

Information Pack on NSW Inquiry into the Regulation of Brothels

You may have heard about the inquiry being conducted in NSW on the regulation of brothels. A Select Committee on the Regulation of Brothels has been established and will examine and report around the 12th November on:

- (a) The current extent and nature of the brothel industry in New South Wales;
- (b) Current regulation of brothels in New South Wales and other states;
- (c) Penalties and enforcement powers required to close illegal brothels;
- (d) Options for reform including a scheme of registration or licensing system for authorised brothels;
- (e) The protection of sex workers, including issues around organised crime and sex trafficking;
- (f) Options to maintain the high level of public health outcomes;
- (g) Residential amenity and the location of sex services premises;
- (h) Any legislative changes that may be required; and
- (i) Any other related matters.

Countless studies demonstrate decriminalisation is the best-practice approach to regulating the sex industry. The NSW government seems set on replacing best practise with approaches that have failed in many other places.

In the election before last the Government made an 'election promise' to introduce a licensing model of regulation. This is the second inquiry since then. The first extensive inquiry resulted in a report however the report was not released.

As sex workers and sex worker organisations we know from experience in Queensland and Victoria that licensing models are:

- expensive
- create significant barriers to compliance
- do not support sex workers control over our work, occupational health and safety.

THERE IS NO SUCH THING AS AN ILLEGAL BROTHEL IN NSW...find out more in this info pack

This is a chance for sex workers, as the experts and people most able to see where changes to brothel regulation will create problems or just not be practical, to inform government processes or decisions.

Submissions can be as simple as a letter (an example is included in this pack).

Your comments must be received by government by post or email by Wednesday 19th August 2015

The Committee includes:

Alistair Henskens (Chair)

kuringgai@parliament.nsw.gov.au

Member for Ku-ring-gai

- Liberal Party

Melinda Pavey (Deputy Chair)

oxley@parliament.nsw.gov.au

Member for Oxley

- National Party

Melanie Gibbons

holsworthy@parliament.nsw.gov.au

Member for Holsworthy

- Liberal Party

Alex Greenwich

sydney@parliament.nsw.gov.au

Member for Sydney

- Independent

Jo Haylen

summerhill@parliament.nsw.gov.au

Member for Summer Hill

- Labor Party

Eleni Petinos

miranda@parliament.nsw.gov.au

Member for Miranda

- Liberal Party

Kathleen Smith

gosford@parliament.nsw.gov.au

Member for Gosford

- Labor Party

This information pack is to assist people, particularly sex workers, to have a say in this inquiry.

It includes:

1. Information on how to have your say.
2. Information on where to send your submission (including postal address).
3. An example submission/letter (as a guide for your own).
4. Facts, myths and misinformation (to help you write your submission).
5. Suggestions you can give to people who support sex workers.

Section 1 - How can you have a say:

As a Member of the Community

You can put your opinion in writing without identifying yourself as a sex worker. Many other members of the community will be doing just that. They will not feel the need to identify what they do. Take advantage of being part of the community.

As a Sex Worker

You may want to say you are a sex worker and discuss the way changes to brothel regulation will impact on your work – this will be important for the Committee to understand the real impact straight from sex workers. However, if you feel you cannot identify yourself consider using your working name or another name and state why you are doing so – ‘for privacy reasons’ or ‘to protect my safety’

As a Manager or Operator

If you are involved in the sex industry you are a stakeholder and have a right to point out how changes to the regulation of brothels will impact on your work and your business.

Section 2 – Where to send your letter/submission:

Send submissions by post or submit online.

Post:

The Committee Manager
 Select Committee on the Regulation of Brothels
 Parliament House
 Macquarie St
 Sydney NSW 2000

Online:

<http://www.parliament.nsw.gov.au/regulationofbrothels>

Are you are confused by the different models of sex industry regulation? Or looking for references or more information, you can find the Model Principles for Sex Work Legislation resource on the Scarlet Alliance Website.
www.scarletalliance.org.au/library/principles_2014

Your submission must be received by **Wednesday, 19 August 2015!**

The United Nations Population Fund, United Nations Development Fund and UNAIDS all support the decriminalisation of sex work and note that legal empowerment of sex worker communities underpins effective HIV responses.

