



LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

## Select Committee on the Regulation of Brothels

REPORT 1/56 – NOVEMBER 2015

INQUIRY INTO THE REGULATION OF BROTHELS

REPORTS  
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LEGISLATIVE  
ASSEMBLY



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SELECT COMMITTEE ON THE REGULATION OF  
BROTHELS

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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# Terms of Reference

- (1) A select committee, to be known as the Select Committee on the Regulation of Brothels, be appointed to inquire into and report on the regulation of brothels in New South Wales.
- (2) The committee is to examine and report on:
  - (a) Appropriate local and state government regulatory and compliance functions for brothels;
  - (b) The demarcation in local and state government roles and responsibilities; and
  - (c) Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.
- (3) The inquiry should consider:
  - (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 licencing 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.
- (4) The committee consist of seven members, as follows:
  - (a) Four Government members, being Ms Melanie Gibbons, Mr Alister Henskens, Mrs Melinda Pavey and Ms Eleni Petinos;
  - (b) Two Opposition members; and
  - (c) One Independent member, being Mr Alex Greenwich.
- (5) Mr Alister Henskens shall be the Chair of the committee.
- (6) The Opposition members shall be nominated in writing to the Clerk of the Legislative Assembly by the Opposition Whip by 25 June 2015. Any changes in membership, including the Independent member, shall also be so notified.
- (7) The committee will have leave to sit during the sitting or any adjournment of the House.
- (8) The committee is to report by 12 November 2015.

## Chair's Foreword

It has been a privilege to Chair the Joint Select Committee on the Regulation of Brothels in NSW.

The Committee was appointed at a time of ongoing media reports with regard to the failure of the current system.

We approached our task with a strong desire to deliver a comprehensive report with robust and practical recommendations to expose and remove the:

- exploitation of vulnerable sex workers;
- criminal elements within the industry; and
- unapproved sex work premises in inappropriate locations across the state.

The Committee has concluded that it would be retrograde and serve no public purpose to re-criminalise sex work. Government should not criminalise sex work where it is a consensual activity between adults. It is undesirable to stigmatise sex workers by requiring them to be licensed and forever recorded as having worked in the industry. It is also equally undesirable to criminalise the clients of sex workers as proponents of the Nordic model urged upon us.

The current system is not perfect and the Committee has concluded that there are problems which justify additional but limited new regulation.

The Committee's recommended solutions to these problems are not novel. The system we recommend is very similar to New Zealand which has been well received. The limited system of registration will apply only to the owners and managers of brothels and not to the sex workers. Only fit and proper persons should own or manage brothels. That is important in a decriminalised environment to protect sex workers from exploitation and also to protect the community against organised crime. The architecture for the regulation, powers of entry and enforcement, has also drawn upon the existing NSW Tattoo Parlour and Boarding House legislation. The particular difficulties gathering admissible evidence in this area have also been addressed.

We have recommended that a specialised unit be established within the NSW Police Force to investigate breaches of the new regulatory system and co-ordinate the inter government agencies involved in the regulation and enforcement of the new licensing laws relating to the owners and managers of brothels.

When the NSW Parliament decriminalised prostitution in the mid-1990s it went where no western government had previously gone. But in doing so sex work in NSW in 1995 was not only decriminalised, but almost completely deregulated – with its only regulation confined to planning controls.

As the Deputy Commissioner for Police, Mr Nick Kaldas, told us, under the current NSW system there is more regulatory control devoted to the ownership and registration of a dog than there is to the protection of sex workers. It seems counter-intuitive and it has not been good public policy for NSW laws to regulate tattoo parlours and restaurants and cafes substantially more

than brothels. The absence of regulation is particularly surprising when reliable evidence to the Committee has shown that sex workers are often (but by no means always) vulnerable by reason of sex trafficking and workplace exploitation, or have diminished life control because of drug addiction and/or mental health issues. Extreme deregulation is also surprising because large cash industries like prostitution have always been particularly attractive to organised criminal groups who can wash money obtained from illegal activities like drug distribution.

NSW currently has a two tiered system of approved and unapproved brothels. While some brothels operate within the planning laws, many brothels operate without approval in locations where they should not be. Brothels often operate under the false façade of only providing massage, karaoke or other adult entertainment. NSW should have a system which is properly enforced so it operates in a uniform fashion within the requirements of the various laws that apply to it.

Some witnesses contended that these unapproved brothels were caused by Councils not giving planning approval for them. The City of Sydney's approach to planning law and brothel approvals was held up as a model to be followed by other councils. However, the evidence was that the City of Sydney too has problems with unapproved massage parlours operating as brothels.

The Committee heard evidence that unapproved massage parlours offering sexual services had popped up recently in many local government areas at an alarming rate. In one council six such establishments had commenced operating within the previous eighteen months when no development application for a brothel had been made in the council area within the previous six years. Evidence concerning other council areas was to a similar effect. The establishment of the unapproved brothels could not be linked to the rejection of applications by the council which had set aside areas for brothels to be established.

Many of the brothels operating without approval were located in areas which would never obtain approval under reasonable planning laws because of, for example, their very close proximity to schools. There was also evidence that some of the unapproved brothels which called themselves massage parlours may be part of large commercial chains operating throughout metropolitan Sydney.

Evidence before the Committee by the NSW Police Force was that reports of sexual servitude in brothels were increasing. The Australian Federal Police and Victoria Police also gave evidence of a considerable number of reports of sexual servitude in brothels. They also gave evidence that drug use and distribution, the use of illegal workers and organised criminal groups were connected to brothels in NSW. The successful recent prosecutions for sexual servitude are sufficient to justify government action.

Sexual servitude is by its nature concealed criminal activity of a most heinous kind. The Federal and State Police evidence was unanimous that sexual servitude is under reported. There is no reason to assume that all instances of sexual servitude come to the attention of Police under the current deregulated environment where the Police have limited visibility and a very limited basis to enter and investigate premises operating as a brothel.

There was also evidence of workplace exploitation of sex workers where their income is commonly reduced through unconscionable fines imposed upon them by the brothel owners for minor infractions of contrived "workplace rules" designed to reduce their wages.



Furthermore, the brothel owners do not always ensure a safe workplace by allowing unprotected sexual acts to take place within their businesses, especially unprotected oral sex within brothels masquerading as massage parlours.

Evidence was given that planning laws in so far as they relate to brothels were not properly working. Councils are beset with a confused regulatory environment where, for example, the term “brothel” has a different meaning under various pieces of legislation. Enforcement of planning breaches by brothels was shown to be easily avoided. In one case cited by a council, a new business opened within seven days of a closure order upon an unapproved brothel. The new business performed the same unapproved sexual services in the same premises, requiring the sometimes long and expensive investigation and enforcement process by council to start all over again.

Apprehension of a corruption risk with the re-entry of the NSW Police to this area does not justify keeping the Police from holding a central role in the investigation and enforcement of the recommended regulatory regime in order to properly address the organised crime and sexual slavery in the industry. The criminalisation of prostitution created the previous corruption risk. That is no longer an issue. There have been no reports of corruption associated with tattoo parlours which involves very similar regulation to that proposed by our report. Robust checks and balances have been introduced since 1995 with regard to the Police’s corruption risk.

Under the pre 1995 regime it was contended that sex workers did not report rape or violence to Police who were the regulators of their illegal conduct. Such concerns will not arise again under our recommended changes. Under our recommended regime, regulation is imposed upon the owners of brothels and not sex workers. Prostitution will remain decriminalised.

A final matter to note is that decriminalisation is said to have achieved positive public health outcomes in NSW with regard to the incidence of sexually transmitted infections (STIs). No accurate data is available as to how many sex workers there are in NSW. Sex workers are not licensed. Many of them currently work underground in massage parlours without planning consent. The available data says that there are similar STI rates in NSW compared with the more regulated and still criminalised Victorian sex worker regime. The common STI rates between NSW and Victorian sex workers suggest that the strength of regulation is neutral in an Australian context with regard to STI amongst sex workers, perhaps because education and public sex clinics are more important in keeping the rates low.

I wish to thank the Minister for Innovation and Better Regulation, the Honourable Victor Dominello MP, for requesting that the Committee be appointed. We were given important work to do and I am grateful for his foresight on this issue.

I also wish to thank my fellow Committee members for their dedication and collegiality. It has been my pleasure to chair our meetings, to hear your contributions and to work with you to complete this report.

Finally, I wish to thank the Legislative Assembly Committee staff for the expertise and professionalism they applied to assisting the Committee and me in our work.



**Alister Henskens SC MP**  
Chair

# Executive Summary

The Legislative Assembly Select Committee on the Regulation of Brothels was formed on 25 June 2015 to inquire into and report on the regulation of brothels in NSW.

The Committee was asked to examine and report on appropriate local and state government compliance functions for brothels; the demarcation in local and state government roles and responsibilities; and possible reform options that address the social, health and planning challenges associated with legal and illegal brothels. Amongst the specific matters to be considered included the protection of sex workers, including issues around organised crime and sex trafficking and options for reform, including registration or licensing system for authorised brothels.

Chapter One describes the background to the inquiry and provides information about its conduct, that is, the submissions received by the Committee and the visits of inspection and public hearings that it held.

Chapter Two discusses the sex services industry in NSW and other jurisdictions. It records the evidence by the Deputy Commissioner of NSW Police that the industry has been under regulated for some years making the industry attractive to criminal elements including sex slavery and outlaw motorcycle gangs. It examines the extent and nature of the industry in NSW, finding that there is a diversity of circumstances in which sex workers operate. It then examines the operation of the industry in NSW, providing an historical overview up to the decriminalisation of sex work in 1995, and outlining the laws that regulate the industry today. The chapter ends with a brief outline of regulation in other jurisdictions.

Chapter Three explores the planning issues associated with the sex services industry in NSW. It outlines the planning and development assessment requirements to operate a brothel in NSW. It then discusses the various planning issues raised with the Committee, including brothels that are operating without planning and development approval. The chapter finds that a substantial section of the NSW industry is operating in premises for which there is no planning or development approval to offer sexual services. It also finds that some of these premises are in inappropriate locations, for example near schools, where they would not be given approval to operate were they to apply for it.

Chapter Four discusses some of the risks faced by sex workers and the inadequate systems in place to offer them protection. It also explores criminal involvement in the sex services industry. The police have reported that 40 of the 340 brothels in NSW have some connection to outlaw motorcycle gangs. There are factors such as the use of cash that make sections of the industry attractive to organised crime. In addition, it examines the evidence that there is increased reporting of sexual slavery and that it is a crime which is under reported. Given the past successful sex slave prosecutions and the Police evidence to the Committee, it is likely that media reports of sex slavery and criminal networks are not fabrications. Police have insufficient visibility over the industry and the criminal elements that operate within it because

a substantial section of the industry operates in premises for which there is no planning or development approval to offer sexual services.

Chapter Five addresses the public health outcomes delivered by the current regulation of brothels in NSW. It examines current rates of sexually transmitted infections (STIs) and condom use, availability of and access to sexual health clinics and outreach services, and the impact of regulatory options on public health outcomes. The chapter finds that although the current rates of STIs among sex workers in NSW are reported to be equal to or better than the population as a whole, it is difficult to know the percentage of sex workers that are covered by official data.

The chapter further finds decriminalisation of sex work has probably made it easier for sex workers to obtain regular STI checks. However, there is recorded lower rates of condom use in unapproved premises which could present a risk of higher STI levels. The chapter also provides evidence of studies which show high rates of post-traumatic stress disorder in sex workers. The chapter ends by making several recommendations to help identify regulatory enhancements that could be built onto the strengths of the existing NSW system.

The sixth and final chapter of the report outlines the Committee's preferred options for reform of the regulation of brothels in NSW. Most significantly, the chapter recommends a licensing system for most premises where sex work takes place. The chapter finds a licensing system would help to solve identified problems in the industry – assisting the proper enforcement of planning laws, protecting sex workers from exploitation and danger, assisting to fight organised criminal elements in the industry, and ensuring that only fit and proper persons control and operate brothels. The chapter also notes the positive public health outcomes that have been linked with decriminalisation in NSW and finds that decriminalisation should remain and that criminal penalties for sex work should not be re-introduced.

Chapter Six contains a number of other recommendations including recommendations to streamline and modernise legislation, and a scheme for enforcing the proposed new licensing and regulatory system. This would involve the creation of a special Sex Services Industry Co-ordination Unit within the NSW Police Force; greater coordination between agencies; and appropriate investigation, entry, and enforcement powers for authorities in respect of brothels. Changes to the law to enable easier proof of sexual activity in unapproved premises are also recommended. It is recommended that the NSW government request the Commonwealth government to consider changes to visa conditions in order to facilitate the prevention of sex trafficking.

While the chapter finds that councils are ill-equipped to close down unauthorised brothels and to deal with criminal activity, and that state government agencies including the new Police Unit should be mobilised to take over these roles, it also finds that councils are best placed to make decisions about the location of brothels in their areas. In light of this, the chapter also recommends that under the new system, local councils have a continuing role making planning and development approval decisions about the location of brothels in their areas.

# List of Findings and Recommendations

The Committee has made findings of fact and recommendations for action to be taken by the NSW Government as follows:

## FINDING 1 \_\_\_\_\_ 9

There is not a single uniform sex services industry in NSW. Sex work is conducted in a number of different workplaces including development approved brothels of various types and sizes; businesses where sexual services are provided without development approval such as massage parlours and karaoke bars; or by sex workers operating in their own homes, as escorts, or on the streets.

## FINDING 2 \_\_\_\_\_ 9

There is a diversity of circumstances in which sex workers operate:

- Some sex workers are highly independent and able to make a rational choice of their own free will about participating in the sex services industry;
- Other sex workers are vulnerable because of poverty, drug addiction, mental health issues, language barriers and sexual servitude which may adversely impact, to varying degrees, on their ability to exercise free choice about their participation in the sex services industry.

## FINDING 3 \_\_\_\_\_ 43

A substantial section of the sex services industry in NSW is operating in premises for which there is no planning approval to provide sexual services. In this context, there is an underground sex services industry that is operating in NSW.

## FINDING 4 \_\_\_\_\_ 43

There is evidence of association, and perhaps common ownership, between massage parlours that appear to be offering sexual services in premises that do not have planning approval to do so and other massage parlours across Sydney.

## FINDING 5 \_\_\_\_\_ 43

At least some and possibly many of the premises that have no planning approval to provide sexual services are in inappropriate locations for which they would not be given planning approval were they to apply for it.

## FINDING 6 \_\_\_\_\_ 43

There should not be any change to the current restrictions on street workers and sex services premises being within close proximity to schools, educational institutions for young people, places where children and adolescents regularly gather or places of worship.

## FINDING 7 \_\_\_\_\_ 43

Councils experience difficulties enforcing the current planning laws in order to prevent unapproved brothels from operating in areas where they are not permitted.

## RECOMMENDATION 1 \_\_\_\_\_ 46

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.

FINDING 8 \_\_\_\_\_ 61

Sexual services are being provided on a large scale and on many occasions in premises that do not have planning approval to do so, affording the police insufficient visibility over the industry and the criminal elements that may operate within it.

FINDING 9 \_\_\_\_\_ 61

Unapproved massage parlours and karaoke bars where sexual services are provided without planning approval and in an underground manner, allow significant potential for them to be affiliated with organised crime or human trafficking and sexual servitude especially compared with the approved sector of the sex services industry in NSW.

FINDING 10 \_\_\_\_\_ 61

There are structural aspects of larger operations in the sex services industry which make them attractive to organised crime, in particular their use of cash which is of assistance in laundering money obtained from unrelated enterprises of an illegal nature.

FINDING 11 \_\_\_\_\_ 61

Successful sex slave prosecutions and evidence from both the Australian Federal Police and the NSW Police Force make it probable that:

- Sexual servitude occurs in NSW; and
- Criminal networks do operate in some parts of the NSW sex services industry.

FINDING 12 \_\_\_\_\_ 69

There are significant numbers of foreign workers operating in the NSW sex services industry which has an estimated 340 brothels in NSW.

FINDING 13 \_\_\_\_\_ 69

The nature of the services sex services industry is such that sex workers from foreign countries operate without proper visa permission and in circumstances where they are vulnerable to exploitation and servitude whether as part of a system of sex trafficking or not.

FINDING 14 \_\_\_\_\_ 69

Some sex workers are subject to fines or other financial punishment and other undesirable industrial practices (like being forced to work in their places of work for up to 17 hours or more a day against threat of deportation) that would not be acceptable in normal work places and the usual protection of the rights of workers provides particular challenges given the nature of the sex services industry.

FINDING 15 \_\_\_\_\_ 70

There are pressures from clients to compromise the occupational health and safety of sex workers and the nature of the operation of the industry make it difficult for SafeWork NSW to protect workers in the sex services industry.

FINDING 16	70
The enforcement of the current planning laws, industrial laws and health and safety laws provide particular challenges given the nature of the sex services industry.	
FINDING 17	70
It is impossible to police whether foreign sex workers are only conducting sex work for the 40 hours they are permitted to work a fortnight, thus exposing them to an environment where foreign nationals can be subjected to sexual servitude or other exploitation.	
FINDING 18	85
The incidence of STIs amongst sex workers in NSW is reported to be equal to or better than the population as a whole although there are problems with accurate data given that sex workers in NSW are not registered and it is difficult to know the percentage of sex workers that are covered by the official data on STIs.	
FINDING 19	85
It is probable that decriminalisation of sex work has made it easier for sex workers to obtain regular STI checks at medical clinics and obtain information about safe sexual practices.	
FINDING 20	86
The Committee finds that rates of STIs in a more regulated environment, such as the one in Victoria, compared to a less regulated environment like NSW, are equivalent.	
RECOMMENDATION 2	88
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.	
RECOMMENDATION 3	88
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.	
RECOMMENDATION 4	88
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.	
RECOMMENDATION 5	88
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.	
FINDING 21	97
The current legislative environment governing the sex services industry in NSW is contained in many pieces of legislation meaning that there is inconsistency in the definition of key concepts	

such as the meaning of ‘brothel’ and enforcement of the current laws is confusing and therefore difficult to implement.

FINDING 22 \_\_\_\_\_ 97

There would be greater harmony in the legislative environment governing the sex services industry in NSW if the provisions dealing with the sex services industry that are contained in the *Restricted Premises Act 1943*, the *Summary Offences Act 1988* and the *Crimes Act 1900* were consolidated into one piece of legislation (‘the Consolidated Act’), that the *Environmental Planning and Assessment Act 1979* (which would remain separate), could interact with.

RECOMMENDATION 6 \_\_\_\_\_ 97

That the NSW Government conducts a review of the legislation governing the sex services industry with a view to creating the Consolidated Act.

FINDING 23 \_\_\_\_\_ 99

The *Summary Offences Act 1988* contains a number of important protections of the community in relation to sex work which should be included in the Consolidated Act.

RECOMMENDATION 7 \_\_\_\_\_ 99

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 *Summary Offences Act 1988*; and consider instituting advertising provisions along the lines of those contained in section 11 of New Zealand’s *Prostitution Reform Act 2003* and having regard to the New Zealand provisions relating to internet advertising of adult products and services.

RECOMMENDATION 8 \_\_\_\_\_ 99

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.

FINDING 24 \_\_\_\_\_ 101

The system of decriminalisation of the sex services industry in NSW should remain because medical and other experts conclude that it has provided favourable public health outcomes.

RECOMMENDATION 9 \_\_\_\_\_ 103

That NSW not introduce a system of regulation of the sex services industry similar to that in Victoria because:

- Victoria’s system is not decriminalised and the Committee supports decriminalisation;
- 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;
- Medical experts consider the registration of sex workers would probably have negative public health outcomes;

- Registration of sex workers is not otherwise justified by the small benefits to be derived from such a system.

RECOMMENDATION 10 \_\_\_\_\_ 106

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.

RECOMMENDATION 11 \_\_\_\_\_ 106

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.

RECOMMENDATION 12 \_\_\_\_\_ 106

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.

RECOMMENDATION 13 \_\_\_\_\_ 112

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.

RECOMMENDATION 14 \_\_\_\_\_ 112

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.

RECOMMENDATION 15 \_\_\_\_\_ 112

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.

RECOMMENDATION 16 \_\_\_\_\_ 113

That the NSW Government identify or create a body to administer the licensing process under the proposed NSW brothel licensing scheme (‘the licensing body’).

RECOMMENDATION 17 \_\_\_\_\_ 113

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 *Tattoo Parlours Act 2012*.

RECOMMENDATION 18 \_\_\_\_\_ 113

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.



RECOMMENDATION 19 \_\_\_\_\_ 113

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.

RECOMMENDATION 20 \_\_\_\_\_ 114

That penalties for operating unlicensed or unapproved sex work premises under the proposed NSW brothel licensing scheme be monetary and/or custodial.

RECOMMENDATION 21 \_\_\_\_\_ 114

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.

RECOMMENDATION 22 \_\_\_\_\_ 116

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.

RECOMMENDATION 23 \_\_\_\_\_ 116

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.

RECOMMENDATION 24 \_\_\_\_\_ 117

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 workers contrary to industrial laws.

FINDING 25 \_\_\_\_\_ 117

Greater checking and enforcement of visa conditions of sex workers is important to stop sexual servitude or sex trafficking and greater coordination between Commonwealth and State Government agencies is essential to achieve this end.

RECOMMENDATION 25 \_\_\_\_\_ 117

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.

RECOMMENDATION 26 \_\_\_\_\_ 120

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:

- Local government notifies the NSW Police Force Sex Industry Coordination Unit of the suspected planning breaches;
- 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;
- 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;
- That the NSW Police Force be given the *option* 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.

RECOMMENDATION 27 \_\_\_\_\_ 121

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 *Tattoo Parlours Act 2012*.

RECOMMENDATION 28 \_\_\_\_\_ 121

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 *Tattoo Parlours Act 2012*.

RECOMMENDATION 29 \_\_\_\_\_ 121

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 to the Victorian Police's Sex Industry Co-ordination Unit be established and appropriately resourced.

RECOMMENDATION 30 \_\_\_\_\_ 121

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 *Tattoo Parlours Act 2012*.

RECOMMENDATION 31 \_\_\_\_\_ 121

That monetary penalties, similar to those that apply under section 30 of the *Tattoo Parlours Act 2012* 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.

RECOMMENDATION 32 \_\_\_\_\_ 122

That regardless of whether the proposed brothel licensing system is implemented, in proving sexual services have been provided at a suspected brothel:

- Circumstantial evidence should continue to be admissible similar to section 17A of the Summary Offences Act and section 124AB of the *Environmental Planning and Assessment Act 1979* without the need for direct evidence;
- 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
- 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.

RECOMMENDATION 33 \_\_\_\_\_ 122

That regardless of whether the proposed brothel licensing system is implemented, owner/operators of unlicensed or unauthorised brothels be held strictly liable for 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.

RECOMMENDATION 34 \_\_\_\_\_ 122

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 *Tattoo Parlours Act 2012* when exercising those powers.

RECOMMENDATION 35 \_\_\_\_\_ 122

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.

RECOMMENDATION 36 \_\_\_\_\_ 123

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.

RECOMMENDATION 37 \_\_\_\_\_ 123

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.





# Chapter One – Introduction

## TERMS OF REFERENCE

- 1.1 On 25 June 2015, on the motion of the Hon. Victor Dominello MP, Member for Ryde and Minister for Innovation and Better Regulation, the House resolved to establish a select committee, to be known as the Select Committee on the Regulation of Brothels, to inquire into and report on the regulation of brothels in NSW.
- 1.2 The motion provided that the Committee was to examine and report on appropriate local and state government regulatory and compliance functions for brothels; the demarcation in local and state government roles and responsibilities; and possible reform options that address the social, health and planning challenges associated with legal and illegal brothels. The full terms of reference may be found on page iii.

## THE COMMITTEE

- 1.3 The Committee was established with the following membership:
- Mr Alister Henskens SC MP, Chair and Member for Ku-ring-gai
  - The Hon. Melinda Pavey MP, Deputy Chair and Member for Oxley
  - Ms Melanie Gibbons MP, Member for Holsworthy
  - Mr Alex Greenwich MP, Member for Sydney
  - Ms Jo Haylen MP, Member for Summer Hill
  - Ms Eleni Petinos MP, Member for Miranda
  - Ms Kathy Smith MP, Member for Gosford.

## CONDUCT OF THE INQUIRY

### Submissions

- 1.4 The Committee called for public submissions by advertising in the *Sydney Morning Herald* on 24 July 2015 and the *Daily Telegraph* on 25 July 2015, issuing of media releases and writing to key stakeholders inviting them to make a submission. The closing date for submissions was 19 August 2015.
- 1.5 The Committee received 177 submissions from stakeholder organisations and individuals. Several submissions were received from organisations and individuals located overseas. The following is a breakdown of the submissions received by category and the number of submissions received under each category.
- 1.6 The Committee received 177 submissions from stakeholder organisations and individuals. Several submissions were received from organisations and individuals

located overseas. The following is a breakdown of the submissions received by category and the number of submissions received under each category.

(1) Local Councils	21
(2) Government	2
(3) Healthcare Providers	10
(4) Sex Workers (currently working in sex industry)	41
(5) Brothel Owners	1
(6) Sex Worker Support/Advocacy Organisations (includes advocates for people with disability accessing sex services)	21
(7) Academics/Research Institutes	11
(8) Lobby groups and Peak Body Representative Organisations	11
(9) Legal	6
(10) Individuals (includes former sex workers and others who support either the current regulatory model or advocate for change)	37
(11) Members of Parliament, Local Councillors and Political Parties	5
(12) Overseas Organisations and Individuals	9
(13) Other	2

A complete list of submission providers may be found in Appendix One.

## Visits of inspection

- 1.7 The Committee undertook a visit of inspection in Melbourne on 28 August 2015. During the visit the Committee met with representatives from Victoria's Business Licensing Authority and Consumer Affairs Victoria and was briefed on the operation of Victoria's licensing and regulatory scheme for the sex services industry. The Committee also met with Ms Fiona Patten MLC, representing the Australian Sex Party, and with a representative from the Vixen Collective, Victoria's peer only sex worker organisation to hear their views on the nature of the sex services industry and how the different regulatory systems in Victoria and NSW affect sex workers.
- 1.8 During the visit to Melbourne the Committee also visited two licensed sex services premises. This allowed the Committee to meet with sex workers, a brothel owner and a representative from the Legal Adult Sex Industry Inc. and get their perspective on working within Victoria's licensing and regulatory system. The Committee also met with a representative from Resourcing health & Education (RhED), a Victoria based service providing support for sex workers.

- 1.9 A second visit of inspection was undertaken in Sydney on 4 September 2015 to visit sex services premises located in Glebe, Hornsby, and Rose Hill. The Committee was able to speak with the owners of the premises and was briefed on a range of issues including the wellbeing of sex workers, the diversity of the sex services industry in NSW, potential regulatory reform options, and issues regarding the incidence of sexual slavery and the involvement of organised crime in the sex services industry.
- 1.10 This visit of inspection also allowed the Committee to inspect the facilities of the Kirketon Road Centre in Darlinghurst which provides primary healthcare and support services to marginalised populations, including at risk young people, injecting drug users and sex workers. The Committee was briefed on the services that Kirketon Road provides, particularly to sex workers, and on how it works with the police and health and support organisations to protect the health and safety of sex workers.

### Public Hearings

- 1.11 The Committee held public hearings on 1 September, 2 September and 11 September 2015 at Parliament House, Sydney. 45 witnesses provided oral evidence to the Committee. These included representatives from the Department of Planning and Environment, the Department of Justice, the Ministry of Health, the NSW Police Force, local councils, healthcare providers, and sex worker support and advocacy organisations. The Committee also heard from representatives of Victoria Police and the Australian Federal Police. A list of the witnesses who appeared before the Committee may be found in Appendix Two.
- 1.12 The transcripts of evidence from the hearings may be found on the Committee's webpage: <http://www.parliament.nsw.gov.au/regulationofbrothels>.
- 1.13 The Committee thanks the organisations and individuals who participated in the inquiry.



## Chapter Two – The Sex Services Industry in NSW and Other Jurisdictions

- 2.1 This chapter explores the nature and extent of the sex services industry in NSW. It then explores the operation of the industry and the systems of regulation of the sex services industry in other Australian and some overseas jurisdictions.

### EXTENT AND NATURE OF THE SEX SERVICES INDUSTRY IN NSW

- 2.2 The sex services industry, the broad focus of this inquiry, refers to those who engage in sexual acts in exchange for money. It is to be distinguished from the broader sex industry which not only includes the sex services industry but adult shops and the sale of pornography.
- 2.3 A 2012 report by the Kirby Institute indicated that it is hard to verify the number of people working in the sex services industry in NSW because employment in the industry tends to be covert and transient. The report estimated that there were between 1,500 and 10,000 female sex workers in NSW.<sup>1</sup> 66.7 per cent of the workers sampled by this study were from Asian or other non-English speaking countries and the median time they spent in the industry was between 1.6 and two years.<sup>2</sup>
- 2.4 The report further found that about 60 per cent of sex workers, mostly female, work in brothels. The remaining 40 per cent work privately, including in private homes. This includes the majority of male workers. Of those working privately approximately 5 per cent are street-based and an unknown number, less than 10 per cent, work exclusively as escorts (that is, doing ‘out calls’ at places other than their own home or a brothel).<sup>3</sup>
- 2.5 At the time of the report there were at least 101 brothels operating within 20km of the Sydney Central Business District. Approximately 1,000 female sex workers were estimated to be employed in these brothels in any one week and 3,174 were estimated to be employed in brothels in Sydney over any 12 month period.<sup>4</sup>
- 2.6 In evidence to the Committee, Mr Nick Kaldas, Deputy Commissioner of the NSW Police Force confirmed that it is difficult to estimate the extent of the sex services industry in NSW. He stated:

We have looked at the magnitude of the industry. We do not have definitive empirical data on the number of brothels active in NSW, however, we have done

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<sup>1</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales, 2012, p16.

<sup>2</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, p17.

<sup>3</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, p16.

<sup>4</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, p16.

some preliminary work...We feel that 340 brothels active in NSW is probably the ballpark figure. The largest concentration is in the city and suburbs, what is for us, the central metropolitan region with 130 and then southwest Sydney with 81...<sup>5</sup>

2.7 When asked how many of the estimated 340 had planning approval to operate, the Deputy Commissioner stated:

I do not have a breakdown I regret...Our inability to get exact figures highlights one of the problems we face...there is no central record kept of each establishment...<sup>6</sup>

2.8 Even if the numbers are unknown, as discussed in more detail later in this report, the Committee received evidence throughout its inquiry about sex work being conducted in a number of businesses without development approval.

2.9 For example, many local councils indicated there is evidence that businesses in their area that hold themselves out as massage parlours and that do not have development approval to operate as a brothel are providing sexual services.<sup>7</sup> The NSW Local Government Association gave evidence that their members complain that Councils spend a lot of resources prosecuting massage parlours which provide sexual services contrary to their planning approvals.<sup>8</sup>

2.10 In addition, Deputy Commissioner Kaldas indicated to the Committee:

Several karaoke venues in the south-west metro region were found to have or are suspected of providing sexual services...<sup>9</sup>

2.11 During its Sydney site visits on 4 September 2015, the Committee also noted that there is a great diversity of development approved brothels across Sydney, from large inner-city brothels of approximately 20 rooms that focus on erotic massage, to equally large brothels in industrial estates in western Sydney, to small brothels of only a few rooms that operate in the outer suburbs.

2.12 In addition, during its inquiry the Committee noted that there is a diversity of circumstances in which sex workers operate. Some, such as the witnesses from Scarlet Alliance Australian Sex Workers Association, the Sex Workers Outreach Project (SWOP) and Touching Base who gave evidence at the Committee's public hearings present as highly articulate and independent. For example, Ms Rachel Wotton, sex worker and committee member of Touching Base stated:

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.<sup>10</sup>

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<sup>5</sup> Deputy Commissioner Nick Kaldas, NSW Police Force, *Transcript of Evidence*, 1 September 2015, p13.

<sup>6</sup> Deputy Commissioner Kaldas, *Transcript of Evidence*, p13.

<sup>7</sup> See for example Dr Lisa Simone, Safe City Manager, Council of the City of Sydney, *Transcript of Evidence*, 1 September 2015, p51; Ms Nicole Magurran, Director, Planning and Environment, Camden City Council, *Transcript of Evidence*, 11 September 2015, pp2-3; submission 173, Marrickville Council, p2 which indicates that over the last 5 years 57 complaints were made about 14 premises operating as massage parlours offering sexual services; and Mr Simon Evans, Compliance and Certifications Manager, Hornsby Shire Council, *Transcript of Evidence*, 1 September 2015, pp55&62, which indicates approximately 25 complaints over the last 18 months about massage parlours providing sexual services.

<sup>8</sup> Mr Noel Baum, Director, Policy, Local Government NSW, *Transcript of Evidence*, 11 September 2015, p52.

<sup>9</sup> Deputy Commissioner Kaldas, *Transcript of Evidence*, p14.

2.13 However, the Committee notes evidence that this is not always the case and that some sex workers are highly vulnerable because of poverty, drug addiction and mental health issues or they are forced into working through sexual servitude. For example, a former sex worker provided the following evidence to the Committee:

I was recruited into sex work at 18. If they'd approached me earlier, I probably would have started earlier because at 15 I was homeless, broke and desperate for a better life. I'm thankful for those few years I got to live like a (semi) normal teenager. Once immersed in the sex industry I quickly became addicted to alcohol and any drug I could get my hands on to numb the pain of the horrible work I was doing.<sup>11</sup>

2.14 Reverend Graham Long, Pastor and Chief Executive Officer of the Wayside Chapel which runs community services centres in Kings Cross and Bondi that provide showers, meals, clothing, activities and services to disadvantaged members of the community, gave evidence that street workers (those who solicit in a public place) can be particularly vulnerable:

**Rev Long:** There is a very wide variety of people grouped together in sex work...most of the people we meet are street workers. I think they are exposed to the greatest dangers and probably the greatest health risks as well...We have known a number of assaults that have happened...fairly serious...

**Ms Melanie Gibbons:** Reverend Long, do you have an opinion on or any insight as to why some sex workers would choose to work on the street rather than in a brothel?

**Rev Long:** It usually means they are more desperate than anybody else. I would say nearly all the time they are funding a drug habit...

**Chair:** Does that mean that they may well be homeless themselves?

**Rev Long:** Yes.<sup>12</sup>

2.15 This evidence aligns with data provided by Dr Kerry Chant, Chief Health Officer and Deputy Secretary of Population and Public Health, NSW Health, referencing a study by Amanda Roxburgh, Louisa Degenhardt and Jan Copeland who:

...interviewed 72 female street-based sex workers [in the greater Sydney area] and found that just under half of the sample met the criteria for post-traumatic stress disorder. All but one of the street-based sex workers interviewed reported experiencing trauma, with the majority reporting multiple traumas that typically began in early childhood. Injecting drug use was highly prevalent in this sample.<sup>13</sup>

2.16 Mr Cameron Cox, Chief Executive Officer of SWOP, an organisation of current and former sex workers that provides peer community outreach and education to the NSW sex services industry confirmed that there is a significant amount of drug use in the industry stating:

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<sup>10</sup> Ms Rachel Wotton, Sex Worker and Member, Touching Base, Transcript of Evidence, 11 September 2015, p39.

<sup>11</sup> Submission 27, p1.

<sup>12</sup> Reverend Graham Long, Pastor and Chief Executive Officer, Wayside Chapel, Transcript of Evidence, 2 September 2015, pp61&62.

<sup>13</sup> Dr Kerry Chant, Chief Health Officer and Deputy Secretary of Population and Public Health, NSW Health, Answers to Questions Taken on Notice, 11 September 2015, p5.

I work in industries apart from sex work and there is lots and lots of drug use. Many people use drugs in sex work situations as well.<sup>14</sup>

- 2.17 The Committee also heard concerns that the large number of sex workers from non-English speaking backgrounds in NSW may be particularly vulnerable. As stated above, a 2012 Kirby Institute report indicated that 66.7 per cent of the NSW sex workers sampled in that study were from Asian or other non-English speaking countries.
- 2.18 Due to these rates of sex workers from non-English speaking backgrounds, many health services available to sex workers, discussed in greater detail in chapter five of this report, provide information in a variety of languages.<sup>15</sup> Similarly, many of the sex worker support agencies have workers who can communicate with sex workers in their native language, assisting them to understand their rights and responsibilities.<sup>16</sup>
- 2.19 However, other stakeholders raised concerns about the ability of these workers to negotiate working conditions with their managers and clients. Ms Jessica Megarry, Member of the Executive Committee of the Coalition Against Trafficking in Women Australia told the Committee:
- [In its submission to the inquiry] The Collective Shout Organisation...talks a lot about what they call the Asianisation of brothels in NSW 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.<sup>17</sup>
- 2.20 As discussed in more detail later in this report (chapter four) concerns were also raised before the Committee about sexual servitude in the industry. Deputy Commissioner Kaldas gave evidence of recent reports of large scale networks using Asian students as sex slaves throughout NSW and other states. He stated:
- There is some anecdotal evidence...of girls being forced to do things they do not want to do, including the taking of hard drugs with clients...Again anecdotally, it has been the case that brothel owners will keep the girls' passports and they are forced to work in the brothel to pay off their debt for travel costs etc...We have certainly seen some cases of very genuine sexual servitude...it may be in the minority, but I would suggest – and I do not think anyone would disagree – one woman held in sexual servitude is one too many.<sup>18</sup>
- 2.21 Commander Glen McEwen, Manager, Victim Based Crime, Australian Federal Police confirmed that sexual servitude is a concern in NSW stating that one

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<sup>14</sup> Mr Cameron Cox, Chief Executive Officer, Sex Workers Outreach Project, Transcript of Evidence, 2 September 2015, p33.

<sup>15</sup> For example Sydney Sexual Health Centre – see submission 162, Sydney Sexual Health Centre p1; and Clinic 16, see submission 64, Northern Sydney Local Health District, p1.

<sup>16</sup> See for example Mr Cox, Transcript of Evidence, 2 September 2015, p31.

<sup>17</sup> Ms Jessica Megarry, Member, Executive Committee, Coalition Against Trafficking in Women Australia, Transcript of Evidence, 11 September 2015, p32; see also submission 163, Collective Shout, pp2-3.

<sup>18</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp14&17.

quarter of the current sexual servitude investigations in Australia were with respect to NSW:

If we look at sexual [servitude] exploitation investigations that were conducted for the financial year 2014-15, there were 24 Australia-wide; that translated to being six in NSW.<sup>19</sup>

## Committee Comment

- 2.22 The Committee notes the diversity in the way in which sex workers across NSW operate, and the diversity of circumstances under which they operate.
- 2.23 In particular, the Committee considers that while the sex workers from Scarlet Alliance, SWOP and Touching Base who gave evidence at its public hearings presented as articulate and as autonomous in their decision to work in the sex services industry, this cannot be said to be the case for all people involved in sex work in NSW.
- 2.24 The Committee received evidence that decriminalisation has profoundly improved the safety, well-being and health of sex workers and their clients as well as improved police integrity with respect to the industry. Decriminalisation has reduced the prejudice experienced by sex workers and has the support of the vast number of sex workers. The report states that the *Commonwealth Criminal Code Act 1995* empowers the Australian Federal Police to investigate criminal activity – particularly related to sexual servitude – with NSW Police and the Department of Immigration and Border Protection. Given the positive impacts of decriminalisation and the existing powers of law enforcement, any move towards licensing sex workers must be dismissed.
- 2.25 The Members for Sydney, Summer Hill and Gosford maintain that the chapter advocates the case for a licensing regime without adequately addressing the current framework of decriminalisation. These members are of the view that the report overstates the susceptibility of sex workers and brothels to criminal activity such as money laundering, sexual servitude and outlaw bkie gangs. These members are of the view that the report gives disproportionate weighting to the views of NSW Police (Deputy Commissioner Kaldas), to the exclusion of other organisations which balanced this view. These members are of the view that little concrete evidence is presented to support these claims and the experiences of sex workers are simplified to suggest overwhelming vulnerability. These members are of the view that the Committee received evidence of complex intersections of marginalisation, however, the report does not elucidate how licensing would stop an underground industry or protect sex workers.
- 2.26 The Members for Ku-ring-gai, Oxley, Holsworthy and Miranda do not agree with the views expressed in paragraph 2.25 and in particular are of the view that the susceptibility of brothels and sex workers to criminal activity such as money laundering, sexual servitude and outlaw bkie gangs cannot be emphasised enough in order to protect the welfare of sex workers. These members are of the

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<sup>19</sup> Commander Glen McEwen, Manager, Victim Based Crime, Australian Federal Police, Transcript of Evidence, 11 September 2015, p63.

view that the evidence of the NSW Police, on balance, was the most cogent and reliable evidence received on these matters (see paragraphs 4.23-4.47 below).

