minimising instances of sex trafficking?

Mr McEWEN: Absolutely. As the diversity of crime continues, law enforcement in general is looking not only across government; we do require assistance from private enterprise, non-government organisations [NGOs], industry and academia. No one agency has the answer. It is very much a partnership which evolves somewhat over time, but it is definitely something that will be enduring and is required into the future.

CHAIR: We heard from the licensing authority in Victoria that there has been quite a dramatic increase in the foreign ownership of at least licensed brothels in Victoria and in particular from one country where ownership has gone from 5 per cent to 30 per cent in quite a short period of time. Have you any concerns around whether there may be organised criminal elements responsible for that change of ownership in the Victorian industry? Are you aware of any similar trends in New South Wales?

Mr McEWEN: The short answer is no, I am not aware of the Victorian experience in relation to foreign ownership. What we have seen previously is Australian citizens who are married to foreign nationals—so would that be considered a foreign-owned premises? It is open to conjecture. I would not be in a position to provide any further information relating to that notion about foreign ownership other than to say our experience has been, when there is a foreign nexus to another country, more times than not there will be a connection in Australia with the same ethnicity.

Ms MELANIE GIBBONS: Commander, in the example you gave earlier of someone who is driven to and from work with no time on her or his own, would they be able to access health appointments or any kind of health care?

Mr McEWEN: In the example I gave you, no. If I recall rightly, there were some health issues attached to that particular victim due to the work and workload that were being experienced. But I have also been advised that, depending on the sophistication of the network, they have supplied that. Again it is one of those things that can be at either end of the spectrum. We do not seem to have come across a business model that has that element of consistency.

CHAIR: But in the case of organised criminal activity of that kind is it more likely that the victim would be taken to a sympathetic medical practitioner in private practice rather than one of the public sex clinics?

Mr McEWEN: I would suggest that is right, yes.

Ms MELANIE GIBBONS: And whether or not they went on their own would also be a good question.

CHAIR: Yes.

Mr McEWEN: When asked for a Medicare card, they are a little bit short.

Ms MELANIE GIBBONS: Sure. We are talking about the relationship the AFP would have with groups like Scarlet Alliance or SWOP and working together. When either WorkCover—or whatever they are called now—or council do any kind of visit, is there something that they should be looking out for? Is there a way that they can better help you or help the people that are there against their will?

Mr McEWEN: Oh, absolutely. There are definitely ways. I will ask Superintendent Mewburn to answer that further. We have had experiences where we have worked and we have been in attendance on compliance inspections with our immigration counterparts who have gone in with council and other authorities.

Mr MEWBURN: Just in case, so I do not miss out any of the key points, I direct you to the Commonwealth Attorney-General's website, which has some very good information packs particularly in relation to trafficking and the signs to look for where people's liberty has been curtailed. We have heard mention today of taking of passports, of people not having any cash, credit cards or identification—those things that would indicate free and open passage. The other thing is to have a look at the scenario in which they reside and understand how they get to and from work. I suppose the best thing is to go to the Commonwealth website which has a very good information pack that can be shared with inspectors and they get the feeling of the tell-tale signs. The other thing is that people who work in that industry, particularly if they receive training along the lines of what to look for, will develop after a while that specialty and that gut feeling of what to look for.

Ms MELANIE GIBBONS: Many of the groups have told us that situations like the one you mention really do not occur or rarely occur. So I am troubled when I hear from other groups like you and our police force that it does happen. We have heard from some groups that situations like passports being taken off people does occur and from other groups to say it does not happen at all. How can we better get attention? The website you have just directed us to will probably help us to find these circumstances and identify it better, because it troubles me that there could be people in this situation that we are not aware of and that are not getting the support groups that are out there and able to help them. They are not getting the attention that they may need. I guess that was more of a comment than a question, in many ways.

CHAIR: I ask a question along the lines of what Ms Gibbons is saying. We have heard evidence that there are a high proportion of South-East Asian sex workers in massage parlours and brothels who may well fit the profile of the person who the commander described from Thailand. I assume that there are limited powers of entry for the Australian Federal Police and Border Protection into premises of that kind without some sort of reasonable suspicion that they may be subject to sexual servitude so it is very difficult for you to investigate without some sort of cogent information. Is that an accurate description of your powers of entry and are there any powers that you could suggest as recommendations for the Committee that would more easily facilitate your investigation of sex trafficking in New South Wales?

Mr McEWEN: To answer the first question in relation to the AFP's powers, it is very similar to New South Wales in that there has to be a threshold in relation to suspicion for us to seek judicial authority to require a search warrant and to enter premises. When you mentioned Australian Border Force—and I am obviously not an expert in this field—my understanding is that under the immigration regime there is the ability for immigration officials to attend premises under their own warrant arrangements, which are subject to a lower threshold, if I recall rightly, that are not issued by the traditional judicial officer that police need to. If I recall rightly it is an internal mechanism and they have to reach a level of suspicion, but their suspicion is in relation to visa compliance.

