



**Minister for Innovation and Better Regulation**  
The Hon Victor Dominello MP

9 May 2016



Ms Ronda Miller  
Clerk of the Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Ms Miller

I refer to your letter to the Premier, the Hon. Mike Baird MP on 10 November 2015 which enclosed a copy of report 1/56 of the NSW Legislative Assembly Select Committee on the Regulation of Brothels.

Your letter was referred to me as Minister for Innovation and Better Regulation.

Please find attached the NSW Government's response to the report of NSW Legislative Assembly Select Committee on the Regulation of Brothels *Inquiry into the Regulation of Brothels*.

Yours sincerely

**The Hon Victor Dominello MP**  
Minister for Innovation and Better Regulation

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# **NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels**

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MAY 2016



## NSW Government response to the final report of the Legislative Assembly Select Committee Inquiry into the Regulation of Brothels

The NSW Government welcomes the final report of the Legislative Assembly Select Committee on the Regulation of Brothels. The Government is committed to ensuring that brothels in NSW are appropriately regulated to ensure the protection of sex worker health and safety, public health and public amenity. The decriminalisation of the sex work industry in NSW has achieved positive health outcomes and outreach. The NSW Government, like the Select Committee, continues to support decriminalisation as the best way of protecting sex workers and maintaining a more transparent sex work industry. We do not tolerate unlawful or criminal conduct and will continue to work closely with councils and law enforcement to continuously improve brothel compliance with all government requirements and reduce any criminal activity or influence.

The Government supports the majority of the Committee's recommendations either fully or in part. A table with the NSW Government response to each of the final report's recommendation begins on page four.

A number of the Committee's recommendations have been implemented or will be implemented as soon as possible by the NSW Government.

- / NSW Health will review the current surveillance methods for STIs in NSW to ensure they are sufficiently robust and commensurate with the public health importance of this issue
- / SafeWork NSW is updating the NSW Health and Safety Guidelines for Brothels in consultation with NSW Health
- / On 31 July 2015 the *Environmental Planning and Assessment Amendment Act 2014* came into effect and granted councils stronger powers of entry to inspect brothels without notice. The powers of local councils to enter, inspect and collect evidence from brothels are comparable to those in the *Tattoo Parlours Act 2012* that the Committee recommended.
- / From August 2015, the NSW Government introduced the toughest penalties in Australia for planning breaches.

### The NSW Government will continue to appropriately regulate brothels

The NSW Government, in close partnership with local councils, protects public amenity through strict planning conditions designed to protect communities. We recognise that there is more work to do to ensure that brothels in NSW are properly oversighted. To ensure better regulation of brothels, we are committed to improving the collection and sharing of information about brothels between agencies and levels of government. We are confident that once implemented, the improved information sharing of up-to-date records about brothels in our state will improve the ability of local councils and communities to monitor compliance with planning regulations and help identify premises that are not meeting standards or are involved in any criminal activity.

The NSW Government will continue its current body of work to examine the issues relating to the regulation of brothels, to ensure that any system meets community expectations, combats criminal activity and protects vulnerable individuals from exploitation. The NSW Government has considered the regulatory recommendations of the final report of the Select Committee's inquiry as part of this work, as well as evidence-based best practice internationally and domestically. However, the NSW Government will not be introducing the licensing model described by the final



report of the Select Committee because reintroducing such significant regulatory burdens and police involvement risks creating similar outcomes to recriminalising sex work. The NSW Government will ensure that there is a standard definition of brothel across NSW Legislation. The Select Committee recommended that the definition of brothel be the same as that in the Standard Instrument Principal Local Environment Plan - that is, any premises where people are engaging in sex work except where no more than two prostitutes are working from their home and not interfering with local amenity.

Currently the *Restricted Premises Act 1943* and the *Environmental Planning and Assessment Act 1979* contain different definitions of a brothel.