2.27 The Committee makes the following findings:

#### FINDING 1

**There is not a single uniform sex services industry in NSW. Sex work is conducted in a number of different workplaces including development approved brothels of various types and sizes; businesses where sexual services are provided without development approval such as massage parlours and karaoke bars; or by sex workers operating in their own homes, as escorts, or on the streets.**

#### FINDING 2

**There is a diversity of circumstances in which sex workers operate:**

- **Some sex workers are highly independent and able to make a rational choice of their own free will about participating in the sex services industry;**
- **Other sex workers are vulnerable because of poverty, drug addiction, mental health issues, language barriers and sexual servitude which may adversely impact, to varying degrees, on their ability to exercise free choice about their participation in the sex services industry.**

### THE OPERATION OF THE SEX SERVICES INDUSTRY IN NSW

#### Historical Overview to Decriminalisation

2.28 In NSW, from 1908 onwards, various laws existed making sex work and living off the earnings of sex work illegal. In particular, under the *Disorderly Houses Act 1943*, the operation of a brothel was, until 1995, an activity that could have premises declared a disorderly house, and an application could be made to the Supreme Court to close it down.<sup>20</sup>

2.29 In the 1988 case of *Sibuse Pty Ltd v Shaw* 1988 13 NSWLR 98, the Supreme Court of NSW – Court of Criminal Appeal specifically ruled that the *Disorderly Houses Act 1943* enabled the Court to declare premises a disorderly house where those premises were habitually used for prostitution, whether or not those premises were ‘disorderly’ in the ordinary sense of the term. People in, on, entering or leaving the premises could be convicted of an offence, and the repetition of prostitution upon the premises could render the owner or occupier guilty of an offence.<sup>21</sup> This led to concerns that if the police fully exercised their powers under the Act, closing down large numbers of brothels, many sex workers would start soliciting on the streets which would not be in the interests of local residents or the sex workers.

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<sup>20</sup> S. Smith, ‘The Regulation of Prostitution: A Review of Recent Developments’ *NSW Parliamentary Library Research Service Paper 21/99*, p2.

<sup>21</sup> *NSW Parliamentary Library Research Service Paper 21/99*, p4.

- 2.30 Another concern around this time was police corruption connected with the industry. The Select Committee of the Legislative Assembly upon Prostitution which reported in 1986 received allegations of police corruption and the Committee found that:
- Police corruption has been a facet of brothel prostitution for a considerable number of years. The structure and organisation of this corruption cannot on the information available to the Committee be accurately determined but there is little doubt that such corruption exists. In certain areas, in particular Sydney's inner city, there appear to be regular payments made to certain police. There are also indications that brothel owners and managers in other areas of NSW are...paying corrupt police.<sup>22</sup>
- 2.31 After evidence given before the Royal Commission into the NSW Police Service the case for reform became stronger. NSW legislative change occurred prior to the release of the Commission's final report in 1997, which documented extensive police corruption and payments from brothel operators.<sup>23</sup>
- 2.32 In 1995, in response to the concerns about the *Sibuse v Shaw* case and in an attempt to eliminate the potential for police corruption, the Minister for Police, the Hon Paul Whelan MP introduced the Disorderly House Amendment Bill which passed Parliament and was assented to on 22 November 1995.<sup>24</sup>
- 2.33 The *Disorderly Houses Amendment Act 1995* legalised brothels and living off the earnings of a prostitute. It also amended the *Crimes Act 1900* to abolish the common law offence of keeping a brothel and related common law offences. With the passage of the legislation, a brothel then became a commercial business requiring local council planning approval under the *Environmental Planning and Assessment Act 1979* (EP&A Act). In addition, the *Disorderly Houses Amendment Act 1995* provided a mechanism for local councils to apply to the Land and Environment Court to close a brothel.<sup>25</sup>
- 2.34 In short, from 1995, most sex work specific criminal laws were removed and the police force was removed as the industry regulator. Of course activity such as underage prostitution and sex trafficking continued to be addressed by the criminal law. This system, referred to as 'decriminalisation' and detailed further below has continued in NSW to the present day.

### Current Regulatory Framework in NSW

- 2.35 Under the current decriminalised system of regulation for the sex services industry in NSW, brothels are legal and only require council planning approval. Street soliciting is allowed provided it is away from dwellings, schools, churches and hospitals. Living off the earnings of a sex worker is illegal but owners and operators of brothels are exempted.

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<sup>22</sup> NSW Parliamentary Library Research Paper 21/99, pp4&5.

<sup>23</sup> NSW Parliamentary Library Research Paper 21/99, p5.

<sup>24</sup> NSW Parliamentary Library Research Paper 21/99, p5.

<sup>25</sup> NSW Parliamentary Library Research Paper 21/99, p5.

2.36 Therefore, under the current system of decriminalisation the only real regulation to establish a brothel is the requirement to obtain planning approval for the business premises. Regulation like the Liquor Licensing system for hotels, night clubs or restaurants which require licensees to be fit and proper persons and for proper planning approvals to be in place before a licence is issued does not exist. In this regulatory void, it is left up to councils and not the Police Force to look after brothels. This system was described by the NSW Deputy Commissioner of Police, Mr Kaldas as quite unsatisfactory:

...we think [this industry] has been under-regulated for some years....We feel that regulation of the industry is necessary and currently where the responsibility for that regulation sits is ambiguous. Regulation is necessary because in that industry much could go wrong if unregulated and the rules are not enforced....<sup>26</sup>

The results from our analysis and thinking indicated that there are clearly issues in the industry in terms of servitude, the use of illegal workers and extortion by or involvement of organised crime and outlaw motorcycle gang groups. Around 40 brothels have some recorded connection or ties to outlaw motor cycle gang groups in our intelligence holdings....<sup>27</sup>

one woman held in sexual servitude is one too many...<sup>28</sup>

we do not accept that regulating the industry properly will force it underground, as some may argue. As it is right now, there exists next to no regulation, no enforcement and abuses are far more likely to go undetected with horrible consequences for individuals. Lax or non-existent checks and balances are not the answer to what is a very real problem...<sup>29</sup>

it is probably harder to get a dog and get a dog licence than it is to work in the sex industry at the moment...<sup>30</sup>

If we have a gap in regulation, organised crime has to be attracted, to make money out of the industry, knowing that it is not that regulated or not that strictly enforced.<sup>31</sup>

### *Legislation*

2.37 Under the current decriminalised system of regulation for the sex services industry in NSW, there are seven key pieces of legislation:

- The EP&A Act which regulates brothels as a land use through the planning and development assessment process;
- The *Local Government Act 1993* which provides for the enforcement of conditions of consent and for the inspection of premises;

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<sup>26</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p12.

<sup>27</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp14-15.

<sup>28</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p17.

<sup>29</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>30</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p18.

<sup>31</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p18.



- The *Restricted Premises Act 1943* which provides a definition of a brothel and outlines powers to seek an order to close a brothel;
- The *Summary Offences Act 1988* which provides a definition of prostitution and provides for offences relating to sex work including advertising sex work and coercion;
- The *Crimes Act 1900* which provides for offences relating to sexual servitude and underage sex work;
- The *Work Health and Safety Act 2011* (WHS Act) which provides for work health and safety requirements;<sup>32</sup>
- The *Public Health Act 2010* which provides public health and disease control measures and offences relating to sexually transmissible infections (STIs).

### *Regulatory Agencies*

2.38 Councils, as the consent authority, are primarily responsible for regulating brothels as a land use under the decriminalised system. In addition, a number of other agencies have roles in relation to the sex services industry:

- The Department of Planning and Environment is responsible for the NSW planning system as a whole, including zoning for different land uses;
- The NSW Police Force is responsible for investigating criminal activities associated with brothels and sex work (noting that sex work and brothels themselves are not illegal);<sup>33</sup>
- SafeWork NSW is responsible for administering the legislation relating to health, safety and welfare at work, including in brothels; and
- The NSW Ministry of Health is responsible for supporting the delivery of STI and HIV services.

### *Land Use Planning, Compliance and Enforcement*

2.39 Under the EP&A Act, councils may regulate brothels through local environment plans (LEPs) or development control plans (DCPs). LEPs may permit or prohibit sex work (including 'sex services premises' or 'home occupation (sex services)' in specific locations (through zones) in LEPs, or specify standards or controls that must be met for the location, design or operation of such premises.

2.40 Development consent, obtained through lodging a development application, is generally required to operate premises as a brothel. The planning and development process is discussed in more detail in chapter three of this report.

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<sup>32</sup> Submission 137, NSW Government, p3.

<sup>33</sup> Submission 137, NSW Government, p3.

- 2.41 As mentioned above, as the consent authority, councils are the primary regulators of brothels in NSW, whether the brothel has development consent or not. There is a range of legislative action that councils can take in respect of a non-compliant brothel.
- 2.42 First, under the EP&A Act, if a brothel is not operating in accordance with its development consent, without development consent, or in an area where brothels are prohibited, a council can respond by:
- Issuing a penalty notice;
  - Issuing an order to comply with a development consent (section 121B of the EP&A Act);
  - Issuing an order for premises to cease being used as a brothel (a brothel closure order under section 121ZR of the EP&A Act);
  - If a brothel closure order is not complied with, enforcing the order by cutting off utilities to the premises by seeking such an order from the Local Court or the Land and Environment Court (section 121ZS of the EP&A Act); or
  - Taking action in either the Land and Environment Court<sup>34</sup> or the Local Court.<sup>35</sup>
- 2.43 Under section 17 of the *Restricted Premises Act 1943*, the Land and Environment Court may, upon the application of a council, make an order that an owner or occupier of a brothel is not allowed to use the premises for a brothel, even if the brothel has development consent. For an application to be successful, complaints must have been made by certain categories of people (for example, residents of the area) and the Court must be satisfied that the brothel is having an undue effect on the neighbours or amenity.<sup>36</sup>
- 2.44 Relevantly, the definition of ‘brothel’ under the *Restricted Premises Act 1943* is not the same as it is under the EP&A Act.
- 2.45 Section 2 of the *Restricted Premises Act 1943* provides that ‘brothel’ means premises habitually used for the purposes of prostitution; or that have been used for the purposes of prostitution and are likely to be used again for the same purpose; or that have been expressly or implicitly advertised or represented as being for the purposes of prostitution. **Section 2 further provides that premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.**
- 2.46 In contrast, section 4 of the EP&A Act provides that ‘brothel’ means brothel within the meaning of the *Restricted Premises Act 1943*, **other than premises**

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<sup>34</sup> Submission 137, NSW Government, p5.

<sup>35</sup> Submission 62, Hornsby Shire Council, p4, indicates councils can take action in the Local Court against a person carrying out a prohibited development, that is, a development prohibited by an environmental planning instrument – see also section 76B EP&A Act.

<sup>36</sup> See in particular section 17(5) *Restricted Premises Act 1943*.

**likely to be used for the purposes of prostitution by no more than one prostitute.**

2.47 Therefore, unlike the EP&A Act, the *Restricted Premises Act 1943* definition covers premises used by a sole sex worker. Consequently, where a sex worker, operating on his or her own, is having an undue impact on local amenity or the neighbours, action can be taken under the *Restricted Premises Act 1943* to stop the premises being used as a brothel.<sup>37</sup>

#### *Criminal Activities Associated with Brothels and Sex Work*

2.48 As a consequence of the introduction of decriminalisation, sex work and living off the earnings of a sex worker are no longer illegal in NSW and the police are no longer the industry regulators. Nonetheless, the police still have a role investigating criminal activities that may be associated with brothels and sex work. First, the following offences are provided for under the *Crimes Act 1900*:

- Causing sexual servitude or the conduct of a business involving sexual servitude (sections 80D and 80E). Sexual servitude is defined as ‘the condition of a person who provides sexual services and who, because of the use of force or threats is not free to cease providing the sexual services, or is not free to leave the place or area where the person provides sexual services’ (section 80B).
- Procuring, enticing or leading away a person who is not a prostitute for the purposes of prostitution; or procuring, enticing or leading away any person for the purposes of prostitution using fraud, violence, threat, abuse of authority or by the use of any drug or intoxicating liquor (sections 91A and 91B).
- Promoting or engaging in acts of child prostitution, obtaining a benefit from child prostitution or using premises for child prostitution (section 91C-91F).
- Crimes such as sexual assault, harassment or any other crimes that may have taken place in a brothel or in the context of sex work.<sup>38</sup>

2.49 The *Summary Offences Act 1988* also sets out various offences connected with brothels and sex work; and defines ‘prostitution’ to include acts of prostitution between persons of different sexes or of the same sex including sexual intercourse and masturbation committed by one person on another for payment.<sup>39</sup> The offences are:

- Causing or inducing a person by coercive conduct or undue influence to commit an act of prostitution or to surrender any proceeds of an act of prostitution (section 15A)

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<sup>37</sup> This was noted in the NSW Better Regulation Office Issues Paper, ‘Regulation of Brothels in NSW’ September 2012, p47, Department of Premier and Cabinet website, [http://www.dpc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/145077/Issues\\_Paper\\_Regulation\\_of\\_Brothels.pdf](http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0006/145077/Issues_Paper_Regulation_of_Brothels.pdf), viewed 21 September 2015.

<sup>38</sup> See for example section 61I *Crimes Act 1900*.

<sup>39</sup> Section 2, *Summary Offences Act 1988*.

- Advertising or erecting a sign indicating that premises are used for the purposes of sex work (section 18)
- Advertising that a person is available for the purposes of sex services (section 18)
- Advertising for prostitutes (section 18A)
- Using, for the purposes of prostitution, premises held out as being available for massage, sauna baths, steam baths, facilities for physical exercise, the taking of photographs, or for similar services (section 16)
- Owners, managers and occupiers permitting premises held out as being available for massage etc to be used for the purposes of prostitution (section 17)
- Street workers soliciting clients near or within view of a dwelling, school, church or hospital (section 19)
- Clients soliciting street workers near or within view of a dwelling, school, church or hospital (section 19A)
- Public acts of prostitution (section 20)
- Living on the earnings of prostitution of another person (however brothel owners, managers and employees are exempted and premises may constitute a brothel even where they are used by only one prostitute for the purposes of prostitution) (section 15).

2.50 In addition, the police may apply to the Supreme Court for a brothel to be closed down if they suspect any ‘disorderly conduct’ as outlined in the *Restricted Premises Act 1943* is taking place in the premises. This includes the sale of liquor or drugs or the involvement of criminals in the control or management of the brothel.<sup>40</sup>

2.51 The Commonwealth *Criminal Code Act 1995* also sets out various offences concerned with sexual servitude, people trafficking and debt bondage.<sup>41</sup> The Australian Federal Police is separately responsible for investigating the trafficking of people into all industries and domestic situations, including for sex work. The Australian Federal Police works in close coordination with the Department of Immigration and Border Protection and the NSW Police Force to police these offences.<sup>42</sup>

2.52 Criminal legislation concerning the sex services industry is discussed in further detail in later chapters of this report.

2.53 Deputy Commissioner Kaldas gave evidence that the industry is not sufficiently regulated, that there is not a dedicated unit within the NSW Police Force to

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<sup>40</sup> Submission 137, NSW Government, p8.

<sup>41</sup> See Chapter 8, Divisions 270 and 271 *Criminal Code Act 1995* (Cth).

<sup>42</sup> Submission 137, NSW Government, p8.

collect intelligence with regard to breaches of the above legislation by sex work premises and that currently brothel related criminal activity is not measured by Police Local Area Commands.<sup>43</sup>

### *Work Health and Safety*

- 2.54 The WHS Act regulates health and safety at work and covers all workplaces in NSW, including brothels. Owners and operators of brothels, as with other workplaces, must ensure the health and safety of sex workers, other workers, clients and visitors to the premises.<sup>44</sup>
- 2.55 Under the *Workers Compensation Act 1987*, employers must obtain and maintain in force a policy of workers compensation for their workers.
- 2.56 Work health and safety requirements for sex workers are discussed in more detail in chapter four of this report.

### *Public Health*

- 2.57 Public health in relation to the sex services industry mainly relates to the levels of STIs, including HIV, amongst sex workers.<sup>45</sup> The *Public Health Act 2010*, makes it an offence for a person who knows that he or she suffers from an STI to have sexual intercourse with another person unless that second person is informed of the risk and accepts it. The Act also makes it an offence for a brothel owner/operator to knowingly allow a sex worker to commit such an offence in his/her brothel (section 79).
- 2.58 NSW Health supports the delivery of HIV and STI strategies across NSW while public health regulations in brothels (including as regards equipment such as spa baths and routine inspections to assess hygiene) are mainly enforced by local council officers with support from NSW Health.<sup>46</sup> Public health and the sex services industry is discussed in detail in chapter five of this report.

## The Role of Non-Government Agencies

- 2.59 A number of non-government agencies, some of whom the Committee received evidence from, also play an important role in relation to the sex services industry both independently and in conjunction with government. Some examples are provided below.

### *Scarlet Alliance*

- 2.60 Scarlet Alliance Australian Sex Workers Association is the peak national sex worker organisation in Australia. Its membership includes state and territory based sex worker organisations and projects, and individual sex workers throughout Australia. Scarlet Alliance, according to its website:
- Plays an active role in Australia's response to HIV/AIDS and is a member of the peak body Australian Federation of AIDS Organisations

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<sup>43</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp12, 19 and 21.

<sup>44</sup> Submission 137, NSW Government, p6.

<sup>45</sup> Submission 137, NSW Government, p6.

<sup>46</sup> Submission 137, NSW Government, p7.

- Produces national resources like its Guide to Best Practice, Occupational Health and Safety in the Sex Industry
- Advocates for the health, safety and welfare of workers in Australia's sex industry, and advocates regarding other issues affecting sex workers
- Promotes peer education, where people with knowledge of, and experiences in, the sex industry are employed as peer educators.<sup>47</sup>

2.61 In terms of its interaction with government, Scarlet Alliance:

- Provides information to Government and policy makers in relation to sex industry legislation and other issues affecting sex workers in Australia.<sup>48</sup> For example, the Committee heard that Scarlet Alliance's Migration Project Manager sits on the Commonwealth Committee Roundtable on Trafficking, a committee that advises the Commonwealth Attorney General.<sup>49</sup>
- Provides training and education to Government and other organisations on issues relating to the Australian sex industry and migration of sex workers to Australia.<sup>50</sup> For example, the Committee heard that Scarlet Alliance has a program through the Commonwealth Attorney General's Department that is aimed at the prevention of sex trafficking in Australia.<sup>51</sup>

### *SWOP and ACON*

2.62 SWOP has a 30 year history working in the NSW sex services industry in peer community outreach and education.<sup>52</sup> In evidence to the Committee, Dr Kerry Chant, Chief Health Officer and Deputy Secretary of Population and Public Health, NSW Health, described it as an 'excellent service' and stated that the NSW Government provides it with funding of \$1,193,900.<sup>53</sup>

2.63 In 2014, SWOP's staff visited 447 brothels in NSW, interacted with over 6,700 NSW sex workers, distributed over 270,000 safe sex items and approximately 20,000 pieces of educational material. SWOP also visited 44 rural and regional areas, held seven major events and 15 educational workshops for sex workers, and provided educational and support information via its social media streams and website. All SWOP's outreach workers are, or have been, sex workers.<sup>54</sup>

2.64 ACON, established in 1985 as the AIDS Council of NSW, is a health promotion organisation specialising in HIV prevention, HIV support, and lesbian, gay, bisexual, transgender and intersex (LGBTI) health. Until July 2014, ACON

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<sup>47</sup> Scarlet Alliance website, <http://www.scarletalliance.org.au>, viewed 22 September 2015.

<sup>48</sup> Scarlet Alliance website, <http://www.scarletalliance.org.au>, viewed 22 September 2015.

<sup>49</sup> Ms Janelle Fawkes, CEO, Scarlet Alliance, Transcript of Evidence, 2 September 2015, pp11&12.

<sup>50</sup> Scarlet Alliance website, <http://www.scarletalliance.org.au>, viewed 22 September 2015.

<sup>51</sup> Ms Fawkes, Transcript of Evidence, p12.

<sup>52</sup> Submission 145, Sex Workers Outreach Project, p1.

<sup>53</sup> Dr Chant, Transcript of Evidence, 11 September 2015, p15.

<sup>54</sup> Submission 145, Sex Workers Outreach Project, p1.

auspiced SWOP. SWOP is now an independent non government organisation and ACON and SWOP continue to work closely on issues of mutual interest.<sup>55</sup>

#### *Wayside Chapel and BaptistCare HopeStreet*

2.65 As mentioned above, during its inquiry the Committee heard evidence from the Wayside Chapel. In addition, it heard from BaptistCare HopeStreet. Both organisations run centres that provide care and services (such as showers, clothing, meals, casework and counselling and service referral) to marginalised members of the community including street sex workers.<sup>56</sup>

### THE REGULATION OF THE SEX SERVICES INDUSTRY IN OTHER JURISDICTIONS

2.66 During its inquiry, the Committee received significant evidence about the system of regulation of the sex services industry in Victoria as well as the 'Nordic Model' of regulation that exists in Sweden, Norway, Iceland, Northern Ireland and Canada.<sup>57</sup> These systems are outlined below and there is also a brief discussion of regulation in other Australian jurisdictions and in New Zealand.

#### Victoria

2.67 On 28 August 2015, the Committee met in Victoria with public officials, industry and health representatives, Ms Fiona Patten MLC and Ms Jane Green of the Vixen Collective to discuss Victoria's system of regulating the sex services industry. The Committee also heard evidence from the Sex Industry Coordination Unit of Victoria Police at its public hearing on 11 September.

#### *Licensing Requirements and Other Restrictions*

2.68 Under section 22 of the *Sex Work Act 1994* (Vic) a person must hold a licence to carry on a business as a sex work service provider (a brothel or escort agency) in Victoria. Small owner/operators are exempt from this licensing requirement (that is, people operating a brothel or escort agency where only they, or only they and one other person, will work as a sex worker in that business (section 23)).

2.69 Street prostitution is illegal (sections 12 and 13) and maximum penalties range from fines of ten penalty units (currently \$1,516.70<sup>58</sup>) to six months gaol.

2.70 When open for business, all brothels in Victoria must be supervised by either the licensee or a person who has been approved to be a brothel manager by the Business Licensing Authority (section 49). Chapter six of this report discusses the requirements that must be met to obtain a licence to carry on a business as a sex work service provider in Victoria, or an approval to manage a brothel in Victoria,

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<sup>55</sup> Submission 123, ACON, p2.

<sup>56</sup> Wayside Chapel Website, <http://www.waysidechapel.com.au>, viewed 22 September 2015; and submission 175 BaptistCare HopeStreet, p2.

<sup>57</sup> Ms Megarry indicated that these are the countries the Nordic Model exists in, see Transcript of Evidence, 11 September 2015, p29.

<sup>58</sup> See Victorian Department of Justice and Regulation website: <http://www.justice.vic.gov.au/home/justice+system/fines+and+penalties/penalties+and+values/> viewed 6 October 2015.

and the circumstances under which a person must be refused a licence or an approval.

- 2.71 There are restrictions on advertising a sex services business in Victoria including that the business licence or exemption number must be displayed on the advertisement and photographs of people in the advertisements must be restricted to head and shoulders.<sup>59</sup>

### *Regulators*

- 2.72 In evidence to the Committee, Senior Sergeant Marilyn Ross, of the Sex Industry Coordination Unit, Victoria Police, explained the roles that various government agencies have under the Victorian regulatory system:

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 etc to set up a brothel in a local government area.<sup>60</sup>

- 2.73 In short, the Business Licensing Authority manages the licensing process, considering applications, issuing or refusing licences, and imposing conditions. If licence conditions are breached, Consumer Affairs can take disciplinary action in the Victorian Civil and Administrative Tribunal.<sup>61</sup> Victoria Police focusses on identifying illegal brothels and/or illegal activity associated with the sex industry.<sup>62</sup> Its Sex Industry Coordination Unit, a unit of six police officers, coordinates and manages intelligence information, delegating prosecutions out to local area commands.<sup>63</sup> The Victorian experience demonstrates however, that adequate police resourcing is critical and to better attack the illegal brothels and/or illegal activity in Victoria, the police unit would need to double in size from six to 12 members.<sup>64</sup>
- 2.74 To further regulate the sex services industry in Victoria, agencies also coordinate and share information. For example, the Business Licensing Authority provides details of licence applications to Victoria Police which provides investigation and probity reports on all licensees.<sup>65</sup> Similarly, Victoria Police chairs the Victorian Sex Industry Strategic Management Group which includes representatives of the Australian Federal Police, the Australian Border Force, the Business Licensing Authority, Consumer Affairs Victoria, the Department of Health, the Municipal Association of Victoria, and the Australian Taxation Office.<sup>66</sup>

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<sup>59</sup> *Sex Work Regulations 2006* (Vic), regulation 9.

<sup>60</sup> Senior Sergeant Marilyn Ross, Sex Industry Coordination Unit, Victoria Police, Transcript of Evidence, 11 September 2015, p21.

<sup>61</sup> Discussions with officials from the Business Licensing Authority, Victoria, Committee Site Visits, 28 August 2015.

<sup>62</sup> Senior Sergeant Ross, Transcript of Evidence, p19.

<sup>63</sup> Senior Sergeant Ross, Transcript of Evidence, pp19&21.

<sup>64</sup> Senior Sergeant Ross, Transcript of Evidence, p25.

<sup>65</sup> Discussions with officials from the Business Licensing Authority, Victoria, Committee Site Visits 28 August 2015; see also section 36 of the *Sex Work Act 1994* (Vic).

<sup>66</sup> Senior Sergeant Ross, Transcript of Evidence, pp19&21.



- 2.75 Inspection powers are also provided for under the *Sex Work Act 1994 (Vic)*<sup>67</sup> and joint teams including officers from Consumer Affairs Victoria, the Sex Industry Coordination Unit Victoria Police, the Australian Federal Police and the Australian Taxation Office conduct regular inspections of brothels.<sup>68</sup>

### The Nordic Model

- 2.76 During its inquiry, the Committee received a significant amount of evidence about the Nordic model of regulation, some in favour, some against.<sup>69</sup> As above, the Nordic model is the model of regulation that has been adopted in Sweden, Norway, Iceland, Northern Ireland and Canada.<sup>70</sup> The Coalition Against Trafficking in Women, Australia also advised that it is being considered in a number of other countries including France, Israel, Ireland, Scotland and Lithuania.<sup>71</sup>
- 2.77 Under the Nordic model, people providing sexual services are decriminalised, while pimping, brothel owing and the purchase of sex are criminalised.<sup>72</sup> In her evidence to the Committee, Ms Jessica Megarry, Member, Executive Committee, Coalition Against Trafficking in Women, Australia provided context for the Nordic model:

The Nordic model...is a legislative approach that recognises that prostitution is a form of violence against women and, broadly speaking, undermines women's equality...The law recognises that prostitution is a highly gendered industry in which the bought are largely women and the perpetrators are largely men...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...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.<sup>73</sup>

### Other Australasian Jurisdictions

- 2.78 During its inquiry, the Committee did not have the opportunity to hear from Australian jurisdictions other than Victoria in relation to the regulation of the sex services industry. The 2012 NSW Better Regulation Office issues paper, 'Regulation of Brothels in NSW' includes the following summary of laws across jurisdictions in Australia.<sup>74</sup>

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<sup>67</sup> See for example sections 61J and 61K *Sex Industry Act 1994 (Vic)*.

<sup>68</sup> Discussions with officials from the Business Licensing Authority, Victoria, Committee Site Visits 28 August 2015.

<sup>69</sup> For examples of supporters, see Submission 27, Ms Geena Leigh; Submission 57, Coalition Against Trafficking in Women Australia; Submission 61, Wilberforce Foundation; Submission 115, Australian Christian Lobby; Submission 116, Nordic Model Australia; Submission 135 Life, Marriage and Family Centre, Catholic Archdiocese of Sydney; Submission 163, Collective Shout; Submission 168, Fighting for Justice Foundation; Submission 167, Pink Cross Foundation Australia, and Submission 176, Dr Helen Pringle.

<sup>70</sup> Ms Megarry, Transcript of Evidence, 11 September 2015, p29.

<sup>71</sup> Submission 57, Coalition Against Trafficking in Women, Australia, p4.

<sup>72</sup> Submission 57, Coalition Against Trafficking in Women, Australia, p4.

<sup>73</sup> Ms Megarry, Transcript of evidence, 11 September 2015, p29.

<sup>74</sup> NSW Better Regulation Office Issues Paper, 'Regulation of Brothels in NSW', 2012, p54.

### *Queensland*

- 2.79 In Queensland, brothels must have a licence from the Prostitution Licensing Authority and local council planning approval. Licences and planning approvals must be renewed annually. There are restrictions on the location and size of brothels (a maximum of five rooms and no more than five sex workers on the premises at one time). Private sex workers are unregulated but must work alone and must use condoms. Escorts are illegal as is operating an unlicensed brothel. Street work and advertising are illegal. More information is provided in the Queensland Prostitution Licensing Authority's submission to the inquiry.<sup>75</sup>

### *ACT*

- 2.80 In the ACT, brothels are permitted in prescribed (industrial) locations with council planning approval. Escort agencies are legal. Brothels and escorts must register but no probity checks are conducted as part of the registration process. Private sex workers must also register. Street work is illegal.

### *Western Australia*

- 2.81 In Western Australia, brothel keeping with more than one sex worker is illegal. Escort agencies are not illegal. Street work is illegal.

### *South Australia*

- 2.82 In South Australia, brothel keeping is illegal and some escort work is illegal. Street work is illegal.

### *Tasmania*

- 2.83 In Tasmania, brothel keeping is illegal, escort work is probably legal and street work is illegal.

### *Northern Territory*

- 2.84 In the Northern Territory, brothel keeping and street work are illegal. Outcall and escort agencies are legal with a licence from the Escort Agency Licensing Board. There are no specific planning requirements.

### *New Zealand*

- 2.85 Ms Julie Bates<sup>76</sup> and Mr Saul Isbister<sup>77</sup> who are sex workers and represented Touching Base and Ms Jane Green, a sex worker and convenor of Vixen Independent Sex Worker Organisation<sup>78</sup> each gave evidence praising the New Zealand legislative position.
- 2.86 New Zealand like NSW has decriminalised prostitution. New Zealand has a system of regulation such that operators of businesses of prostitution must be licensed<sup>79</sup> and certain persons are disqualified from holding a licence.<sup>80</sup> There are

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<sup>75</sup> Submission 170, *Queensland Prostitution Licensing Authority*.

<sup>76</sup> Ms Julie Bates, Member Touching Base and sex worker, Transcript of Evidence, 11 September 2015 p40.

<sup>77</sup> Mr Saul Isbister, President Touching Base and sex worker, Transcript of Evidence, 11 September 2015 p43.

<sup>78</sup> Ms Green met with the Committee at the Victorian Parliament during the Committee Site Visits on 28 August 2015.

<sup>79</sup> Section 35, *Prostitution Reform Act 2003*, (NZ).

anti sex slave provisions such that no visa issued to a foreign national may permit them to provide sexual services.<sup>81</sup> The New Zealand legislation also contains provisions relating to health and safety,<sup>82</sup> advertising,<sup>83</sup> prohibitions on under age sex work<sup>84</sup> and powers of entry and inspection of premises.<sup>85</sup>

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<sup>80</sup> Section 36, *Prostitution Reform Act 2003*, (NZ).

<sup>81</sup> Section 19, *Prostitution Reform Act 2003*, (NZ).

<sup>82</sup> Sections 8 to 10, *Prostitution Reform Act 2003*, (NZ).

<sup>83</sup> Section 11, *Prostitution Reform Act 2003*, (NZ).

<sup>84</sup> Sections 20 to 23, *Prostitution Reform Act 2003*, (NZ).

<sup>85</sup> Sections 24 to 33, *Prostitution Reform Act 2003*, (NZ).

## Chapter Three – Planning Issues

- 3.1 This chapter explores the planning challenges associated with the sex services industry in NSW. It first provides an outline of planning and development assessment requirements to operate sex services premises in NSW. It then discusses the various planning challenges raised with the Committee including consistency of decision making, coordination between state and local government, amenity impact, unauthorised sex services premises and catering for people with disability.

### PLANNING AND DEVELOPMENT ASSESSMENT REQUIREMENTS

#### Planning Requirements for Sex Services Businesses

- 3.2 As discussed in chapter two, under the EP&A Act, councils may regulate brothels through local environment plans (LEPs) or development control plans (DCPs). LEPs may permit or prohibit sex work, including 'sex services premises' or 'home occupation (sex services)' in specific locations (that is, through zones), in LEPs, or specify standards or controls that must be met for the location, design or operation of such premises.<sup>86</sup>

- 3.3 The planning principle on the location of brothels that was set down by the Land and Environment Court in the case of *Martyn v Hornsby Shire Council* [2004] NSWLEC 614 has been widely used by councils to inform their policy on regulating brothels. This planning principle notes that brothels are a legal land use that benefit some sections of the community but offend others. It also notes that:

Most people believe that the exposure of impressionable groups like children and adolescents to the existence of brothels is undesirable. The aim should therefore be to locate brothels where they are least likely to offend.<sup>87</sup>

- 3.4 Further, given that brothels may offend some sections of the community, the principle states they should not be located near schools, educational institutions for young people or places where children and adolescents regularly gather, or near places of worship. This fits in with the broader legislative scheme for sex work, discussed in chapter two, that also prohibits street workers from soliciting clients near or within view of a school or places of worship; or vice versa.<sup>88</sup> *Martyn v Hornsby Shire Council* also states that the criteria for brothels should not be so onerous as to exclude them from all areas of a municipality.

- 3.5 In evidence to the Committee, Ms Elizabeth Kinkade, Executive Director, Planning Policy, Department of Planning and Environment confirmed that the Department regulates councils' planning decisions regarding brothels in accordance with *Martyn v Hornsby Shire Council*. Ms Kinkade advised that:

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<sup>86</sup> Submission 137, NSW Government, p4.

<sup>87</sup> Planning Principle on the Location of Brothels set down by Roseth SC in *Martyn v Hornsby Shire Council* [2004] NSWLEC 614, at [18] – see also submission 137, NSW Government, Appendix A.

<sup>88</sup> See sections 19 and 19A, *Summary Offences Act 1988*.

The Department has a position where we require councils to allow the uses in at least one zone in their local government area. A number of councils have restricted that to industrial zones, although not all councils restrict it to those zones. But we do not contemplate the option of having the use prohibited across the whole local government area. We would work with the council to make sure that their planning controls did not mean that the use was going to be prohibited completely across the local government area.<sup>89</sup>

- 3.6 Ms Kinkade also confirmed that councils *are* able to completely prohibit home-based sex work in their local government areas (LGAs).<sup>90</sup>
- 3.7 The Standard Instrument LEP Program also provides guidance to councils making decisions regarding the regulation of sex services premises in their LGAs. The Department of Planning and Environment started the Program in 2006 to create a common format and content for LEPs across NSW.<sup>91</sup> The Standard Instrument Principal Local Environment Plan contains the following definitions relevant to the sex services industry:
- Sex services means sexual acts or sexual services in exchange for payment
  - Sex services premises means a brothel, but does not include home occupation (sex services)
  - Home occupation (sex services) means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling by not more than two permanent residents of the dwelling and that does not involve (a) the employment of persons other than those residents, or (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or (c) the exhibition of any signage, or (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items by retail; but does not include a home business or sex services premises.<sup>92</sup>
- 3.8 As pointed out in the submission of Scarlet Alliance Australian Sex Workers Association, the home occupation (sex services) definition ensures that such businesses can only involve up to two permanent residents. This differs from the requirements for other home occupations in NSW (e.g. accountants or lawyers who work from home) where there is no limit on the number of permanent residents for home occupations unless they impact on residential amenity.<sup>93</sup> However, if the definition for home occupation sex services was any different, there would be a back door means of establishing brothels without council

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<sup>89</sup> Ms Elizabeth Kinkade, Executive Director, Planning Policy, Department of Planning and Environment, Transcript of Evidence, 1 September 2015, pp 8&9.

<sup>90</sup> Ms Kinkade, Transcript of evidence, p9.

<sup>91</sup> NSW Department of Planning and Environment website, <http://www.planning.nsw.gov.au/en-AU/Plans-for-Your-Area/Local-Environmental-Plans>, viewed 24 September 2015.

<sup>92</sup> See Dictionary to Standard Instrument - Principal Local Environment Plan.

<sup>93</sup> See submission 133, Scarlet Alliance, p15, for a discussion of this.

approval if home occupation services could assume a scale larger than two workers.

## Development Assessment

- 3.9 Development consent, obtained through lodgement of a development application is generally required to operate premises as a brothel, whether as a sex services premises or a home occupation (sex services). Requirements for the location, design and operation of brothels are generally set by councils in their development control plans (DCPs). They also usually require the notification and/or advertising of sex services development applications to the community, or for them to be determined at a full meeting of council rather than by a council officer under delegation. There is no requirement for councils to consult with other public agencies, such as NSW Health or Police, as part of the assessment of a DA for a brothel.<sup>94</sup>
- 3.10 If a brothel is granted development consent it will be required to act in accordance with conditions of consent. The conditions of consent are set by the relevant council and may relate to the management and operation of the premises, including maintaining a Plan of Management, hours of operation, limits on the number of workers, cleaning requirements, parking or allowing access by health professionals to assist and educate workers.<sup>95</sup> For example, City of Sydney Council's submission to the inquiry states:

The City's Development Controls require sex industry premises to submit clear plans of management that include details regarding premises security, CCTV, safety, waste management and crime prevention. All premises must include separate and secure facilities for workers. All working rooms in City of Sydney brothels must have duress alarms and intercoms so that staff can contact reception in case of any incident or concern. All plans of management must demonstrate how health services and information will be promoted to staff.<sup>96</sup>

## PLANNING AND BROTHELS

### Consistency of Decision Making and Management

- 3.11 The Committee received evidence during its inquiry that the criteria for approval with respect to, and the number of, brothels differs greatly from one LGA to another. As Local Government NSW, the peak body for NSW Local Government stated in its submission:

Councils planning controls vary considerably across the sector reflecting the history and social attitudes around sex premises.<sup>97</sup>

- 3.12 This was reflected in the 20 councils that the Committee received evidence from (three of which asked for their evidence to remain confidential). Some indicated they have a relatively large number of authorised sex services premises in their

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<sup>94</sup> Submission 137, NSW Government, p4.

<sup>95</sup> Submission 137, NSW Government, p4.

<sup>96</sup> Submission 63, City of Sydney Council, p2.

<sup>97</sup> Submission 142, Local Government NSW, p6.