Section 3 – Example letter/submission:

[Insert your Name and address] Note - if you use your address – often submissions are PUBLIC unless you request confidentiality The SWOP PO box is PO Box 1354 Strawberry Hills NSW 2012

[Insert date here]

The Committee Manager
Select Committee on the Regulation of Brothels
Parliament House, Macquarie St
Sydney NSW 2000

To whom it may concern,

As a sex worker, I am writing to make a submission to the Inquiry into the Regulation of Brothels. Sex workers are the *key stakeholders* in the process of evaluating the regulation of brothels in NSW.

Some points you could make in your letter/submission include (suggestions only):

- The decriminalisation of sex work is essential to recognising the human rights of sex workers in Australia. Sex work has been decriminalised in NSW since 1995 and NSW is world-renowned as having a best practice model. The outcomes of decriminalisation in NSW have been:
 - Extremely low rates of STIs and HIV (recognised by Australia’s National Strategies and the Kirby Institute Annual Surveillance Report);¹
 - Better access to health promotion (finding of the Law and Sex Worker Health Study, which compared the health impacts of legal frameworks across Victoria, NSW and WA);²
 - No evidence of organised crime (recognised by the Land and Environment Court);³
 - Better access to Occupational Health and Safety (WorkCover and SWOP worked with sex workers to create Health and Safety Guidelines for Brothels, which have been translated to Thai, Chinese and Korean);⁴ and
 - Current evidence presented by the Lancet at AIDS 2014 found the decriminalisation of sex work would have the greatest impact on the HIV epidemic, reducing HIV by up to 46% in the next decade and resulting on cost saving thresholds of tens of millions of dollars globally.⁵

I have worked in other places with different regulatory models and choose to work in a state where sex work is decriminalised because.....

Yours Faithfully,

[If you use your working name or any other pseudonym explain why]

¹ Australian Government Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, Commonwealth of Australia, Canberra, 2010, 16. Kirby Institute, HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report, University of New South Wales, 2011, p8, Figure 46, Figure 34.

² Christine Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, (2010), ‘The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers’, *Australian and New Zealand Journal of Public Health*, 34:5 at 482.

³ Land and Environment Court of New South Wales, *Martyn v Hornsby Shire Council [2004] NSWLEC 614*, 2004, accessed at <http://www.lawlink.nsw.gov.au/lecjudgments/2004nswlec.nsf/00000000000000000000000000000000/45b396e658d9f27eca256f420004a76a?opendocument> on 12 August 2015.

⁴ NSW Government and Workcover, ‘Health and Safety Guidelines for Brothels’, 2001, accessed at http://www.workcover.nsw.gov.au/_data/assets/pdf_file/0014/15134/brothels_health_safety_guidelines_English_0120.pdf on 12 August 2015.

⁵ The Lancet Series on HIV and Sex Workers, July 2014, accessed at <http://www.thelancet.com/series/HIV-and-sex-workers> on 30 October 2014.

Section 4 – Facts, Myths and Misinformation

The Terms of Reference for this inquiry demonstrate that the NSW Government is operating under a number of false assumptions and fundamental misunderstandings about sex work, how brothels, and the sex industry operates, and what is necessary to develop effective sex industry regulation.

Decriminalisation has worked.

Decriminalisation has proven to be a successful regulatory model in NSW if you consider: the excellent health outcomes, the low cost of this model, high levels of compliance compared to other models, reduction of police corruption, and improved occupational health and safety for sex workers.

However, some councils have struggled to effectively do their role of regulating zoning and amenity impact in their areas. Some councillors have refused development applications fearful of losing votes if they are seen to approve a brothel in the local area and others have failed to allow for sex industry businesses to operate within their planning guidelines. Most either do not allow sex workers to work from home or still require individual sex workers working from home to apply for a development application. This failure to effectively do their role in implementing decriminalisation has led to multiple problems that could be addressed if councils were to follow the intention of the legislation and not discriminate against the sex industry.