It is proposed that minor legislative amendments be made to apply a consistent definition of brothels across all relevant NSW legislation. The NSW Government will analyse the implications of any changes to the definition and develop a legislative definition that is most appropriate for achieving government objectives in brothel regulation.

### **The NSW Government will continue to deliver excellent health services**

The NSW Government maintains excellent health outcomes and safeguards public health for the people of NSW by delivering preventative and treatment programs for sexually transmissible infections (STI) and human immunodeficiency virus (HIV). In December 2015, we launched the NSW HIV Strategy 2016-2020 to build on the success of the NSW HIV Strategy 2012-15 and, in February 2016, also launched the NSW STI Strategy 2016-2020.

The NSW Government has a strong commitment to maintaining the health and safety of sex workers in NSW. Health promotion activities in the sex industry in NSW have been very successful to date. Condom use in commercial sex work approaches 100% in Sydney brothels and the prevalence of STIs in sex workers is at least as low as the general population. Work health and safety regulations apply in brothels and SafeWork NSW is empowered to enforce these requirements.

The NSW HIV Strategy 2016-2020 and the NSW STI Strategy 2016-2020 identify sex workers as a priority population. The STI Strategy aims to sustain the low rates of STIs amongst sex workers and programs include peer education, outreach efforts for sex workers and supporting access to non-discriminatory testing and sexual health services delivered by the Sex Worker Outreach Project (SWOP) supported by Local Health Districts and the Multicultural HIV and Hepatitis Service. As recommended by the final report, NSW Health will review the current surveillance methods for STIs in NSW to ensure that they are sufficiently robust and commensurate with the public health importance of this issue. NSW Health is improving the data systems within sexual health clinics to strengthen the data collection for STIs including recording sex worker status. The NSW Government is already updating the *NSW Health and Safety Guidelines for Brothels*, and guidance will be included to assist local government in their decision making and to ensure public health outcomes are maintained.

The Ministry of Health is also funding a longitudinal research project by the University of New South Wales that examines the incidence of STIs and testing patterns in sex workers presenting to public sexual health clinics. Results from that project should be publically available later this year and will assist in the continual improvement of health policies and practices in this area.

### **The NSW Government has strengthened powers of investigation and enforcement**

On 31 July 2015, the *Environmental Planning and Assessment Amendment Act 2014* introduced by this Government came into effect and granted councils stronger powers to deal with suspected breaches of planning conditions. The changes improved the enforcement regime under the *Environmental Planning and Assessment Act 1979*, including:

- giving councils increased powers to enter non-residential premises without notice, inspect, collect evidence to support criminal proceedings; and
- providing the court with new powers to make offenders more accountable and punish developers that breach approval conditions, with a new maximum fine of \$5 million.

The accompanying Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015 introduced the strongest planning penalties in the country, with fines for breaching planning regulations increasing five-fold. This means councils can issue fines of up to \$3,000 for individuals and \$6,000 for corporations that are operating brothels unlawfully.

The NSW Government also recently doubled the number of Department of Planning and Environment compliance officer numbers across our state to better detect problems and enforce planning regulations.



# NSW Government Response to Recommendations

The NSW Government welcomes the report of the Legislative Council Select Committee on the Regulation of the Brothels. The Government's response to the Committee's 37 recommendations is outlined below.