LGA (such as City of Sydney with 49, Marrickville with 16 and Penrith with 16)<sup>98</sup>, while others indicated they had none, or only one or two.<sup>99</sup>

- 3.13 In addition, while some indicated they have carried out significant strategic planning work to integrate sex industry premises into commercial and/or mixed use zones within their areas, others restrict sex services premises to industrial areas or try to exclude them altogether.<sup>100</sup> City of Sydney has taken a strategic planning approach and told the Committee:

Whilst the impact of individual premises can vary in relation to their nature and scale, the accumulation of premises may exacerbate any negative amenity impacts. It is therefore important that land use planning controls seek to reduce any negative amenity impact whilst allowing the development of adult entertainment and sex industry premises in suitable locations and of an appropriate scale and operation.<sup>101</sup>

- 3.14 Similarly, Randwick City Council indicated that it has two approved brothels which are situated in one of its busiest commercial precincts, managed through strategic planning controls:

Council's planning controls require consideration to be given to the proximity of the proposed location in relation to residential zones and public open space...Council's Development Control Plan 2013 (DCP) provides additional guidance for sex services premises to ensure proposals are well located, designed and managed to avoid adverse impacts on the surrounding area and also maintain high levels of amenity...<sup>102</sup>

- 3.15 Of the councils that take a different approach, some indicated to the Committee that industrial zones are the only areas within their LGAs where brothels can be approved.<sup>103</sup>

- 3.16 Ashfield Council indicated that while it has two approved brothels within its LGA, both were approved by the Land and Environment Court on appeal after being refused consent by the Council. Its submission stated:

Ashfield Council has over many years consistently rejected all development applications for brothels. The Council has long argued that because it is a relatively small LGA and predominantly of residential character, there are few if any locations which would be suitable for brothels...Council sought to be exempted from the need

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<sup>98</sup>Submission 63, City of Sydney Council, p3; submission 173, Marrickville Council, p1; and submission 164, Penrith City Council, p1.

<sup>99</sup>See for example the evidence of Ms Magurran, Transcript of Evidence, 11 September 2015, p4 which indicates Camden LGA has one authorised brothel; submission 126, Tamworth Regional Council, p2 which indicates Tamworth LGA has one authorised brothel; and submission 10, Gloucester City Council, p1 which indicates Gloucester LGA has no authorised brothels.

<sup>100</sup>See submission 137, NSW Government, p4; submission 63, City of Sydney Council, p3; and submission 79, Ashfield Council, p3.

<sup>101</sup>Submission 63, City of Sydney, p1.

<sup>102</sup>Submission 169, Randwick City Council, p2.

<sup>103</sup>Examples of Councils that fall into this category are Hornsby and Ballina - see the evidence of Mr Evans, Transcript of Evidence, 1 September 2015, p60; submission 8, Ballina Shire Council, p1.

to allow brothels in this area, however, the expectation was that all councils needed to define an area or areas within which brothels could be permissible.<sup>104</sup>

3.17 On the subject of home occupation (sex services), decision-making also differs across LGAs. It appears City of Sydney Council allows home occupation (sex services) in certain circumstances<sup>105</sup> and Tamworth Regional Council will consider applications that relate to dwellings that are in commercial zones.<sup>106</sup> In contrast, seven other councils that provided evidence to the inquiry specifically stated that undertaking home occupation (sex services) in their LGAs is prohibited.<sup>107</sup>

3.18 The Committee also received evidence that, once sex services premises are approved, the approach to managing them differs across LGAs. Penrith City Council's submission stated:

The [enforcement of the] regulation of brothels differs between councils depending on available resources. The policy direction of councils will also largely determine if brothels are regulated proactively (regular routine inspection program) or reactively (complaint only basis inspections).<sup>108</sup>

3.19 Some councils, such as City of Sydney, Leichhardt, Tamworth and Camden Councils, indicated that they proactively and regularly inspect sex services premises to ensure compliance with conditions of development consent, for example, fire safety and cleanliness.<sup>109</sup> However, Warringah Council indicated that many councils do not do this, advising:

Many councils...do not have a proactive inspection programme to regulate public health concerns as this is not a mandated function. Typically Council investigations are reactive in nature, following complaint or referral from another agency, such as police seeking assistance to support their criminal investigations and initiatives, or from the public concerning illegal operations.<sup>110</sup>

## Coordination Between State and Local Government

3.20 The Committee also received evidence from some councils of a need for greater coordination between local government and relevant state government agencies in the regulation of brothels, to demarcate roles, avoid duplication of effort and share information. For example, Warringah Council stated:

The existing provisions for regulation and compliance provide for unnecessary overlap and inefficiency. For example, when considering public health and safety of sex workers and customers, WorkCover, Local Councils and NSW Health all have regulatory powers. The level of regulation by each agency is a matter of individual

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<sup>104</sup> Submission 79, Ashfield Council, p3.

<sup>105</sup> See City of Sydney website, <http://www.cityofsydney.nsw.gov.au/business/regulations/sex-industry-premises>, which indicates that City of Sydney policy for Home Occupation Sex Service Premises varies according to premises.

<sup>106</sup> Submission 126, Tamworth Regional Council, p2.

<sup>107</sup> See for example, Mr George Lerantges, Team Leader, Compliance, Marrickville Council, Answers to Questions Taken on Notice, 1 September 2015, p1; submission 79, Ashfield Council, p2; submission 124, Shoalhaven City Council, p1; and the evidence of Ms Magurren, Transcript of Evidence, 11 September 2015, p4.

<sup>108</sup> Submission 164, Penrith City Council, p1.

<sup>109</sup> See submission 63, City of Sydney Council, p3; submission 138, Leichhardt Municipal Council, p2; submission 126, Tamworth Regional Council, p2 and Ms Magurren, Transcript of Evidence, 11 September 2015, p5.

<sup>110</sup> Submission 104, Warringah Council, p1.



priority with little planned coordination...In practice guidelines clarifying demarcation of roles and establishing better coordination and memorandum of understanding for joint working may be sufficient.<sup>111</sup>

- 3.21 On the subject of unauthorised premises, discussed in more detail below, Leichhardt Municipal Council stated that there is:

Lack of communication or systems to enable cross jurisdiction information sharing between various agencies (e.g. Councils, Public Health, Police, Immigration, ATO etc). This leads to separate evidence silos and a hesitation in relation to taking regulatory action as it is unknown if one agency could impact the work being undertaken by another regulatory agency.<sup>112</sup>

- 3.22 Similarly, on the subject of unauthorised premises, Mr Simon Evans, Compliance and Certifications Manager, Hornsby Shire Council indicated that greater coordination between Police and local councils would be helpful, as per the following exchange:

**Chair:** ...perhaps local government and the police force might act in a more cooperative fashion with regard to the enforcement of rules around unapproved operators. Would you invite the assistance of the police force in respect to those matters?

**Mr Evans:** Definitely and we have.

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

**Mr Evans:** For legal brothels yes, illegal brothels, no.<sup>113</sup>

### Amenity Impacts of Authorised Sex Services Premises and Home Occupation (Sex Services)

- 3.23 The Committee received evidence that where sex services premises have been authorised by local councils, they have minimal amenity impact and are rarely the subject of complaint. They also received evidence that home occupation (sex services) are rarely the subject of complaint. Amenity in a planning context refers to 'the pleasant or normally satisfactory aspects of a location which contribute to its overall character and the enjoyment of residents or visitors'.<sup>114</sup>

- 3.24 In its submission Scarlet Alliance stated:

Scarlet Alliance submits that 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...Prior and Crofts' 2010 study illustrates that of 400 residents living in close proximity to commercial sex services in City of Sydney and Parramatta,

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<sup>111</sup> Submission 104, Warringah Council, p1.

<sup>112</sup> Submission 138, Leichhardt Municipal Council, 4.

<sup>113</sup> Mr Evans, Transcript of Evidence, p57.

<sup>114</sup> See The Planning Academy website, <http://theplanningacademy.com.au/planning-language>, viewed 28 September 2015.

43.1% were unaware they lived within 400m, and of those who did know, 48.2% believed the business had no overall impact in the local area, and 24.1% rated it positively. Prior and Crofts' research suggests that communities come to accept sex services premises as they become more familiar with them...<sup>115</sup>

- 3.25 This accords with the evidence of local councils to the inquiry. While many indicated they receive complaints in relation to unauthorised brothels (discussed below), the Committee heard that complaints regarding authorised brothels are rare. For example, City of Sydney Council stated:

Although it is recognised that the perception of amenity impacts for sex industry premises is considered high, once a development is operational, the City's experience demonstrates minimal impacts, with premises often operating without attracting any complaints or concerns...It is noted that the City rarely receives complaints concerning approved sex premises, however does receive and investigate complaints concerning such businesses operating illegally with[out] council approval.<sup>116</sup>

- 3.26 Leichhardt Municipal Council gave similar evidence:

Where brothels have followed the Development Application process and are regularly inspected, these premises appear to have met the intended outcomes. However, it is [with] the unauthorised premises that regulation is difficult.<sup>117</sup>

- 3.27 Randwick Council stated in respect of its two authorised premises:

It is important to note that these premises over many years of operation have not generated community concern or given rise to any disturbances which have resulted in complaints to Council. In the absence of any regulatory regime that requires council to inspect these premises, the inference that is drawn is that these two brothels operate discreetly and would appear to be well managed.<sup>118</sup>

- 3.28 Similarly, Ashfield Council stated:

The two approved brothels in Ashfield LGA have been operational for well over 10 years and conduct their operations relatively discreetly and with limited impacts on the amenity of their respective localities.<sup>119</sup>

- 3.29 Ballina Shire Council indicated before its two authorised brothels were authorised, it used to receive complaints in relation to them, but now receives none:

These two brothels do operate in accordance with their respective development consents that were issued approximately 10 to 15 years ago...These two brothels did attract complaints initially when operating as unauthorised businesses and numerous submissions were received as part of the development assessment process. These complaints have however been resolved and a check of Council

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<sup>115</sup> Submission 133, Scarlet Alliance, p17.

<sup>116</sup> Submission 63, City of Sydney Council, pp1&2.

<sup>117</sup> Submission 138, Leichhardt Municipal Council, p2.

<sup>118</sup> Submission 169, Randwick City Council, p3.

<sup>119</sup> Submission 79, Ashfield Council, p4.

records has not identified any complaint lodged against either business for a number of years.<sup>120</sup>

3.30 In its submission, Marrickville Council stated that over the last five years, of the 30 complaints that were made to it concerning brothels, nine were made against approved brothels. Not all of these related to amenity. While some questioned the land use, others complained of 'unhealthy conditions' or a 'poor' level of service but the Council decided that none warranted enforcement action.<sup>121</sup>

3.31 In short, councils consistently advised the Committee that where council authorisation had been given to operate sex services premises, complaints concerning those premises were few.

3.32 On home occupation (sex services), Local Government NSW confirmed that councils have not raised concerns about their operation:

**Chair:** ...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...Is that a fair summary of the position, or have I missed something?

**Ms Dennis:** That is actually probably a good observation...

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

**Chair:**...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 another?

**Mr Baum:**...it is probably a fair observation.<sup>122</sup>

## Unauthorised Sex Services Premises

### *Extent of Unauthorised Sex Services Premises*

3.33 In contrast to authorised sex services premises, and home occupation (sex services), the Committee heard from many stakeholders that councils do receive a number of complaints in relation to unauthorised sex services premises – that is, commercial premises that do not have development approval from the relevant council to operate as sex services premises. Of the 20 councils that provided evidence to the inquiry, nine stated that concerns had been raised with them about unauthorised premises. In particular:

- City of Sydney Council indicated it probably has between ten and 30 complaints per year about massage parlours operating as brothels without consent<sup>123</sup>

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<sup>120</sup> Submission 8, Ballina Shire Council, p2.

<sup>121</sup> Submission 173, Marrickville Council, p2.

<sup>122</sup> Transcript of Evidence, 11 September 2015, pp47&48. See also Mr Noel Baum, Director Policy, Local Government NSW, Answers to Questions Taken on Notice, 11 September 2015, p1.

<sup>123</sup> Dr Simone, Transcript of Evidence, 1 September 2015, p51.

- Marrickville Council indicated that over the last five years, 57 complaints were made by members of the community alleging that 14 premises were operating as massage parlours but offering sexual services<sup>124</sup>
- Hornsby Shire Council indicated that over the last 18 months it had received approximately 25 complaints about unauthorised brothels<sup>125</sup>
- Camden Council indicated that it had received a number of ongoing complaints from the community alleging one premise that is approved to provide massage services is also providing sexual services<sup>126</sup>
- Ashfield Council indicated that from time to time it receives enquiries and complaints from members of its community alleging that a particular premise is being used as a brothel [without authorisation]<sup>127</sup>
- Willoughby City Council indicated that over the past ten years there appears to have been a significant increase in the number of unauthorised brothels operating within the City of Willoughby.<sup>128</sup> From 14 May 2009 to 4 August 2015, Willoughby City Council has served a total of 41 brothel closure orders involving 34 premises. The council has also commenced five sets of class 4 enforcement proceedings in the Land and Environment Court seeking orders for the closure of unauthorised brothels<sup>129</sup>
- Holroyd City Council indicated that it has anecdotal evidence to suggest that some massage parlours operating in its LGA are offering sexual services. This council also stated that it could reasonably be argued that massage parlours providing sexual services are far more prevalent than authorised brothels<sup>130</sup>
- Shoalhaven Council indicated that problems and issues have arisen in relation to unauthorised brothels operating in its LGA.<sup>131</sup>

3.34 It is unclear exactly what proportion of NSW sex workers are working in premises that do not have development approval from the relevant council to operate as sex services premises. The Committee notes from the above that many of the complaints about such services relate to massage parlours. Hence, one indicator may be the number of sex workers who report to health authorities that they work at 'massage parlours'.

3.35 Sydney Sexual Health Centre has reported that six per cent of its sex worker clients report working in a massage parlour or in bondage and discipline. These

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<sup>124</sup> Submission 173, Marrickville Council, p2.

<sup>125</sup> Mr Evans, Transcript of Evidence, p62.

<sup>126</sup> Ms Magurren, Transcript of Evidence, p2.

<sup>127</sup> Submission 79, Ashfield Council, p1.

<sup>128</sup> Submission 120, Willoughby City Council, p1.

<sup>129</sup> Submission 120, Willoughby City Council, p2.

<sup>130</sup> Submission 39, Holroyd City Council, p3.

<sup>131</sup> Submission 124, Shoalhaven City Council, p1.

categories are grouped together on its database therefore it is not possible to determine the percentage working in either.<sup>132</sup>

3.36 Similarly, the Committee heard that it would not be possible to determine what percentage of these 'massage parlour' workers operated in unauthorised premises as some could work in 'erotic massage parlours' that do have council approval to offer sexual services, while others could just be using 'massage parlour' as a euphemism because of the stigma of working in the sex industry.<sup>133</sup>

3.37 However, internet searches for two of the massage parlours that Hornsby Shire Council has received complaints about (that are in Edgeworth David Avenue Hornsby, and one of which was the subject of court action discussed further below), indicate that that they may be associated with a number other massage parlours across Sydney. A number of these massage parlours are advertising from common websites which may indicate common ownership.<sup>134</sup>

#### *Increased Risks Around Unauthorised Sex Services Premises*

3.38 Councils indicated to the Committee that where sex services premises operate without development approval, this increases a number of risks including:

- Risks to public health and residential amenity;<sup>135</sup>
- Lower health standards within unauthorised premises;<sup>136</sup>
- A greater likelihood of sex worker exploitation and trafficking, particularly if premises also have links to organised crime;<sup>137</sup>
- Sex workers failing to report unsafe working conditions due to concerns that they themselves are behaving outside the regulatory framework;<sup>138</sup> and
- Unfair competition to premises which operate with development consent and comply with locational restrictions and incur compliance costs.<sup>139</sup>

3.39 Dr Phillip Read, the Acting Director of the Kirketon Road Centre, gave evidence that his research indicated that premises operating as massage parlours without a development application but providing sex services had higher risks of sexually transmitted infections (STIs) from oral sex than in approved brothels. He hypothesised that in such operations the management could not insist on

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<sup>132</sup> Dr Anna McNulty, Director, Sydney Sexual Health Centre, Answers to Questions Taken on Notice, 2 September 2015, p35.

<sup>133</sup> Transcript of Evidence, 2 September 2015, pp8&9.

<sup>134</sup> See comments made by the Chair, Transcript of Evidence, 1 September 2015, p56; and Asian Massages Sydney website, <http://asianmassages.com/au/hornsby>, viewed 31 August 2015; and XMassage website, <http://xmassage.com.au/ws-massage-hornsby/> viewed 29 September 2015.

<sup>135</sup> Submission 63, City of Sydney Council, p2.

<sup>136</sup> Submission 112, confidential, p1 (quoted with permission).

<sup>137</sup> Submission 112, confidential, p2 (quoted with permission).

<sup>138</sup> Submission 138, Leichhardt Municipal Council, p3.

<sup>139</sup> Submission 112, confidential, p2 (quoted with permission).

condom use which probably was causative of the lower public health outcomes.<sup>140</sup>

- 3.40 Increased risks around worker exploitation, trafficking and unsafe working conditions, and increased health risks, are discussed in more detail in chapters four and five of this report.
- 3.41 On the subject of increased risks to amenity and community, the Committee also heard evidence that some of the unauthorised brothels that councils have received complaints about are operating in areas that are completely contrary to the planning principle on the location of brothels set down by the Land and Environment Court in the case of *Martyn v Hornsby Shire Council* (discussed earlier in this chapter). For example, both of the massage parlours in Edgeworth David Avenue Hornsby, that Hornsby Shire Council is prosecuting for allowing sexual services without planning approval, are within 50 metres of a high school.<sup>141</sup>
- 3.42 Similarly, Shoalhaven Council indicated that unauthorised brothels in its LGA, have been in areas frequented by children.<sup>142</sup> Camden Council also gave evidence that a massage parlour was providing sexual services in an area that would not be approved as a brothel.<sup>143</sup>

#### *Legislative Tools to Deal with Unauthorised Sex Services Premises*

- 3.43 As touched upon in chapter two of this report, where premises are providing sex services without development approval, councils can follow a number of legislative avenues in response. These include:
- Issuing a penalty notice. These have recently broadly doubled to \$6,000 for corporations and \$3,000 for individuals.<sup>144</sup>
  - Issuing an order for premises to cease being used as a brothel, which is a brothel closure order under section 121ZR of the EP&A Act. For example, where a premises has consent to operate as a massage parlour but is providing sexual services, the council could issue a brothel closure order to stop that provision of sexual services.
  - If a brothel closure order is not complied with, enforcing it by applying to the Local Court or the Land and Environment Court for an order to cut off utilities to the premises under section 121ZS of the EP&A Act.
  - Taking action in the Local Court. For example, where premises are operating as a brothel in an area where such activity is prohibited under

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<sup>140</sup> Dr Phillip Read, Acting Director, Kirketon Road Centre, Transcript of Evidence, 1 September 2015, pp 36&40.

<sup>141</sup> Mr Evans, Transcript of Evidence, pp53, 59&60.

<sup>142</sup> Submission 124, Shoalhaven City Council, p1.

<sup>143</sup> Ms Magurren, Transcript of Evidence, p9.

<sup>144</sup> Ms Alison Frame, Deputy Secretary, Policy and Strategy, Department of Planning, Transcript of Evidence, 1 September 2015, p2.

the LEP, a council can apply to the Local Court seeking a fine against the proprietor.<sup>145</sup> In the Local Court the maximum fine is \$110,000.<sup>146</sup>

- Taking action in the Land and Environment Court. For example, if a person breached a brothel closure order, a council could apply to the Land and Environment Court seeking a fine for non-compliance. The maximum possible fine in this case would be larger than if proceedings were commenced in the Local Court – the maximum penalty in the Land and Environment Court for a tier 2 offence is \$2 million for a corporation and \$500,000 for an individual.<sup>147</sup>
- Councils also may apply to turn off the power and water to a property which is the subject of an order, although that is not available with regard to residential premises.<sup>148</sup>

3.44 Such compliance action – whether to take it and what sort to take – is discretionary. Ms Alison Frame, Deputy Secretary, Policy and Strategy, Department of Planning and Environment, explained:

All that compliance action taken by council is discretionary, that is whether or not the compliance action is taken and the type of compliance action that is taken will depend on a range of considerations that are made by council. Usually a council will decide which action to take by assessing the alleged breach against its internal compliance policy or guidelines.<sup>149</sup>

3.45 Ms Frame also spoke about when a council would choose to take action in the Local Court, compared with when a council would choose to take action in the Land and Environment Court:

One thing that may...figure in council's decision-making there, as you said about cost of proceedings, but [also]...the quantum of the fine and have there been offences in the past and the message that the council wanted to send about the acceptability of the practice may impact their decision where to pursue the proceedings.<sup>150</sup>

3.46 Evidence from councils confirmed that compliance action in relation to unauthorised sex services premises varies from council to council. Marrickville Council indicated to the Committee that where it has enough evidence to suggest that a massage parlour is offering sexual services without development consent, it generally issues a penalty notice to the operator for non-compliance with consent to run a massage parlour.<sup>151</sup>

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<sup>145</sup> See section 76B EP&A Act 1979. This is the course of action taken by Hornsby Shire Council in a recent case: see submission 62, Hornsby Shire Council, p4; and the evidence of Mr Evans, Transcript of Evidence, pp55&56.

<sup>146</sup> Ms Frame, Transcript of Evidence, p10.

<sup>147</sup> Ms Frame, Transcript of Evidence, p10.

<sup>148</sup> Mr Daniel Streater, Manager, Certification and Compliance, Camden City Council, Transcript of Evidence, 11 September 2015, p3.

<sup>149</sup> Ms Frame, Transcript of Evidence, p5.

<sup>150</sup> Ms Frame, Transcript of Evidence, p10.

<sup>151</sup> See Transcript of Evidence, 1 September 2015, pp49&50. See also Mr Lerantges, Answers to Questions Taken on Notice, 1 September 2015, p1 which indicate Marrickville Council has issued four penalty infringement notices in

- 3.47 In contrast, Willoughby Council tends to issue brothel closure orders. In the last five years it has served a total of 41 brothel closure orders. Where necessary, it also commences proceedings in the Land and Environment Court to enforce brothel closure orders.<sup>152</sup>
- 3.48 Camden Council also indicated to the Committee that it intends to issue a brothel closure order in respect of premises in its LGA that are approved for a massage use but have been found to be providing sexual services.<sup>153</sup>
- 3.49 Finally, Hornsby Shire Council indicated that it has issued brothel closure orders to massage parlours providing sexual services in the past (three in the last 18 months).<sup>154</sup> However, most recently it has commenced proceedings in the Local Court against a massage parlour for operating a brothel in an area where such activity is prohibited under the LEP, and seeking a fine.<sup>155</sup>
- 3.50 When discussing the legislative options to deal with unauthorised sex services premises, it is also relevant to note sections 16 and 17 of the *Summary Offences Act 1988*. These sections are also touched upon in chapter two of this report and provide that it is an offence to use, or allow the use of premises that are held out as a massage parlour for the purposes of prostitution. In evidence to the Committee, the Department of Justice indicated that these provisions are currently not being used to complement the planning laws in relation to unauthorised brothels – there have been no prosecutions for these offences in the last five years.<sup>156</sup> Justice also clarified that the NSW Police Force has primary responsibility for investigating and prosecuting offences under the *Summary Offences Act 1988*.<sup>157</sup>

*Difficulties for Councils with the Enforcement of Planning Laws Concerning Unauthorised Sex Services Premises*

- 3.51 Despite the array of legislative options for dealing with unauthorised sex services premises, the Committee received evidence that councils are still finding the current laws difficult to enforce.
- 3.52 First, where councils have received complaints about unauthorised premises, before they can take action the onus is on the council to provide proof that the premises are being used for sexual services. Ms Frame of the Department of Planning and Environment provided evidence about the tools councils have at their disposal to obtain this evidence:

To start with, council investigation officers are authorised under the Act to enter any premises other than premises used for residential purposes without notice and

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the last five years in relation to massage parlours where evidence obtained indicated they were operating as a brothel.

<sup>152</sup> Submission 120, Willoughby City Council, p2.

<sup>153</sup> Ms Magurren, Transcript of Evidence, p2.

<sup>154</sup> Mr Evans, Transcript of Evidence, p64.

<sup>155</sup> Mr Evans, Transcript of Evidence, pp55&56.

<sup>156</sup> Mr Paul McKnight, Executive Director, Strategy and Policy, Department of Justice, Transcript of Evidence, 1 September 2015, p2.

<sup>157</sup> Mr Paul McKnight, Executive Director, Strategy and Policy, Department of Justice, Answers to Questions Taken on Notice, 1 September 2015, p2.



without the consent of the owner or occupier to determine whether there has been a breach of the *Environmental Planning and Assessment Act* under section 119D of the *Environmental Planning and Assessment Act*. This means that investigation officers can enter suspected brothels without notice, giving councils a better chance of obtaining evidence of unlawful use.<sup>158</sup>

3.53 Ms Frame continued:

While at premises they can obtain evidence under section 119 F, such as taking photographs and videos of the premises and people at the premises and they can require records to be produced, such as inspect appointment books and other written material. A site inspection may provide then both direct and circumstantial evidence that the premises are being used as a brothel.<sup>159</sup>

3.54 However, Local Government NSW stated:

Although circumstantial evidence can be adduced to show that premises are being used to provide sex, it is not always easy for a council to gather this evidence and [it] can take a long period of time and tie up large amounts of council resources to gather such evidence.<sup>160</sup>

3.55 This is consistent with other evidence that the Committee heard that council officers usually do not have a large amount of experience in these types of matters. For example, Mr Daniel Streater, Manager, Certification and Compliance, Camden City Council told the Committee that when Camden Council received complaints about a massage parlour operating as an unauthorised brothel, he had not had previous experience investigating such matters and it took a lot of research to find out what to do.<sup>161</sup> Mr Streater provided further information to this effect:

**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.<sup>162</sup>

3.56 Further, once obtained, such circumstantial evidence can be of limited use. For example, Marrickville Council confirmed that where it receives a complaint

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<sup>158</sup> Ms Frame, Transcript of Evidence, p4.

<sup>159</sup> Ms Frame, Transcript of Evidence, p4.

<sup>160</sup> Submission 142, Local Government NSW, p4.

<sup>161</sup> Mr Streater, Transcript of Evidence, p8.

<sup>162</sup> Mr Streater, Transcript of Evidence, p9.

concerning a massage parlour operating as a brothel, it undertakes an inspection of the premises to look for items such as condoms and sexually explicit magazines, and interviews workers and owners. It also checks website forums which may contain details about the types of services on offer. However, when a follow-up site inspection occurs to confirm sexual services are no longer on offer and that premises are only being used for their approved massage use, these physical items have been removed. Mr Simon Grierson, Manager, Monitoring Services, Marrickville Council told the Committee that this may just be a case of 'learnt behaviour':

I would suggest that from our experience, when we turn up to inspect a premises and if we are finding physical evidence that may indicate sexual services are on offer, any subsequent inspection which has an absence of that, and even signage which indicates sex is not provided on the premises, that could be just learnt behaviour of knowing what we look for and what our triggers are to issue penalties or orders and notices.<sup>163</sup>

3.57 Indeed, Marrickville Council indicated that in cases where physical evidence has been removed on subsequent inspection, website information sometimes continues to suggest sexual services are still on offer at the premises. This alone is insufficient evidence for the council to take any further action, however.<sup>164</sup>

3.58 The Committee heard that, given the difficulties obtaining and limitations of circumstantial evidence, some councils use private investigators to gain direct evidence that sexual services are being provided at unauthorised premises. Local Government NSW stated:

...councils have found that a more efficient way to provide evidence to a Court that premises are being used as a brothel is for a council to employ a member of the public to have sex on the premises so as to provide the required evidence that the premises is being used as a brothel.<sup>165</sup>

3.59 In evidence to the Committee, Mr Noel Baum, Director Policy, Local Government NSW expanded on this point:

...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...it gets very expensive. We have heard figures banded about like \$60,000 over two years and those sort of figures.<sup>166</sup>

3.60 Indeed, one of the factors contributing to this expense is the need to monitor premises on an ongoing basis following the issue of a penalty notice or orders. Ms Magurren of Camden Council explained this in the context of premises with development approval to operate as a massage business, but not to provide sexual services:

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<sup>163</sup> Mr Simon Grierson, Manager, Monitoring Services, Marrickville Council, Transcript of Evidence, 1 September 2015, p50.

<sup>164</sup> Submission 173, Marrickville Council, p3.

<sup>165</sup> Submission 142, Local Government NSW, p4.

<sup>166</sup> Mr Baum, Transcript of Evidence, p48.

...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 massage use.<sup>167</sup>

- 3.61 Hornsby Shire Council also provided evidence that, owing to a decision in a recent case, even hiring private investigators is not providing sufficient evidence to proceed against unauthorised premises. As touched upon above, recently the Council commenced proceedings in the Local Court against a massage parlour for operating a brothel in an area where such activity is prohibited under the LEP (partly because it is 50 metres from a high school), and seeking a fine under the EP&A Act.<sup>168</sup>
- 3.62 The Council told the Committee that when it received complaints about the massage parlour, Council officers did preliminary investigations including gathering advertisements from newspapers and online, as well as monitoring adult chat forums. These all suggested that sexual services were being provided at the premises.<sup>169</sup> Council officers also surveyed the premises to compare the number of males who entered compared to females. In addition, they inspected the premises but found no physical evidence of sexual services such as condoms, and the manager denied that sexual services were on offer.<sup>170</sup>
- 3.63 Following this, the council hired a private investigator who entered the premises and received sexual services.<sup>171</sup> However, when the council presented this evidence to the Local Court, the magistrate ruled that it did not prove the premise was operating as a 'brothel' within the meaning of the EP&A Act.<sup>172</sup>
- 3.64 As outlined in chapter two, the *Restricted Premises Act 1943* defines brothel to mean premises habitually used for the purposes of prostitution; or that have been used for the purposes of prostitution and are likely to be used again for the same purpose; or that have been expressly or implicitly advertised or represented as being for the purposes of prostitution. It further provides that premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.
- 3.65 However, the EP&A Act provides that brothel means brothel within the meaning of the *Restricted Premises Act 1943* **other than premises likely to be used for the purposes of prostitution by no more than one prostitute**. As the evidence only proved that one worker at the premises was providing sexual services, the magistrate dismissed the case. The case highlighted that circumstantial evidence which was available to establish more than one worker was providing sexual services at the premises was not applied by the magistrate in that case. It also

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<sup>167</sup> Ms Magurren, Transcript of Evidence, p3.

<sup>168</sup> Mr Evans, Transcript of Evidence, pp53, 55&56.

<sup>169</sup> See Mr Evans, Transcript of Evidence, pp 53&54.

<sup>170</sup> Mr Evans, Transcript of Evidence, p54.

<sup>171</sup> Mr Evans, Transcript of Evidence, pp53&54.

<sup>172</sup> See Mr Evans, Transcript of Evidence, p54; and submission 62, Hornsby Shire Council, pp4&5.

showed that operators can use the legal test to argue that the sex worker was a rogue operative and rely upon the difficulties for the regulator to prove otherwise.<sup>173</sup> There was other evidence that councils did not believe it was sufficient to rely only upon circumstantial evidence.<sup>174</sup>

- 3.66 Hornsby Shire Council advised that all in all, this investigation and instituting court proceedings cost it between \$60,000 and \$70,000 with no result.<sup>175</sup> The council further advised that in the hope of proceeding against the massage parlour in the future, it is hiring three investigators to enter the premises to obtain the evidence. In its submission it stated:

Hornsby Shire Council now arranges for three private investigators to attend a brothel at the same time to ensure more than one prostitute is providing a service and to eliminate the possibility of two of the investigators being serviced by the same prostitute.<sup>176</sup>

- 3.67 The Committee also heard that when exercising powers of entry, councils consider that they must give seven days written notice before entering premises.<sup>177</sup> This notice often caused evidence to be destroyed before the power of entry was exercised. In addition, council officers agreed that they were ill equipped to investigate unapproved brothels because it was covert criminal activity, conducted on a systematic basis for reward.<sup>178</sup>

- 3.68 Finally, in terms of difficulties for councils in dealing with unauthorised premises, the Committee also heard that brothel closure orders can be of limited use, not only because of the need for constant follow up and monitoring (to see that premises have not reverted to providing sexual services, as discussed above) but because unauthorised premises can simply close and open elsewhere, often in a new LGA. Mr Evans from Hornsby Shire Council explained that this is why Hornsby Shire Council has stopped issuing brothel closure orders and pursues fines now:

**Chair:** Why did you choose the Local Court for a fine rather than [issuing a brothel closure order or going to the Land and Environment Court seeking orders for the premises to close]?...

**Mr Evans:** I guess 18 months ago we had no brothels disguised as massage parlours so in 18 months we ended up with six. They started coming in all at the same time, so our thought processes were if we issue a closure order, they simply can close and then open up in another name or they close and move into another shire across the boundaries...we probably think that we have got these six massage parlours because another council has pushed them out of their shire into our shire, so our methodology...was to simply say, well we want a court to try and look at the circumstances of the case and issue a fine that is a deterrent from them working a prohibited business within our shire and any other shire, and if we were successful in

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<sup>173</sup> Mr Evans, Transcript of Evidence, pp54-55.

<sup>174</sup> Mr Streater, Transcript of Evidence, p8.

<sup>175</sup> Mr Evans, Transcript of Evidence, p56.

<sup>176</sup> Submission 62, Hornsby Shire Council, p4; see also Mr Evans, Transcript of Evidence, p55.

<sup>177</sup> Mr Streater, Transcript of Evidence, p3.

<sup>178</sup> Mr Streater, Transcript of Evidence, pp8-9.

our ventures...then there would be a criminal record on that business owner that could be used by someone else if they decided to take their business elsewhere...<sup>179</sup>

...One [brothel closure order] was complied with for a week and then they re-opened under a new management

**Chair:** Same trading name?

**Mr Evans:** No, different owner.

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

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

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

**Mr Evans:** None that we could identify.

**Ms Clarke:** So effectively starting the process entirely again.

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

**Mr Evans:** It would, the downside to that is it moves it to somewhere else.<sup>180</sup>

3.69 These examples of failed closure orders exemplify the necessity for closure orders to attach to premises as well as persons. Even moving somewhere else, as Mr Evans anticipated if orders attached to premises, would break goodwill and continuity of the business making the unlawful conduct more difficult to succeed.

### *Causes of Unauthorised Sex Services Premises*

3.70 As discussed earlier in this chapter, councils have different planning instruments dealing with the authorisation of brothels in their LGA. In its evidence to the inquiry, Scarlet Alliance argued that the fact that there are unauthorised premises operating in NSW is linked to some councils being too restrictive in their authorisation decisions:

It is public knowledge that some councils refuse to approve any sex industry business development applications, providing no option but non-compliance...the excessive cost of appeals to the Land and Environment Court due to incorrectly refused development applications is completely unnecessary and would be avoided if councils determined development applications on their merit.<sup>181</sup>

3.71 However, Local Government NSW indicated that the problem of unauthorised sex services premises needs to be placed in a wider context:

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<sup>179</sup> Mr Evans, Transcript of Evidence, pp55&56.

<sup>180</sup> Mr Evans, Transcript of Evidence, pp64&65.

<sup>181</sup> Ms Fawkes, Transcript of Evidence, p3.

It cannot be assumed that unauthorised sex premises will be approved if a DA was lodged. The difficulty is that some sex premises are located in areas where these activities are not permissible under the zoning or are proposed to be located next to activities where a sex premises is not considered an appropriate use, such as a school.<sup>182</sup>

- 3.72 Other evidence to the inquiry was directly contrary to the contention that sex work premises were unapproved because of the refusal of councils to approve development applications for brothels. For example, the City of Sydney which was held up by many witnesses as a progressive facilitator and approver of sex work premises, has massage parlours operating within its council area as unapproved brothels.<sup>183</sup> Hornsby Shire Council had not received a development application for a brothel in the previous six years despite an area set aside for them. But six massage parlours offering sex services had opened in that area in the previous 18 months.<sup>184</sup> Camden City Council gave evidence of a similar experience.<sup>185</sup>
- 3.73 Based on this evidence, we conclude that the contended link between refused development consents and unapproved brothels is contrary to the evidence presented to the Committee. More likely operators of massage parlours who are offering sexual services wish to be located in areas where they are not permitted and to have the advertising freedoms which a non brothel is permitted. This gives them an unfair competitive advantage over approved brothels and means that they are in unsuitable locations.

### Committee Comment

- 3.74 The Committee notes concerns raised by some stakeholders about the consistency of local council decision making around brothels – some councils have a more restrictive approach than others. However, the Committee is comfortable with these differing approaches. As noted by Local Government NSW, the differing planning controls reflect differing histories and social attitudes in LGAs across the state.<sup>186</sup> The Committee also agrees with City of Sydney Council that local councils are best placed to assess what is appropriate for their LGAs in terms of brothel location.<sup>187</sup>
- 3.75 The Committee is, however, concerned at the number of councils that have indicated sex services premises are operating in their LGAs without development approval. This suggests that an underground sex services industry is operating in NSW that is not visible to local councils or other authorities (such as NSW Health, Police, SafeWork NSW, Immigration and the Australian Tax Office) thereby increasing risks to the welfare of sex workers within those premises. The Committee is also concerned that while some councils report that they make proactive compliance visits to authorised sex services premises, others report

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<sup>182</sup> Mr Baum, Answers to Questions Taken on Notice, 11 September 2015, pp2&3.

<sup>183</sup> Dr Simone, Transcript of Evidence, p51.

<sup>184</sup> Mr Evans, Transcript of Evidence, pp55&59.

<sup>185</sup> Ms Magurren, Transcript of Evidence, p6-7.

<sup>186</sup> Submission 142, Local Government NSW, p6.

<sup>187</sup> Submission 63, City of Sydney Council, p3.

that they only inspect authorised brothels in response to a complaint, and that there is insufficient coordination with other government authorities.

- 3.76 Further, the Committee is concerned that internet searches suggest massage parlours that appear to be offering sexual services in Hornsby may be associated with a number of other massage parlours across Sydney. A number of these massage parlours are advertising from common websites which may indicate common ownership. This suggests unauthorised sex services premises may be a systemic problem in Sydney.
- 3.77 There are many aspects of the business model of massage parlours also offering sex services which may contribute to this systemic problem. Massage parlours are a more diversified business than a traditional brothel. They may offer only a massage to some customers looking for no more or they can offer sex services to other customers who look for those services. They therefore have a potentially larger customer base than a brothel. As an underground sex services premises, they may operate from locations that an approved brothel cannot and they can advertise and have signage without restriction. They are also a good cash business, making them attractive to operators who wish to avoid tax or launder money. Each of these factors has also led to a proliferation of unapproved massage parlours offering sex services in Victoria despite its different planning rules.<sup>188</sup>
- 3.78 The Committee does not accept arguments that unauthorised sex services premises are caused by the restrictive planning policies of some councils. The Committee notes that councils that have more liberal policies around brothel approvals (such as City of Sydney Council), have reported complaints concerning unauthorised premises in their LGA. Similarly, at least some of the unauthorised brothels that have come to the attention of the Committee are operating in completely inappropriate areas – such as 50 metres from a high school – where they would not get planning approval under *any* planning principles that currently apply in NSW. This is concerted and deliberate unlawful conduct.
- 3.79 Anyone who lives in a civilised community must accept that their rights and interests are to be balanced against those of other sections of the community. Just as current planning principles require local councils to identify some areas within their LGAs where brothels can operate lawfully, it must be accepted that brothel operators should not conduct their business in the areas where they are excluded by planning laws. For this reason, they cannot be near areas where children regularly congregate, or near places of worship. This is consistent with general planning principles and fits in with the broader legislative scheme for sex work in NSW that prohibits street workers from soliciting clients near or within view of a school or church or vice versa.<sup>189</sup>
- 3.80 With the above in mind, the Committee makes the following findings.

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<sup>188</sup> Senior Sergeant Ross, Transcript of Evidence, pp22-23.

<sup>189</sup> See sections 19 and 19A, *Summary Offences Act 1988*.