Some facts:

- Providing safe working environments for sex workers is an essential factor of a successful regulatory model.
- **Brothels which are non-compliant with council requirements are not ‘illegal’, and describing brothels as illegal is inflammatory and incorrect.**
- Sex industry businesses are not different to other business and there is no basis for the assumption that special laws and regulations are required to manage non-compliant brothels differently to other non-compliant businesses.
- **Councils already have significant brothel closure powers to address non-compliant brothels.**
- The failure of councils to consider Development Applications from sex industry businesses on the basis of planning and amenity impact (the impact on other businesses or residents) has meant many development applications not approved by council are then considered by the Land and Environment Court and found to have met the requirements for approval. This process is unnecessarily costly for both businesses and councils.
- **Even though the Land and Environment Court has confirmed that offensiveness and morality are not relevant planning considerations,⁶ brothels continue to be ‘perceived as outlaws’ and ‘regarded as inherently awful, disorderly, and hence warranting and requiring exclusion from the community by councils.’⁷**
- There are minimal to nil amenity impacts of sex industry businesses, and this has been demonstrated in NSW, through experience and research. Research from 2008 demonstrates that after 13 years of decriminalisation in NSW, only one brothel owner had been ordered to cease operation due to amenity impacts, and there had been no complaints relating to amenity impacts for private sex work.⁸
- **The key issue that councils appear to have with decriminalisation is that they must actually demonstrate some kind of proof or produce evidence of a premises being used as a brothel before they are able to cut off utilities and close down businesses. This is an important protection to reduce corruption.**
- Decriminalisation removes police as the regulators of the sex industry. Licensing models re-introduce police as the regulators on the non-compliant sector, and police corruption was one of the main reasons NSW was decriminalised.
- **Licensing models promote the development of a two-tiered industry whereby many are excluded from operating legally – often because meeting the requirements of licensing is excessive or unreasonable⁹**
- Despite the significant financial resources invested into identifying trafficking in Australia, consistently low government statistics show that the media-estimated incidence of trafficking in Australia is inflated.

⁶ *Liu, Lonza and Beauty Holdings Pty Limited v Fairfield City Council* (1996).

⁷ Penny Crofts, ‘Brothels: Outlaws or Citizens?’ (2010) *International Journal of Law in context*, 6:2, 151.

⁸ Scarlet Alliance and Nothing About Us Without Us, *Submission to Shadow Attorney General Chris Hatcher on Sex Industry Regulation in NSW*, September 2010, 10.

⁹ Christine Harcourt et al., ‘Sex Work and the Law’, *Sexual Health* 2(3) 121–8 at 125.

Decriminalisation is let down by councils who fail to effectively regulate the sex industry. Not because they do not have enough powers to do this effectively.

Under a licensing model of regulation councils will still need to provide for sex industry businesses of various sizes and scales within their local area. However, sex worker and sex industry businesses will have significantly higher barriers to compliance.

Section 5 – Suggestions you can give to people who support sex workers

1. Access the Terms of Reference

This inquiry is loaded, and the committee is stacked conservatively. You can access the terms at <http://www.parliament.nsw.gov.au/regulationofbrothels>

2. Write a Submission as Part of the Community Consultation Process

Submissions do not have to be long and are an important way to let the Committee know you do not support changes to the regulation of brothels in NSW.

Send submissions by post or submit online.

Post:

The Committee Manager
Select Committee on the Regulation of Brothels
Parliament House, Macquarie St
Sydney NSW 2000

Online:

<http://www.parliament.nsw.gov.au/regulationofbrothels>

3. Write a letter to your local member or local politician – you can find them online

<http://www.parliament.nsw.gov.au/prod/parlment/members.nsf/V3ListCurrentLAMembers?Open&vwCurr=CurrLAByElectorate>

If you are in the following electorates, your local member is on the Committee: Ku-ring-gai, Oxley, Gosford, Miranda, Summer Hill, Sydney, and Holsworthy. Local members should represent their electorate, and as a member of their electorate they should meet with you.

4. Spread the Word Around –

Let other sex workers and supporters know about the inquiry and why it's important that we have our voices heard.

'Swedish' or 'Nordic' laws

There has been a push for the 'Swedish Model' or 'Nordic Model' despite evidence this model of sex industry regulation has had a negative impact on the human rights of sex workers. Sex workers in Sweden do not support the laws, describing the model as increasing isolation and describing how police stakeout their homes and workplaces in order to detect and arrest their clients.

The model does not 'decriminalise sex workers and criminalise the clients of sex workers' – it actually reduces sex workers' opportunities to work independently, and can also make landlords of sex workers likely to be charged.

The Prostitution Licensing Authority Queensland reported that the Swedish model has 'driven the sex industry underground', leaving sex workers 'at greater risk of violence'.