No.	Recommendation	Response
<b>RECOMMENDATIONS FOR LICENSING SYSTEM</b>		
8	That if NSW introduces a system of regulation of the sex services industry, it introduces as part of its advertising provisions that all advertisements (including upon the internet) must quote the registration number of the sex work premises that the worker is operating from except for advertisements for home based or escort services.	Introduction of a licensing system is not supported.
11	A system of licensing of brothels (as defined) should be introduced because it would assist with proper enforcement of the planning laws, allow for better protection of sex workers from exploitation and danger, assist with fighting organised criminal elements in the industry, and ensure only fit and proper persons control and operate brothels.	Introduction of a licensing system is not supported. This model would be high cost and risks creating incentives for non-compliance. It also risks creating similar adverse outcomes as recriminalisation, such as reduced sexual health screening and protection for sex workers.
12	Any register of licensed premises or individuals created under the proposed brothel licensing system should not be made public and privacy protocols should be established for their management.	Introduction of a licensing system is not supported.
13	That all owners, managers, employees (other than sex workers), and their associates, be required to be fit and proper persons to be affiliated with a licensed brothel under the proposed NSW brothel licensing scheme.	Not supported. The NSW Government is confident that current laws and processes provide adequate protection of sex workers, and that improved monitoring and enforcement of the planning requirements under new powers we introduced will improve these circumstances.
14	That there be a right of review by the NSW Civil and Administrative Tribunal of decisions to refuse to grant a licence/approval under the proposed NSW brothel licensing scheme. However, such review rights should consider the need to keep the existence and content of criminal intelligence reports and similar information, used to arrive at a decision, confidential.	Introduction of a licensing system is not supported.



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15	That nobody be able to be judged unsuitable to own, manage or work in a licensed brothel under the proposed NSW brothel licensing scheme, solely on the basis that he or she has worked as a sex worker.	Introduction of a licensing system is not supported.
16	That the NSW Government identify or create a body to administer the licensing process under the proposed NSW brothel licensing scheme ('the licensing body').	Introduction of a licensing system is not supported.
17	That the interplay between the licensing body and the NSW Police Force in assessing a licensing application be similar to the interplay between NSW Fair Trading and the NSW Police Force under the <i>Tattoo Parlours Act 2012</i> .	Not supported.
18	That licences and approvals under the proposed NSW brothel licensing scheme not be issued unless planning and development approval for the proposed licensed brothel has first been granted by the relevant local council.	Introduction of a licensing system is not supported.
19	That the proposed NSW brothel licensing scheme not focus on revenue-raising but on identifying brothels, to assist to resolve problems with organised crime, sex trafficking, sexual servitude and other worker exploitation or criminal activity.	Introduction of a licensing system is not supported.
20	That penalties for operating unlicensed or unapproved sex work premises under the proposed NSW brothel licensing scheme be monetary and/or custodial.	Introduction of a licensing or registration system is not supported. Penalties for operating a brothel without planning approval have recently been increased.
21	That councils continue their current role of assessing the location of and granting the planning approvals for premises operating in the sex services industry in their local government area.	Supported. Councils play an integral role in designing planning regulations that are in the best interest of their local communities.
24	That a special unit similar to the Victorian Police Sex Industry Coordination Unit be established within the NSW Police Force and appropriately resourced to coordinate the response of relevant Local, State and Commonwealth Government agencies to ensure that brothels have a licence; are properly identified by all relevant agencies; operate within the planning laws; do not have foreign nationals operating within them contrary to their visa conditions; do not have workers in sexual servitude or part of sex trafficking operations; are not operated or owned by organised criminal elements; engage in safe systems of work; and do not permit the exploitation of sex	Not supported. NSW Police will support the regulation of brothels through the monitoring, investigation and enforcement of the criminal law but will not be designated a primary role in the enforcement of compliance and regulatory offences related to brothels.