### FINDING 3

**A substantial section of the sex services industry in NSW is operating in premises for which there is no planning approval to provide sexual services. In this context, there is an underground sex services industry that is operating in NSW.**

### FINDING 4

**There is evidence of association, and perhaps common ownership, between massage parlours that appear to be offering sexual services in premises that do not have planning approval to do so and other massage parlours across Sydney.**

### FINDING 5

**At least some and possibly many of the premises that have no planning approval to provide sexual services are in inappropriate locations for which they would not be given planning approval were they to apply for it.**

### FINDING 6

**There should not be any change to the current restrictions on street workers and sex services premises being within close proximity to schools, educational institutions for young people, places where children and adolescents regularly gather or places of worship.**

### FINDING 7

**Councils experience difficulties enforcing the current planning laws in order to prevent unapproved brothels from operating in areas where they are not permitted.**

- 3.81 The Committee is also concerned at the difficulties councils appear to be having in responding to unauthorised sex services premises in their LGAs, and to reports of a lack of coordination between local government and other relevant agencies in the regulation of sex services premises.
- 3.82 The Committee accepts that council officers are not experts in assembling the admissible evidence needed to stop unauthorised sex services premises operating and that this is costing councils a lot of time and money, especially where multiple private investigators are hired.
- 3.83 It also notes the limited efficacy of brothel closure orders where operators who receive an order can simply open up shop in another LGA. In addition, it notes that certain legislative provisions that deal with unauthorised sex services premises are not being used, in particular, those under the *Summary Offences Act 1988* that provide that it is an offence to use, or allow the use of premises that are held out as a massage parlour for the purposes of prostitution. Again, this may indicate the need for better coordination between agencies. While councils proceed against unauthorised sex services premises under the EP&A Act, the Police have primary responsibility for prosecuting offences under the *Summary Offences Act 1988*.



- 3.84 The final chapter of this report contains recommendations for a licensing system under which councils would retain responsibility for sex services planning decisions. However, enforcement responsibility would shift to include a greater role for the NSW Police Force in a state government regime with suitable expertise (investigatory and prosecutorial) and resources. This would enable the authorities to coordinate responses across LGAs to stop any regulatory overlap, plug any gaps and ensure compliance with the law.
- 3.85 The chapter also makes recommendations for legislative change that would make it easier to prove an unauthorised sex services premises is operating, and to hold owners and operators accountable where this is occurring.
- 3.86 In addition, the chapter finds that, if such a licensing system is not implemented and local councils continue to be the primary regulator they will need more resources (investigatory, prosecutorial and monetary) to continue to enforce planning laws around sex services premises.
- 3.87 Investigating other policy options, including the establishment of an expert team within the Office of Local Government to advise on brothel inspections and enforcement may assist the existing system to work more effectively. Providing local governments with increased resources and authority to enforce existing laws would improve councils' capacity to counter any rise in unauthorised brothels and sex services premises.

### People with Disability

- 3.88 The final planning challenge to be discussed in this chapter, and that the Committee heard evidence about during its inquiry, is taking the needs of people with disability into account when making planning decisions around sex services premises.
- 3.89 The Committee received evidence from Northcott, a not-for-profit organisation that provides support to people with a broad range of disabilities, that compared to other adults in the community, people with disability often have difficulty commencing, conducting and continuing their sexual lives. The Committee heard that the ability to access sex workers, including but not limited to sex workers who specialise in providing services to people with disability, impacts greatly on the quality of life of people with disability.<sup>190</sup>
- 3.90 In her submission to the inquiry Laura, who has a physical disability, stated that her experience of visiting a sex worker on a regular basis has made her happier and:
- It makes me feel valued, and my visits are something I really look forward to.
- 3.91 Laura went on to state that:
- I believe this service is extremely valuable for people with disabilities to experience something that many people take for granted. Physical contact with another person

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<sup>190</sup> Submission 106, Northcott, pp4&5.

is a basic human need, and if I didn't have this in my life my outlook on life would be greatly affected.<sup>191</sup>

3.92 The Committee also received evidence that in recent years the sexual expression of people with disability has been increasingly recognised and supported<sup>192</sup> and that having the opportunity to engage as fully in life as the rest of the population has been recognised as an important human right.<sup>193</sup>

3.93 In addition, the Committee was told that people with a disability access sex services in a variety of locations, including in their own residence, the sex worker's residence, in hotels or in sex services premises.<sup>194</sup> In deciding where to access and meet with a sex worker, people with disability take a number of considerations into account including whether the sex worker is trained to work with people with disability,<sup>195</sup> and whether premises have the facilities to accommodate someone with their level of disability.<sup>196</sup> Their privacy, and the privacy of the people who support and care for them when engaging a sex worker are also considerations.<sup>197</sup>

3.94 The Committee heard that one particular issue for people with disability who wish to access sex services is that services are often located on the upper floor of buildings making it difficult for people with restricted mobility to access. Mr Saul Isbister, President of Touching Base, spoke of this:

**Chair:** In your paper you identify that ground-floor locations in local government areas are largely not permitted to operate as sex services 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...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 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....

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<sup>191</sup> Submission 30, Laura, p.1.

<sup>192</sup> Mr Isbister, Transcript of Evidence, p35.

<sup>193</sup> Submission 106, Northcott, p2.

<sup>194</sup> Ms Wotton, Transcript of Evidence, p39.

<sup>195</sup> Submission 30, Laura, p1.

<sup>196</sup> Ms Wotton, Transcript of Evidence, p39.

<sup>197</sup> Submission 30, Laura, p1.

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...<sup>198</sup>

### Committee Comment

- 3.95 The Committee acknowledges that having the opportunity for sexual expression is very important to the wellbeing of people with disability. The Committee also acknowledges the work of organisations, including Touching Base, Northcott and Family Planning NSW, in supporting people with disability and allowing them to express their sexuality in a supportive and positive way.
- 3.96 The Committee notes evidence that many sex services premises are located on the upper floors of buildings and that they often lack sufficient access for people with restricted mobility. This may be appropriate having regard to the location of the premises and the surrounding uses. While many people with disability may prefer and be more comfortable having sex workers visit them in their own homes, many people, for various reasons, would prefer to meet sex workers within the environs of commercial sex services premises.
- 3.97 As discussed earlier in this chapter, if sex services premises are granted development consent, the owner/operators must act in accordance with the conditions of consent set by the local council. The Committee notes that these conditions can include requirements for access and facilities for people with disability. Indeed, Tamworth Regional Council stated in its submission to the inquiry that in approving sex services premises in its LGA, it included conditions that access and facilities for people with disability be provided.<sup>199</sup> In light of concerns raised, the Committee makes the following recommendation.

### Recommendation 1

**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.**

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<sup>198</sup> Transcript of Evidence, 11 September 2015, p39.

<sup>199</sup> Submission 126, Tamworth Regional Council, p2.

## Chapter Four – Protection of sex workers

- 4.1 This chapter examines some of the risks faced by sex workers and the systems in place to offer protection. It explores criminal involvement in the sex work industry and also work health and safety matters.

### ORGANISED CRIME AND SEXUAL SLAVERY

- 4.2 A key aspect of the decriminalised model which operates in NSW is that it should protect the safety of sex workers. By sex workers operating with the understanding that they are not acting illegally, they should be able to freely access the services of the police if the need arises.<sup>200</sup>

### Concerns Raised in the Sex Services Industry

- 4.3 Although sex workers are able to report matters of concern to the police, this inquiry has received evidence of serious instances of criminal involvement in the sex services industry and sex slavery.

### *Organised Crime, Including Outlaw Motorcycle Gangs and International Syndicates*

- 4.4 As discussed in chapter two of this report, one of the reasons for the introduction of decriminalisation in NSW was to make the sex services industry less attractive to criminal elements.<sup>201</sup> However, there is still significant criminal activity present in the industry. Around 40 brothels have some recorded connection or ties to outlaw motorcycle gangs in NSW Police intelligence holdings.<sup>202</sup> There are also numerous reports of links to Asian organised crime in NSW brothels.<sup>203</sup> This is a national problem. The Victorian Police also reported problems with outlaw motorcycle gangs and Asian syndicates operating in the sex services industry in that state.<sup>204</sup>
- 4.5 There are a number of reasons why the sex services industry is attractive to organised crime. These include:
- The fact that it is usually cash based facilitating money laundering
  - The presence of outlaw motorcycle groups in the nightclub industry or entertainment precincts which can be complementary to the operation of brothels; and
  - The structure and absence of a regulatory regime in the decriminalised model means that there is not an effective intelligence base so

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<sup>200</sup> See for example Mr Nicholas Parkhill, Chief Executive Officer, ACON, Transcript of Evidence, 2 September 2015, p19.

<sup>201</sup> NSW Parliamentary Library Research Paper 21/99, p5.

<sup>202</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp 14-15; submission 60, Police Association of NSW, p1.

<sup>203</sup> This information was provided to the Committee in a private briefing with Deputy Commissioner Kaldas, NSW Police Force on 13 October 2015.

<sup>204</sup> Senior Sergeant Ross, Transcript of Evidence, p23.

organised crime can infiltrate the industry without the knowledge of law enforcement or local government.<sup>205</sup>

- 4.6 The NSW Police Force informed the Committee that it has intelligence of organised crime, including outlaw motorcycle gangs, being involved in the sex services industry in NSW. Deputy Commissioner Kaldas stated:

The results from our analysis and thinking indicate that there are clearly issues in the industry in terms of servitude, the use of illegal workers and extortion by or involvement of organised crime and outlaw motorcycle gang groups. Around 40 brothels have some recorded connection or ties to outlaw motorcycle gang groups in our intelligence holdings.<sup>206</sup>

- 4.7 Certain local councils also reported that they had received allegations of organised criminal involvement in the sex services industry in their local government areas. According to Ballina Shire Council:

... Council has received a number of complaints and allegations alleging the involvement of organised crime and criminal motorcycle gangs in the owning and operation of brothels in the northern rivers area of New South Wales.<sup>207</sup>

- 4.8 There was also evidence of the involvement of organised crime, both outlaw motorcycle groups and international syndicates, in the sex services industry in Victoria. These criminal elements were involved in both the licensed side of the industry and the unlicensed side. Representatives from the Sex Industry Coordination Unit, Victoria Police, advised that:

**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.

...

**Ms ROSS:** ... If you go across to the licensed sector, we definitely know that we have outlaw motorcycle gangs involved and also Asian syndicates operating there.<sup>208</sup>

### *Exploitation of Foreign Sex Workers, Including Students*

- 4.9 A key concern raised in evidence before the Committee was that of sexual servitude. The NSW Police Force gave evidence that the reporting of sexual servitude was increasing.<sup>209</sup> The Victorian Police said that 'we have a lot of problems there [with sexual servitude].'<sup>210</sup> The Federal, NSW and Victorian police all said that sexual servitude was under reported.<sup>211</sup>

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<sup>205</sup> Deputy Commissioner Nick Kaldas, NSW Police Force, Answers to Questions Taken on Notice, 1 September 2015, p4.

<sup>206</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp14-15.

<sup>207</sup> Submission 8, Ballina Shire Council, p4.

<sup>208</sup> Sergeant Richard Farrelly and Senior Sergeant Marilyn Ross, Sex Industry Coordination Unit, Victoria Police, Transcript of Evidence, 11 September, p23.

<sup>209</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p14.

<sup>210</sup> Senior Sergeant Ross, Transcript of Evidence, 11 September 2015, p22.

<sup>211</sup> Deputy Commissioner Kaldas, Transcript of Evidence p14; Senior Sergeant Ross, Transcript of Evidence, p22; Commander McEwen, Transcript of Evidence, p63.

- 4.10 The Australian Federal Police who are the lead agency on this issue, gave evidence of the typical scenario around sexual servitude:

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.<sup>212</sup>

- 4.11 Although sex slavery is by its nature concealed criminal conduct by organised groups, some of the confirmed cases give a flavour for what occurs in NSW with regard to this criminal activity. In August 2010, NSW and Federal Police executed warrants at three brothels, one in St Leonards and two in Crows Nest, in relation to trafficking sex slaves from Asia. In February 2012, the Federal Police charged the owner of a brothel in Guildford with sexual servitude, intent to cause another to enter into debt bond and allowing an unlawful citizen to work in breach of visa conditions. In 2013, Chee Mei Wong was convicted of sex slavery with regard to a group of Malaysian women at a brothel known as 'Diamonds' in Crows Nest and 'Darlings' in Five Dock. Police have also received recently information concerning another sex slavery ring involving multiple premises in NSW and other states.<sup>213</sup>

- 4.12 Both the NSW Police and the Australian Federal Police outlined scenarios which they had experienced involving the exploitation of women who had come to Australia, often from Asia. In these cases, the women who arrive in Australia either have a valid student visa or go through the process of applying for one on arrival. It is common for these women to be required to work in excess of the permissible working conditions allowed for a student visa holder. These visa

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<sup>212</sup> Commander McEwen, Transcript of Evidence, p63.

<sup>213</sup> This information was provided to the Committee in a private briefing with Deputy Commissioner Nick Kaldas, NSW Police Force on 13 October 2015.

breaches are almost impossible to police at the best of times but are particularly difficult to do so in the sex services industry.

- 4.13 These women are often unfamiliar with their surroundings and the regulatory framework surrounding sex work in NSW. It is difficult for them to receive fair treatment or to seek help. Deputy Commissioner Kaldas indicated that:

... the result is that that worker, usually an Asian young lady, is extremely vulnerable, probably has poor English language, lack of knowledge of the legal system, their legal entitlements and is incapable of breaking away, no matter how bad things get. They are almost dependent on and at the mercy of their employer who brought them to Australia.<sup>214</sup>

- 4.14 Furthermore, there are occasions when these women meet contacts in Australia who are meant to help them but instead force them to work in the sex services industry. These contacts will take the women's passports and inform them that they have a debt to those who facilitated the journey to Australia which they must pay off through the provision of sexual services. The working conditions for these women are very poor and their contact with the greater community is severely limited.<sup>215</sup> These sex workers remain in these situations because they are unable to report their situation to the relevant authorities. They are either prevented from speaking to anyone or they are threatened not to report the problems.<sup>216</sup>

- 4.15 Similarly, the Coalition Against Trafficking in Women, Australia, highlighted evidence that Asian women trafficked into the sex services industry are subject to detrimental working conditions including shifts of up to 17 hours or more, engaging in unprotected sex, and receiving less payment than their Caucasian counterparts.<sup>217</sup>

### *Drug Taking and Selling*

- 4.16 Instances of drug taking and selling were raised with the Committee, particularly in sex services premises that had links to organised crime. During the Committee's visits of inspection to sex service premises in Sydney, it heard informal evidence that some clients would try and take drugs during their sessions with the sex workers. One owner told the Committee he had refused entry to a number of clients who wanted to take drugs but had also had to call the ambulance to assist sex workers and their clients when they had taken drugs without his knowledge. There is some anecdotal evidence of sex workers being forced to do things they do not want to do, including the taking of hard drugs with clients during sessions.<sup>218</sup> Another sex service premises owner alleged that he is aware of unauthorised sex services premises with links to organised crime and that are also involved in the drug trade. This information was provided to the Committee anecdotally, and in confidence.

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<sup>214</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p14.

<sup>215</sup> Commander McEwen, Transcript of Evidence, p63.

<sup>216</sup> See the evidence of Commander McEwen, Transcript of Evidence, p63; and of Senior Sergeant Ross, Transcript of Evidence, p22 in this regard.

<sup>217</sup> Submission 57, Coalition Against Trafficking in Women, Australia, pp6&7.

<sup>218</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p14.

4.17 Injecting drug use is more common amongst sex workers than the general population. Dr Phillip Read, Acting Director, Kirketon Road Centre told the Committee that:

We have a disproportionately high number of sex workers who report a history of injecting drugs compared to the general New South Wales situation.<sup>219</sup>

4.18 In terms of drug use during work, Mr Cameron Cox, Chief Executive Officer, SWOP, observed that 'many people use drugs in sex work situations as well'.<sup>220</sup>

4.19 Similarly, the Committee heard that the majority of sex workers who operate on the street are doing so to fund a drug habit.<sup>221</sup>

### *Underage Sex Workers*

4.20 A further concern for the wellbeing of sex workers is whether underage people are working in the sex services industry. The Victoria Police told the Committee that they have had reports of underage people providing sexual services in unlicensed massage shops.<sup>222</sup>

4.21 In NSW, statistics from the Bureau of Crime Statistics and Research (BOCSAR) provided by the Police Association of NSW showed that, between January 2005 and March 2015, there were:

- 11 finalised charges of acting as a client with child between the ages of 14 and 18 in prostitution
- Four finalised charges of participating as a client with child under 14 in prostitution
- Two finalised charges of obtaining benefit from child prostitution; and
- Five finalised charges of operating premises where child participates in prostitution.<sup>223</sup>

4.22 In more recent times, however, there does not appear to have been a proliferation of cases involving underage sex workers. Deputy Commissioner Kaldas, told the Committee that:

The incidence of under-age workers within the sex industry has remained infrequent, thankfully, over the past 10 years, with only one confirmed report since 2012.<sup>224</sup>

### **Extent of the Problems**

4.23 In the course of the inquiry, it has been difficult to ascertain the extent to which many of the issues raised occur. One of the reasons for this is that the nature of

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<sup>219</sup> Dr Read, Transcript of Evidence, p36.

<sup>220</sup> Mr Cox, Transcript of Evidence, p33.

<sup>221</sup> Reverend Long, Transcript of Evidence, p62.

<sup>222</sup> Senior Sergeant Ross, Transcript of Evidence, p21.

<sup>223</sup> Submission 60, Police Association of NSW, p3.

<sup>224</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p14.



the sex services industry, as private and discreet, means that offences committed are not immediately identified.

- 4.24 The Committee also heard that, due to the number of sex services premises operating without council approval, and the lack of a centralised record of those which do, it can be difficult to properly investigate matters. Deputy Commissioner Kaldas, stated that:

I have to stress that our figures are, in a sense, rubbery ...

Our inability to get exact figures highlights one of the problems we face. That is, there is no central record kept of each establishment, let alone using those records to ensure that they are doing the right thing and let alone, records of staff involved. You cannot regulate establishments you simply do not know about.<sup>225</sup>

- 4.25 Conversely, a number of stakeholders argued that the lack of data in this area suggests that the issues are not a major concern.<sup>226</sup>

- 4.26 In the case of human trafficking and sexual servitude, according to the US Department of State Trafficking in Persons Report July 2015, Australia is a destination country for women trafficked into the sex services industry.<sup>227</sup> While again recognising that empirical data can be hard to come by in this field, evidence of sexual exploitation was presented by Commander Glen McEwen, Manager, Victim Based Crime, Australian Federal Police, who told the Committee that:

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. ... 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 ... that is where the greater numbers go.<sup>228</sup>

- 4.27 Commander McEwen expanded on this point in his answers to questions taken on notice at the Committee's hearing on 11 September 2015:

Human trafficking is by its very nature a clandestine activity and we believe our data does not reflect the levels and impacts of sexual trafficking and sexual slavery in the Australian community.<sup>229</sup>

- 4.28 Despite this, statistics provided by the Department of Justice show that there were two guilty findings under section 270.6(2) (Conduct business involving

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<sup>225</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp13-14.

<sup>226</sup> Submission 151, Group of Senior Sex Workers, p1; submission 19, Xena Wrestles, p2; submission 81, Naomi Spilsbury, p1.

<sup>227</sup> Quoted in submission 57, Coalition Against Trafficking in Women Australia, p6; see US Department of State, *Trafficking in Persons Report*, Washington DC: US Department of State, 2015, available from US Department of State website, <http://www.state.gov/j/tip/rls/tiprpt/> viewed 13 October 2015.

<sup>228</sup> Commander McEwen, Transcript of Evidence, p63.

<sup>229</sup> Commander Glen McEwen OAM, Manager, Victim Based Crime, Australian Federal Police, Answers to Questions Taken on Notice, 11 September 2015, pp1&4.

sexual servitude of person over 18) of the Commonwealth *Criminal Code Act 1995*, between April 2010 and March 2014 in NSW.<sup>230</sup>

4.29 Similarly, the Australian Federal Police indicated that between 1 July 2012 and 31 August 2015, it received 31 referrals for suspected sexual servitude matters that related to NSW, 19 of which were accepted for further investigation. Of these, 17 related to women engaged in work in brothels or massage parlours.<sup>231</sup> The Commonwealth Government has also committed more than \$150 million towards initiatives in its *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, to prevent, detect, investigate and prosecute cases of human trafficking, slavery and slavery like offences as well as to support victims.<sup>232</sup>

4.30 In addition, the NSW Police Force provided evidence that sexual servitude, particularly that linked to student visa violation, was increasing in NSW. Deputy Commissioner Nick Kaldas, stated that:

...reporting of sexual servitude unfortunately...has increased, although there have been few confirmed cases. Of significance is consistent recent reporting which alleges large scale networks using Asian students as sex slaves throughout New South Wales and other States. There has been a considerable increase in reports for student and tourist visa breaches over the past two years. Once again, it is likely these figures are well below the actual rate of incidence due to regulation falling outside of NSW Police responsibility, thus not entirely visible to us.<sup>233</sup>

4.31 This evidence was supported by the Victorian Police who also said that human trafficking was under reported, that there are a lot of problems with sex trafficking in Victoria and that it occurred in both licensed and illegal premises.<sup>234</sup> The Victorian police explained some of the causes of under reporting of sex trafficking. Sex workers will usually not report sexual servitude and give a signed statement in order to start an investigation. Some of the barriers include language and cultural difficulties. There can also be a fear of police and authorities because in the victim's country of origin the police may be active participants in the trafficking system. There may be threats to the victim or their families in their country of origin. Sometimes the trafficked worker does not see themselves as a victim because their life may be better as a sex slave than it had been in their country of origin.<sup>235</sup>

4.32 For cases involving underage sex workers or the exploitation of children in the sex services industry, the Committee heard that the lack of convictions for child prostitution may be because they are prosecuted under different laws. For example, if a person under 16 is engaged in sexual services, it is easier to prove that an offender had sexual intercourse with them, which is itself an offence, rather than prove that they are involved in prostitution. Mr Daniel Noll, Director, Criminal Law Specialist, Department of Justice explained that:

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<sup>230</sup> Mr McKnight, Answers to Questions Taken on Notice, 1 September 2015, p4.

<sup>231</sup> Commander McEwen, Answers to Questions Taken on Notice, 11 September 2015, pp1&4.

<sup>232</sup> Commander McEwen, Answers to Questions Taken on Notice, 11 September 2015, p3.

<sup>233</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p14.

<sup>234</sup> Senior Sergeant Ross, Transcript of Evidence, p22.

<sup>235</sup> Senior Sergeant Ross, Transcript of Evidence, p22.

[it is] easier to prove because under section 66C [of the *Crimes Act 1900*] you only have to prove the extended definition of sexual intercourse with a child, whereas the child prostitution offences require proof of the context of prostitution as in a sexual service, money exchange and so forth. So I am personally aware—and I cannot speak for the Director of Public Prosecution—of prosecutions for child prostitution matters going on under section 66C rather than the child prostitution offences themselves.<sup>236</sup>

- 4.33 There are also links to be found in sex services premises operating without council approval and some of the more concerning practices which are harmful to sex workers. This includes karaoke bars which offer sexual services and employ predominantly Asian sex workers without proper approval for work. Deputy Commissioner Kaldas, informed the Committee that:

Several karaoke venues in the south-west metro region were found to have or are suspected of providing sexual services and employing illegal Asian workers, including those I mentioned, as unlawful residents, tourists and students.

Karaoke venues offer a unique loophole, in that they are not categorised as an adult entertainment industry premises and therefore do not fall under the local council regulation for the activities undertaken there. The venues identified also appear to have links to Asian organised crime networks.<sup>237</sup>

- 4.34 The Australian Federal Police gave evidence that state police forces were better able to understand whether triads or outlaw motorcycle gangs were involved in the running of brothels or massage parlours than they were.<sup>238</sup> As noted above, evidence by both the NSW and Victorian police was that outlaw motorcycle gangs and Asian organised crime syndicates are linked to brothels in both states.<sup>239</sup> The Federal Police agreed that by its nature, sex trafficking relies upon an organised group for it to operate but the scale of operation can vary.<sup>240</sup>

- 4.35 Other stakeholders have argued that the claims of organised criminal activity operating within the sex services industry are exaggerated by the media. SWOP argued that:

In relation to organised crime, we are aware of regular and frequent allegations of criminality in the sex industry, but apart from unsubstantiated media reports, there is little hard data to support these claims or any evidence of the rates of criminal involvement in the sex industry at all, let alone above other industries.<sup>241</sup>

- 4.36 On the related subject of human trafficking and sexual servitude, the same argument was presented, which is that it is not a common occurrence in the sex services industry. While recognising that sexual servitude does occasionally take place, Ms Jules Kim, Migration Project Manager, Scarlet Alliance reported that:

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<sup>236</sup> Mr Daniel Noll, Director, Criminal Law Specialist, Department of Justice, Transcript of Evidence, 1 September 2015, p29.

<sup>237</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p14.

<sup>238</sup> Commander McEwen, Transcript of Evidence, p65.

<sup>239</sup> Deputy Commissioner Kaldas, Transcript of evidence, pp 14-15; submission 60, Police Association of New South Wales, p1; this information was also provided to the Committee in a private briefing with Deputy Commissioner Kaldas, NSW Police on 13 October 2015; Senior Sergeant Ross, Transcript of Evidence, p23.

<sup>240</sup> Commander McEwen, Transcript of Evidence, p65.

<sup>241</sup> Submission 145, Sex Workers Outreach Project, p4.

[since the commencement of legislation in 2004], ... in New South Wales there has never been a conviction under the Commonwealth legislation for debt bondage. There have been four people convicted for sexual servitude relating to three instances and there have been two convictions for slavery related to sexual servitude in New South Wales.<sup>242</sup>

4.37 Further to this, it was claimed that some sex workers who had come to work in Australia had done so with the understanding that they would be participating in the sex services industry. They had not necessarily been tricked, cajoled or forced into providing sex services. Scarlet Alliance stated that:

In all the finalised trafficking cases that have involved migrant sex workers, no one had been deceived as to the fact they would be sex working and they had all consented to working as a sex worker in Australia. Some had sex worked previously. None of the cases involved deception or trickery of the fact they would be working as a sex worker.<sup>243</sup>

4.38 There was a challenge to the Scarlet Alliance assertion that in all confirmed cases of sex trafficking, the foreign sex workers knew that they were going to be trafficked before they arrived in Australia:

**CHAIR:**.... Can I take you to page 26 of your submission please and some of the statements you make about sex trafficking. You say this:

In all the finalised trafficking cases that involved migrant sex workers, no one had been deceived as to the fact that they would be sex working and they all consented to working as a sex worker in Australia.

Do you see that?

**Ms KIM:** Yes, that is correct.

**CHAIR:** Are you familiar with the prosecution of Chee Mei Wong, the proprietor of Diamonds Brothel in Crows Nest?

**Ms KIM:** Yes I am.

**CHAIR:** In that case the two sex workers involved had been recruited to Australia with the promise of an education and a fresh start, had they not?

**Ms KIM:** They knew that they would be sex working. I think if you have a look at the case transcripts, it was made very clear that they would be sex working coming to Australia. Our assertion is that nobody was deceived as to the fact that they would be sex working. Clearly there were cases of exploitation and there were clearly workplace breaches, but we are saying in terms of the fact that they would be sex working, there was no deception.

**CHAIR:** They were promised a fresh start and education, were they not?

**Ms FAWKES:** The two things are not mutually exclusive. You can have a fresh start and an education and also be a sex worker.

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<sup>242</sup> Ms Jules Kim, Migration Project Manager, Scarlet Alliance, Transcript of Evidence, 2 September 2015, p10.

<sup>243</sup> Submission 133, Scarlet Alliance, p26.

**CHAIR:** They were kept in sexual servitude working 17 hour days and having to perform sexual acts even when they refused or were sick.

**Ms KIM:** We are not denying that there is exploitation taking place. Our statement does not exclude the fact that exploitation had taken place. Our statement is that consent to the fact that they would be sex working was not an issue in those cases.

**Ms FAWKES:** It is an important point, because often media and other people misunderstand the cases that have occurred in Australia and believe that people have been tricked into being sex workers. But actually what we do have in Australia is a situation where people do seek to come and work in the sex industry and there are few legal pathways in order for that to happen.<sup>244</sup>

- 4.39 The characterisation of the case of sexual servitude that Ms Kim and Ms Fawkes of Scarlet Alliance were asked about involving Chee Mei Wong was clearly incorrect. They were challenged as to its accuracy and adhered to the false contention that the workers involved were not tricked and knew that they would be involved in sex work when they came to Australia.
- 4.40 We were supplied with the Statement of Facts tendered by the Australian Federal Police in the trial of Chee Mei Wong concerning sex trafficking at Diamonds.<sup>245</sup> Ten female sex workers provided statements to the Federal Police. Each of them had slightly different circumstances but many of the facts were common to them.
- 4.41 One of the trafficked women told that she responded to an advertisement in a Chinese newspaper in Malaysia suggesting that people who wished to study in Australia could ring a telephone number. The woman the victim spoke to when she rang the telephone number arranged for a visa and ticket for the victim to travel to Australia. The victim travelled to Perth with an unknown male and was told to pretend he was her boyfriend. When the victim arrived in Perth, she was told by the Perth boss that she was going to be a sex worker. The victim had never worked in the sex industry and refused to work as a sex worker. The victim was then locked in a house for a month before she could send a message to her boyfriend in Malaysia who came to Australia to help her.
- 4.42 The Perth boss gave the victim contact details in Sydney for Chee Mei Wong who used the name Yoko as a person who could help her with a visa. The victim then travelled to Sydney. Yoko told her that she could arrange a student visa for the victim if she paid Yoko \$3000 every three months. Yoko showed the victim the accommodation for their sex workers which was very close to the brothel. Yoko also asked the victim to work as a sex worker but the victim refused. Yoko then refused to help the victim anymore and strongly advised her to return to Malaysia. Evidence in the prosecution hearing showed that women were brought to Australia from Malaysia by Chee Mei Wong and those women worked as sex slave workers in the Diamonds brothel.
- 4.43 Similarly, it was suggested that some reports of sexual servitude are made by competitors in the sex services industry. In these cases, the allegations are seen

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<sup>244</sup> Transcript of Evidence, 2 September 2015, p6.

<sup>245</sup> This information was provided to the Committee in a private briefing with Deputy Commissioner Nick Kaldas, NSW Police on 13 October 2015.

as an effective method of denigrating rival premises but may not have any basis in reality. Professor Basil Donovan, Professor and Head, Sexual Health Program, Kirby Institute reflected that:

When I hear the police talk about servitude, I think the police are often being manipulated. The worst place is the North Shore where you get approved brothel owners organising for unapproved brothels to get called illegal, screaming out to the police and tell the police all sorts of things about how these women have been coerced and so on, and all they are doing is trying to kill off the competition. They are manipulating the police.<sup>246</sup>

- 4.44 Many of the support groups working directly with sex workers to provide information or health services argued that they were in the best position to be made aware of problems facing sex workers in these areas. This is particularly the case due to the large number of sex workers these organisations encounter and the focus on their wellbeing. Ms Janelle Fawkes, CEO, Scarlet Alliance argued that:

If there were high levels of organised crime and that was impacting on sex workers or sex industry businesses in New South Wales, then we would be hearing about it and we would be the first to be attempting to have something done about it. That is not our experience in New South Wales at all.<sup>247</sup>

- 4.45 Similarly, Mr Saul Isbister, President, Touching Base, noted that:

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... we are...compassionate about the working conditions of our peers.<sup>248</sup>

- 4.46 Some of these organisations also provide their services in languages other than English. This gives them the ability to engage directly with sex workers who come from backgrounds which may be vulnerable to trafficking and they are able to ask them whether they have had any difficulties. Dr Phillip Read, Acting Director, Kirketon Road Centre advised that:

I think that historically people did reveal that, even in the context of a criminalised situation, so I do not think that there is any reason to believe that the drop-off in Sydney, as I understand ... that used to be one of the questions, that the Thai, Korean and Chinese health promotion officers would always ask of the girls they saw, what sort of relationship are you in with your brothel manager and historically people did report that in the early nineties but that has hugely dropped off and is virtually never reported.<sup>249</sup>

- 4.47 The inconsistency between the Police evidence about organised crime and sex trafficking in the NSW sex services industry on the one hand and those who are part of the established sex worker organisations and the public sex clinics on the

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<sup>246</sup> Professor Basil Donovan, Professor and Head, Sexual Health Program, Kirby Institute, Transcript of Evidence, 1 September 2015, p37.

<sup>247</sup> Ms Fawkes, Transcript of Evidence, p11.

<sup>248</sup> Mr Isbister, Transcript of Evidence, p43.

<sup>249</sup> Dr Read, Transcript of Evidence, p37.

other hand was put to the Deputy Commissioner for Police, Mr Kaldas. Mr Kaldas was emphatic that the information provided to the Committee by the NSW, Victorian and Federal Police was correct. He hypothesised that the activity he was giving evidence about was underground and out of the view of the 'established' sex industry groups.<sup>250</sup> This seemed a credible explanation for the conflict in the evidence. The successful prosecutions for sexual servitude cannot be accurately described as fanciful or as some have suggested 'a media beat up.' The activity would be beyond the visibility of Dr Read and Professor Basil Donovan because those who are in sexual servitude are not allowed to mingle in the community generally and would not attend public health clinics of the kind staffed by them.<sup>251</sup> The evidence on behalf of the sex worker groups was almost universally by long term established Australian residents whereas the exploited workers in sexual servitude are mainly recently arrived foreign nationals from Asia.

### Difficulties in Investigating Matters

- 4.48 As has been explored in previous chapters, the lead agency, if it can be called that, for monitoring sex services premises is local government. Councils' powers only relate to the planning provisions surrounding the development approval of sex services premises and include powers of entry and closure. The other agencies like the NSW Police Force or SafeWork NSW display little interest currently in proactively dealing with sex work premises and the activities that take place within them. However, as established in chapter three, local councils experience difficulty in these areas and this has led to a proliferation of sex services premises operating without proper approval.
- 4.49 Local councils have also indicated that despite their powers in this area, they are not properly resourced, trained, or equipped to identify, or investigate more serious criminal matters that have been outlined in this chapter. Ballina Shire Council argued that:
- ... this Council would expect that the majority of local Councils within regional New South Wales do not have the resources or the appropriate level of expertise to make determinations in relation to ... the involvement of organised crime or criminal motor cycle gangs in the owning and operation of brothels.<sup>252</sup>
- 4.50 The NSW Police Force is responsible for investigating criminal activity in the sex services industry. Police may apply to the Supreme Court for a brothel to be closed down if they suspect any 'disorderly conduct' as outlined in the *Restricted Premises Act 1943* is taking place in the premises. This includes the sale of liquor or drugs, or the involvement of criminals in the control or management of the brothel.<sup>253</sup> This is in addition to usual police powers to conduct investigations and, where evidentiary standards are met, lay charges with respect to crimes which occur within the sex services industry.

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<sup>250</sup> This information was provided to the Committee in a private briefing with Deputy Commissioner Nick Kaldas, NSW Police Force on 13 October 2015.

<sup>251</sup> Commander McEwen, Transcript of Evidence, p66.

<sup>252</sup> Submission 8, Ballina Shire Council, p4.

<sup>253</sup> Submission 137, NSW Government, p8.

- 4.51 However, the NSW Police Force told the Committee that their work in this area is hampered by a lack of regulation. Deputy Commissioner Kaldas also expressed the view that the NSW Police Force has inadequate powers. This is particularly problematic in those premises that do not have planning and development approval to offer sexual services.<sup>254</sup>
- 4.52 One suggestion made by the NSW Police Force which would assist them in the identification and investigation of criminal matters in sex services premises would be greater powers of entry. They argued that these powers were already held by other agencies such as the Department of Immigration and Border Protection and SafeWork NSW.<sup>255</sup> Without these powers, the police can only enter premises if they obtain a search warrant which in turn requires a reasonable suspicion of criminal activity. To obtain that information may not be easy as has already been explored and they must rely on information provided by these agencies and local councils who may not be properly able to identify criminal activity. Furthermore, it was claimed that these powers would assist police when searching for missing persons who may be held against their will.<sup>256</sup>
- 4.53 It was noted, however, that there is nothing to preclude the Police from lending assistance to other agencies, such as the Department of Immigration and Border Protection when they conduct compliance inspections under their powers of entry.<sup>257</sup> This was recognised by the NSW Police Force but they explained that the Department of Immigration and Border Protection has limited resources and is not able to investigate all matters within the sex services industry.<sup>258</sup>
- 4.54 Another difficulty faced by the NSW Police Force is that it does not have an accurate record of all the sex services premises in NSW. This includes those that are operating with proper approval and those which are not. If a list of authorised sex service premises was created and maintained, in coordination with local councils, this would facilitate the monitoring of these properties for illegal activity and also make it easier to identify properties which were offering sex services without approval which may also indicate other illegal activities such as sexual servitude, visa breaches or tax avoidance.<sup>259</sup>
- 4.55 A key element of a list of sex service premises would be the inclusion of the owners, and managers. The NSW Police Force noted that the current model allows for criminal elements to easily become involved in sex services in NSW. There have also been reports of sex services premises owners being barred from operating in other states and moving to NSW.<sup>260</sup> To prevent this from happening, a form of probity or background check could be introduced for those wanting to own or manage a sex services premises. This would help to keep the criminal element out of the sex services industry for the protection of the community and sex workers. Deputy Commissioner Kaldas commented:

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<sup>254</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>255</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>256</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p19.

<sup>257</sup> Commander McEwen, Transcript of Evidence, pp67&68.

<sup>258</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p19.

<sup>259</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>260</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.



... perhaps we should consider creating and maintaining accurate registries of all adult entertainment premises, brothels particularly and to keep this data up to date. These registries should list owners and managers and some background or probity checks should be carried out on them. Those banned in other jurisdictions should be banned here. There is anecdotal evidence that some individuals who are banned interstate, simply move to Sydney and set up shop here.<sup>261</sup>

4.56 The NSW Police Force also explained that their resources in this area are limited. They do not have a dedicated unit focussing on criminal activity within approved or non-approved sex service premises. There is a sex crimes unit within the NSW Police Force but this also deals with sex abuse and child exploitation and its resources are limited. Deputy Commissioner Kaldas, stated that:

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

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

...

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

**Deputy Commissioner KALDAS:** I suspect it would be minimal.<sup>262</sup>

### Committee Comment

4.57 The Committee was very concerned to hear evidence that organised crime and instances of sexual servitude are occurring within the sex services industry in NSW. It is highly probable that those sex services premises which have links to organised crime take advantage of vulnerable sex workers and do not provide safe and healthy working conditions for the sex workers who operate there.

4.58 It is abhorrent to have slavery of any kind in NSW. It is particularly reprehensible in any modern liberal society 182 years after William Wilberforce caused the Parliament of Westminster to make slavery illegal by reason of the Slavery Abolition Act of 1833. That Act applied to NSW and most of the rest of the British Empire.

4.59 The discreet nature of the sex services industry and certain aspects of its operation, such as the fact that it is largely cash based, make it an attractive space in which to operate for organised crime, because money can be laundered through it.

4.60 The Committee is very concerned that the current absence of regulation facilitates sex workers being brought to Australia under false pretences, being held against their will and forced to provide services which they had not agreed to. While the Committee notes the discrepancy between stakeholders on the

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<sup>261</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>262</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p21.

scale of this problem, it considers that all cases of sexual servitude or human trafficking should be eradicated. The Committee emphatically agrees with the evidence of Deputy Commissioner Kaldas that one instance of sexual servitude occurring is one too many.<sup>263</sup>

- 4.61 The Committee notes the difficulties outlined by the NSW Police Force and also local government's problems in identifying and issuing penalties and closure orders on unapproved sex services premises, particularly compared to approved premises. Given this gap in regulation, it is likely that unapproved sex service premises are attractive to criminal elements as places to operate from. This may involve sexual servitude, drug distribution or human trafficking.
- 4.62 As has been outlined elsewhere in this report, there is a significant number of sex service premises operating without proper planning approval. While local government is best placed to be the prime regulator with regard to planning control, the Committee has concerns that the NSW Police Force has insufficient involvement with those unapproved premises which may also be engaging in illegal activity.
- 4.63 The Committee is also of the view that regulation without appropriate police resources, as in Victoria, will be ineffective and will not prevent unlawful operators nor prevent sexual servitude or organised crime from operating in the industry.