Obviously it is a sales pitch in relation to having foreign nationals providing certain services; obviously the appetite for the community is broad so it is not hard to identify where foreign-based workers would be working. Of course, then you have Fair Work Australia and the like, and there are other powers in that industrial relations or working environment. There are different ways and that is what I mean about a whole-of-government approach, be it all levels of government. You cannot do it alone, but you can leverage off each other. You will find that the authority of one department to enter premises does not preclude the assistance provided by others.

CHAIR: In the case of Immigration and Border Protection having a lower threshold to enter premises and execute a warrant, if they satisfy that threshold is it then for you to accompany them in those powers of entry or do you need to wait until they get some further information before you can enter?

Mr McEWEN: No, we have accompanied them at the point of execution of the warrant, yes.

Mr ALEX GREENWICH: In New South Wales do you know—and I do not know the correct term, whether it is a raid or visit—?

CHAIR: Execute a warrant.

Mr ALEX GREENWICH: Or execute a warrant?

Mr McEWEN: Compliance inspections.

Mr ALEX GREENWICH: Compliance inspections, whatever the term is?

Mr McEWEN: Let us go with compliance inspections.

Mr ALEX GREENWICH: Do you know how many compliance inspections, jointly or otherwise, the AFP has made in New South Wales to sex service premises?

Mr McEWEN: No, I am sorry I do not have that level of detail. Of course the compliance inspection regime belongs to the Department of Immigration and Border Protection so obviously they would be in a far better position than me.

Mr ALEX GREENWICH: But as to the number of visits where the AFP has accompanied Border Force, is that information that you could provide to us?

Mr McEWEN: Yes, I do have it here. It is quite a low number.

Mr MEWBURN: There were four in the past year.

Mr McEWEN: I think it was four in the past year, but I need to preface this by saying that when the focus of human trafficking began back in 2004, 100 per cent of the effort was around sexual exploitation. Unfortunately as the diversity of crime broadens so, too, does where trafficking looks, so we have moved from where it was 100 per cent focused on sexual servitude, debt bondage, deceptive recruiting into labour exploitation and, unfortunately, part of trafficking now is forced marriages, which was touched on earlier. When we look at the number being small, the effort is still there, but of course with finite resources we have other competing priorities, if I could use that term.

Ms MELANIE GIBBONS: Whilst proportionally it may look different, the number may remain the same?

Mr McEWEN: Correct. The actual compliance inspections of Immigration in concert with Fair Work and even the NSW Police Force and local authorities, that would be far greater. I do not want to paint the perception that it is low because the AFP is not involved.

Mr ALEX GREENWICH: I have got you. Going back to my earlier question, have any of the departments with which you are involved done any analysis of the way in which sex work is regulated and its impact on pull factors for sex trafficking?

Mr McEWEN: No.

CHAIR: What about the push factors?

Mr McEWEN: Analysis? I am not aware of any.

Mr MEWBURN: To that granular detail, no. We have a broad understanding of what those push factors are in the country of origin, but I do not know whether we have actually done the degree of research that you may be looking for.

Mr McEWEN: When we are talking push factors, we are talking about moving from the country of origin to Australia?

CHAIR: Yes, or New South Wales?

Mr ALEX GREENWICH: Or because we are in the New South Wales Parliament to specific States based on the regulation system in those States?

Mr McEWEN: No, it is best not to comment on that purely because it would be ill informed.

Mr MEWBURN: We recognise under the Commonwealth National Action Plan the four pillars that make that up. We understand that one of those push factors is either education or the economy within the countries of those people who predominantly are targeted and great work is done towards minimising those efforts.

Ms MELANIE GIBBONS: If someone suspected something was going on in a sex services premises and they reported it, what does it take to get the attention of the AFP? Does it have to be a certain degree of significance? Does it have to occur to someone from overseas? When does it go to the State police versus the AFP?

Mr McEWEN: It would be the foreign aspect. The AFP has a brand now; people actually understand a lot more what our remit is. Unfortunately the experience is that it is predominantly foreign nationals so we would be the first port of call and if not then definitely it would get to us in a short time.

Mr MEWBURN: I would add that we take these referrals very seriously. We have support mechanisms of victims and victims can avail themselves of intensive care for, I think it is, 65 days in the first instance with a follow-up 45 days if required and that may be the period of time in which the AFP can evaluate the veracity of the situation, the allegation or our ability to actually investigate for a whole range of reasons.