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	workers contrary to industrial laws.	
<b>26</b>	<p>That if the proposed brothel licensing system is implemented, a system of coordinated State and local government enforcement be employed so that before any local government action is commenced for planning related breaches around brothels:</p> <ul style="list-style-type: none"> <li>• Local government notifies the NSW Police Force Sex Industry Coordination Unit of the suspected planning breaches;</li> <li>• The NSW Police Force and the licensing body takes action to determine whether the brothel is operating unlicensed or there is any other illegal activity in connection with the brothel;</li> <li>• Priority is given to NSW Police Force prosecutions related to licensing and criminal matters but an opportunity is also given for complementary or parallel planning enforcement by local government if necessary;</li> <li>• That the NSW Police Force be given the <i>option</i> to prosecute planning breaches that relate to brothels, on instruction from the relevant local council, in the same proceedings as licensing and criminal prosecutions relating to brothels in order to save costs and avoid a multiplicity of proceedings.</li> </ul>	Not supported. NSW Police will support the regulation of brothels through the monitoring, investigation and enforcement of the criminal law but should not be designated a primary role in the enforcement of compliance and regulatory offences related to brothels.
<b>27</b>	That officers of the NSW Police Force and authorised officers of the licensing body be given similar powers of entry, search and seizure in respect of brothels and premises reasonably suspected of being brothels (as defined) as those enjoyed by authorised officers under sections 30A, 30B and 30C of the <i>Tattoo Parlours Act 2012</i> .	Introduction of a licensing system is not supported.
<b>28</b>	That the NSW Police Commissioner be given powers to issue an interim closure order in respect of an unlicensed brothel or a brothel where he or she reasonably suspects serious criminal offences are occurring, similar to the power that currently exists in respect of tattoo parlours under section 28 of the <i>Tattoo Parlours Act 2012</i> .	Not supported.
<b>29</b>	That because of the problems with sexual servitude and organised crime in the sex services industry, the NSW Police Force be the co-ordinating agency under any new system of regulation and that a dedicated unit within the NSW Police Force similar	Not supported. The NSW Police Force works closely with other law enforcement agencies, including the Australian Federal Police, to investigate breaches and enforce the criminal law in relation to sexual servitude and



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	to the Victorian Police's Sex Industry Co-ordination Unit be established and appropriately resourced.	organised crime. The NSW Police Force will allocate resources to investigations and prosecution as appropriate and an additional regulatory function will divert resources from the policing functions that they are statutorily required to undertake.
<b>30</b>	That an appropriate court be given the power to issue a long term closure order in respect of an unlicensed brothel, or where the court is satisfied there have been, or there are likely to be, serious criminal offences committed at or in connection with the brothel, similar to the power that currently exists in respect of tattoo parlours under section 29 of the <i>Tattoo Parlours Act 2012</i> .	Supported.
<b>31</b>	That monetary penalties, similar to those that apply under section 30 of the <i>Tattoo Parlours Act 2012</i> apply in respect of a brothel that continues to operate while a closure order is in force and consideration be given to the imposition of custodial sentences.	Supported in part. Custodial sentences will continue to be an option for breaches of the criminal law.
<b>36</b>	That if the proposed brothel licensing system is implemented, a review of the system take place within five years of its commencement, with the report to be tabled in Parliament.	Introduction of a licensing system is not supported.
<b>1</b>	<b>OTHER RECOMMENDATIONS – INDEPENDENT OF PROPOSED LICENSING SYSTEM</b>	
	That in granting development consent to operate as sex services premises, councils consider including conditions of consent that require premises to provide safe and equal access for people with disability.	Not supported. The <i>Disability (Access to Premises – Buildings) Standards 2010</i> (Cwth) (the Premises Standard), made under the <i>Disability Discrimination Act 1992</i> (Cwth), specify the requirements for access for people with a disability to and within new buildings and new parts of buildings. The Premises Standard is intended among other things to ensure that dignified and equitable access to buildings, and facilities and services within buildings, is provided for people with a disability. Under the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and Regulation, all new buildings and new building work in NSW must comply with the National Construction Code (NCC), which includes the Premises Standard's Access Code.  In buildings where development consent is required for the use of a