## FINDING 8

**Sexual services are being provided on a large scale and on many occasions in premises that do not have planning approval to do so, affording the police insufficient visibility over the industry and the criminal elements that may operate within it.**

## FINDING 9

**Unapproved massage parlours and karaoke bars where sexual services are provided without planning approval and in an underground manner, allow significant potential for them to be affiliated with organised crime or human trafficking and sexual servitude especially compared with the approved sector of the sex services industry in NSW.**

## FINDING 10

**There are structural aspects of larger operations in the sex services industry which make them attractive to organised crime, in particular their use of cash which is of assistance in laundering money obtained from unrelated enterprises of an illegal nature.**

## FINDING 11

**Successful sex slave prosecutions and evidence from both the Australian Federal Police and the NSW Police Force make it probable that:**

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<sup>263</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p17.

- **Sexual servitude occurs in NSW; and**
- **Criminal networks do operate in some parts of the NSW sex services industry.**

## WORKER WELLBEING

4.64 This section of the report will examine some of the threats to the general wellbeing of sex workers in NSW. It looks at mental health issues and drug and alcohol abuse, the rates of workers from culturally and linguistically diverse backgrounds in the sex services industry, occupational health and safety, industrial matters and the support services available to sex workers. Current rates of STIs and condom use amongst sex workers, as well as sex workers' access to sexual health clinics and outreach services are covered in chapter five of this report which deals with public health outcomes.

### Mental Health Issues, Drug and Alcohol Abuse, and Rates of Workers from Non-English Speaking Backgrounds

- 4.65 In chapter two of this report it was established that there are a diversity of circumstances in which sex workers operate. While some sex workers are highly independent and able to make a rational choice of their own free will about participating in the sex services industry, other sex workers are highly vulnerable. The reasons for this vulnerability include poverty, drug addiction, mental health issues and language barriers.
- 4.66 On the mental health of sex workers generally, research has found that stress, depression and a sense of isolation have all been reported by sex workers. Sex workers can often suffer from social isolation due to the stigma attached to their work. A report from the Kirby Institute found that 26 per cent of 201 sex workers interviewed did not have a supportive relationship with another person.<sup>264</sup>
- 4.67 The same report found that 10 per cent of these sex workers had high scores on the Kessler-6 psychological distress scale. This indicates that they were likely to have a serious mental illness. It is about twice the rate for similar aged women in the general population.
- 4.68 As previously discussed in this chapter, and in chapter two, it is not uncommon for drugs to be used by sex workers. Sex workers interviewed by the Kirby Institute were found to have a smoking rate three times greater than the general population rates.
- 4.69 This study also found that 2 per cent of the respondents had injected a drug in the previous 12 months. Other substances which were taken by the respondents include: marijuana (16 per cent of respondents); cocaine (16 per cent); ecstasy (15 per cent); and speed (9 per cent).

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<sup>264</sup> Unless stated otherwise, the following evidence is found in Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, pp26-27.

- 4.70 On the other hand, instances of alcohol abuse were relatively low. 44 per cent of the workers in the study reported that they had never consumed more than four alcoholic drinks in a day, with a further 10 per cent indicating that they had not done so for more than three months.
- 4.71 At particular risk of mental health problems and drug dependency are the sex workers who operate on the street rather than in sex services premises. The Committee heard that these workers are much more likely to suffer from work-related violence, homelessness and drug dependency.<sup>265</sup>
- 4.72 As outlined in chapter two, Dr Kerry Chant, Chief Health Officer and Deputy Secretary of Population and Public Health NSW Health provided data referencing a study by Amanda Roxburgh, Louisa Denenhardt and Jan Copeland. They interviewed 72 female street-based sex workers in Sydney finding just under half met the criteria for post-traumatic stress disorder and that injecting drug use was highly prevalent in the sample.<sup>266</sup> This study from 2006 is consistent with another international study which found that amongst the 854 sex workers examined in nine countries, 68 per cent were found to have post-traumatic stress disorder rates similar to combat veterans.<sup>267</sup>
- 4.73 This was supported by the evidence of Ms Jessica Davidson, Women's Services Team Leader, BaptistCare HopeStreet, an inner-city care organisation that works to support people with difficulties. Ms Davidson highlighted:
- ... the many factors that are strongly linked to women entering and continuing in the street-based sex industry, including homelessness, mental health, domestic violence, trauma and addiction.<sup>268</sup>
- 4.74 As is also discussed in chapter two, there are a large number of sex workers from non-English speaking backgrounds in NSW. According to research conducted by the Kirby Institute, 66.7 per cent of sex workers that they sampled came from non-English speaking backgrounds. The most common countries of origin were China (21 per cent) and Thailand (17 per cent). Another 15 per cent came from 'other Asian' countries, 9 per cent were from Western Europe and 4.5 per cent were from other non-English speaking countries.<sup>269</sup>
- 4.75 Similar evidence was presented by Mr Cameron Cox, Chief Executive Officer of SWOP, who stated that 'about 72 per cent of sex service premises that we know of have people who have not got English as their first language'.<sup>270</sup>
- 4.76 Of the sex workers surveyed by the Kirby Institute, including those who came from Australia, New Zealand and other English speaking backgrounds, 46 per cent rated their English proficiency as 'fair' or 'poor'.<sup>271</sup>

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<sup>265</sup> See the evidence of Reverend Long, Transcript of Evidence, pp61&62.

<sup>266</sup> Dr Chant, Answers to Questions Taken on Notice, 11 September 2015, p5.

<sup>267</sup> Dr Chant, Transcript of Evidence, p18.

<sup>268</sup> Ms Jessica Davidson, Women's Services Team Leader, BaptistCare HopeStreet, Transcript of Evidence, 2 September 2015, p53.

<sup>269</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, p17.

<sup>270</sup> Mr Cox, Transcript of Evidence, p31.

- 4.77 Due to these rates of sex workers from non-English speaking backgrounds, many health services provide information in a variety of languages.<sup>272</sup> This is discussed further in chapter five of this report.
- 4.78 Similarly, many of the sex worker support agencies have workers who can communicate with sex workers in their native language. This helps to ensure that they are able to understand their rights and responsibilities and also discuss any concerns they may have. Mr Cox of SWOP explained that:
- We have got a call team, half our female staff are Chinese, Mandarin, Vietnamese, Korean speaking and sex workers of course as well and so when we go into parlours where language is spoken, they can often speak privately to the workers away from the boss, stuff like that.<sup>273</sup>
- 4.79 However, other stakeholders raised concerns that these sex workers may suffer from poor working conditions as they are unable to properly negotiate with managers of sex services premises or clients. Ms Jessica Megarry, Member, Executive Committee, Coalition Against Trafficking in Women, Australia stated that:
- ... research ... 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.<sup>274</sup>

## Work Health and Safety

- 4.80 During the course of this inquiry, the regulatory and insurance functions of WorkCover were assumed by three new discrete organisations:
- the State Insurance Regulatory Authority (SIRA), for workers compensation regulation
  - SafeWork NSW, for work health and safety regulation; and
  - Insurance and Care NSW (icare), for workers compensation insurance.<sup>275</sup>
- 4.81 Reference is made to both SafeWork NSW and WorkCover in this report depending on when evidence was received.
- 4.82 Under the model of decriminalisation, sex services premises are treated in the same way as all other workplaces according to the *Work Health and Safety Act 2011*. Therefore, the owners and operators of sex services premises have a responsibility to ensure the health and safety of sex workers, other employees,

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<sup>271</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, p18.

<sup>272</sup> For example Sydney Sexual Health Centre – see submission 162, Sydney Sexual Health Centre p1; and Clinic 16, see submission 64, Northern Sydney Local Health District, p1.

<sup>273</sup> Mr Cox, Transcript of Evidence, p29.

<sup>274</sup> Ms Megarry, Transcript of Evidence, p32.

<sup>275</sup> WorkCover NSW, <<http://www.workcover.nsw.gov.au/>>, viewed 28 September 2015.

clients and visitors to the premises.<sup>276</sup> Mr Peter Dunphy, Executive Director, SafeWork NSW highlighted that:

Under the former legislation, the Occupational Health and Safety Act, the employer had a duty of consultation ... 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.<sup>277</sup>

- 4.83 No sex service premises have been prosecuted by SafeWork NSW or WorkCover NSW.<sup>278</sup>
- 4.84 To assist owners and operators to comply with their work health and safety obligations, SafeWork NSW released the *Health and Safety Guidelines for Brothels* in 2001. This document outlines the main rights and duties with regard to health and safety within sex service premises. It also provides proprietors with minimum standards for maintenance of a safe and healthy environment for sex workers, other employees, clients and visitors.<sup>279</sup> The document is available in English, Thai, Chinese, and Korean.<sup>280</sup>
- 4.85 SafeWork NSW indicated that 'this guide is currently being reviewed for currency and will be updated where necessary'.<sup>281</sup>

#### *Workers Compensation*

- 4.86 Under the *Workers Compensation Act 1987*, employers must obtain and maintain in force a policy of workers compensation insurance for their employees.
- 4.87 SafeWork NSW confirmed that it was 'most likely' that the operator of a brothel would be obliged to take out workers compensation for all sex workers on a premises. SafeWork NSW advised the Committee that all employers must have a workers compensation policy. An employer is anyone who 'employs or hires workers on a full time, part time or casual basis, under an oral or written contract of service'.<sup>282</sup> While some employers are exempt, SafeWork NSW advised that:
- Even if a brothel is exempt they still have the same obligations to provide assistance with injury management and return to work.<sup>283</sup>
- 4.88 SafeWork NSW stated that a sex worker would have no more or less difficulty making a claim for workers compensation than any other worker.<sup>284</sup> On the other

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<sup>276</sup> Submission 137, NSW Government, p6.

<sup>277</sup> Mr Peter Dunphy, Executive Director, SafeWork NSW, Transcript of Evidence, 11 September 2015, pp59-60.

<sup>278</sup> Mr Peter Dunphy, Executive Director, SafeWork NSW, Answers to Questions Taken on Notice, 11 September 2015, p1.

<sup>279</sup> WorkCover NSW, *Health and Safety Guidelines for Brothels*, WorkCover NSW website, <[http://www.workcover.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/15134/brothels\\_health\\_safety\\_guidelines\\_English\\_0120.pdf](http://www.workcover.nsw.gov.au/__data/assets/pdf_file/0014/15134/brothels_health_safety_guidelines_English_0120.pdf)>, viewed 28 September 2015.

<sup>280</sup> Dr Chant, Answers to Questions Taken on Notice, 11 September 2015, p5.

<sup>281</sup> Mr Dunphy, Answers to Questions Taken on Notice, 11 September 2015, p3.

<sup>282</sup> Mr Dunphy, Answers to Questions Taken on Notice, 11 September 2015, p2.

<sup>283</sup> Mr Dunphy, Answers to Questions Taken on Notice, 11 September 2015, p2.

<sup>284</sup> Mr Dunphy, Answers to Questions Taken on Notice, 11 September 2015, p2.

hand, the Committee heard informal evidence that sex workers would be hesitant to make claims as they are unwilling to provide their name or details of their work.

### *Workplace Inspections*

- 4.89 SafeWork NSW is responsible for administering the legislation relating to health, safety and welfare at work. It undertakes a variety of compliance and enforcement activities, which includes the provision of information and inspections where necessary.<sup>285</sup> Compliance visits are made 'on the basis of issues being raised with the WHS [Work Health and Safety] regulator that require intervention'.<sup>286</sup>
- 4.90 These inspections will take a similar form to other workplaces and will check to ensure that work, health and safety consultation is taking place. They will also make sure that hazard controls are in place along with the appropriate amenities such as toilets and showers, first aid facilities and emergency preparedness, including evacuations processes.<sup>287</sup>
- 4.91 These inspections also give the investigators the opportunity to speak to workers without the presence of the owner or manager of premises.<sup>288</sup>
- 4.92 The level of activity by SafeWork NSW within an industry is based on data and evidence of the rates of complaints, fatalities, injuries and serious incidents. Those industries that have higher rates are prioritised. The sex services industry is not a priority industry for SafeWork NSW.<sup>289</sup>
- 4.93 SafeWork NSW has conducted the following compliance visits, due to requests for service or complaints since 1 January 2012:
- 2012 – 14 visits
  - 2013 – nine visits
  - 2014 – six visits
  - 2015 – one visit.<sup>290</sup>
- 4.94 However, SafeWork NSW also recognised the improved reception of information if it is provided via peer to peer support. A lot of the information surrounding work health and safety in the sex services industry is provided by SWOP, which also stressed the importance of health and safety when they visit sex service premises.<sup>291</sup> Taken with the other evidence that there are about 340 brothels operating in NSW, the seven compliance visits in the last year and a half by

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<sup>285</sup> Submission 137, NSW Government, p6.

<sup>286</sup> Mr Dunphy, Answers to Questions Taken on Notice, 11 September 2015, p2.

<sup>287</sup> Mr Dunphy, Transcript of Evidence, p57.

<sup>288</sup> Mr Dunphy, Transcript of Evidence, p57.

<sup>289</sup> Submission 137, NSW Government, p6.

<sup>290</sup> Mr Dunphy, Answers to Questions Taken on Notice, 11 September 2015, p1.

<sup>291</sup> Mr Dunphy, Transcript of Evidence, p59; and submission 145 Sex Workers Outreach Project, p1.

SafeWork NSW to brothels indicates that it is not embarking upon a proactive role as a regulator of the industry.

### *Industrial Conditions*

- 4.95 As discussed in chapter two, a 2012 report by the Kirby Institute found that employment in the sex services industry tends to be covert and transient.<sup>292</sup> Given that many sex workers are itinerant, and do not necessarily work in the industry for any length of time<sup>293</sup> this could make negotiating fair terms of employment and following up complaints against owners or managers of sex services premises difficult.
- 4.96 Similarly, during the Committee's visits of inspections to sex service premises in both Sydney and Melbourne, the employment status of the sex workers was a little vague. Most proprietors of sex services premises explained that the sex workers were self-employed and that the premises simply provide the venue for the worker and their client. The terms that sex workers were engaged on also appeared to vary from premises to premises. In one premises that the Committee visited, the workers were paid around 35 per cent of what the premises charged for services, while in another it was 60 per cent.
- 4.97 It would appear that sex workers operating in brothels under these kind of arrangements are independent contractors. There are a number of factors which may tend to indicate a person is working as an independent contractor rather than an employee, and there are a number of advantages that employees may enjoy that independent contractors generally do not.
- 4.98 For example, while an employee bears no financial risk (this being the responsibility of their employer), an independent contractor bears the risk of making a profit or loss on each work task.<sup>294</sup> Applied to the sex services industry, this might mean that a slow night at sex services premises would translate to a smaller pay packet that week.
- 4.99 Similarly, independent contractors are responsible for paying their own tax, including GST, if they meet the relevant threshold, while employees have income tax deducted by their employer; and employees are generally entitled to receive paid leave while independent contractors are not. In addition, an employee's tools and equipment are generally provided by the employer while a sub-contractor generally uses his or her own.<sup>295</sup> For example, at one of the premises the Committee visited, the owner stated that sex workers are required to supply their own condoms or buy them from the owner at cost price.
- 4.100 The Committee also heard informal evidence that some sex services premises will unfairly penalise workers. This can include unreasonable fines for minor

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<sup>292</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, p16.

<sup>293</sup> Mr Cox, Transcript of Evidence, p28.

<sup>294</sup> See Fair Work Ombudsman, 'Independent Contractors and Employees Fact Sheet', July 2015, Fair Work Ombudsman website, <https://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/contractors-and-employees-whats-the-difference>, viewed 13 October 2015.

<sup>295</sup> See Fair Work Ombudsman, 'Independent Contractors and Employees Fact Sheet'.



discrepancies such as arriving late or charging high prices for food or drink consumed while on the premises. The Victorian Police Sex Industry Co-ordination Unit has found that fines could be as high as two thirds of the wages of the sex workers and includes fines for trivial activities like leaving a power point on.<sup>296</sup>

## Support Services Available

4.101 As outlined very briefly in chapter two, a number of support services are available for sex workers, particularly in the inner Sydney area. Some of those brought to the attention of the Committee include:

- BaptistCare, HopeStreet
- The Wayside Chapel
- The Kirketon Road Centre.

4.102 These organisations primarily offer their services to more marginalised members of the community which includes sex workers who are not able to access services elsewhere, often street based sex workers. These organisations do offer their services to all sex workers. However, from the evidence of the control exercised over the lives of sexual servitude victims it is unlikely that those sex workers would interact with these organisations.

4.103 HopeStreet and the Wayside Chapel offer safe places for people to go where they can discuss problems. They also provide amenities, food and clothing, legal advice, and information and advocacy services for those who need it. This includes services particularly aimed at sex workers.<sup>297</sup>

4.104 In addition to their work in the health arena, outlined elsewhere in this report, the Kirketon Road Centre also run classes to help people get back on track. At its site visit to the Kirketon Road Centre on 4 September 2015, the Committee heard that these include classes on filling in Centrelink paperwork and cooking classes.

4.105 Another service provided by HopeStreet is to help women who want to exit the sex services industry. HopeStreet found that a lot of women face stigma and discrimination if they have a history of sex work, especially when applying for new jobs. To help these women, HopeStreet have partnered with some commercial businesses who agree to take people on referral from HopeStreet but without specifically mentioning their work in the sex services industry. They also provide employment skills training and self-esteem programs.<sup>298</sup>

## Committee Comment

4.106 The Committee notes the evidence put before it about the mental health of sex workers and drug and alcohol issues in the sex services industry. The Committee is especially concerned about the particular problems facing street based sex workers. Given the additional issues often faced by this subset of workers, it

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<sup>296</sup> Senior Sergeant Ross, Transcript of Evidence, p27.

<sup>297</sup> Submission 175, BaptistCare HopeStreet ; and The Wayside Chapel website, <<https://www.thewaysidechapel.com/community-service-center.php>>, viewed 28 September 2015.

<sup>298</sup> Ms Davidson, Transcript of Evidence, pp55-56.

appears that those most in need of support may be the least able to access it owing to life circumstances.

- 4.107 The Committee also notes the prevalence of people from non-English speaking backgrounds working in the sex services industry. Where these workers are foreign nationals who require a visa to work, it is very difficult to monitor and enforce the limit of 40 hours work a fortnight. This is particularly the case given evidence that a lot of sex workers are itinerant and may be working in various locations.
- 4.108 The regulatory framework surrounding work health and safety is fairly complex and may be difficult to understand for sex workers for whom English is a second language. Similarly, their ability to negotiate one on one with managers and clients may be severely limited. Furthermore, a number of these workers may come from countries which do not have the same work health and safety protections that exist in Australia and may therefore be unaware of their rights and responsibilities.
- 4.109 While the Committee recognises the work done by SafeWork NSW in this area, it also understands that the sex services industry, by its nature, is a private one and there can be difficulties ensuring a safe workplace. While SafeWork NSW does conduct inspections of premises, they are to only a very small fraction of sex work premises and as a consequence cannot be on hand to assist a sex worker who may be pressured into performing unsafe sex or drug-taking by a client.
- 4.110 The Committee is also concerned that it appears many if not most sex workers operating in sex services premises are not considered employees. The nature of the industry is discreet. Workers are often itinerant and from non-English speaking backgrounds. This may make them more vulnerable to exploitation and unfair work practices. It is apparent that industrial laws, like work health and safety laws are difficult to enforce. This is no different from planning laws – as outlined in detail in chapter three – these are also difficult to enforce in the sex services industry.

## FINDING 12

**There are significant numbers of foreign workers operating in the NSW sex services industry which has an estimated 340 brothels in NSW.**

## FINDING 13

**The nature of the services sex services industry is such that sex workers from foreign countries operate without proper visa permission and in circumstances where they are vulnerable to exploitation and servitude whether as part of a system of sex trafficking or not.**

## FINDING 14

**Some sex workers are subject to fines or other financial punishment and other undesirable industrial practices (like being forced to work in their places of work for up to 17 hours or more a day against threat of deportation) that would not be acceptable in normal work places and the usual protection of the rights**

**of workers provides particular challenges given the nature of the sex services industry.**

**FINDING 15**

**There are pressures from clients to compromise the occupational health and safety of sex workers and the nature of the operation of the industry make it difficult for SafeWork NSW to protect workers in the sex services industry.**

**FINDING 16**

**The enforcement of the current planning laws, industrial laws and health and safety laws provide particular challenges given the nature of the sex services industry.**

**FINDING 17**

**It is impossible to police whether foreign sex workers are only conducting sex work for the 40 hours they are permitted to work a fortnight, thus exposing them to an environment where foreign nationals can be subjected to sexual servitude or other exploitation.**

## Chapter Five – Public Health Outcomes

- 5.1 This chapter addresses the public health outcomes delivered by the current regulation of brothels in NSW. In particular it examines current rates of STIs and condom use, availability of and access to sexual health clinics and outreach services, and the known and predicted impact of regulatory options on public health outcomes.
- 5.2 The chapter considers the evidence that was presented to the Committee comparing public health outcomes in NSW under the decriminalised system, with public health outcomes being achieved under the licensing systems in Victoria and Queensland. It makes several findings and recommendations to help identify public health related regulatory enhancements that could be built onto the strengths of the existing NSW system in the context of the recommendations made later in this report which address the framework of sex services industry regulation in NSW as a whole.

### CURRENT RATES OF STIs AND CONDOM USE

- 5.3 The terms of reference for this inquiry recognised that NSW is achieving a high level of public health outcomes in relation to brothels. The terms required that the Committee consider options to maintain this.
- 5.4 Many of the submissions received by the Committee, and much of the evidence provided by witnesses, addressed the health of sex workers, options for promoting good health, and the impact of different regulatory regimes on public health outcomes. The key performance indicators for public health in this area are the rates of STIs and condom use.
- 5.5 In its submission, The Kirby Institute, University of NSW stated that decriminalisation of adult sex work in NSW is considered, both in Australia and internationally, to be an 'unqualified success'.<sup>299</sup> In support of this view, the Institute described the public health achievements in NSW as including the 'lowest rates of HIV and STIs ever documented in female sex workers', with robust surveillance systems in place to provide ongoing verification.<sup>300</sup>
- 5.6 Similarly, ACON (formerly the AIDS Council of NSW), cited decriminalisation of sex work as the measure which would have the greatest impact on the HIV epidemic globally.<sup>301</sup> ACON noted the high level of condom use in the NSW sex services industry and a rate of STIs amongst female sex workers in NSW that is lower than that of other sexually active females in NSW. ACON reported that 'there has not been one recorded case of HIV transmission due to commercial sex work in NSW'.<sup>302</sup> ACON described these as 'world leading' outcomes only achievable

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<sup>299</sup> Submission 15, The Kirby Institute, p1.

<sup>300</sup> Submission 15, The Kirby Institute, p1.

<sup>301</sup> Submission 123, ACON, p9.

<sup>302</sup> Submission 123, ACON, p9.

since decriminalisation, and only possible through concerted peer outreach programs, especially peer education, and the uptake of education by sex workers themselves.<sup>303</sup>

- 5.7 The Kirketon Road Centre is a primary care facility of the South Eastern Sydney Local Health District involved in prevention and treatment of STIs amongst sex workers and other at risk people. Kirketon Road stated that NSW sex workers have comparable rates of STIs with the general population, due to condom use and safe sex practices, and 'sex workers should not be considered vehicles of sexual infections or a public health risk'.<sup>304</sup> In the Centre's view, the current excellent public health outcomes amongst sex workers in Sydney are the result of the current regulatory framework.<sup>305</sup>
- 5.8 SWOP also cited high rates of condom use and low STI rates amongst female sex workers as evidence of the success of the NSW regulatory regime, contrasting this success with the Victorian and Queensland experiences under licensing regimes. SWOP recommended in its submission that decriminalisation be maintained as essential to maintaining the current public health outcomes.<sup>306</sup>
- 5.9 In its submission to the inquiry, the NSW Government quoted studies which found that condom use approached 100 per cent in Sydney brothels and that STI rates amongst Sydney sex workers were at least as low as the general population.<sup>307</sup> The NSW Government concluded that these achievements were the result of targeted NSW Government programs, and specialist health services, support and outreach programs.
- 5.10 Many other submissions quoted similar studies to those quoted by the NSW Government to support the view that the NSW regulatory regime represents world's best practice in the regulation of sex work and the achievement of a high level of public health outcomes.<sup>308</sup>
- 5.11 The Committee invited representatives of the Kirby Institute, ACON, the Kirketon Road Centre, SWOP and the NSW Government to give evidence at public hearings.
- 5.12 At its public hearing on 1 September 2015, the Committee asked Professor Basil Donovan, Head of the Sexual Health Program at the Kirby Institute, why rates of STIs amongst NSW sex workers are so low.

...why are the rates so low—because they wear condoms at work. It has been documented and we are about to re-document because it has not been done for a long time, but certainly recently documented in Victoria that the principal risk in terms of infections for sex workers are their boyfriends. If they do not have a non-

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<sup>303</sup> Submission 123, ACON, p9.

<sup>304</sup> Submission 160, The Kirketon Road Centre, p2.

<sup>305</sup> Submission 160, The Kirketon Road Centre, p2.

<sup>306</sup> Submission 145, Sex Workers Outreach Project, p6.

<sup>307</sup> Submission 137, NSW Government, p7.

<sup>308</sup> See for example submission 4, Ms Elena Jeffreys, pp1-2; submission 14, name suppressed, pp1-2; submission 19, Ms Xena Wrestles, p2; and submission 81, Miss Naomi Spilsbury, pp1-2.

paying partner at home, they do not have STIs at all, because they wear condoms. Big secret, condoms work.<sup>309</sup>

5.13 Similarly, Dr Phillip Read, Acting Director of the Kirketon Road Centre, told the Committee that a decriminalised system breaks down perceived barriers for sex workers in accessing health care. Dr Read described the Centre's clientele as a more marginalised group within the industry – street workers some of whom are or have been injecting drug users – and who are most likely to disengage with any additional regulatory requirements imposed on their industry.<sup>310</sup>

5.14 On the subject of more marginalised sex workers, the Committee asked Dr Read whether these workers, and particularly those working from unauthorised premises, had similar rates of condom use and STIs as sex workers more generally. Dr Read advised that lack of development approval can be relevant to a workers' ability to insist on condom use in some contexts. Dr Read stated:

Because in NSW that has them outside the legal system to a certain extent, research has still been able to access those locations and engage with the clients in there but what we did find was that if a place was not able to get a development application and it was also particularly related to certain work locations that had women from diverse cultural backgrounds, that failure to get a development application made it more difficult for those people to necessarily insist on condom use for oral sex with clients through their management.<sup>311</sup>

5.15 Dr Read qualified his evidence by saying:

I would just like to make one additional point about my comment about condom use, which I do not want to be misinterpreted. The findings were that condom use is exceptionally high. I was just simply referring to oral sex in unplanned premises, which was slightly lower condom use but still over 80, 85 per cent of oral sex occasions were condom protected in those settings too.<sup>312</sup>

5.16 When asked in which places condom use may be lower, Dr Read identified massage parlours not approved as sex services premises:

My speculation is that if a massage parlour is having to masquerade as a massage parlour rather than a brothel ... my supposition is that if a place is having to work very hard to prove it is not offering sexual services, then the access to condoms for the girls in that service is lower because of structural issues, not because of a desire from the girls to use them or potentially for the management to have them.<sup>313</sup>

5.17 Witnesses who gave evidence at later public hearings confirmed the success of decriminalisation in achieving low rates of STIs and high rates of condom use. For instance, Mr Cameron Cox, Chief Executive Officer of the Sex Workers' Outreach

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<sup>309</sup> Professor Donovan, Transcript of Evidence, p39.

<sup>310</sup> Dr Read, Transcript of Evidence, p36.

<sup>311</sup> Dr Read, Transcript of Evidence, p36.

<sup>312</sup> Dr Read, Transcript of Evidence, p37.

<sup>313</sup> Dr Read, Transcript of Evidence, p40.

Project advised that NSW sex workers report rates of condom use in vaginal sex which exceed 99.9 per cent.<sup>314</sup>

- 5.18 Similarly, Dr Kerry Chant, Chief Health Officer and Deputy Secretary of Population and Public Health, NSW, told the Committee that STI rates amongst sex workers are commensurate with those in the general population. She further observed:

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.<sup>315</sup>

- 5.19 The Committee also discussed the issue of STIs and condom use rates in unapproved premises with Dr Chant. Dr Chant indicated that she is confident that sex workers operating from unapproved premises are being accounted for in NSW statistics. Dr Chant emphasised the efforts in NSW to remove the stigma around sex work to encourage sex workers to access health services and declare their occupation:

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.<sup>316</sup>

- 5.20 Dr Chant further explained that sex workers are accessing health services regardless of whether they work in approved or unapproved brothels:

SWOP is agnostic to the status of the brothel because it is looking to provide support to sex workers wherever they undertake their work.

....

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.<sup>317</sup>

- 5.21 However, there is no accurate record of how many sex workers there are in NSW. It is therefore impossible to know what proportion of sex workers are being reached by SWOP and whether the official data is representative of all or nearly all sex workers.

## SEXUAL HEALTH CLINICS

- 5.22 During its inquiry, the Committee received a significant amount of evidence that sex worker access to high quality sexual health clinics is essential to achieving good public health outcomes in NSW.

- 5.23 In its submission, the NSW Government listed 'providing a range of sexual health services' as a key component of its HIV and STI strategies.<sup>318</sup> On the nature and

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<sup>314</sup> Mr Cox, Transcript of Evidence, p26.

<sup>315</sup> Dr Chant, Transcript of Evidence, p12.

<sup>316</sup> Dr Chant, Transcript of Evidence, p12.

<sup>317</sup> Dr Chant, Transcript of Evidence, p14.

extent of these services, Dr Chant advised that NSW has a network of publicly funded sexual health services offering free and confidential services including STI and HIV testing and health promotion at 51 sites across the State.<sup>319</sup>

- 5.24 Other submissions to the inquiry provided an idea of the nature and extent of services provided by individual clinics. For example, the Sydney Sexual Health Centre advised that it is the largest sexual health clinic in NSW. The Centre provides interpreter assistance language clinics for Thai and Chinese-speaking sex workers and employs bilingual Health Promotion Officers.<sup>320</sup>
- 5.25 The Northern Sydney Local Health District operates Clinic 16 which provides sexual health, screening and management. The clinic employs a fulltime Health Education Officer who provides outreach and clinic-based services to culturally and linguistically diverse sex workers. On a weekly basis, Clinic 16 provides a dedicated Chinese and Korean language clinic.<sup>321</sup>
- 5.26 The South Western Sydney Local Health District described both its outreach and clinical services,<sup>322</sup> which also include one clinic per week where interpreters are available.<sup>323</sup>
- 5.27 In evidence to the Committee, Dr Read of Kirketon Road provided further information about the Kirketon Road Centre:
- ...the Kirketon Road Centre was established in around 1987 because the situation at the time, the not decriminalised environment and the many sex workers operating in that area who were not accessing services and were very much under the radar, had poor health, human rights outcomes and difficult interactions with police and so forth.
- Over that 28 year period Kirketon Road has seen 10,000 men, women and transgender people who identify as sex workers. One of the main reasons that we have had success engaging with organisations like Sex Workers Outreach Project, brothels and sex workers locally is because of the free conversation and lack of perceived barriers to engaging in care.<sup>324</sup>
- 5.28 Professor Donovan, of the Kirby Institute emphasised the importance of non-judgmental services in promoting access:

... they come to the Sydney sexual health centre ... because they feel comfortable with the place, the services. Since the beginning of the early seventies it has had a very close working relationship and has never had a threatening role or a punitive role, so it has developed a relationship of trust. Fifty per cent of all the sex workers

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<sup>318</sup> Submission 137, NSW Government, p7.

<sup>319</sup> Dr Chant, Answers to Questions Taken on Notice, 11 September 2015, p2.

<sup>320</sup> Submission 162, Sydney Sexual Health Centre, p1.

<sup>321</sup> Submission 64, Northern Sydney Local Health District, p1.

<sup>322</sup> Submission 172, South Western Sydney Local Health District, p1.

<sup>323</sup> Dr Chant, Answers to Questions Taken on Notice, 11 September 2015, p2.

<sup>324</sup> Dr Read, Transcript of Evidence, pp35-36.



within 20 kilometres of here, when we questioned them in the brothels attended the Sydney sexual health centre in the previous 12 months.<sup>325</sup>

- 5.29 In addition, Professor Donovan stated that anonymous and no-cost services are vital, particularly amongst the more marginalised sections of the industry:

The Sydney sexual health centre has been targeting those women, again, because we are not the police, because we are a free public health service and we do not require identification from them, the public clinics in New South Wales have extremely good access to all components of the sex industry.<sup>326</sup>

- 5.30 However, the evidence was that in sexual servitude cases, the sex workers are kept separate from the general community and use a compliant private medical practitioner for health checks rather than the public health system.<sup>327</sup>

- 5.31 Importantly, the Committee also heard that sex workers themselves are proactive in guarding their sexual health, and thus attending clinics, as this is their livelihood. Mr Nicholas Parkhill, Chief Executive Officer of ACON, told the Committee:

It is also really important to note, for a lot of sex workers, having good sexual health is absolutely fundamental to their livelihood; their economic agency depends on it, so that is why we have such great testing rates of sex workers in New South Wales, we have high levels of condom use, we have high levels of engagement with health services because it actually makes sense for their business model to be making sure that they are sexually healthy.<sup>328</sup>

- 5.32 Dr Chant, Chief Health Officer, acknowledged the important role that the network of sexual health clinics plays in data collection, given the network's popularity with sex workers and high visitation rates, especially amongst potentially marginalised groups. She told the Committee:

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.<sup>329</sup>

## OUTREACH SERVICES

- 5.33 In the context of the sex services industry, outreach services refer to health and other support services and information provided to sex workers at their place of work (including on the streets) or in other settings where they spend time, rather than at a clinic or centre that sex workers visit.

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<sup>325</sup> Professor Donovan, Transcript of Evidence, pp36-37.

<sup>326</sup> Professor Donovan, Transcript of Evidence, p37.

<sup>327</sup> Commander McEwen, Transcript of Evidence, p66.

<sup>328</sup> Mr Parkhill, Transcript of Evidence, p22.

<sup>329</sup> Dr Chant, Transcript of Evidence, p13.

5.34 Many of the outreach services referred to in submissions to the inquiry are based out of the sexual health clinics. Other outreach services are more mobile and community based including peer-supported services and services that work through organisations outside the sex services industry, but which have contact with and relevance for sex workers.

5.35 In linking the work of outreach services with low rates of STIs in NSW, ACON stressed the effectiveness of peer outreach services, that is, those provided by sex workers to sex workers, stating:

...[these rates have] only been possible through concerted peer outreach programs, especially peer based education undertaken by people with targeted language skills and the consistent and enthusiastic uptake of these education programs by sex workers themselves.<sup>330</sup>

5.36 Mr Parkhill of ACON emphasised the importance of peer based outreach services in reaching sex workers who might not be amenable to contact with government agencies. In evidence provided to the Committee he stated:

I think if there is going to be some sort of enhancement to the way NSW puts in place governance frameworks around this...it would be about building the capacity of councils to better do their job...but then also mobilising other agencies as well...but also recognising the agency of sex workers to be delivering those services and those fundamental sexual health services to each other, because peer-based led approaches are much more effective than government driven approaches into those often stigmatised populations due to a whole range of reasons.<sup>331</sup>

5.37 In addition, Dr Read of the Kirketon Road Centre, described how the centre reaches out to sex workers who may not visit the centre:

I think the other thing I would say is how does one access clients. Clearly there might be people that we do not know about that you cannot see but on the other hand, we at Kirketon Road are out and about till midnight every day of the year within our local health district ... sometimes doing outreach work with sex worker organisations, sometimes with drug user organisations, communicating with local community organisations. We go to the safe houses and places like that, such that exist anymore which are clearly seeing people who are in a marginalised situation. I think the access to parts of the sex industry from services like Sydney sexual health centre or Kirketon Road is actually extremely great. I do not think there is a significant component to the industry that are not accepting.<sup>332</sup>

5.38 Mr Cox of SWOP also described the SWOP model and its achievements through peer based outreach:

Since 1990 SWOP's main funding has come from NSW Department of Health and we adopt a peer education model, which has led to very successful work ... (the NSW) achievements in sexual health and especially in mandating condom use for all commercial sex were initially achieved by female sex workers in NSW, both street

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<sup>330</sup> Submission 123, ACON, p9.

<sup>331</sup> Mr Parkhill, Transcript of Evidence, p22.

<sup>332</sup> Dr Read, Transcript of Evidence, p37.

and brothel based with no outside support and against considerable opposition. They did this by organising and educating their fellow workers as peers.<sup>333</sup>

- 5.39 Mr Cox also detailed the current scope of SWOP's outreach efforts, and how sex workers actually make contact with SWOP:

In our last reporting year, as well as our engagement with former sex work networks and within the health and blood-borne virus sectors, we engaged directly with over 6,700 of our fellow NSW sex workers.

SWOP visited over 670 NSW sex services premises, partnered with sexual health clinics and local area health districts across NSW, made 44 separate visits to regional and rural areas in NSW, distributed 270,000 safe sex items and over 20,000 printed resources.<sup>334</sup>

... quite a lot of people come to us, they walk through the door, they phone in, they contact us on social media, they contact us by email. The outreach work that we do is mainly to brothels, but goes to private workers and rural and regional areas, so it is a two-way thing. Some of it is people coming in and some of it is us going out.<sup>335</sup>

- 5.40 In addition, Mr Cox told the Committee about the availability and success of outreach services in regional areas:

Every outreach officer goes out twice a year at least and spends possibly two nights, three days in a rural or regional area, liaises with the local sexual health clinic or local area health district. Outreach is to them in a way because we do sensitive interview training, stuff like that. They provide us with information. We visit brothels, private workers and depending on the circumstances, maybe some outdoor work as well.<sup>336</sup>

- 5.41 Mr Cox also confirmed Dr Chant's evidence that SWOP conducts outreach wherever it thinks sex work may be taking place and it does not restrict itself to premises that have council planning approval.<sup>337</sup> There is no licensing of sex work premises and the Committee received evidence that there was an extensive underground industry in NSW. With this lack of visibility it is impossible to accurately know whether SWOP visits all of the unapproved premises or even knows about them.

- 5.42 In turn, Dr Chant provided the Committee with an outline of outreach services provided through the NSW network of publicly funded sexual health clinics, with particular focus on the higher risk groups. She emphasised the partnership between NSW Health and SWOP, encompassing both clinic-based services and outreach to sex workers in brothels and on the street:

The Sex Workers Outreach Project [SWOP] provides an excellent service. We provide it with funding... In addition, a number of local health districts have augmented their services for sex workers. For instance, in south-western Sydney...there is a longstanding health promotion program there, employing designated health

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<sup>333</sup> Mr Cox, Transcript of Evidence, p26.

<sup>334</sup> Mr Cox, Transcript of Evidence, p27.

<sup>335</sup> Mr Cox, Transcript of Evidence, p28.

<sup>336</sup> Mr Cox, Transcript of Evidence, p28.

<sup>337</sup> Mr Cox, Transcript of Evidence, p28.

education officers to deliver outreach to brothels, in partnership with the sexual health clinic and SWOP, who provide the bilingual peer workers.<sup>338</sup>

## IMPACT OF REGULATION ON PUBLIC HEALTH OUTCOMES

### Decriminalisation

5.43 In considering possible reform options for regulating brothels in NSW, the Committee paid special attention to the evidence it received about the effect that different regulatory frameworks have on public health outcomes.