Ms MELANIE GIBBONS: What protections are available if it is, say, a visa issue? What would happen to them once they are found in need of help?

Mr McEWEN: If they are in need of help— ?

Ms MELANIE GIBBONS: If they want to be in Australia but they are working against their will. What protections are available for them to stay in the country?

Mr MEWBURN: The Commonwealth Government recently announced a new visa classification, which moved away from what was previously called the criminal justice stay visa removing the stigma where a victim had the title of "criminal justice" attached so they now have their own visa classifications where they can stay in Australia whilst investigation or prosecution is going forward.

Ms MELANIE GIBBONS: So coming forward does not necessarily jeopardise them being able to stay in Australia?

Mr MEWBURN: No. The other thing is that we also recognise that we are not going to return people back to possible persecution as well, so there are safeguards certainly within our remit and the remit of the Department of Immigration to minimise those negative effects as well.

CHAIR: I will ask a final question. Are you gentlemen able to identify any changes to the current status quo in New South Wales that would better assist you to investigate and prosecute sex trafficking? Is there anything that this Committee could recommend, whether it be co-ordination in government agencies, legislative powers, powers of entry? I am asking this question broadly because I do not know what, if anything, the Committee could recommend to assist you in finding and prosecuting any sex trafficking, sex servitude-type cases?

Mr McEWEN: If I may say first of all, traditionally the AFP has been excluded from the use of New South Wales legislation anyway so it really would not impact on us. But if we were looking from the inside out, obviously what I mentioned before about free and open access to employees would be something that would assist. What I have seen in relation to co-ordination, not having a full understanding of what is currently in place, and that excludes the AFP, of course we would be more than happy to enter into any sort of arrangement similar to what is in Victoria. We are very well versed in working in partnerships. We have been doing it for a long time and it has been a very effective way. In relation to entry powers, again in policing there are sufficient powers there once we have reached a level of suspicion that we are able to make application to judicial officers and that has been extremely well established over very many years, probably the beginning of governments here in Australia. I do not have anything further.

Mr MEWBURN: Coming from an intelligence background, information is gold. We have very strong information exchange protocols between the Commonwealth and the State police forces, as they do themselves. So any of those regimes that would collect data that might identify organised crime groups or associations that could point towards criminal activity then we see it as very useful.

CHAIR: In New South Wales local government has a significant role in this space. Are there any protocols where local government in New South Wales provides information to you? That may be a source of better information gathering if protocols were created, at least, where perhaps local government give information to State Government, which would then, I assume, be shared with you.

Mr MEWBURN: I do not have specifics in relation to the New South Wales Government. I certainly know that we have the ability to access data holdings across a broad range of topics. But specifically in relation to those ones that may regulate that industry in New South Wales, I actually do not have that finite detail. But I would expect that there would be certain privacy provisions where the AFP would have that ability.

CHAIR: Would it be of some assistance if the Committee were to recommend at least a working party to identify ways in which perhaps local, State and Federal authorities can work together in this space and develop protocols? Would that be of any assistance?

Mr McEWEN: Any sort of coordinated approach would be of assistance. I am just conscious of the fact of obviously the limited visibility that we would have. I would hate to suggest that things are not in place when they are already. Of course we would be supportive of anything like that. It may already be in existence, that is all.

CHAIR: Even if you had a working group to identify that everything is great, it is not harmful because it may actually identify things that could be improved, I suppose.

Mr McEWEN: Absolutely. As I have said, that sort of arrangement can be done without the recommendations as well.

Mr ALEX GREENWICH: Do you say that that sort of thing happens informally already with your co-ordination with different stakeholders, different levels of government, different agencies?

Mr McEWEN: As I have said, our maturity in relation to whole-of-government and being partnered up is extremely mature these days.

Mr ALEX GREENWICH: And outside of government?

Mr McEWEN: And outside of government, absolutely. We do have informal and formal mechanisms currently in place. Could they be enhanced? Of course, but again we just need to be mindful of the broad breadth of law enforcement focus and other department and agencies focuses as well. Unfortunately they are not narrowing, and that is the challenge for us. I am comfortable that we do have a high degree of co-ordination as it stands today.

CHAIR: The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence. Are you happy to provide a written reply to any further questions within, say, five business days?

Mr McEWEN: We will do our best.

CHAIR: If you require further time you can indicate to the Committee staff. I thank all witnesses who appeared today. I thank the Committee members for their contributions, and I thank our parliamentary staff whose work makes these hearings possible.

Mr MEWBURN: Will the question that we took on notice earlier be provided to us in writing?

CHAIR: Yes, it will, with any other questions.

(The witnesses withdrew)

(The Committee adjourned at 5.06 p.m.)