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		<p>premises as a brothel, but no construction certificate is required (i.e. there is no associated building work), there is generally no mechanism to enforce the requirements of the Premises Standard or NCC relevant to disability access.</p> <p>More broadly, the location of brothels is a local matter to be determined by local councils in setting planning policy.</p>
2	<p>That NSW Health review the current sampling methods being used to monitor the testing rates for STIs amongst sex workers to identify how testing rates can be improved, and to ensure all cohorts of sex workers are monitored regardless of who they are, and how and where they work.</p>	<p>Supported. The NSW Government recently launched the NSW STI Strategy 2016-2020 and the NSW HIV Strategy 2016-2010. NSW Health will review the current surveillance methods for STIs in NSW to ensure that they are sufficiently robust and commensurate with the public health importance of this issue. Data systems are also being improved within NSW Health sexual health clinics to strengthen the data collection for STIs including recording of sex worker status.</p> <p>The Ministry of Health is also funding a research project through the University of New South Wales to look longitudinally at the incidence of STIs and testing patterns in sex workers presenting to public sexual health clinics. Results from that project should be available in early 2016.</p>
3	<p>That the NSW Government examine the New Zealand framework for regulating the sex services industry to identify practical regulatory provisions which could be built into the NSW framework to enhance public health outcomes.</p>	<p>Supported. The NSW Government has considered the New Zealand framework as part of this response and its ongoing work to maintain appropriate regulation of brothels, which includes identifying best practice internationally and in other Australian jurisdictions.</p>
4	<p>That in reviewing the <i>NSW Health and Safety Guidelines for Brothels</i>, NSW Health, in consultation with Local Government NSW and SafeWork NSW, give specific consideration to including content that would assist councils to make sound development assessment decisions around sex services premises from a public health perspective.</p>	<p>Supported. The NSW Government has begun revising the <i>NSW Health and Safety Guidelines for Brothels</i> and will ensure that the document is useful to regulators and enforcers, particularly local councils.</p>
5	<p>That NSW Health consult with Local Government NSW about any additional assistance, such as educational briefings, that it could give councils to assist them to make sound development assessment decisions around sex services premises from a public health perspective.</p>	<p>Supported.</p>



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6	That the NSW Government conducts a review of the legislation governing the sex services industry with a view to creating the Consolidated Act.	Not supported.
7	That the NSW Government consider ending the prohibition of advertising of premises and persons for the purposes of prostitution set out in section 18 of the <i>Summary Offences Act 1988</i> ; and consider instituting advertising provisions along the lines of those contained in section 11 of New Zealand's <i>Prostitution Reform Act 2003</i> and having regard to the New Zealand provisions relating to internet advertising of adult products and services.	Not supported.
9	<p>That NSW not introduce a system of regulation of the sex services industry similar to that in Victoria because:</p> <ul style="list-style-type: none"> <li>• Victoria's system is not decriminalised and the Committee supports decriminalisation;</li> <li>• Victoria registers some sex workers and the registration of sex workers provides the potential for a lifetime of stigma for sex workers, many of whom work in the industry for only a small part of their lives;</li> <li>• Medical experts consider the registration of sex workers would probably have negative public health outcomes;</li> <li>• Registration of sex workers is not otherwise justified by the small benefits to be derived from such a system.</li> </ul>	Supported.
10	For the purposes of any future law, there should be a uniform definition of 'brothel' across all legislation. The definition of 'brothel' should be any premises where people are engaging in sex work except home occupation (sex services) as currently defined under the Standard Instrument Principal Local Environment Plan.	Supported in part. The NSW Government will introduce a uniform definition of a 'brothel' that is appropriate for achieving government objectives after considering all options for changing the definition and potential consequences of the amendment.
22	That if the proposed brothel licensing system is not implemented in NSW, more resources be allocated to local councils for them to continue to investigate and prosecute owners and operators of unauthorised brothels. In particular, the NSW Office of Local Government should provide local councils with advice on the best methods of investigating, assembling evidence and prosecuting unauthorised brothels.	Supported in part. The NSW Government will continue to work with councils to assist them with effectively monitoring and enforcing their regulatory responsibilities. The NSW Government has also provided additional assistance to councils through legislation that grants them greater powers and access to premises. The resources to be dedicated to enforcing brothel regulation are at the discretion of local councils to consider and make the