5.44 The Committee received evidence from a variety of stakeholders linking the decriminalisation of sex work in NSW with good public health outcomes. This included evidence from academics,<sup>339</sup> health experts,<sup>340</sup> outreach service providers,<sup>341</sup> government service providers and regulators<sup>342</sup> and many sex workers.<sup>343</sup>

5.45 The Kirby Institute indicated to the Committee that the success of the NSW system of decriminalisation is recognised internationally:

There is clear acknowledgement around Australia and internationally that the bipartisan act of decriminalising adult sex work in NSW in 1995 has been an unqualified success...The public health achievements include the lowest rates of HIV and STIs ever documented in female sex workers, and robust surveillance systems provide ongoing verification.<sup>344</sup>

5.46 The Committee also received evidence explaining why decriminalisation is linked with good health outcomes. The Committee heard that under decriminalisation, health workers have excellent access to brothels and sex workers, and vice versa, because brothel owners and sex workers are not worried about criminal sanctions and have no need to evade the authorities. For example, Mr Parkhill of ACON told the Committee:

Decriminalisation has facilitated the good sexual health outcomes for sex workers that we have seen in NSW, with high rates of condom use, low rates of STIs and no reported transmission of STIs during commercial sex work.

It has also facilitated an enabling environment in which sex workers have access to the NSW Police Force, WorkCover, the Australian Taxation Office, health services,

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<sup>338</sup> Dr Chant, Transcript of Evidence, p15.

<sup>339</sup> See for example submission 13, Sydney School of Public Health, University of Sydney, p4; and submission 48, University of Technology Sydney, p2.

<sup>340</sup> See for example submission 7, Sydney Medically Supervised Injecting Centre, p1; submission 161, Nepean Blue Mountains Local Health District, p1; and submission 162, Sydney Sexual Health Centre, p1.

<sup>341</sup> See for example submission 80, Asia Pacific Network of Sex Workers, p1; submission 82, Council of Social Service of NSW (NCOSS), p2; submission 117, NSW Users and AIDS Association, p1; and submission 125, Respect Inc, p3.

<sup>342</sup> See the evidence of Dr Chant, Transcript of Evidence, p14 focussing on the removal of stigma to promote STI testing rather than 'Big Brother-type criminalisation intent'.

<sup>343</sup> See for example submission 107, Mr Tarkwin DJ Coles, p1; and submission 136, Ms Rachel Wotton, p4.

<sup>344</sup> Submission 15, The Kirby Institute, p1.

amongst others, without fear of repercussions from organisations that often play a regulatory role in other licensed and criminalised frameworks.<sup>345</sup>

- 5.47 Similarly, Professor Donovan reiterated the view that outreach to sex workers in unapproved premises is easier because there is no criminal law involved.<sup>346</sup>
- 5.48 The Council of Social Service in NSW (NCOSS) provided similar evidence in its submission. It argued that criminalising sex work makes it more difficult for sex workers to protect their own health as it increases the likelihood they will avoid state institutions, including those providing health care. According to NCOSS, the decriminalisation of sex work in NSW removed the expense and barriers created by regulation, allowing effective programs to be implemented to minimise the public health threat posed by sex work.<sup>347</sup>
- 5.49 This also fits in with evidence touched upon above that decriminalisation assists in the delivery of outreach services, removing barriers that sex workers experience or perceive in accessing services.<sup>348</sup> SWOP too indicated that decriminalisation provides the conditions to allow for effective peer education amongst sex workers and health promotion by sex worker organisations.<sup>349</sup>
- 5.50 SWOP argued that the health and safety of sex workers is best served by the current system of decriminalisation which treats sex work as a legitimate occupation. Like many other stakeholders, SWOP emphasised the high levels of access to sex services premises that outreach programs and standard regulators enjoy under decriminalisation. SWOP also highlighted the fact that, under decriminalisation, sex workers are empowered to insist on their rights to health and safety.<sup>350</sup>
- 5.51 Finally, Scarlet Alliance remarked that NSW public health outcomes demonstrate that decriminalisation has created an ‘enabling environment’ for sex workers where they are implementing safe sex practices themselves, regardless of whether they are working individually or in brothels.<sup>351</sup>

## Licensing and Registration

- 5.52 The Committee sought to compare public health outcomes under decriminalisation with the outcomes achieved under licensing as applied in Victoria and Queensland.
- 5.53 To much the same degree that the submissions to the inquiry from academics, health experts, outreach service providers, government service providers and regulators, and sex workers supported decriminalisation, they did not support licensing.

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<sup>345</sup> Mr Parkhill, Transcript of Evidence, p19.

<sup>346</sup> Professor Donovan, Transcript of Evidence, p40.

<sup>347</sup> Submission 82, Council of Social Service of NSW (NCOSS) p2.

<sup>348</sup> Submission 123, ACON, p9.

<sup>349</sup> Submission 145, Sex Workers Outreach Project, p4.

<sup>350</sup> Submission 145, Sex Workers Outreach Project, p4.

<sup>351</sup> Submission 133, Scarlet Alliance, p8.

- 5.54 ACON, described licensing as problematic from a public health perspective. In ACON's view, decriminalisation enables the widest reach of health services targeting sex workers. In contrast, licensing systems almost inevitably produce a second tier of sex services premises which are difficult for outreach services to access.<sup>352</sup> In evidence to the Committee, Mr Parkhill of ACON stated:
- Licensing schemes such as those in Victoria and Queensland have not provided better health or justice outcomes for sex workers or their clients. The experience in these other states has shown us that inevitably licensing creates a second tier of sex workers and brothels. Some brothels operate outside the licensing system, creating the potential for corruption and making sex workers vulnerable to abuse.
- Those sex workers working in these second tier systems may have poorer health outcomes...<sup>353</sup>
- 5.55 ACON further reported that comparisons of STI rates amongst sex workers in one study generally showed similar rates between NSW and Victoria. However, the Victorian data was gathered solely from sex workers working in licensed premises therefore it was not a truly representative cross-section of workers. This makes genuine comparisons between jurisdictions problematic.<sup>354</sup>
- 5.56 The Committee received similar evidence from Professor Basil Donovan of the Kirby Institute. Professor Donovan stated that he was unable to gain access to unlicensed brothels in Victoria to investigate STI rates, while in NSW he was able to gain access to brothels regardless of their approved or unapproved status. Professor Donovan explained:
- Because there is no criminal law involved and also, in Victoria the Victorian Health Department only funds health outreach activities to the licensed sector. It means that the organisation involved in delivering education in the community is not funded to deal with the unlicensed sector.<sup>355</sup>
- 5.57 The Committee also notes evidence from Dr Chant about the Victorian system which indicated that street-based sex workers may not be reached by Victoria's outreach program. Dr Chant advised that the Victorian Department of Health conducts a comprehensive outreach program through publicly funded clinics and peer based educators, as well as requiring licensed brothel operators to promote good sexual practices. However, regarding street workers Dr Chant stated:
- ...it should be noted that sex work is only permitted in brothels in Victoria; street-based sex work is illegal. It is unknown whether street-based sex workers declare that they are doing sex work if/when they present to a sexual health service for STI testing. As outlined above, sex workers in NSW, including street-based sex workers, access public health clinics and targeted outreach programs.<sup>356</sup>
- 5.58 The Committee also asked Professor Donovan to compare the Victorian and Queensland licensing systems. Professor Donovan suggested that neither system

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<sup>352</sup> Submission 123, ACON, p6.

<sup>353</sup> Mr Parkhill, Transcript of Evidence, p19.

<sup>354</sup> Submission 123, ACON, p10.

<sup>355</sup> Professor Donovan, Transcript of Evidence, p40.

<sup>356</sup> Dr Chant, Answer to Questions Taken on Notice, 11 September 2015, p3.

had better levels of public health outcomes than those achieved in NSW, but had experienced higher administrative costs.<sup>357</sup>

- 5.59 The Committee also received particularly strong evidence against any system that seeks to register sex workers. As with licensing, Professor Donovan indicated that a register would reduce the access health workers currently have to sex workers:

Of course no one wants to go on a lifelong register, so immediately everyone evaporates into the bushes.<sup>358</sup>

- 5.60 Dr Read, of the Kirketon Road Centre, explained the risks of sex worker registration in further detail:

I think it would be an unmanageable disaster. From a public health perspective, and again, I speak to a certain part of the sex industry that Kirketon Road sees, we have trouble sometimes getting people to register for Medicare, let alone a brothel or sex worker list. The other thing is...There are many people that do intermittent sex work for various reasons and are highly unlikely to register and deregister and register and deregister every time the situation that takes them towards sex work occurs.<sup>359</sup>

- 5.61 In her evidence to the Committee, Ms Janelle Fawkes, CEO, Scarlet Alliance provided some more background for why sex workers would be very reluctant to register:

This very real fear of stigma and discrimination is also the reason that registration of sex workers has failed wherever trialled. When there is the potential to lose custody of your children or to be excluded from professions you are studying to be part of, or from travelling to other countries, for example, the United States of America, simply because you have worked as a sex worker, people avoid having their real name attached to their work and weighing up the risk, cannot register.<sup>360</sup>

- 5.62 This accords with evidence from the Queensland Prostitution Licensing Authority. In Queensland, licensing attaches to brothel owners and operators, not to individual sex workers. In its submission, the Authority acknowledged criticisms of individual licensing or registration and stated its view that this is draconian and stigmatising. The Authority also stated that individual licensing or registration will not improve health or safety outcomes and that 'the inevitable result (of individual licensing) is that many sex workers will choose not to be licensed or registered and will be forced underground' resulting in reduced visits to clinics and barriers to outreach services, identified in other submissions to the inquiry.<sup>361</sup>

- 5.63 In sum, the Committee does not support creating any register of sex workers in NSW, along Victorian lines or any other. However, the Committee does support creating a central register of sex services premises through a licensing system to ensure proper regulation and to prevent the issues outlined by the Deputy

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<sup>357</sup> Professor Donovan, Transcript of Evidence, p42.

<sup>358</sup> Professor Donovan, Transcript of Evidence, p39.

<sup>359</sup> Dr Read, Transcript of Evidence, p39.

<sup>360</sup> Ms Fawkes, Transcript of Evidence, p2.

<sup>361</sup> Submission 170, Queensland Prostitution Licensing Authority, p2.

Commissioner of the NSW Police Force, Mr Kaldas and others going unchecked, and this is discussed further below.

- 5.64 Finally, Dr Chant cautioned that, in considering whether to introduce further regulation of the sex services industry in NSW and its possible impact on the health of sex workers, it is important to avoid 'perverse incentives' in implementing a policy. Dr Chant stated:

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.<sup>362</sup>

### Mandatory Health Checks

- 5.65 A key question for the Committee in considering whether greater regulation of the sex services industry would improve public health outcomes was to examine the way health checks are carried out in the industry, and whether mandating health checks, as is the case in Victoria, could be a positive step.

- 5.66 In its submission, ACON concluded that the Victorian system, which requires enforced and frequent testing, has been unable to produce a better health outcome than NSW's system of decriminalisation, despite the additional cost and administrative burdens.<sup>363</sup>

- 5.67 Similarly, Dr Read of Kirketon Road Centre recommended against mandatory testing stating that the already low rates of STIs in NSW had been achieved without the costs of mandatory testing. Dr Read stated:

I think there is often a temptation to look at some sort of mandated testing calendar and process. I think that the frequency with which sex workers do already test in New South Wales for STIs, they take control of that issue themselves, use condoms and also the cost of doing that in Victoria where they had their one monthly to three monthly system was such that ... it was tens and tens of thousands of dollars per year to prevent one Chlamydia infection or something like that. It was an extremely costly attempt to drive STIs rates to lower them and they already were low.<sup>364</sup>

- 5.68 In response to questions from the Committee, Dr Chant expanded on the concept of 'perverse incentives' which might flow from implementing a policy like mandatory testing. In particular, Dr Chant cautioned:

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.<sup>365</sup>

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<sup>362</sup> Dr Chant, Transcript of Evidence, p16.

<sup>363</sup> Submission 123, ACON, p10.

<sup>364</sup> Dr Read, Transcript of Evidence, p43.

<sup>365</sup> Dr Chant, Transcript of Evidence, p13.



5.69 Dr Chant expressed confidence that NSW was achieving high levels of testing without mandatory testing because of trust placed in NSW Health by sex workers, and the non-punitive and cooperative environment which existed in NSW under decriminalisation.<sup>366</sup> Dr Chant also stated:

Again, I cannot overestimate the fact that people feel free to come forward without judgment 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.<sup>367</sup>

### The New Zealand Prostitution Reform Act 2003

5.70 The Committee briefly examined the New Zealand *Prostitution Reform Act 2003* and particularly its public health provisions.

5.71 The New Zealand Act decriminalises prostitution within a framework that licenses brothel operation. The Act aims to promote the welfare and occupational health and safety of sex workers and public health, amongst other objectives.<sup>368</sup>

5.72 Under the Act, operators of businesses of prostitution must hold certificates,<sup>369</sup> and are required to meet specified health and safety requirements including condom use, the promotion of health information, and the adoption of safe sex practices.<sup>370</sup> The Act prescribes powers for inspectors to enter brothels and inspect compliance with health and safety requirements.<sup>371</sup>

### Health and Safety Guidelines for Brothels

5.73 Another area in which regulation could be used to better public health outcomes relates to coordination between NSW Health and local councils.

5.74 As outlined in chapter four, to assist owners and operators to comply with their work health and safety obligations, SafeWork NSW released the *Health and Safety Guidelines for Brothels* in 2001. This document outlines the main rights and duties with regards to health and safety within a sex service premise. It also provides proprietors with minimum standards for maintenance of a safe and healthy environment for sex workers, other employees, clients and visitors.<sup>372</sup> The document is available in English, Thai, Chinese, and Korean.<sup>373</sup>

5.75 Dr Chant told the Committee that while these guidelines are produced by SafeWork NSW, NSW Health also has significant input, and they are currently being reviewed. The current guidelines cover health and cleanliness

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<sup>366</sup> Dr Chant, Transcript of Evidence, p14.

<sup>367</sup> Dr Chant, Transcript of Evidence, p13.

<sup>368</sup> Section 3, *Prostitution Reform Act 2003* (NZ).

<sup>369</sup> Section 34, *Prostitution Reform Act 2003* (NZ).

<sup>370</sup> Section 8, *Prostitution Reform Act 2003* (NZ).

<sup>371</sup> Section 26, *Prostitution Reform Act 2003* (NZ).

<sup>372</sup> WorkCover NSW, *Health and Safety Guidelines for Brothels*, WorkCover NSW website, [http://www.workcover.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/15134/brothels\\_health\\_safety\\_guidelines\\_English\\_0120.pdf](http://www.workcover.nsw.gov.au/__data/assets/pdf_file/0014/15134/brothels_health_safety_guidelines_English_0120.pdf), viewed 28 September 2015.

<sup>373</sup> Dr Chant, Answers to Questions Taken on Notice, 11 September 2015, p5.

requirements for brothels (for example, relating to clean linen and the disinfection of spa pools) and include a section on the management of public health complaints. Dr Chant indicated it is her understanding that council consent documents for sex services premises would generally reference the requirements contained in the guidelines.<sup>374</sup>

- 5.76 In re-writing the guidelines, Dr Chant indicated it may be helpful to consider what information should be included to help councils make appropriate development assessment decisions around sex services premises from a public health perspective. Dr Chant also indicated it may be helpful for NSW Health to strengthen its educative response to councils and provide briefings in relation to public health issues surrounding the sex services industry.<sup>375</sup>

### Committee comment

- 5.77 The Committee notes various studies cited in evidence before it indicating that the rate of STIs amongst sex workers in NSW is equal to or lower than rates amongst the population as a whole. The Committee further notes the evidence it received that the system of decriminalisation in NSW is linked with good public health outcomes, removing barriers that sex workers would otherwise experience or perceive in accessing health services, including outreach services.
- 5.78 The Committee accepts that decriminalisation has probably increased sex worker access to health services and notes evidence placed before it that sex workers are accessing health services (including outreach services) regardless of the settings they work in (including when working from unapproved premises).
- 5.79 Notwithstanding this, the Committee is concerned that in the current system, there is no way of accounting for *all* sex workers and it is possible for some individuals to fall outside it.
- 5.80 In light of the above, the Committee makes the following findings:

#### FINDING 18

**The incidence of STIs amongst sex workers in NSW is reported to be equal to or better than the population as a whole although there are problems with accurate data given that sex workers in NSW are not registered and it is difficult to know the percentage of sex workers that are covered by the official data on STIs.**

#### FINDING 19

**It is probable that decriminalisation of sex work has made it easier for sex workers to obtain regular STI checks at medical clinics and obtain information about safe sexual practices.**

- 5.81 In chapter 6 of this report, the Committee recommends a licensing system for the sex services industry in NSW to address concerns that a number of premises are operating without planning and development approval, causing complaints from

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<sup>374</sup> Dr Chant, Transcript of Evidence, p17.

<sup>375</sup> Dr Chant, Transcript of Evidence, p17.

the community, and to address concerns regarding criminal elements infiltrating the sex services industry.

- 5.82 In recommending a licensing system for NSW, the Committee notes that STI rates being achieved in the Victorian system are generally equivalent to those being achieved in NSW, but also that the cost of regulation in the interstate models is substantial. Hence, the Committee notes that the challenge for the NSW Government will be to ensure these costs are minimised while ensuring the benefits of any new regulation are maximised, and makes the following finding:

#### FINDING 20

**The Committee finds that rates of STIs in a more regulated environment, such as the one in Victoria, compared to a less regulated environment like NSW, are equivalent.**

- 5.83 In recommending a licensing system for NSW, the Committee is anxious to retain the public health benefits that are a probable outcome of the decriminalised system, and to avoid creating the two-tiered system that some stakeholders have warned is a risk within licensed systems. That is, the Committee does not wish to create an unlicensed underclass with poor health outcomes. The Committee wishes to improve the current system of decriminalisation, not to reverse its successes.
- 5.84 In light of this, as discussed further in chapter six, the licensing system proposed by the Committee will retain decriminalisation. It will not re-introduce any criminal penalties for sex work or owning or operating sex services premises. The Committee has noted the concerns of stakeholders, discussed in this chapter, that criminalising sex work has an adverse impact on public health because sex workers and brothel owners are worried about criminal sanctions and therefore evade the authorities, including health workers.
- 5.85 In addition, the Committee's proposed licensing system will not include a register for sex workers. The licensing and registration will focus on owner/operators and managers and perhaps non-sex worker employees of sex services premises. The Committee has noted evidence discussed in this chapter that, similar to criminalising sex work, registering sex workers would be likely to force them underground, stopping them from accessing health services, with serious consequences for their health and wellbeing and public health more generally.
- 5.86 Finally, the Committee notes that for any licensing system to be effective, and to prevent concerns about the possible creation of an unlicensed underclass, the system must be properly enforced including through the detection of unlicensed operators. In light of this, chapter six outlines an appropriate enforcement regime to support the proposed brothel licensing scheme for NSW.
- 5.87 In short, in the Committee's view, if a licensing system is introduced in NSW that builds on the strengths of the current system, including by retaining decriminalisation, not registering sex workers, and including an appropriate enforcement regime, it will assist to resolve identified problems with the current system of regulation without creating negative public health outcomes. This is particularly the case given the excellent range of free and anonymous health

services available to sex workers across NSW regardless of where they work, and in light of evidence that sex workers are generally proactive in guarding their sexual health as it is essential for their livelihood.

- 5.88 Further, in light of the Committee's finding that there is no way of determining the percentage of sex workers that is covered by the official data on STIs, the Committee is particularly concerned about marginalised workers who may have been overlooked. The Committee notes in particular evidence that rates of condom use may be lower in sex services premises that are operating without planning and development approval.
- 5.89 The Committee also notes the many sex workers made submissions to the inquiry calling for the retention of the current system. However, as found earlier in this report, not all sex workers are equally empowered under the current system – some, such as non-English speakers and street workers are more vulnerable than others. It is these workers who may fare less well under the rather *laissez-faire* framework of decriminalisation. In the circumstances, it would be irresponsible of regulators not to seek improvements and build on the successes of decriminalisation wherever possible.
- 5.90 In this regard, the Committee considers that the benefits which may flow from mandatory health testing of sex workers should be explored further. The Committee accepts evidence that self-managed testing has achieved high level public health outcomes in NSW. However, to capture the cohort of sex workers who may not be testing voluntarily, or not testing at regular intervals, a form of mandatory testing should be considered. It should be supplementary to the current framework and focussed on outreach and education, and improved access, targets and incentives, not on sanctions and penalties.
- 5.91 The Committee is also of the view that the New Zealand approach regarding public health should be examined further. From its brief examination, the Committee notes that the New Zealand regulatory framework decriminalises prostitution while regulating brothel operators with specific health and safety requirements. The New Zealand provisions may present opportunities for identifying practical regulatory provisions which can be built into the NSW framework to enhance the public health outcomes being achieved under the decriminalised model.
- 5.92 Finally, the Committee notes that the *Health and Safety Guidelines for Brothels* are currently being reviewed. As part of that review process the Committee considers it would be useful for NSW Health, in consultation with Local Government NSW and SafeWork NSW, to give specific consideration to the inclusion of content that assists councils to make appropriate development assessments around sex services premises, from a public health perspective. The Committee also supports any educational initiatives led by NSW Health to assist councils to make sound development assessment decisions around sex services premises from a public health perspective.
- 5.93 In light of the above, the Committee makes the following recommendations:

### Recommendation 2

**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.**

### Recommendation 3

**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.**

### Recommendation 4

**That in reviewing the *NSW Health and Safety Guidelines for Brothels*, 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.**

### Recommendation 5

**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.**

## Chapter Six – Options for reform

- 6.1 This chapter will discuss the options for reform in the sex services industry in NSW, having regard to the planning challenges, the need to protect sex workers, and the need to maintain good public health outcomes discussed in previous chapters of this report. It then outlines the Committee’s preferred options for change to make improvements in this area.

### REFORM OPTIONS

#### No Change – Retention of the Status Quo

- 6.2 As discussed in chapter 2 of this report, under the current model of decriminalisation in NSW, most sex work specific criminal laws have been removed and brothels are legal and only require council planning approval.
- 6.3 This system is well regarded by a number of stakeholders who argued for its retention. The supporters of the current model included current sex workers who were comfortable working within a framework that recognised their profession and allowed them to access various services without fear of discrimination or reprisal. The public health benefits of the current model were also repeatedly stressed. The following statement from Scarlet Alliance provides a good summary of the argument for retention of the status quo:
- Decriminalisation is recognised worldwide as a best practice approach to regulating the sex industry. In NSW, decriminalisation has delivered exceptional public health outcomes, minimal opportunities for police corruption, increased transparency, improved safety for sex workers, and far higher levels of compliance than any other model of regulation.<sup>376</sup>
- 6.4 These benefits have been discussed previously in this report and are discussed further, later in this chapter.
- 6.5 However, concerns were also raised with the operation of the current model and these problems have been identified in previous chapters of this report. The most common and problematic concerns are re-iterated below.

#### *Sex service Premises Operating Without Development Approval*

- 6.6 As outlined in chapter three of this report, many councils have indicated that there are significant numbers of premises in their Local Government Areas [LGAs] offering sexual services without the development approval to do so. Indeed, there is some evidence of association, and perhaps common ownership, between massage parlours that appear to be offering sexual services in premises that do not have the required approvals, and other massage parlours across Sydney. As outlined in chapter four, there is also evidence that some karaoke bars are employing illegal migrant workers to offer sexual services without development consent.

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<sup>376</sup> Submission 133, Scarlet Alliance, p8.

- 6.7 All this suggests that a substantial underground sex services industry is operating in NSW that is not visible to local councils or other authorities (such as Police, SafeWork NSW, Health, Immigration and the Australian Tax Office).
- 6.8 Councils indicated to the Committee that this can increase a number of risks around the sex services industry, as examined earlier in this report, including:
- Risks to public health and residential amenity<sup>377</sup>
  - Risks to amenity and community more generally<sup>378</sup>
  - Lower health standards within unauthorised premises<sup>379</sup>
  - A greater likelihood of sex worker exploitation and trafficking, particularly if premises also have links to organised crime<sup>380</sup>
  - Sex workers failing to report unsafe working conditions due to concerns that they themselves are behaving outside the regulatory framework<sup>381</sup> and
  - Unfair competition to premises which operate with development consent and comply with locational restrictions and incur compliance costs.<sup>382</sup>

#### *Difficulties for Councils in Enforcing the Current Laws*

- 6.9 As is also discussed in detail in chapter three of this report, related to this problem of sex services premises operating without development approval, is the fact that under the current system councils are finding it difficult to close them down.
- 6.10 Councils provided evidence that the avenues available to them to take action against unauthorised brothels were ineffective. Many councils agreed with Ashfield Council who argued that, 'current legislative arrangements in place for councils to close down an unauthorised brothel can be costly, time consuming and difficult to prove'.<sup>383</sup> The Committee also heard evidence to indicate that investigating these matters and assembling admissible evidence to prosecute is not an area of expertise for council officers.<sup>384</sup>
- 6.11 To protect council workers, some councils now hire private investigators to perform undercover operations at premises suspected of offering sexual services

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<sup>377</sup> Submission 63, City of Sydney Council, p2.

<sup>378</sup> See Mr Evans, Transcript of Evidence, pp53, 59&60 which indicates unauthorised sex services premises are operating in Hornsby within 50 metres of a high school.

<sup>379</sup> Submission 112, confidential, p1 (quoted with permission).

<sup>380</sup> Submission 112, confidential, p2 (quoted with permission).

<sup>381</sup> Submission 138, Leichhardt Municipal Council, p3.

<sup>382</sup> Submission 112, confidential, p2 (quoted with permission).

<sup>383</sup> Submission 79, Ashfield Council, p5.

<sup>384</sup> Mr Streater, Transcript of Evidence, p9.

without proper development consent. This is not seen as a preferable option as it involves high costs to ratepayers.<sup>385</sup>

- 6.12 Similarly, Hornsby Shire Council provided evidence that, owing to a decision in a recent case, even hiring private investigators is not providing sufficient evidence to proceed against unauthorised premises, such is the prohibitively high burden of proof.<sup>386</sup> This relates back to another problem identified with the current system for the regulation of brothels – the fact that the law surrounding brothels is contained in a number of pieces of legislation, creating confusion and difficulties with implementation.
- 6.13 As discussed in chapter three, one of the barriers encountered by Hornsby Shire Council in taking action against unauthorised premises in this case was the definition of ‘brothel’ in two different pieces of legislation – the *Restricted Premises Act 1943* and the EP&A Act. The magistrate found the council had only provided evidence that one sex worker was providing sexual services to a private investigator at the relevant premises. The magistrate further found that the EP&A Act requires evidence of more than one worker providing sexual services for premises to be considered to be operating as a ‘brothel’ and dealt with accordingly under the Act. The magistrate therefore dismissed the case.<sup>387</sup>
- 6.14 The Committee also heard that certain remedies provided for under the legislation, such as brothel closure orders, are of limited use because after being served with one an owner/operator can simply move his or her business to another LGA where the local council knows nothing about his/her history.<sup>388</sup>
- 6.15 Finally, while some councils are in a position to undertake proactive inspections of authorised sex services premises to ensure compliance with the law, others only respond to complaints.<sup>389</sup>

#### *Lack of Coordination Between Agencies*

- 6.16 Under the current model of decriminalisation, local councils as the consent authority, are primarily responsible for the regulation of brothels but a number of other agencies also have regulatory responsibility including the NSW Police Force, NSW Health and SafeWork NSW at state level and the Australian Federal Police, Immigration and the Australian Taxation Office at the Commonwealth level.
- 6.17 As discussed earlier in this report, it has been suggested that there is insufficient coordination between all these agencies, and particularly between the state government agencies and local government. This makes it more difficult to take action when unauthorised brothels start to operate or problems are identified with authorised sex services premises.<sup>390</sup>

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<sup>385</sup> Mr Evans, Transcript of Evidence, p56.

<sup>386</sup> See Transcript of Evidence, 1 September 2015, p54; and submission 62, Hornsby Shire Council, pp4&5.

<sup>387</sup> See Transcript of Evidence, 1 September 2015, p54; and submission 62, Hornsby Shire Council, pp4&5.

<sup>388</sup> Mr Evans, Transcript of Evidence, 1 September 2015, pp55&56.

<sup>389</sup> Submission 104, Warringah Council, p1.

<sup>390</sup> Submission 138, Leichhardt Municipal Council, p2.



- 6.18 One council explained that while the NSW Police Force had assisted them when they were investigating breaches in a brothel operating with development consent, they had been of little assistance when the council was investigating an unauthorised brothel.<sup>391</sup>
- 6.19 As is also noted in chapter three of this report, another reason to suggest a lack of coordination between agencies is the fact that sections 16 and 17 of the *Summary Offences Act 1988* are currently not being used to complement the planning laws in relation to the sex services premises that are operating without development consent. The NSW Police Force has primary responsibility for investigating and prosecuting offences under the *Summary Offences Act 1988*<sup>392</sup> but these provisions, which state that it is an offence to use, or allow the use of premises that are held out as a massage parlour for the purposes of prostitution, have not been exercised for at least the last five years.<sup>393</sup>
- 6.20 It was put to the Committee that better coordination between agencies and improved demarcation of roles would avoid duplication of work. There may also be opportunities for information sharing. Warringah Council observed that:

The existing provisions for regulation and compliance provide for unnecessary overlap and inefficiency. For example, when considering public health and safety of sex workers and customers, WorkCover, Local Councils and NSW Health all have regulatory powers. The level of regulation by each agency is a matter of individual priority with little planned coordination...In practice guidelines clarifying demarcation of roles and establishing better coordination and memorandum of understanding for joint working may be sufficient.<sup>394</sup>

#### *Lack of Restriction on Who Can Own or Operate Sex Services Premises*

- 6.21 Under the current system there is no restriction on the type of person who can own or operate sex services premises – no background or probity checks are done.<sup>395</sup> Indeed, there is evidence that unsuitable people may be involved in running sex services premises and the NSW Police Force, Victorian Police, Australian Federal Police and Ballina Shire Council made reference to criminal organisations being involved in the sex services industry.<sup>396</sup> A number of other stakeholders also alerted the Committee to the risks of organised criminal activity<sup>397</sup> and sex trafficking<sup>398</sup> in the sex services industry, and concerns about use of drugs, employment of underage workers and sexual servitude involving sex services premises in NSW were also raised.<sup>399</sup>
- 6.22 Add to this the fact that there is no central register of authorised sex services premises across the state, and that there is evidence many businesses are

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<sup>391</sup> Mr Evans, Transcript of Evidence, p57.

<sup>392</sup> Mr McKnight, Answers to Questions Taken on Notice, 1 September 2015, p2.

<sup>393</sup> Mr McKnight, Transcript of Evidence, p2.

<sup>394</sup> Submission 104, Warringah Council, p1.

<sup>395</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>396</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp14-15; Senior Sergeant Ross, Transcript of Evidence, p23; Commander McEwen, Transcript of Evidence, p65; and submission 8, Ballina Shire Council, p6.

<sup>397</sup> Submission 112, confidential, p2 (quoted with permission) and submission 163, Collective Shout, p3.

<sup>398</sup> Commander McEwen, Transcript of Evidence, p63.

<sup>399</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp12-14.

operating without planning approval, and there is the potential for serious consequences that go completely unchecked by the authorities.<sup>400</sup>

- 6.23 A common suggestion to protect the sex services industry from the influence of criminal elements was the introduction of background and probity checks for people who wish to run a sex services premise.<sup>401</sup> This concept is discussed in chapter four, and later in this chapter.

## The Nordic Model

- 6.24 As has been outlined previously in chapter two of this report, the Nordic model is one option of regulating the sex services industry which was raised during this inquiry. The basic premise of the Nordic model is that people providing sexual services are decriminalised while pimping, brothel owning and the purchase of sex are criminalised.<sup>402</sup> This model has been adopted in Sweden, Norway, Iceland, Northern Ireland and Canada.<sup>403</sup>

- 6.25 According to proponents of this model, it aims to protect women, who make up the majority of sex workers, and is based on the concept that 'prostitution is a form of violence against women and, more broadly, that it undermines women's equality'.<sup>404</sup> Ms Jessica Megarry, Member, Executive Committee, Coalition Against Trafficking in Women explained to the Committee:

...it is a question of addressing the inherent power relations in the sex industry, which I think are very visibly apparent...Men have a choice 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...prostitution is in and of itself a form of harm.<sup>405</sup>

- 6.26 Stakeholders who argued for this model also brought studies to the attention of the Committee indicating links between sex work and poverty, disadvantage and mental health issues.<sup>406</sup>
- 6.27 The aim of the model is to reduce demand for prostitution by instilling a fear of punishment in those who would engage with sex workers. This in turn reduces the profitability and attractiveness of the industry for sex workers and potential managers and operators of illegal sex services premises. Furthermore, this decreased demand reduces the risks and instances of people being trafficked for the purposes of working in the sex services industry.<sup>407</sup>

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<sup>400</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p12.

<sup>401</sup> See for example Deputy Commissioner Kaldas, Transcript of Evidence, p15.

<sup>402</sup> Submission 57, Coalition Against Trafficking in Women, Australia, p4.

<sup>403</sup> Ms Megarry, Transcript of Evidence, p29.

<sup>404</sup> Submission 57, Coalition Against Trafficking in Women, Australia, p4.

<sup>405</sup> Ms Megarry, Transcript of Evidence, p33.

<sup>406</sup> See for example, Ms Wendy Francis, Queensland State Director, Australian Christian Lobby, Transcript of Evidence, p41; and Ms Megarry, Transcript of Evidence, p30.

<sup>407</sup> Submission 57, Coalition Against Trafficking in Women Australia, p7.

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6.28 The Committee also heard that one of the most important elements of the Nordic model is development and funding of comprehensive exit programs to assist people to transition to other work and educational opportunities.<sup>408</sup>

6.29 Advocates of the Nordic model told the Committee that it had been successful in its aims. According to the Australian Christian Lobby:

The new law has been remarkably effective. Sweden's National Board of Health and Welfare has reported significant decreases in the number of women in street prostitution and the number of men buying sex.<sup>409</sup>

6.30 On the other hand, the Committee received evidence that recommended against the introduction of the Nordic model.

6.31 ACON referenced a paper produced by the Program on Human Trafficking and Forced Labour at the Centre for Human Rights and Humanitarian Law of the American University Washington College of Law. The issues paper states that:

... early claims of success of the Swedish model were based on readings of a limited English language summary of the Swedish government's findings and that the government, in fact, 'had no evidence that fewer men are purchasing sex, that fewer women are selling sex and that fewer people are being trafficked into prostitution'.<sup>410</sup>

6.32 Concerns were also raised with the Committee by sex worker advocacy groups that the Nordic model would be detrimental to sex workers. This included:

- Increased discrimination and an unequal treatment under the law in other areas such as rental accommodation<sup>411</sup>
- Increased levels of isolation and social exclusion, leading to increased suicide rates<sup>412</sup>
- Decreased access to social services<sup>413</sup>
- Less safe work practices, including an increase in isolated street work and difficulty in screening clients.<sup>414</sup>

6.33 Other sex workers refuted the premise that they were victims, explaining that sex work was a legitimate career choice. Rachel Wotton, sex worker and member, Touching Base, emphasised that:

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

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<sup>408</sup> Ms Francis, Transcript of Evidence, p41.

<sup>409</sup> Submission 115, Australian Christian Lobby, p7.

<sup>410</sup> Jordan, Ann 'The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering' *Issue Paper #4*, American University Washington College of Law, April 2012, quoted in submission 123, ACON, p9.

<sup>411</sup> Submission 118, Touching Base, p14.

<sup>412</sup> Submission 133, Scarlet Alliance, p24.

<sup>413</sup> Submission 133, Scarlet Alliance, p24.

<sup>414</sup> Ms Fleur de Lys, sex worker and Member, Touching Base, Transcript of Evidence, 11 September 2015, p40.

who have already presented to you? We are independent. We have autonomy over ourselves.<sup>415</sup>

- 6.34 Similarly, Touching Base argued that it was inappropriate to characterise all men who engage with sex workers as criminal and disrespectful towards women. In particular, they provided the example of people with a disability who often have difficulty commencing, conducting and continuing their sexual lives compared to other adults in the community.<sup>416</sup> Under the Nordic model, these people would face criminal charges, as would their carers, support staff or relatives who often help to facilitate their appointments with sex workers.<sup>417</sup> Mr Saul Isbister, President Touching Base, reflected that:

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.<sup>418</sup>

### Committee comment

- 6.35 Given the differing statistics provided by stakeholders on both sides, the Committee is unclear about the efficacy of the Nordic model. The difficulties for sex workers to access support services or talk to the police under this model could have significant negative effects on their wellbeing.
- 6.36 As discussed in chapter two of this report, the Committee has learned throughout its inquiry that there is a diversity of circumstances in which sex workers operate. While the Committee has found that some sex workers do have a high incidence of vulnerability due to a range of factors including poverty and mental health issues, others are highly independent and are able to make a rational choice of their own free will about participating in the sex services industry. Similarly, the Committee heard from clients who highlighted the important work performed by sex workers, including in relation to people with disability.<sup>419</sup>
- 6.37 In short, the Committee finds the Nordic model's characterisation of sex workers as victims and clients as perpetrators to be oversimplified and the Committee does not support the introduction of the Nordic model in NSW. The Committee instead prefers tightening measures to ensure sex workers are not exploited through servitude or unfair work practices.
- 6.38 The Committee is supportive of the model of decriminalisation in NSW and recognises its benefits, particularly in relation to public health. It does not propose making sex work illegal.
- 6.39 However, the Committee does recognise that the current model has some flaws. These are especially apparent in the current proliferation of unauthorised sex services premises in NSW and the difficulties encountered by local councils in

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<sup>415</sup> Ms Wotton, Transcript of Evidence, p39.

<sup>416</sup> Submission 106, Northcott, pp4&5.

<sup>417</sup> Submission 118, Touching Base, p15.

<sup>418</sup> Mr Isbister, Transcript of Evidence, p40.

<sup>419</sup> See for example submission 30, Laura, p1; or submission 40, Mr Charles Callaghan, p1.

investigating and taking action against these businesses, but there are also more general compliance and enforcement issues.

6.40 The Committee is also concerned that there is a criminal element involved in the sex services industry in NSW. This is of particular concern given the increased reports of sexual servitude and the number of sex services premises that appear to be operating without planning approval and in an underground manner. There is no central register of authorised sex services premises across the state. Not only are unsuitable people able to own and operate sex services premises but the authorities can be completely unaware of where they are operating.

6.41 This chapter will now discuss a preferred method of regulation which will aim to rectify these problems.

### PREFERRED REFORM OPTION - A REVISED SYSTEM FOR REGULATING THE SEX SERVICES INDUSTRY IN NSW

6.42 In what follows of this chapter, the Committee will outline its preferred reform option – a revised system for regulating the sex services industry in NSW. In sum, the Committee supports decriminalisation and does not propose to criminalise sex work or owning and operating sex services premises. The Committee will recommend a licensing system for the sex services industry as well as various legislative changes to solve identified problems.

#### The Legislative Environment

6.43 The first area of reform required in the regulation of the sex services industry in NSW is the legislative environment. As discussed above and throughout this report, the laws surrounding the sex services industry in NSW are contained in a number of pieces of legislation, in particular:

- The EP&A Act which regulates brothels as a land use through the planning and development assessment process
- The *Restricted Premises Act 1943* which provides a definition of a brothel and outlines powers to seek an order to close a brothel
- The *Summary Offences Act 1988* which provides a definition of prostitution and provides for offences relating to sex work including advertising sex work and coercion
- The *Crimes Act 1900* which provides for offences relating to sexual servitude and underage sex work.<sup>420</sup>

6.44 Spreading the laws across four pieces of legislation has created confusion and made it more difficult for councils to close down unauthorised sex services premises. Put simply, definitions across the legislation are not consistent. While the *Restricted Premises Act 1943* defines a brothel to include premises used by only one sex worker for the purposes of prostitution, the EP&A Act excludes

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<sup>420</sup> Submission 137, NSW Government, p3.

premises likely to be used for the purpose of prostitution by no more than one sex worker.

