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Why licensing will not work in NSW

Scarlet Alliance does not support a licensing model of sex industry regulation for NSW. The Queensland and Victorian licensing models have provided comprehensive evidence of the model's failure.

The Victorian licensing model:

- has resulted in extremely high levels of non-compliance. There were 95 licensed brothels and up to 70 unlicensed brothels in 2006.¹ In 2015 there are 88 licensed brothels and an unknown number of unlicensed brothels (police estimate that there could be up to 350 businesses operating as unlicensed brothels)²; 50% of Victorian sex workers were still operating illegally in 2012;³
- has resulted in police replacing Consumer Affairs as key regulators of the sex industry in Victoria. The Sex Industry Coordination Unit (SICU) is charged with addressing the high level of illegal brothels;
- has created a group of '*clandestinas*', who fall outside health interventions and miss targeted health programs;⁴ the LASH (Law and Sexual Health) report in 2012 recommends that the licensing of sex work should not be regarded as a viable legislative response. It states that licensing is a 'threat to public health';⁵
- requires private sex workers to register their legal names and address on a permanent register, interfering with privacy, limiting ability to travel, and affecting access to justice in court;
- prevents private sex workers seeing clients at their own home/apartment or at a hotel room booked by the sex worker meaning sex workers must visit clients in their homes or a hotel room the client has booked;

After 14 years implementation, the Queensland licensing model:

- has resulted in extremely high levels of non-compliance. Only 24 legal brothels have been licensed in fourteen years in Queensland;⁶
- within two years of implementation, 201 towns or areas were granted permission to refuse brothel development applications – giving sex industry businesses in those areas no option but to operate illegally.
- is inherently expensive and requires long-term commitment by Government to resource the Licensing Authority. In 2002, approximately 80% of the Prostitution Licensing Authority (PLA) income was provided by Government grants. In 2006, approximately 45% of the Prostitution Licensing Authority was still carried by Government grants. In 2014 just over 40% of the Prostitution Licensing Authority revenue continued to be comprised of Government grants;⁷
- although the Queensland Government had expected the cost of maintaining the licensing model to be covered by sex industry licensing fees, this has never been realised;
- has required the development of a Police Prostitution Enforcement Taskforce (PET-F). In 2013-2014, 69% of complaints received by the PLA were referred to Queensland Police for response.⁸ Police are now the regulators of a large section of the Queensland sex industry. Scarlet Alliance has consistently received complaints from sex workers about police treatment;
- requires a high level of police involvement in regulation of the industry, maximising corruption risk. Note: the NSW model of regulation was decriminalised in response to high levels of Police corruption and is recognised to have reduced corruption;
- is extremely costly to the licence applicant and creates extreme barriers to compliance. Processing times for license applications are long, and during this time the property has to be leased or owned and have planning permission. Licensing fees are extremely costly,⁹ and the long processing time exacerbates the cost of applying for a license. A brothel with only 3 rooms and 1 licensee will pay \$26, 828 for a license in 2015, costing a small business over \$500 a week in licensing fees.¹⁰

The issues represented here remain consistent barriers to the success of licensing models to regulate the sex industry. Licensing models in Queensland and Victoria have created a two-tier sex industry; the legal sector or those that can comply, and the illegal sector made up of the majority of the industry, who are unable to meet the excessive conditions of compliance.

In both states licensing has resulted in high levels of non compliance, returning the industry to regulation by police.

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- ¹ Chen MY, Donovan B, Harcourt C, Morton A, Moss L, Wallis S, Cook K, Batras D, Groves J, Tabrizi SN, Garland S, Fairley CK, 'Estimating the number of unlicensed brothels operating in Melbourne' (2010) *Australia and New Zealand Journal of Public Health* Vol 34(1), 67.
- ² Carnovale, M, 'Trading in Lives' *Police Life* Autumn 2015, 11.
- ³ Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012) *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, Kirby Institute, UNSW.
- ⁴ Harcourt C, Egger S, Donovan B, 'Sex Work and the Law' (2005) *Sexual Health* 2(3) 125.
- ⁵ Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012) *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, Kirby Institute, UNSW, Recommendation 2.
- ⁶ Queensland Prostitution Licensing Authority, *Licensed Brothels*, <http://www.pla.qld.gov.au/brothels/licensedBrothels.htm>
- ⁷ Queensland Prostitution Licensing Authority, *Annual Report 2013-2014*
http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2014/documents/financialStatements2013_14.pdf
- ⁸ Queensland Prostitution Licensing Authority, *Annual Report 2013-2014*
<http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2014/documents/monitoringCompliance.pdf>
- ⁹ Queensland Prostitution Licensing Authority, *Apply for a Brothel Licence*, <http://www.pla.qld.gov.au/licencesCertificates/brothelApplication.htm>
- ¹⁰ Queensland Prostitution Licensing Authority, (July 2015) *Fees Matrix: Licence and Certificate Fees*.