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23	That regardless of whether the proposed NSW brothel licensing scheme is implemented, there be greater coordination between local councils, the NSW Police Force, NSW Health, SafeWork NSW, the licensing body (if implemented), the Australian Federal Police, the Department of Immigration and Border Protection, the Australian Taxation Office and Fair Work Australia to: identify brothels; identify any planning breaches; investigate foreign nationals operating in the sex industry contrary to their visas; investigate sexual servitude, sex trafficking, use of underage sex workers and organised crime; investigate the incidence of unsafe sexual practices and any exploitation of sex workers contrary to industrial laws.	Supported.
25	That the NSW Government request the Commonwealth Government to consider whether a visa condition prohibiting foreign workers from being employed in the sex services industry (similar to New Zealand) should be introduced in order to assist with the prevention of sexual servitude, sex trafficking and the exploitation of foreign sex workers.	Not supported. Australia's immigration and visa frameworks are a responsibility of the Commonwealth Government and such policy questions are to be made by the Minister for Immigration, supported by the Department of Immigration and Border Protection. The NSW Government does not have the necessary expertise and experience on this matter to definitively propose this policy position to the Commonwealth Government.
32	That regardless of whether the proposed brothel licensing system is implemented, in proving sexual services have been provided at a suspected brothel: <ul style="list-style-type: none"> <li>• Circumstantial evidence should continue to be admissible similar to section 17A of the Summary Offences Act and section 124AB of the <i>Environmental Planning and Assessment Act 1979</i> without the need for direct evidence;</li> <li>• Solicitation by a sex worker of a person at the suspected brothel should be deemed to be evidence that actual sex work is taking place at the premises; and</li> <li>• Evidence of blogs or other social media reports of sex acts taking place at a premises should be an exception to the hearsay rule and admissible and received into evidence subject always to the tribunal of fact determining the appropriate weight to be given to the evidence.</li> </ul>	Supported in part. The <i>Restricted Premises Act</i> and the <i>Environmental Planning and Assessment Act</i> permit the Court to consider circumstantial evidence including indirect evidence of a brothel being operated from premises. The NSW Government does not propose any changes to these provisions.
33	That regardless of whether the proposed brothel licensing system is implemented, owner/operators of unlicensed or unauthorised brothels be held strictly liable for	Not supported. If strict liability were to be supported, it would need to apply only to effective control of brothels rather than premise ownership



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	<p>solicitation or the provision of sexual services by workers at the premises. That is, there should be no requirement to prove that the owner/operator knew of the solicitation or knew that the sexual services were being provided, but there should be a defence that the owner/operator took all reasonably practicable steps to ensure that no sexual services were being offered at the premises.</p>	<p>because this may accidentally capture landlords not involved in the operation of the brothel.</p>
34	<p>That regardless of whether the proposed brothel licensing system is implemented, councils should have the power to enter premises suspected of being operating as brothels in breach of the planning laws without any advance notice to the occupier and with full powers to take evidence similar to section 30C of the <i>Tattoo Parlours Act 2012</i> when exercising those powers.</p>	<p>Supported.</p>
35	<p>That regardless of whether the proposed brothel licensing system is implemented, brothel closure orders under the current planning legislation should attach to the premises for a period determined by the Court as well as the business operators and should be able to include an order prohibiting the use of the premises as a massage parlour or for another use specified by the Court for a period determined by the Court so that the orders cannot be easily avoided.</p>	<p>Not supported. Brothel closure orders under the <i>Environment Planning and Assessment Act</i> are attached to particular premises and its permitted land use. It is inappropriate to extend brothel closure order to individuals or businesses except in relation to specific premises.</p>
37	<p>That the NSW Government take steps to implement a system of recording and reporting of complaints, offences and prosecutions relating to the sex services industry in NSW.</p>	<p>Not supported.</p>