- 6.45 As discussed above, these inconsistent definitions resulted in the dismissal of a recent case by the Local Court. In the case, there was evidence a worker had provided sexual services to a private investigator at premises that did not have development approval for such activity. Hornsby Shire Council was seeking to fine the offenders under the EP&A Act for this unauthorised use. In dismissing the council's case, the magistrate found there was no evidence the premises were operating as a 'brothel' within the meaning of the EP&A Act because there was only evidence of one worker providing sexual services.<sup>421</sup>
- 6.46 Another problem with the laws being spread across four pieces of legislation is that they are not being used in a complementary fashion. For example, when taking action against owners and operators of massage parlours that are offering sexual services without development approval, the authorities are not using the *Summary Offences Act 1988* to complement planning laws.
- 6.47 Sections 17 and 18 of the *Summary Offences Act 1988* provide that it is an offence to use, or allow the use, of premises that are held out as a massage parlour for the purposes of prostitution. Notwithstanding this, and the evidence that a number of massage parlours are providing sexual services in NSW without development approval,<sup>422</sup> these summary offences have not been prosecuted for the last five years.<sup>423</sup>
- 6.48 In light of the above, the Committee makes the following findings and recommendation about the legislative environment:

#### FINDING 21

**The current legislative environment governing the sex services industry in NSW is contained in many pieces of legislation meaning that there is inconsistency in the definition of key concepts such as the meaning of 'brothel' and enforcement of the current laws is confusing and therefore difficult to implement.**

#### FINDING 22

**There would be greater harmony in the legislative environment governing the sex services industry in NSW if the provisions dealing with the sex services industry that are contained in the *Restricted Premises Act 1943*, the *Summary Offences Act 1988* and the *Crimes Act 1900* were consolidated into one piece of legislation ('the Consolidated Act'), that the *Environmental Planning and Assessment Act 1979* (which would remain separate), could interact with.**

#### Recommendation 6

**That the NSW Government conducts a review of the legislation governing the sex services industry with a view to creating the Consolidated Act.**

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<sup>421</sup> See Transcript of Evidence, 1 September 2015, p54; and submission 62, Hornsby Shire Council, pp4&5.

<sup>422</sup> See the Committee's discussion and findings in chapter 3 in this regard.

<sup>423</sup> Mr McKnight, Transcript of Evidence, p2.

- 6.49 Further, the Committee considers that the *Summary Offences Act 1988* contains important protections of the community in relation to the sex services industry. These are outlined in detail in chapter two and include offences for coercion; street workers soliciting clients in the vicinity of a dwelling, school, church or hospital (or vice versa); public acts of prostitution; and of course the provisions discussed above that state it is an offence to use, or allow the use of premises that are held out as a massage parlour (or certain other facilities) for the purposes of prostitution. These provisions should remain and be included in the Consolidated Act.
- 6.50 However, changes need to be made to the advertising provisions. Section 18 of the *Summary Offences Act 1988* provides that it is an offence punishable by a maximum fine of \$660 or three months in prison for a person to publish an advertisement that any premises are used or available for use, or that a person is available, for the purposes of prostitution. Even so, it is common knowledge that some newspapers, other publications and websites routinely disobey this law, indicating that it is not enforced.
- 6.51 The Committee notes that New Zealand's *Prostitution Reform Act 2003* contains more sensible advertising provisions. Section 11 of that Act provides that advertisements for commercial sexual services cannot be broadcast on radio or television, or screened at a public cinema, or published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical.
- 6.52 Regarding the internet, in New Zealand, businesses that use the internet to advertise or sell R18 adult products or services are also required to follow a minimum standard to ensure that they are complying with the *Films, Videos and Publications Classification Act 1993* and the *Films, Videos and Publications Classification Act 1994* and other applicable legislation. The standards apply to businesses:
- Located in New Zealand that operate or upload content to an adult website hosted in New Zealand or overseas; or publish adult content provided by another person (who is based in New Zealand or overseas) on a New Zealand-based adult website; or
  - Businesses located overseas and who operate or upload content to a New Zealand-based adult website.
- 6.53 The standards provide that website operators must take reasonable steps to prevent minors' exposure to age-restricted material. In brief, as a minimum requirement, website operators must ensure the following with regard to their website:
- It must have a landing page with a clearly visible age-restricted content warning. The landing page is the page that viewers must see first before they can see any pages that contain age-restricted content
  - The landing page must include an R18 content warning notice and an option to view the website or to exit

- There must be appropriate classifications and labelling for all content including text, images, video and streaming video
- There must be information promoting safer sex practices
- The website must not include any objectionable content or offer or advertise anything that implies the availability of sexual services without the use of a condom.<sup>424</sup>

6.54 Having regard to the system of regulation for brothels recommended below, there is scope for new rules relating to advertising (including advertising on the internet) to require all brothel workers to quote the registration number of the sex work premises that they are operating from. This will allow the regulatory authorities to better identify those premises that are operating outside of the regulatory system. Home based and escort workers will be exempt but that will not diminish the assistance that such a provision would provide to the regulators.

6.55 In light of the above, the Committee makes the following finding and recommendation:

### FINDING 23

**The *Summary Offences Act 1988* contains a number of important protections of the community in relation to sex work which should be included in the Consolidated Act.**

### Recommendation 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 *Summary Offences Act 1988*; and consider instituting advertising provisions along the lines of those contained in section 11 of New Zealand's *Prostitution Reform Act 2003* and having regard to the New Zealand provisions relating to internet advertising of adult products and services.**

### Recommendation 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.**

## Decriminalisation and Regulation

6.56 As discussed in chapter two of this report, in 1995 in NSW, most sex work specific criminal laws were removed and the police were removed as industry regulators. Brothels became legal and only required council planning approval to operate. This system is referred to as 'decriminalisation'.

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<sup>424</sup> New Zealand Department of Internal Affairs website, <http://www.dia.govt.nz/Censorship-Guidance-for-operators-of-R18-adult-websites>, viewed 23 September 2015.



- 6.57 The Committee supports decriminalisation of the sex services industry, and in making changes to the system for regulating it, it does not propose to re-criminalise sex work or the owners and operators of sex services premises.
- 6.58 The Committee notes the evidence of health experts to the inquiry that decriminalisation should remain because it has facilitated favourable health and wellbeing outcomes. This is discussed in more detail in chapter five of this report, and summarised in the following evidence of Mr Nicholas Parkhill, Chief Executive Officer of ACON:
- Decriminalisation has facilitated the good sexual health outcomes for sex workers that we have seen in New South Wales, with high rates of condom use, low rates of STIs and no reported transmission of HIV during commercial sex work.
- It has also facilitated an enabling environment in which sex workers have access to the NSW Police Force, WorkCover, the Australian Taxation Offices, health services, amongst others, without fear of repercussions from organisations that often play a regulatory role in other licensed and criminalised frameworks.<sup>425</sup>
- 6.59 In short, as found in chapter five of this report, it is probable that decriminalisation has made it easier for sex workers to obtain regular STI checks at medical clinics and to obtain information about safe sexual practices. The Committee heard that under decriminalisation most health workers have excellent access to brothels and sex workers because brothel owners and most sex workers are not worried about criminal sanctions, and have no need to evade the authorities.<sup>426</sup>
- 6.60 As also found in chapter five, it is difficult to know the percentage of sex workers that are covered by the official data on STIs. Nonetheless, it is somewhat reassuring that the official data indicates that the rate of STIs amongst sex workers in NSW is low with Dr Kerry Chant, Chief Health Officer and Deputy Secretary of Population and Public Health, NSW Health telling the Committee:
- 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 NSW 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.<sup>427</sup>
- 6.61 The Committee acknowledges the excellent work that has been done in relation to HIV and other STIs in NSW. It considers that re-introducing any kind of system that included criminal penalties for sex work or owning and operating sex services premises may jeopardise this work by making sex workers reluctant to seek health and safety services for fear of criminal sanction. In this sense, decriminalisation should remain in NSW. In light of this, the Committee makes the following finding:

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<sup>425</sup> Mr Parkhill, Transcript of Evidence, p19. Note also other experts who gave evidence to the inquiry about the benefits of decriminalisation, see for example submission 133, Scarlet Alliance, p8.

<sup>426</sup> Professor Donovan, Transcript of Evidence, p40.

<sup>427</sup> Dr Chant, Transcript of Evidence, p12.

## FINDING 24

**The system of decriminalisation of the sex services industry in NSW should remain because medical and other experts conclude that it has provided favourable public health outcomes.**

### Licensing System

6.62 In what follows of this chapter, the Committee will outline a licensing system that it recommends to regulate the sex services industry in NSW.

#### *A Licensing System – the Victorian Experience*

- 6.63 At the outset, the Committee stresses that it does not support a licensing system exactly along the lines of the one that currently exists in Victoria. The Committee supports licensing and regulation only in so far as it is necessary to deal with those who unfairly exploit sex workers through servitude or otherwise and in order to effectively deal with organised crime.
- 6.64 The Committee does not wish to replicate some of the more troubling aspects of the Victorian regulatory system. During its inquiry the Committee received a lot of evidence in relation to the Victorian system of licensing and regulation. As outlined in earlier chapters of this report, on 28 August 2015 the Committee met in Victoria with public officials, industry and health representatives, Ms Fiona Patten MLC, and Ms Jane Green of the Vixen Collective, to discuss the Victorian system of regulation. The Committee also heard evidence from the Sex Industry Coordination Unit of Victoria Police at its public hearing on 11 September 2015.
- 6.65 Under section 22 of the *Sex Work Act 1994 (Vic)* a person must hold a licence to carry on a business as a sex work service provider (a brothel or escort agency) in Victoria. If a sex work service provider operates unlicensed in Victoria he or she is subject to a maximum penalty of five years gaol or a fine of 1200 penalty units – currently \$184,204<sup>428</sup> or both (section 22).
- 6.66 When open for business, all brothels in Victoria must be supervised by either the licensee or a person who has been approved to be a brothel manager by the Business Licensing Authority (section 49). Sections 50 and 51 set out requirements for approval as a manager and circumstances under which the Business Licensing Authority must refuse to approve or renew an application to be a manager. Again, these are discussed in chapter two and later in this chapter.
- 6.67 Small owner/operators are exempt from this licensing requirement (that is, people operating a brothel or escort agency where only they, or only they and one other person, will work as a sex worker in that business (section 23)).
- 6.68 To obtain an exemption from licensing requirements, small owner/operators must be listed on a register maintained by the Business Licensing Authority Victoria, and submit a current planning permit that allows the premises to be

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<sup>428</sup> See Victorian Department of Justice and Regulation website:  
<http://www.justice.vic.gov.au/home/justice+system/fines+and+penalties/penalties+and+values/> viewed 6 October 2015.

used for the purposes of prostitution.<sup>429</sup> Failure to register the required particulars in relation to the business will result in a maximum penalty of 30 penalty units – currently a \$4,550 fine<sup>430</sup> (section 24).

- 6.69 Street prostitution is also illegal in Victoria (sections 12 and 13) and maximum penalties range from fines of ten penalty units (currently \$1,516.70<sup>431</sup>) to six months gaol.
- 6.70 The reason the Committee does not support a system of licensing and regulation exactly along the lines of the system that currently exists in Victoria is that, as it has emphasised, the Committee supports decriminalisation. It does not support a return to a system that includes criminal penalties for sex work or brothel keeping. In contrast, the Victorian system involves penalties, including gaol terms, for street work (regardless of whether it is in the vicinity of a school, place of worship etc). It also involves significant criminal penalties, of up to five years gaol, for people who operate sex services premises unlicensed.
- 6.71 The Committee also notes that under the system of licensing exemption for small owner/operators in Victoria, small owner/operators are required to be listed on a register. As these small owner/operators are, by definition, sex workers themselves, this is a system of registration for some of Victoria's sex workers. The Committee does not support registration of sex workers.
- 6.72 During its inquiry, the Committee heard evidence from the NSW Police Force in support of a register for sex workers. Deputy Commissioner Kaldas stated that a register would be useful to ensure that issues that could arise involving sex services premises, for example, use of drugs, employment of underage workers and sexual servitude, do not occur.<sup>432</sup>
- 6.73 The Committee also notes in this regard evidence it received about criminal organisations being involved in the sex services industry,<sup>433</sup> the risks of organised criminal activity<sup>434</sup> and sex trafficking.<sup>435</sup>
- 6.74 However, as discussed in chapter five of this report, the Committee also heard evidence that, like criminalising sex work, registering sex workers would be likely to have serious consequences for their health and wellbeing, and for public health more generally. Professor Basil Donovan, Professor and Head, Sexual Health Program, Kirby Institute, indicated that a register would reduce the access health workers currently have to sex workers:

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<sup>429</sup> Australian Business Licence Information Service website, <https://ablis.business.gov.au>, viewed 23 September 2015.

<sup>430</sup> See Victorian Department of Justice and Regulation website: <http://www.justice.vic.gov.au/home/justice+system/fines+and+penalties/penalties+and+values/> viewed 6 October 2015.

<sup>431</sup> See Victorian Department of Justice and Regulation website: <http://www.justice.vic.gov.au/home/justice+system/fines+and+penalties/penalties+and+values/> viewed 6 October 2015.

<sup>432</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp12-14.

<sup>433</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp14-15; and submission 8, Ballina Shire Council, p6.

<sup>434</sup> Submission 112, confidential, p2 (quoted with permission); and Submission 163, Collective Shout, p3.

<sup>435</sup> Commander McEwen, Transcript of Evidence, p63.

Of course no one wants to go on a lifelong register, so immediately everyone evaporates into the bushes.<sup>436</sup>

6.75 Dr Phillip Read, Acting Director, Kirketon Road Centre, South Eastern Sydney Local Health District explained further:

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

**Dr Read:** I think it would be an unmanageable disaster. From a public health perspective, and again, I speak to a certain part of the sex industry that Kirketon Road sees, we have trouble sometimes getting people to register for Medicare, let alone a brothel or sex worker list. The other thing is...There are many people that do intermittent sex work for various reasons and are highly unlikely to register and deregister and register and deregister every time the situation that takes them towards sex work occurs.<sup>437</sup>

6.76 In her evidence to the Committee, Ms Janelle Fawkes, CEO, Scarlet Alliance provided some more background for why sex workers would be very reluctant to register:

This very real fear of stigma and discrimination is also the reason that registration of sex workers has failed wherever trialled. When there is the potential to lose custody of your children or to be excluded from professions you are studying to be part of, or from travelling to other countries, for example, the United States of America, simply because you have worked as a sex worker, people avoid having their real name attached to their work and weighing up the risk, cannot register.<sup>438</sup>

6.77 In sum, the Committee does not support creating any register of sex workers in NSW, along Victorian lines or any other. However, the Committee does support creating a central register of sex services premises through a licensing system to ensure proper regulation and to prevent the issues outlined by Deputy Commissioner Kaldas and others going unchecked, and this is discussed further below.

6.78 In light of the above, the Committee makes the following recommendation:

### Recommendation 9

**That NSW not introduce a system of regulation of the sex services industry similar to that in Victoria because:**

- **Victoria's system is not decriminalised and the Committee supports decriminalisation;**
- **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;**

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<sup>436</sup> Professor Donovan, Transcript of Evidence, p39.

<sup>437</sup> Dr Read, Transcript of evidence, p39.

<sup>438</sup> Ms Fawkes, Transcript of Evidence, p2.

- **Medical experts consider the registration of sex workers would probably have negative public health outcomes;**
- **Registration of sex workers is not otherwise justified by the small benefits to be derived from such a system.**

*Reasons For, and Coverage of, a Licensing System for NSW*

6.79 As outlined earlier in this chapter, despite good points, there are a number of issues with the current system for regulating sex services premises in NSW. The Committee considers a licensing system would help address these issues.

6.80 To briefly re-cap, the issues with the current system are:

- A substantial section of the sex services industry in NSW is operating in premises for which there is no planning or development approval. Councils have not been given adequate tools to deal with this problem, are finding it difficult to investigate and take action against these businesses, and in doing so, it is costly, time-consuming and lacking in effectiveness.
- The sex services industry in NSW has no lead agency which is able to deal with the most serious issues in the industry.
- The lack of regulation in the sex services industry in NSW is ripe for sexual servitude and other worker exploitation and facilitates the participation of organised criminal elements because there is little deterrent for these undesirable activities.
- There is a lack of coordination between agencies responsible for regulation.
- There is no central register of authorised sex services premises across the state. Not only are unsuitable people able to own and operate sex services premises but the authorities can be completely unaware of where they are operating.

6.81 A licensing system would assist to resolve these issues by:

- Creating a state wide lead agency responsible for regulating and monitoring the industry
- Increasing visibility of sex services premises to the authorities by creating a central register of sex services premises
- Improving compliance and enforcement action taken against unauthorised businesses – state government authorities could take a lot of the responsibility for compliance and enforcement off under-resourced, ill-equipped councils. There would also be greater coordination between agencies with a macro state wide focus rather than a micro local government focus

- Providing that only fit and proper persons could own or operate sex services premises
  - Improving investigative, entry and enforcement powers.
- 6.82 Under the system, all premises where sex work takes place would have to be licensed except home occupation (sex services) as currently defined under the Standard Instrument Principal Local Environment Plan.
- 6.83 As outlined in chapter three, the Standard Instrument Principal Local Environment Plan defines home occupation (sex services) to mean the provision of sex services in a dwelling that is a brothel, or a building that is a brothel and is ancillary to such a dwelling by not more than two permanent residents of the dwelling and that does not involve (a) the employment of persons other than those residents, or (b) interference with the amenity of the neighbourhood by reason of emission of noise, traffic generation or otherwise, or (c) the exhibition of any signage, or (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items by retail; but does not include a home business or sex services premises.
- 6.84 The Committee sees no need to license home-based sex work. Unlike unauthorised commercially-based businesses, council complaints concerning home-based premises are rare.<sup>439</sup> Similarly, licensing home businesses would have the unintended consequence of creating a register of some sex workers in NSW.
- 6.85 Under the Committee's proposed regulatory regime, in order for a sex services premises to obtain a licence, provision similar to the *Tattoo Parlours Act 2012* would apply. The licensee would have to have planning permission for the premises to operate. The licensee would be subject to background checks by the police and would have to be a fit and proper person. Powers of entry and enforcement of the licensing system would allow the police more easily into licensed premises and premises which are unlicensed but suspected of operating sex services. This greater visibility of regulatory enforcement should be a deterrent to sex slavery and other exploitation of workers.
- 6.86 The Committee heard evidence that the true owners and operators of brothels are often disguised. As a consequence, all non sex workers in a premises will have to be identified to the regulator.
- 6.87 A licensing system will enable there to be a macro overview of the industry state wide. Co-ordination protocols between local, state and federal government agencies can be co-ordinated by a body similar to the Victorian Police's Sex Industry Co-ordination Unit.
- 6.88 For the purposes of any future licensing system there should also be a uniform definition of 'brothel' across all legislation. The problems caused by inconsistent definitions have been discussed above, particularly as regards the difficulty of proving unauthorised premises are operating as a brothel where it has been

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<sup>439</sup> See Transcript of Evidence, 11 September 2015, pp47&48; and Mr Baum, Answers to Questions Taken on Notice 11 September 2015, p1.

found councils must provide evidence that more than one worker is providing sexual services at the premises to be able to take action against the owner/operators for operating as a brothel.

- 6.89 Similarly, owing to the fact that some licensees may wish to maintain privacy with respect to their occupation, the register of licensed brothels to be created under the new system should not be made public and privacy protocols should be established for its management. This holds true for any register that is created under the new system involving other individuals, such as brothel managers (see discussion later in this chapter).
- 6.90 In light of the above, the Committee makes the following recommendations.

#### Recommendation 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.**

#### Recommendation 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.**

#### Recommendation 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.**

#### *Fit and Proper Person Test Under the Licensing System*

- 6.91 To prevent a criminal element operating in the sex services industry, one of the most important features of the proposed licensing system is a 'fit and proper person test'. A person would have to pass this test if he or she is to carry on the business of a brothel.
- 6.92 Both Victoria and Queensland have 'fit and proper person tests' for people who wish to obtain a licence to carry on the business of a brothel in those states. There is much overlap in what both states look for in determining an application – the person's character, whether they have committed certain criminal offences, whether they have been disciplined under the licensing scheme (e.g. had a licence cancelled), whether they are financially viable, whether they have a business plan to ensure the safety of workers and who their 'associates' are.
- 6.93 In Victoria, section 37 of the *Sex Work Act 1994* sets out the circumstances under which a person must be refused a licence. These include:

- Where a person is considered 'not a suitable person' to carry on the business of a sex work service provider. Section 38 defines suitability to mean:
  - Of good repute having regard to character, honesty and integrity
  - Having no known associates who are not of good repute, having regard to character, honesty and integrity
  - Having the financial resources to ensure the financial viability of the business
  - Having in place safety arrangements for workers
  - Having sufficient business ability to establish and maintain a successful business
  - Having a business structure transparent enough to ensure all associates of the applicant, whether natural persons or a body corporate, are readily identified.
- Where a person has been convicted or found guilty of a 'disqualifying offence' (an indictable offence) where granting the licence would not be in the public interest having regard to the nature of the offence and the date on which it was committed.
- Where the person has had a licence cancelled in the last five years.
- Where an associate of the person (either another person or a body corporate) has been found guilty of a disqualifying offence in the last five years.
- Where a person is an insolvent under administration.

6.94 A person must also be 18 years or over to apply for a licence in Victoria (section 33).

6.95 An 'associate' of a person is defined as a relative, other than an uninvolved relative, a business partner, or a person who has entered into a business arrangement or relationship or lease with the applicant in respect of a brothel (section 37). An 'uninvolved relative' is a person who is not, and never has been involved in any business with the applicant involving sex work, or does not propose to be involved in the business that the applicant proposes to conduct (section 3). The 'uninvolved relative' exemption would allow significant avoidance of the legislation and should not be included in any NSW regulatory system.

6.96 A person is an 'associate' of a body corporate where he or she is the director or secretary of the body corporate, a relative (other than an uninvolved relative) of such a director or secretary, or otherwise has a financial interest or power or control over the body corporate (see section 37).



- 6.97 The licensing requirements related to the financial status of the applicant, where his/her business funding is coming from, and who the applicant's associates are, are in place to prevent a person with no criminal record applying for a licence as a front for a criminal person or organisation.<sup>440</sup>
- 6.98 When open for business, all brothels in Victoria must be supervised by either the licensee or a person who has been approved to be a brothel manager by the Business Licensing Authority (section 49). Similar to owner operators, managers of brothels in Victoria must be refused approval to manage a brothel in the following circumstances (see section 51):
- Where he or she is not of good repute having regard to honesty, character and integrity
  - Where he or she has been convicted or found guilty of a 'disqualifying offence' (an indictable offence) where granting the licence would not be in the public interest having regard to the nature of the offence and the date on which it was committed
  - Where he or she has had an owner/operator licence cancelled in the last 5 years
  - Where an associate of the person has been found guilty of a disqualifying offence in the last 5 years
  - Where he or she is an insolvent under administration.
- 6.99 An application for a licence must be accompanied by a national criminal history check, a business plan, proof of a planning permit for the business, cash flow projections, information about the applicant's financial status and information about where the funding for his or her business is coming from.<sup>441</sup>
- 6.100 As outlined in chapter two and later in this chapter, to manage this system of regulation, there is significant interplay between the Business Licensing Authority, which manages the licensing process – considering applications, issuing or refusing licences, and imposing conditions – and other agencies. Most relevantly for the fit and proper person test, the Business Licensing Authority provides details of licence applications to Victoria Police which provides investigation and probity reports on all licensees.<sup>442</sup> Similarly, in considering an application for a licence, the Business Licensing Authority can conduct any inquiries it thinks fit, require an applicant to provide any further information that the Business Licensing Authority thinks fit, and seek advice and information on the application from any other person, body or source that the Business Licensing Authority thinks fit.<sup>443</sup>

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<sup>440</sup> Discussions with officials from the Business Licensing Authority, Victoria, Committee Site Visits 28 August 2015.

<sup>441</sup> Discussions with officials from the Business Licensing Authority, Victoria, Committee Site Visits 28 August 2015.

<sup>442</sup> Discussions with officials from the Business Licensing Authority, Victoria, Committee Site Visits 28 August 2015; see also section 36 *Sex Work Act 1994* (Vic).

<sup>443</sup> Section 36A *Sex Work Act 1994* (Vic).

6.101 Like Victoria, Queensland also has a licensing system for the sex services industry that incorporates a fit and proper person test. To operate a sex services premise, a person must apply to the Prostitution Licensing Authority for a licence. Section 8 of the *Prostitution Act 1999* sets out the circumstances under which a person is ineligible for a licence including where he or she:

- Is a minor
- Has been convicted of a disqualifying offence
- Is an insolvent under administration
- Has had a licence or other authority under the Act (to operate or manage a brothel) cancelled.

6.102 Schedules 1 and 2 of this Act set out the meaning of a ‘disqualifying offence’ including: official corruption; unlawful homicide; attempt to murder; rape; extortion; kidnapping; prostitution offences that relate to a child or person with impairment of the mind; and certain offences under the *Migration Act 1958* (Cth), for example, illegally bringing non-citizens into Australia, harbouring illegal entrants, offences in relation to work and offences in relation to visas.

6.103 Similarly, under section 16 of the Act the Prostitution Licensing Authority must refuse a licence application if satisfied that the applicant is not a suitable person to operate a licensed brothel and section 17 provides that the Authority must consider all relevant matters including the following in deciding whether someone is suitable:

- The applicant’s reputation having regard to character, honesty and integrity;
- Whether the applicant has been convicted of an offence against the *Prostitution Act 1999* or a corresponding law;
- Whether the applicant has been convicted of an indictable offence;
- Whether the applicant has been convicted of an offence the circumstances of which constituted the running of a brothel;
- Whether the applicant has been charged with any offence of a sexual nature that involves violence, intimidation, threats or children;
- Whether the applicant has, or is or will be able to obtain, financial resources that are adequate to ensure the financial viability of the brothel;
- Whether the applicant will have in place arrangements to ensure the safety of the persons directly involved in providing prostitution;
- Whether the business structure for the operation of the brothel is sufficiently transparent to enable all associates of the applicant, whether individuals or bodies corporate, to be readily identified;

- Whether the applicant is an associate of a person who has been convicted of a disqualifying offence or an indictable offence; and
- Whether the applicant is an associate of a body corporate, an executive officer of which has been convicted of a disqualifying offence or an indictable offence.

- 6.104 Section 6 of the Act provides that a person is an ‘associate’ of an individual if the person is a member of the individual’s family; or has entered into a business arrangement or relationship with the individual for the provision of prostitution; or is the owner or lessor, either alone or jointly, of premises used or proposed to be used for the provision of prostitution under a licence. Section 6 also provides that a person is an associate of a body corporate if the person is an executive officer of the body corporate.
- 6.105 As is the case in Victoria, the Prostitution Licensing Authority also provides details of licensing applications to the Queensland Police Service and criminal history, family and associates are checked.<sup>444</sup> Similarly, the Authority may seek advice and information on the application from any other entity it considers appropriate and require the applicant to give further information it considers relevant to the application.<sup>445</sup>
- 6.106 As is also the case in Victoria, a person must also apply for approval (a certificate) if he or she wishes to manage a brothel. The grounds that make people ineligible to apply for a manager’s certificate, as well as the reasons that one must be refused, are similar to those that apply regarding an operator’s licence in Queensland (see sections 34 and 41 and 42 of the Act).
- 6.107 Importantly, in both Victoria and Queensland, the relevant authorities must not decide that an applicant for a licence is not a suitable person to operate a brothel simply because he or she has worked as a sex worker.<sup>446</sup>
- 6.108 The Committee considers that under the proposed licensing system for NSW, people wishing to obtain a licence to operate a brothel should have to pass a ‘fit and proper person test’. The Committee is also of the view that anyone managing a licensed brothel should have to pass such a test.
- 6.109 In formulating the test, regard should be had to the provisions that exist in Victoria and Queensland around criminal offences; previous disciplinary action under the licensing/approval scheme or similar schemes in other jurisdictions; financial viability; a business plan to ensure worker safety; and associates. The focus should be on ensuring that criminal elements do not infiltrate the sex services industry, and an important part of this is vetting an applicant’s associates to ensure that he or she is not acting as a front for a criminal or criminal group. The Committee notes the following evidence of Senior Sergeant Marilyn Ross of the Sex Industry Coordination Unit, Victoria Police, in this regard:

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<sup>444</sup> See section 14 *Prostitution Act 1999* (Qld) and Prostitution Licensing Authority website, <http://www.pla.qld.gov.au/default.htm>, viewed 23 September 2015.

<sup>445</sup> See section 14 *Prostitution Act 1999* (Qld) and Prostitution Licensing Authority website, <http://www.pla.qld.gov.au/default.htm>, viewed 23 September 2015.

<sup>446</sup> See section 38(2) *Sex Work Act 1994* (Vic); and section 17(4) *Prostitution Act 1999* (Qld).

...a person will get a [Victorian] 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.<sup>447</sup>

6.110 Other considerations are whether to automatically disqualify applicants based on specific higher risk offences including money laundering, certain drug offences, sexual violence, migration offences etc, or whether to adopt a blanket ban on all people convicted of offences of a certain level of seriousness, for example, all indictable offences.

6.111 The Committee also notes evidence from Victoria Police suggesting that it may be desirable to have fit and proper person tests, or at least a register, for other employees in sex services premises, not just the owner/operator and manager. On this point, Senior Sergeant Ross told the Committee:

One of the things 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.<sup>448</sup>

6.112 As stated previously, the Committee does not support a register or licensing for sex workers in NSW. However, given the evidence of Victoria Police, it does support fit and proper person checks for any non sex worker employees at brothels.

6.113 In addition, the Committee supports a provision, similar to the ones that exist in the Victorian and Queensland legislation, to provide that people cannot be disqualified from owning, managing or working in a brothel solely on the basis that they have worked as a sex worker (and may have related convictions dating back to the days before decriminalisation).

6.114 Another important consideration is rights of review of a decision to refuse to grant a licence or approval under the proposed new system. The Committee notes that in Victoria these decisions are reviewable by the Victorian Civil and Administrative Tribunal.<sup>449</sup>

6.115 Similarly, under the *Tattoo Parlours Act 2012* (which establishes a system of licensing and regulation for tattoo parlour operators and for body artist tattooists in NSW), a decision to refuse to grant a licence is reviewable by the NSW Civil and Administrative Tribunal.<sup>450</sup> The *Tattoo Parlours Act 2012* was introduced because of concerns that outlaw motorcycle gangs had a stranglehold over the tattoo industry in NSW.<sup>451</sup>

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<sup>447</sup> Senior Sergeant Ross, Transcript of Evidence, p23.

<sup>448</sup> Senior Sergeant Ross, Transcript of Evidence, p28.

<sup>449</sup> Section 56 *Sex Work Act 1994* (Vic).

<sup>450</sup> Section 27 *Tattoo Parlours Act 2012*.

<sup>451</sup> Hon. Anthony Roberts MP, Minister for Fair Trading, Second Reading Speech, *Tattoo Parlours Bill 2012*, 3 May 2012, NSW Parliament website:

<http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/d6079cf53295ca7dca256e66001e39d2/258d8f14bd917601ca2579f20018798e?OpenDocument>, viewed 9 October 2015.

6.116 The Committee further notes that under the tattoo legislation, any review of a refusal decision must not disclose the existence or content of a criminal intelligence report that the authorities have used to reach that refusal decision.<sup>452</sup> Similar to the tattoo licensing system, the Committee is recommending a licensing system for brothels amidst concerns about organised crime. Therefore, while the Committee supports review rights around licensing decisions under its proposed brothel licensing scheme, it notes the non-disclosure of criminal intelligence reports is likely to be important under this scheme too.

6.117 In light of the above, the Committee makes the following recommendations:

### Recommendation 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.**

### Recommendation 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.**

### Recommendation 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.**

### *Administration of the Licensing System and Penalties for Breach*

6.118 The Committee has also given consideration to arrangements for the administration of the proposed brothel licensing system and penalties for breaching the licensing and approval requirements.

6.119 To manage the proposed new system of licensing and regulation, there will need to be significant interplay between a licensing body and other agencies. The licensing body would manage the licensing process including the consideration of applications, issuing or refusing licences and imposing licence conditions. However, while the licensing body would need to carry out investigations and inquiries necessary to determine whether an applicant is suitable to hold a brothel licence, it would also need to refer the application to the NSW Police Force to provide any criminal information or relevant intelligence.

6.120 The Committee notes that the *Tattoo Parlours Act 2012* sets out a useful precedent for the interplay between the licensing body (in this case NSW Fair Trading) and the NSW Police Force. However, the Committee does not comment

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<sup>452</sup> Section 27(4) *Tattoo Parlours Act 2012*.

on the most desirable body to act as a licensing body and this should be determined by the Government.

- 6.121 The Committee also notes that before approving a licence application, it will be necessary for the licensing body to liaise with local government to confirm that the applicant has development approval to operate a brothel at the proposed licensed premises. Local government involvement in the proposed new system is explored further below.
- 6.122 On the subject of licence fees, they would need to be charged to assist with recouping costs. In addition, monetary penalties would have to apply to deter people from operating unlicensed/unapproved. Notwithstanding this, any system of licensing should not have a revenue-raising focus as it should instead focus on identifying premises that are providing sexual services to make sure that the concerns around drug use, employment of underage workers, sexual servitude, sex trafficking and organised crime raised by stakeholders including the NSW Police Force<sup>453</sup> and the Australian Federal Police,<sup>454</sup> and discussed above, are dealt with.
- 6.123 In keeping with the Committee's desire to keep organised criminal elements away from the industry, penalties for operating unlicensed/unapproved would not be monetary only and gaol terms in appropriate cases would apply as they do in Victoria. It is to be stressed that these penalties will only be imposed upon those persons operating sex work premises and not upon the sex workers.
- 6.124 The Committee makes the following recommendations:

#### Recommendation 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').**

#### Recommendation 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 *Tattoo Parlours Act 2012*.**

#### Recommendation 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.**

#### Recommendation 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,**

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<sup>453</sup> See Deputy Commissioner Kaldas, Transcript of Evidence, pp12, 14 and 15.

<sup>454</sup> Commander McEwen, Transcript of Evidence, p63.

**sex trafficking, sexual servitude and other worker exploitation or criminal activity.**

## Recommendation 20

**That penalties for operating unlicensed or unapproved sex work premises under the proposed NSW brothel licensing scheme be monetary and/or custodial.**

### *Planning Approval of Brothels Under the Licensing System*

- 6.125 As discussed throughout this report, under current arrangements, local councils, as the consent authority, are the primary regulators of brothels in NSW.<sup>455</sup>
- 6.126 As noted above, under the proposed new brothel licensing system, the Committee sees a continuing role for local government. The relevant local council would need to have provided planning and development approval for a proposed licensed brothel before the licensing body would consider a licensing application. In short, local councils are best placed to assess what is appropriate in terms of planning and development approvals for brothels in their LGAs.<sup>456</sup>

## Recommendation 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.**

- 6.127 However, the Committee does not consider that councils should continue to be the primary body responsible for compliance and enforcement action around brothels. Where a brothel has council approval, compliance and enforcement responsibilities are likely to be conducted by councils without the involvement of the NSW Police Force unless other criminality is likely to be involved. However, the Committee accepts that a substantial section of the sex services industry in NSW is operating in premises for which there is no planning or development approval. The Committee accepts that council officers are not experts in assembling the admissible evidence needed to stop unauthorised brothels operating; and accepts that this is costing councils a lot of time and money, especially where multiple private investigators are hired. In sum, councils are ill-equipped to deal with unauthorised brothels.
- 6.128 Further, the Committee notes concerns raised during the inquiry about criminal organisations being involved in the sex services industry,<sup>457</sup> sexual servitude<sup>458</sup> and sex trafficking.<sup>459</sup> These concerns are discussed throughout this report, and councils are particularly ill-equipped to address these problems. The Committee

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<sup>455</sup> Submission 137, NSW Government, p4.

<sup>456</sup> As discussed in chapter 3, see submission 142, Local Government NSW, p6 which notes differing histories and social attitudes across LGAs; and submission 63, City of Sydney Council, p3 which indicates that local councils are best placed to assess what is appropriate for their LGAs in terms of brothel location.

<sup>457</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp14-15; and submission 8, Ballina Shire Council, p6.

<sup>458</sup> Deputy Commissioner Kaldas, Transcript of Evidence, pp12&14.

<sup>459</sup> Commander McEwen, Transcript of Evidence, p63.

notes the following from Councillor Nick Berman of Hornsby Shire Council in this regard:

My experience is that less people are worried about what consenting adults do behind closed doors than about brothels attracting a criminal element to their neighbourhoods and being used as fronts for drug dealing and human trafficking. Local government is totally incapable of dealing with these types of issues.<sup>460</sup>

6.129 Similarly, Ballina Shire Council argued that:

...this Council would expect that the majority of local Councils within regional New South Wales do not have the resources or appropriate level of expertise to make determinations in relation to...the involvement of organised crime or criminal motorcycle gangs in the owning and operation of brothels.<sup>461</sup>

6.130 As with unauthorised brothels, the Committee accepts that councils are ill-equipped to deal with the criminal activity that may be associated with some brothels.

6.131 In light of this, in what follows of this chapter, the Committee will make recommendations for enforcement and compliance action under the proposed licensing system to proceed at state, not local, level. This is expected to better address the proliferation of unauthorised brothels in NSW. Any people running businesses, like massage parlours or karaoke bars, that provide sexual services without development approval will be in breach of the licensing system (as well as in breach of the planning laws) and subject to the state level system of enforcement for breach. Councils, who are struggling to proceed against these businesses, will no longer have this role.

6.132 On the subject of criminal activity, the state level enforcement system will also grant authorities the necessary powers to deal not only with premises operating while unlicensed, but also with premises connected with other illegal activity. These include powers of entry, search and seizure, and powers to close premises.

6.133 In addition to a state level enforcement system, there are also recommendations later in this chapter for legislative change that would make it easier to prove an unauthorised brothel is operating, and to hold owners and operators accountable where this is occurring. These legislative changes should proceed regardless of whether the licensing system is implemented as part of the package to combat unauthorised brothels. In addition, recommendations follow for better coordination between agencies including to combat criminal elements.

6.134 However, if the Committee's recommendations for a brothel licensing system are not adopted, then more resources would need to be allocated to local councils to investigate and prosecute unauthorised brothels. The options for better coordination between agencies to combat any criminal elements in the sex services industry and deal with other issues holistically would also need to proceed. In light of this, the Committee makes the following recommendation:

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<sup>460</sup> Submission 150, Councillor Nick Berman, p1.

<sup>461</sup> Submission 8, Ballina Shire Council, p4.



## Recommendation 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.**

### *Enforcement of the Licensing System*

- 6.135 As foreshadowed, the Committee will outline an appropriate enforcement regime to back up the proposed brothel licensing scheme for NSW. For any licensing system to be effective, it must be properly enforced. Otherwise concerns about the creation of an unlicensed underclass of brothels raised by some stakeholders and discussed earlier in this report, could eventuate.<sup>462</sup>
- 6.136 One of the most important elements of the enforcement system should be better coordination between the agencies that have regulatory responsibility for brothels. The Committee is concerned that there is insufficient coordination and accepts that this makes it more difficult to take action when unauthorised brothels start operating or problems are identified with authorised sex services premises. Deputy Commissioner Kaldas told the Committee:
- ...it may well be worthwhile having some sort of coordinating group. Certainly at State level but may well include Federal bodies, meet on a regular systemic basis and look at how they are performing and see where the gaps are and then collectively coming to conclusions so that they own the solution.<sup>463</sup>
- 6.137 Better coordination will be important regardless of whether the proposed licensing system is implemented. For this reason, the Committee makes the following recommendation:

## Recommendation 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.**

- 6.138 With regard to better coordination between local, state and commonwealth agencies, the Committee also notes that there is no dedicated unit of NSW Police focussing on criminal activity within the sex services industry.<sup>464</sup> In contrast,

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<sup>462</sup> See for example submission 123, ACON, p10.

<sup>463</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p20.

<sup>464</sup> See Deputy Commissioner Kaldas, Transcript of Evidence, pp19&21.

Victoria Police has a Sex Industry Coordination Unit. Senior Sergeant Ross, one of the six police officers who works in the Unit, explained its role to the Committee:

The role of our unit is to protect vulnerable people from exploitation... in the sex industry. It is also to identify illegal brothels and/or illegal activity that is associated with the sex industry...<sup>465</sup>

6.139 The Unit strategically manages intelligence and information that it gets from a variety of sources including Commonwealth agencies, Crime Stoppers, police and members of the public and, where appropriate, feeds it back to local area police commands to investigate further.<sup>466</sup>

6.140 The Committee considers NSW would benefit from having a similar unit to manage intelligence and information and makes the following recommendation:

#### Recommendation 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 workers contrary to industrial laws.**

6.141 Given the concerns outlined in this report about sexual servitude and sex trafficking, and the fact the concerns often relate to women from Asian countries and particularly Asian students on student visas, the Committee also considers there should be greater focus on checking and enforcement of visa conditions to stop exploitation.<sup>467</sup> Again, greater coordination between State and Commonwealth agencies is the key to achieving this end and the Committee makes the following finding and recommendation:

#### FINDING 25

**Greater checking and enforcement of visa conditions of sex workers is important to stop sexual servitude or sex trafficking and greater coordination between Commonwealth and State Government agencies is essential to achieve this end.**

#### Recommendation 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**

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<sup>465</sup> Senior Sergeant Ross, Transcript of Evidence, p19.

<sup>466</sup> Transcript of evidence, 11 September 2015, pp21&22.

<sup>467</sup> See Deputy Commissioner Kaldas, Transcript of Evidence, p14 and Commander McEwen, Transcript of Evidence, p63.

**introduced in order to assist with the prevention of sexual servitude, sex trafficking and the exploitation of foreign sex workers.**

- 6.142 Where a breach of any laws is identified by authorities under the proposed brothel licensing system for NSW, a coordinated response is also particularly important. Again, the *Tattoo Parlours Act 2012*, discussed earlier in this chapter, sets a useful precedent, this time for the interplay that should occur between the NSW Police Force and the proposed licensing body around enforcement for breaches. Coordination with local government would also be necessary, as it would remain the lead authority for planning-related breaches.
- 6.143 In short, the Committee considers that under the proposed licensing system, if local government becomes aware of any brothel-related planning breaches in its LGA, it should advise the proposed NSW sex services industry coordination unit of the NSW Police Force who can then liaise with the proposed licensing body to see whether the subject premises are licensed.
- 6.144 If they are unlicensed, or if the NSW Police Force reasonably suspects criminal activity is occurring there, the Police Commissioner should then be able to issue an interim order immediately closing the premises for a period of 72 hours and to apply to a court for a long term closure order (as he or she can currently do under the *Tattoo Parlours Act 2012*).<sup>468</sup> A long term closure order could also be applied for regardless of whether an interim one had been issued.<sup>469</sup> Monetary penalties would apply for continuing to trade contrary to an interim or long-term closure order.<sup>470</sup>
- 6.145 Rights of entry, search and seizure are also important to ensure that licensed premises are complying with all laws, that unlicensed businesses are not operating and that unlicensed businesses that have been detected are not engaging in further illegal activity (for example, sexual servitude). Hence, the Committee also supports rights of entry for authorised officers of the proposed licensing body, and for the NSW Police Force, along the lines set out in sections 30A, 30B and 30C of the *Tattoo Parlours Act 2012* (for authorised officers of NSW Fair Trading and police officers).
- 6.146 That is, under the proposed brothel licensing scheme, authorised officers of the proposed licensing body and police officers should be able to enter at any reasonable time any licensed brothel, or any other premises they reasonably suspect are being used to provide sexual services, without a warrant, to determine whether there have been any breaches of the licensing system.<sup>471</sup>
- 6.147 Where authorised officers reasonably suspect the licensing system has been breached on any premises, they could apply for a warrant to enter the premises and search for evidence of the breach.<sup>472</sup> Powers of entry either with or without a warrant would include requiring owners, managers and employees to answer

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<sup>468</sup> See sections 28 and 29 *Tattoo Parlours Act 2012*.

<sup>469</sup> See section 29(2) *Tattoo Parlours Act 2012*.

<sup>470</sup> See section 30 *Tattoo Parlours Act 2012*.

<sup>471</sup> See section 30A *Tattoo Parlours Act 2012*.

<sup>472</sup> See section 30B *Tattoo Parlours Act 2012*.

any questions relating to licences, registers, books, records or other documents; examining and taking copies of any such documents; and taking photographs, films, audio or video within the premises.<sup>473</sup>

- 6.148 With regard to prosecutions for operating unlicensed premises (applying for long-term closure orders, monetary penalties etc) and breaches of licensing conditions, the police should act as prosecutor. Like under the *Tattoo Parlours Act 2012* the Police Commissioner should also be able to apply for long-term closure orders.
- 6.149 Similar to the situation that resulted in the introduction of the *Tattoo Parlours Act 2012* in NSW, the Committee is recommending a licensing system for brothels amidst concerns about organised crime.<sup>474</sup> Thus the regime under the *Tattoo Parlours Act 2012* provides a useful blueprint for the proposed brothel licensing system. Further, the Committee notes advice from the NSW Police Force that there have been no confirmed findings of police corruption in relation to the enforcement of the *Tattoo Parlours Act 2012*. The present circumstances are very different from the situation in place prior to decriminalisation. The NSW Police Force acknowledges there is always the *potential* for corruption but Police training, systems and supervision are in place to guard against corruption occurring.<sup>475</sup> The Police Integrity Commission is a permanent commission of inquiry which can prevent and discover police corruption. None of the current anti-corruption measures with regard to the NSW Police Force were in place prior to the sex services industry being decriminalised.
- 6.150 In the circumstances, the Committee supports a licensing and enforcement system for the sex services industry that involves the NSW Police Force consistent with the system for tattoo parlours in NSW.
- 6.151 Just as local government would continue to be responsible for making planning and development approval decisions about brothels in their LGAs under the proposed brothel licensing system, the Committee considers that prosecutions around planning related breaches should generally remain the responsibility of local government. While priority should be given to licensing or criminal enforcement by Police, opportunity should be given for complementary or parallel planning enforcement if necessary.
- 6.152 Notwithstanding this, to obviate the need for multiple brothel-related court proceedings, where planning-related breaches have occurred in conjunction with licensing breaches or criminal offences, the NSW Police Force could be given the option of prosecuting all issues in the one set of proceedings. Police could receive instructions on the planning aspect from the relevant local council.

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<sup>473</sup> See section 30C *Tattoo Parlours Act 2012*.

<sup>474</sup> Hon Anthony Roberts MP, Minister for Fair Trading, Second Reading Speech, *Tattoo Parlours Bill 2012*, 3 May 2012, NSW Parliament website: <http://www.parliament.nsw.gov.au/prod/parlment/NSWBills.nsf/d6079cf53295ca7dca256e66001e39d2/258d8f14bd917601ca2579f20018798e?OpenDocument>, viewed 9 October 2015, which indicates the *Tattoo Parlours Act 2012* was introduced amidst concerns that outlaw motorcycle gangs had a stranglehold over the tattoo industry in NSW.

<sup>475</sup> Deputy Commissioner Kaldas, Answers to Questions Taken on Notice, 1 September 2015, p4.

6.153 In sum, in the Committee's view this enforcement regime under the proposed brothel licensing scheme with its focus on coordination, and its powers of entry and closure orders, will help address the range of concerns around brothels including in the areas of planning, criminal activity and worker wellbeing identified throughout this report.

6.154 In addition, on the specific issue of the proliferation of unauthorised premises, the Committee considers steps should be taken to make it easier for authorities to prove that there has been the provision of sexual services at a particular premises. The Committee considers the following provisions should apply:

- Under the current laws, circumstantial evidence can be used to prove premises are operating as a brothel and this should remain the case.<sup>476</sup>
- Solicitation by a sex worker of a person at unlicensed premises should be deemed to be evidence of actual sex work taking place. If the proposed brothel licensing system is not implemented this change should still be made, that is, solicitation at unauthorised premises should be deemed to be evidence of actual sex work taking place.
- Owner/operators should be strictly liable for solicitation or provision of sexual services at their premises, that is, there should be no requirement to prove they knew about it. This is to stop owner/operators claiming a rogue worker offered sexual services without their consent. Again, this change to the law should be made regardless of whether the proposed brothel licensing system is implemented. 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.
- 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 by courts into evidence subject always to the tribunal of fact determining the appropriate weight to be given to the evidence.

6.155 In light of the above, the Committee makes the following recommendations:

### Recommendation 26

**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:**

- **Local government notifies the NSW Police Force Sex Industry Coordination Unit of the suspected planning breaches;**
- **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;**

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<sup>476</sup> See Ms Frame, Transcript of Evidence, p4.

- 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;
- That the NSW Police Force be given the *option* 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.

#### Recommendation 27

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 *Tattoo Parlours Act 2012*.

#### Recommendation 28

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 *Tattoo Parlours Act 2012*.

#### Recommendation 29

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 to the Victorian Police's Sex Industry Co-ordination Unit be established and appropriately resourced.

#### Recommendation 30

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 *Tattoo Parlours Act 2012*.

#### Recommendation 31

That monetary penalties, similar to those that apply under section 30 of the *Tattoo Parlours Act 2012* 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.

### Recommendation 32

**That regardless of whether the proposed brothel licensing system is implemented, in proving sexual services have been provided at a suspected brothel:**

- **Circumstantial evidence should continue to be admissible similar to section 17A of the Summary Offences Act and section 124AB of the *Environmental Planning and Assessment Act 1979* without the need for direct evidence;**
- **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**
- **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.**

### Recommendation 33

**That regardless of whether the proposed brothel licensing system is implemented, owner/operators of unlicensed or unauthorised brothels be held strictly liable for 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.**

### Recommendation 34

**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 *Tattoo Parlours Act 2012* when exercising those powers.**

### Recommendation 35

**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.**

- 6.156 Finally, the Committee considers that, if the proposed new system for regulating the sex services industry in NSW is implemented, it is important that it is reviewed in the future to determine how it is performing. The Committee notes the following from Deputy Commissioner Kaldas in this regard:

I wish we had a crystal ball and I wish I could tell you what you came up with will work or will not, but certainly for us what has worked in the past with difficult issues like this one...is a review mechanism so that you can look at what you have done and whether it has worked or not and then come back in six or 12 months and say, look, we need to tweak it.<sup>477</sup>

6.157 The Committee also notes in this regard that the *Tattoo Parlours Act 2012* provides for a ministerial review of the Act after five years from the date it passed into law, with the report to be tabled within 12 months of the five year period.<sup>478</sup> While the Committee considers the Government should determine the most suitable form for the review to take, it notes that the benefit of waiting longer before a review is conducted (a few years instead of six to 12 months) is that it provides more opportunity for relevant data to be collected, any patterns to emerge, for the inter-government co-ordination protocols to be determined and implemented and for any litigation under the new system to be finalised.

6.158 Lastly, the Committee notes that it is currently not possible to obtain data from BOCSAR on a number of offences relating to the sex services industry. The Department of Justice indicated to the Committee that this is because the data collected by BOCSAR often does not deal specifically with brothels or the sex services industry but are more general.<sup>479</sup> Deputy Commissioner Kaldas also gave evidence that currently brothel related criminal activity is not measured by Police Local Area Commands. This will change somewhat if the reforms recommended in this report are instituted. This is critical as data will be very important if a meaningful review is to take place.

6.159 In light of the above, the Committee makes the following recommendations:

### Recommendation 36

**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.**

### Recommendation 37

**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.**

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<sup>477</sup> Deputy Commissioner Kaldas, Transcript of Evidence, p23.

<sup>478</sup> See section 42, *Tattoo Parlours Act 2012*.

<sup>479</sup> See Transcript of Evidence, 1 September 2015, pp30&31; and Mr McKnight, Answers to Questions Taken on Notice, 1 September 2015, p30.



## Appendix One – List of Submissions

1	Gunnedah Shire Council
2	Mr Peter Woods
3	Name Suppressed
4	Ms Elena Jeffreys
5	Ms T Caruana
6	Name Suppressed
7	Sydney Medically Supervised Injecting Centre
8	Ballina Shire Council
9	Confidential
10	Gloucester Shire Council
11	Mr Clyde James Roberts
12	Mr John Oh
13	Sydney School of Public Health, University of Sydney
14	Name Suppressed
15	Sexual Health Program, The Kirby Institute, University of NSW
16	Ms Riley Alexander
17	Name Suppressed
18	Mr John Mayger
19	Ms Xena Wrestles
20	Mr Mark Stewart
21	Name Suppressed
22	Ms Hilary Caldwell
23	Global Network of Sex Work Projects (NSWP)
24	Miss Ava Grace
25	Ms Deepika Dugan
26	Ms Kerry Porth
27	Ms Geena Leigh
28	Name Suppressed
29	Confidential
30	Ms Laura Suppressed
31	Confidential

BROTHEL REGULATION  
LIST OF SUBMISSIONS

32	Miss Nell Gwynn
33	Mr Philip Ho
34	Confidential
35	Miss Jackie Parker
36	Confidential
37	Ms Name Suppressed
38	Confidential
39	Holroyd City Council
40	Mr Charles Callaghan
41	Camden Council
42	Confidential
43	Name Suppressed
44	Name Suppressed
45	Williams College
46	Name Suppressed
47	Mr Daniel Jullius
48	Ms Eurydice Aroney, University of Technology Sydney
49	Dr Aaron Darrell
50	Name Suppressed
51	Name Suppressed
52	Mr Joshua Pocius
53	Watershed Legal
54	Ms Vanessa Stathopoulos
55	Confidential
56	Name Suppressed
57	Coalition Against Trafficking in Women Australia (CATWA)
58	Ms Lisa Lupa
59	Name Suppressed
60	Police Association of New South Wales
61	Wilberforce Foundation
62	Hornsby Shire Council
63	City of Sydney Council
64	Northern Sydney Local Health District
65	Name Suppressed

SELECT COMMITTEE ON THE REGULATION OF BROTHELS  
LIST OF SUBMISSIONS

66	Name Suppressed
67	Name Suppressed
68	Ms Kimberly Pater
69	Name Suppressed
70	Ms Esther Singer
71	Name Suppressed
72	Mr Michael Chlopicki
73	Name Suppressed
74	Name Suppressed
75	Name Suppressed
76	Name Suppressed
77	Sex Industry Network
78	Name Suppressed
79	Ashfield Council
80	Asia Pacific Network of Sex Workers (APNSW)
81	Miss Naomi Spilsbury
82	NCOSS – Council of Social Services of New South Wales
83	Liverpool City Council
84	Name Suppressed
85	Name Suppressed
86	Name Suppressed
87	Name Suppressed
88	Name Suppressed
89	Name Suppressed
90	Name Suppressed
91	Name Suppressed
92	Name Suppressed
93	Name Suppressed
94	Name Suppressed
95	Name Suppressed
96	Name Suppressed
97	Name Suppressed
98	Name Suppressed
99	Debby Doesn't Do It For Free

BROTHEL'S REGULATION  
LIST OF SUBMISSIONS

100	Name Suppressed
101	Name Suppressed
102	Name Suppressed
103	Confidential
104	Warringah Council
105	Name Suppressed
106	Northcott
107	Tarkwin Darryl Coles
108	Ms Julie Bates
109	Mr Nick Skilton
110	Empower Foundation
111	Confidential
112	Confidential
113	Name Suppressed
114	Associate Professor Penny Crofts
115	Australian Christian Lobby
116	Nordic Model Australia Coalition ' NorMAC'
117	NSW Users and AIDS Association (NUAA)
118	Touching Base Inc
119	Mr Saul Isbister
120	Willoughby City Council
121	Name Suppressed
122	Confidential
123	ACON
124	Shoalhaven City Council
125	Respect Inc
126	Tamworth Regional Council
127	Confidential
128	Mr Cedric Hassing
129	Name Suppressed
130	Family Planning NSW
131	Name Suppressed
132	Confidential
133	Scarlet Alliance

SELECT COMMITTEE ON THE REGULATION OF BROTHELS  
LIST OF SUBMISSIONS

134	New Zealand Prostitutes Collective
135	Life, Marriage and Family Centre Catholic Archdiocese of Sydney
136	Ms Rachel Wotton
137	NSW Government Premier and Cabinet
138	Leichhardt Municipal Council
139	SWOP NT
140	Northern Territory Aids and Hepatitis Council (NTAHC)
141	Name Suppressed
142	Local Government NSW
143	Name Suppressed
144	Name Suppressed
145	Sex Workers Outreach Project Inc (SWOP)
146	Confidential
147	Australian Lawyers for Human Rights
148	Vixen Collective
149	Confidential
150	Mr Nick Berman
151	Ms Emma Arvo
152	Name Suppressed
153	Name Suppressed
154	Name Suppressed
155	Name Suppressed
156	Australian Sex Party
157	Confidential
158	Central Coast Community Legal Centre
159	Community Legal Centres NSW
160	Kirketon Road Centre
161	Nepean Blue Mountains Local Health District
162	Sydney Sexual Health Centre
163	Collective Shout
164	Penrith City Council
165	The Hon. Greg Donnelly MLC
166	The Greens
167	Pink Cross Foundation Australia

BROTHELS REGULATION  
LIST OF SUBMISSIONS

168	Fighting for Justice Foundation
169	Randwick City Council
170	Queensland Government Prostitution Licensing Authority
171	Confidential
172	South Western Sydney Local Health District
173	Marrickville Council
174	Newcastle City Council
175	BaptistCare HopeStreet
176	Dr Helen Pringle
177	Confidential

## Appendix Two – List of Witnesses

TUESDAY 1 SEPTEMBER 2015, ROOM 814, PARLIAMENT HOUSE

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Witness	Organisation
Ms Alison Frame Deputy Secretary, Policy and Strategy	Department of Planning
Ms Elizabeth Kinkade Executive Director, Planning Policy	
Mr Nick Kaldas Deputy Commissioner	NSW Police
Mr Paul McKnight Executive Director, Strategy and Policy	Department of Justice
Mr Daniel Noll Director, Criminal Law Specialist	
Dr Basil Donovan MD Professor and Head, Sexual Health Program	Kirby Institute
Dr Phillip Read Acting Director	Kirketon Road Centre
Mr George Lerantges Team Leader, Compliance	Marrickville Council
Mr Simon Grierson Manager, Monitoring Services	
Mr Bill Mackay Manager, Planning Assessment	
Ms Kate Murray Manager, City Business and Safety	Council of the City of Sydney
Dr Lisa Simone Safe City Manager	
Ms Nichola Clarke Team Leader, Compliance	Hornsby Shire Council
Mr Simon Evans	

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Compliance and Certifications Manager

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Mr Joseph Hill  
Director, City Strategy

North Sydney Council

Ms Marise van der Walt  
Manager, Environment and Building  
Compliance

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WEDNESDAY 2 SEPTEMBER 2015, ROOM 814, PARLIAMENT HOUSE

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Ms Janelle Fawkes  
CEO

Ms Jules Kim  
Migration Project Manager

Scarlet Alliance

Ms Gemma Keegan  
Policy Officer

---

Mr Nicolas Parkhill  
CEO

ACON

Mr Dean Price  
Policy Advisor

---

Mr Cameron Cox  
CEO

Sex Workers Outreach Project

Ms Jackie McMillan  
Policy, Media and Communications Officer

---

Dr Anna McNulty  
Director

Sydney Sexual Health Centre

Ms Wendy Francis  
Queensland State Director

---

Australian Christian Lobby

Mr Matthew Young  
Manager

BaptistCare, HopeStreet

Ms Jessica Davidson  
Womens Services Team Leader

---

Reverend Graham Long AM  
Pastor and CEO

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Wayside Chapel



SELECT COMMITTEE ON THE REGULATION OF BROTHELS  
LIST OF WITNESSES

FRIDAY 11 SEPTEMBER 2015, MACQUARIE ROOM, PARLIAMENT  
HOUSE

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Ms Nicole Magurren  
Director Planning and Environment

Camden City Council

Mr Daniel Streater  
Manager, Certifications and Compliance

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Dr Kerry Chant PSM  
Chief Health Officer & Deputy Secretary,  
Population and Public Health

NSW Health

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Senior Sergeant Marilyn Ross  
Sergeant Richard Farrelly  
Sex Industry Coordination Unit

Victoria Police

---

Ms Jessica Megarry  
Member, Executive Committee

Coalition Against Trafficking in Women,  
Australia

---

Mr Saul Isbister  
President / Public Officer

Ms Rachel Wotton  
Committee Member

Touching Base

Ms Fleur de Lys  
Committee Member

Ms Julie Bates  
Member

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Mr Noel Baum  
Director – Policy

Local Government NSW

Ms Jennifer Dennis  
Senior Policy Officer - Planning

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Mr Peter Dunphy  
Executive Director

SafeWork NSW

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Commander Glen McEwen OAM  
Manager, Victim Based Crime

Detective Superintendent Steve  
Mewburn  
National Coordinator, Counter Exploitation

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Australian Federal Police

# Appendix Three – Extracts from Minutes

## MINUTES OF MEETING No 1

2:00 pm  
Friday 17 July 2015  
Room 1043, Parliament House

### Members Present

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Mr Alex Greenwich MP, Ms Jo Haylen MP (by telephone), Ms Eleni Petinos MP, Ms Kathy Smith MP.

### Apologies

Ms Melanie Gibbons MP.

### Officers in Attendance

Catherine Watson, Jason Arditi, Elspeth Dyer, Jennifer Gallagher.

## 1. Introduction

The Chair opened the meeting at 2:15pm and read the following extracts from the Votes and Proceedings of the Legislative Assembly:

Legislative Assembly Votes and Proceedings no 15, Thursday 25 June 2015, entry no. 28:

Mr Victor Dominello moved, by leave, That:

- (1) A select committee, to be known as the Select Committee on the Regulation of Brothels, be appointed to inquire into and report on the regulation of brothels in New South Wales.
- (2) The committee is to examine and report on:
  - (a) Appropriate local and state government regulatory and compliance functions for brothels;
  - (b) The demarcation in local and state government roles and responsibilities; and;
  - (c) Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.
- (3) The inquiry should consider:
  - (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 licencing 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.
- (4) The committee consist of seven members, as follows:
- (a) Four Government members, being Ms Melanie Gibbons, Mr Alister Henskens, Mrs Melinda Pavey and Ms Eleni Petinos;
  - (b) Two Opposition members; and
  - (c) One Independent member, being Mr Alex Greenwich.
- (5) Mr Alister Henskens shall be the Chair of the committee.
- (6) The Opposition members shall be nominated in writing to the Clerk of the Legislative Assembly by the Opposition Whip by 25 June 2015. Any changes in membership, including the Independent member, shall also be so notified.
- (7) The committee will have leave to sit during the sitting or any adjournment of the House.
- (8) The committee is to report by 12 November 2015.

Question put and passed.

The Chair also to draw the Committee's attention to the following correspondence:

- Letter from Mr Michael Daley MP, Opposition Whip, advising that the two Opposition members of the Committee will be Ms Jo Haylen MP and Ms Kathy Smith MP.

Resolved, on the motion of Mrs Pavey:

That the Committee note the extract from the Legislative Assembly Votes and Proceedings and the correspondence as listed.

## **2. Election of Deputy Chair**

Resolved, on the motion of Ms Petinos, seconded by Mr Greenwich:

That Mrs Pavey be elected Deputy Chair of the Committee.

## **3. Administrative and staffing arrangements**

The Chair introduced the committee staff to the Committee.

## **4. Standard Procedural Motions**

Resolved, on the motion of Mrs Pavey:

1. That during a committee meeting, if a division or quorum is called in the Legislative Assembly, or either House in the case of joint committees, the meeting will be suspended until the committee regains its quorum.

2. That draft reports, evidence, transcripts, submissions and other committee documents are not to be disclosed or published by a member or any other person unless authorised by the committee or the House.
3. That media statements on behalf of the committee can only be made by the Chair after consultation with committee members.
4. That the Chair and Committee Director seek approval from the Speaker, through the Clerk of the Legislative Assembly, for funding of committee visits of inspection, consultancies and other incidental expenses.

That all Committee expenditure be in accordance with Legislative Assembly policies for Committees.

5. That the Chair and Committee staff make arrangements for advertising inquiries, writing to interested parties requesting submissions, calling witnesses, and visits of inspection.
6. That, unless otherwise ordered by the Committee, witnesses appearing before the committee will not be represented by any member of the legal profession or other advocate.

#### **5. Briefing on the Regulation of Brothels in NSW and Other Jurisdictions**

The Committee noted the briefing prepared by Legislative Assembly Committee staff on the regulation of brothels in NSW and other jurisdictions. The Committee also noted Parliamentary Library Research Paper 15/2011, *Regulation of brothels: an update*.

#### **6. Inquiry Plan**

The Committee noted the inquiry plan.

#### **7. Stakeholders and Advertising**

The Committee considered the list of stakeholders (attachment D to the agenda) to write to seeking submissions to the inquiry, drafted by Committee staff in consultation with the Chair. The Committee also considered a list of additional stakeholders provided by Mr Greenwich and a list of additional stakeholders provided by Ms Haylen.

Resolved on the motion of Ms Smith:

That the Chair write to the listed stakeholders and additional stakeholders proposed by Mr Greenwich and Ms Haylen, seeking submissions to the inquiry.

The Committee also discussed advertising for the inquiry.

Resolved on the motion of Mrs Pavey that:

- the Committee call for submissions to the inquiry through advertising on the Committee's webpage, in the *Sydney Morning Herald* and in the *Daily Telegraph*;
- the Chair issue a press release calling for submissions to the inquiry for dissemination by the Committee Secretariat;
- the closing date for submissions to the inquiry is to be 19 August 2015.

The Committee also discussed hearing dates for the inquiry.

Resolved on the motion of Ms Petinos that:

- the Committee hold public hearings on 1 September and 2 September 2015;
- Committee staff liaise with Committee members concerning a suitable date for a third day of public hearings;
- the Committee consider the proposed witness list out of session and allow the Chair to liaise with Committee staff in relation to inviting witnesses to attend.

#### **8. Possible Site Visits**

The Chair raised the issue of possible site visits by the Committee.

Discussion ensued.

Resolved on the motion of Mr Greenwich that:

- The Committee conduct a site visit in Melbourne on 28 August 2015, and a site visit in Sydney on 4 September 2015.

#### **9. General Business**

#### **10. Next Meeting**

The Committee adjourned at 2:34 PM until 24 August 2015 at 2pm.

### **MINUTES OF MEETING No 2**

2:00 pm

Monday 24 August 2015

Room 1043, Parliament House

#### **Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Mr Alex Greenwich MP, Ms Jo Haylen MP, Ms Eleni Petinos MP (by telephone), Ms Kathy Smith MP.

#### **Officers in Attendance**

Jason Arditi, Elspeth Dyer, Leon Last, Jennifer Gallagher.

#### **1. Apologies**

Ms Melanie Gibbons MP.

#### **2. Minutes of Meeting No 1**

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That the minutes of meeting no 1 be confirmed.

#### **3. Correspondence**

*Correspondence In:*

- Letter to Chair dated 22 July 2015 from Mr Berdj Tchakerian, Assistant Director, Director's Coordination Unit, Commonwealth Director of Public Prosecutions, declining to make a submission to the Inquiry.
- Letter to Chair dated 24 July from B O'Sullivan, A/Manager, Secretariat, Office of the NSW Commissioner of Police, acknowledging invitation to make a submission to the Inquiry.
- Letter to Chair dated 27 July 2016 from Mr Trent Linton, Departmental Liaison Officer, Office of Tasmanian Attorney General acknowledging receipt of invitation to make a submission to the Inquiry.
- Email dated 31 July 2015 from Mr Cameron Cox, Chief Executive Officer, Sex Workers Outreach Project, inviting Committee to an information session 8 September 2015.

*Correspondence Out:*

- Letter to Ms Catherine O'Malley, Owner of The Site, dated 27 July 2015, regarding Sydney site visit.
- Letter to Manager of The House @ Hornsby, dated 27 July 2015, regarding Sydney site visit.
- Letter to Mr John Hundy, Kings Court Erotic Massage, dated 27 July 2015, regarding Sydney site visit.
- Letter to Ms Michele Rowland, Registrar, Business Licensing Authority Victoria, dated 31 July 2016, regarding Melbourne site visit.

Resolved, on the motion of Ms Haylen, seconded by Mrs Pavey:  
That the Committee note the correspondence as listed.

**4. Publication of Submissions**

Resolved, on the motion of Ms Smith, seconded by Ms Haylen:  
That submissions 1, 2, 7, 8, 10, 11, 13, 15, 16, 18-20, 22-27, 32, 33, 35, 39-41, 45, 48, 52-54, 57, 58, 60, 61, 63, 64, 68, 70, 72, 77, 79-83, 99, 104, 106-110, 114-117, 119, 123-126, 128, 130, and 134-137 be received by the Committee and published in full.

Resolved, on the motion of Ms Smith, seconded by Ms Haylen:  
That submissions 3-6, 12, 14, 17, 21, 28, 30, 37, 43, 44, 46, 47, 49-51, 56, 59, 62, 65-67, 69, 71, 73-76, 78, 84-98, 100-102, 105, 113, 118, 120, 121, 129, 131 and 133 be received by the Committee and published in part.

Resolved, on the motion of Ms Smith, seconded by Ms Haylen:  
That submission 9, 29, 31, 34, 36, 38, 42, 55, 103, 111, 112, 122, 127, 132 be received by the Committee but not published.

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:

That the email dated 15 August 2015 from Ms Heather Berg, Department of Feminist Studies, University of California Santa Barbara, attaching her paper 'Trafficking Policy, Meaning Making and State Violence' be accepted and noted by the Committee as correspondence.

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That the letter dated 13 August 2015 from Ms Kitty N/A be accepted and noted by the Committee as correspondence.

#### **5. Public Hearings**

The Committee noted witness lists for its public hearings on 1, 2 and 11 September 2015.

Resolved, on the motion of Ms Haylen, seconded by Mrs Pavey:  
That the Chair issue a press release concerning public hearings on 1, 2 and 11 September 2015 for dissemination by the Committee secretariat.

#### **6. Site Visits Melbourne**

The Committee noted arrangements for its Melbourne site visits on 27 and 28 August 2015.

#### **7. Site Visits Sydney**

The Committee noted arrangements for its Sydney site visits on 4 September 2015.

Resolved, on the motion of Mr Greenwich, seconded by Mrs Pavey:  
That the Committee seek relevant approvals to hire a mini-bus for its Sydney site visits on 4 September 2015.

#### **8. General Business**

The Committee noted that any issues relevant to the Committee's inquiry raised verbally by constituents in Committee members' electorates, or other stakeholders, may be forwarded in writing by the member to the Committee Chair for the Committee to note.

#### **9. Next Meeting**

The Committee adjourned at 2:24 PM until its Melbourne site visits on 28 August 2015.

## **Minutes of the Melbourne Site Visit of the Select Committee on the Regulation of Brothels**

Thursday 27 August and Friday 28 August 2015  
Melbourne, Victoria

#### **Members Present**

Mr Henskens, Mrs Pavey, Ms Petinos, Ms Gibbons, Mr Greenwich, Ms Haylen and Ms Smith

#### **Apologies**

Nil

*Officers in attendance:* Elspeth Dyer, and Kieran Lewis

### **1. Site Visit – 27 and 28 August 2015**

The Committee conducted a site visit to Melbourne to meet with Government agencies, industry representatives and Ms Fiona Patten MLC to gain information about Melbourne's system of regulating the sex services industry, particularly its licensing and registration systems. It also heard from these stakeholders about the issues industry participants face under the current regulatory system, including in the areas of health and safety, planning and access to justice; and visited two brothels, the California Club St Kilda and the Board Room South Melbourne to gain insight regarding the practical operations of sex services premises.

The Chair, Committee and Committee staff departed Parliament House on the evening of 27 August 2015 and flew from Sydney to Melbourne, staying overnight at the Mercure Melbourne Treasury Gardens Hotel.

On the following day, 28 August 2015, in chronological order, members of the Committee and Committee staff met with the following persons, starting at approximately 9:00am:

- Ms Michele Rowland, Registrar and Ms Clare-Maree O'Brien, Deputy Registrar, Business Licensing Authority Victoria at 121 Exhibition Street Melbourne.
- Ms Kathryn Bannon, General Manager Enforcement and Legal Services; Ms Clare Davie, Senior Legal Policy Advisor; and Mr John Mullaney, Senior Compliance and Enforcement Officer, Consumer Affairs Victoria at 121 Exhibition Street Melbourne.
- Mr William Albon, Head of the Adult Entertainment Industry Inc; Mr Alan Murnane, Leader Resourcing Health and Education (RhED) Service for the Sex Industry in Victoria; and Mr Vic "Bernie" Craddock, Licensee, Presidential Suite. The Committee travelled from 121 Exhibition Street Melbourne to view the Boardroom, a sex services premises at South Melbourne, then viewed a cluster of brothels from the street at Tope Street South Melbourne (but did not go inside) and then travelled to the California Club St Kilda, another sex services premises.
- Ms Fiona Patten, MLC, Leader of the Australian Sex Party, Parliament House Victoria.
- Ms Jane Green, Convenor, Vixen Independent Sex Worker Organisation, Parliament House Victoria.

Following the Committee's meeting with Ms Jane Green, the formal site visit program concluded at approximately 5:00pm.

The Chair, Mr Greenwich, Ms Haylen, Ms Smith and Committee staff returned to Tullamarine Airport and flew to Sydney Airport arriving at approximately 9:05 pm. Mrs Pavey and Ms Gibbons remained in Melbourne for non-Committee related activities and Ms Petinos left the site visit at approximately 1:45pm on 28 August.

### **MINUTES OF MEETING No 3**

9:30am  
Tuesday 1 September 2015  
Room 814-815, Parliament House

#### **Members Present**



Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Mr Alex Greenwich MP, Ms Jo Haylen MP, Ms Eleni Petinos MP, Ms Kathy Smith MP.

### **Officers in Attendance**

Jason Arditi, Elspeth Dyer, Leon Last, Jennifer Gallagher.

#### **1. Apologies**

Ms Melanie Gibbons MP.

#### **2. Minutes of Meeting No 2 and Minutes of Melbourne Site Visit**

Resolved on the motion of Mr Greenwich, seconded by Ms Smith:

That item 8 'General Business' of the draft minutes of meeting no 2 be amended to read 'The Committee noted that any issues relevant to the Committee's inquiry raised verbally by constituents in Committee members' electorates, or other stakeholders, may be forwarded in writing by the member to the Committee Chair for the Committee to note'.

Resolved, on the motion of Mr Greenwich, seconded by Ms Smith:

That the draft minutes of meeting no 2, as amended, be confirmed.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:

That the draft minutes of the Melbourne site visit on 28 August 2015 be confirmed.

#### **3. Correspondence**

*Correspondence In:*

- Letter to Committee Manager dated 21 August 2015 from Ms Catherine Smith, Assistant Secretary, Commonwealth Attorney General's Department advising the Department does not wish to make a submission to the Inquiry, and attaching factual information regarding human trafficking.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:

That the Committee note the correspondence as listed.

*RB Smyth Correspondence:*

- Letter to Committee Manager dated 22 August 2015 from RB Smyth, Director Smyth Planning regarding Chair's visit to the site of a Pymble brothel.
- Proposed response to RB Smyth's letter.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:

That the Committee note the letter to the Committee Manager dated 22 August 2015 from RB Smyth .

The Committee considered the Chair's proposed response to the letter, circulated to the Committee on 27 August 2015.

Discussion ensued.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:

That the Chair respond to RB Smyth's correspondence by letter that includes paragraphs 1 and 3 of the proposed response circulated to the Committee on 27 August 2015, omits paragraphs

2 and 4 of the proposed response, and splits paragraph 3 of the proposed response into 2 paragraphs.

**4. Matters Arising out of the Melbourne Site Visit to be placed on the official record**

The Committee considered the meeting notes of its Melbourne site visit conducted on 28 August 2015.

Resolved on the motion of Mrs Pavey, seconded by Ms Petinos  
That the Committee accept meeting notes drafted by Committee staff concerning the Committee's Melbourne site visit conducted on 28 August 2015 and provide any further comments concerning them at its deliberative meeting on 11 September 2015.

**5. Publication of Submissions**

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:  
That submissions 138-140, 142, 145, 147, 148, 151, 156, 158-167, 169 and 172 be received by the Committee and published in full.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:  
That submissions 141, 143, 144, 150, 152, 153-155, 168 and 170 be received by the Committee and published in part.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:  
That submissions 146, 149, 157 and 171 be received by the Committee but not published.

**6. Public Hearing, 1 September 2015**

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the Committee take evidence from representatives of the Department of Planning, NSW Police, the Department of Justice, the Kirby Institute, the Kirketon Road Centre, Marrickville Council, Hornsby Council and City of Sydney at a public hearing on 1 September 2015.

Resolved, on the motion of Ms Smith, seconded by Ms Haylen:  
That the Committee take evidence from representatives of North Sydney Council at a public hearing on 1 September 2015 before taking further evidence from representatives of North Sydney Council at an in-camera hearing on 1 September 2015, as requested by Council.

Resolved, on the motion of Ms Petinos, seconded by Ms Smith:  
That the Committee permit the audio-visual recording, photography and broadcasting of the public hearing on 1 September 2015.

Resolved, on the motion of Ms Petinos, seconded by Ms Smith:  
That the Committee note that UTS journalism students will be amongst the persons to carry out audio-visual recording of the public hearing on 1 September 2015.

Resolved, on the motion of Ms Petinos, seconded by Ms Smith:  
That the Committee authorise the Chair to conduct interviews with the UTS journalism students concerning the Committee's work.

Resolved, on the motion of Ms Haylen, seconded by Mr Greenwich:  
That the Chair send questions on notice to witnesses following the public hearing and in-camera hearing on 1 September 2015 as required.

Resolved, on the motion of Ms Petinos, seconded by Mrs Pavey:  
That the Committee secretariat publish the transcript of evidence taken at the public hearing on 1 September 2015, after making corrections for recording inaccuracy, together with the answers to any questions taken on notice at the public hearing, on the Committee's webpage.

#### **7. Witnesses – Public Hearing 11 September 2015**

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:  
That the Committee invite WorkCover NSW, Touching Base, the Sex Industry Coordination Unit of the Victorian Police and the Human Trafficking Section of the Australian Federal Police to appear at a hearing on 11 September 2015.

#### **8. General Business**

Mr Greenwich raised the issue of businesses operating as brothels when they do not have the planning approval to do so noting that while they are often referred to as illegal brothels they could more accurately be referred to as unauthorised brothels.

Discussion ensued.

The Committee noted the point made by Mr Greenwich.

Ms Haylen noted that representatives of Marrickville Council are to appear at the Committee's public hearings on 1 September 2015 and disclosed the fact that she is a Councillor on Marrickville Council.

The Committee noted Ms Haylen's disclosure.

#### **9. Next Meeting**

The Committee adjourned at 10:05am until its public hearing on 1 September 2015.

### **MINUTES OF HEARING No 1**

10:05am  
Tuesday 1 September 2015  
Room 814-815, Parliament House

#### **Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Mr Alex Greenwich MP (except between 11:45am and 12:30pm), Ms Jo Haylen MP, Ms Eleni Petinos MP, Ms Kathy Smith MP, Ms Melanie Gibbons MP (from 1:15pm onwards).

#### **Officers in Attendance**

Jason Arditi, Elspeth Dyer, Leon Last.

#### **1. Hearing**

At 10:05am, the Chair declared the public hearing open and witnesses and the public were admitted.

*NSW Department of Planning*

Ms Alison Frame, Deputy Secretary, Policy and Strategy was sworn and examined.  
Ms Elizabeth Kinkade, Executive Director, Planning Policy was sworn and examined.

Ms Frame made an opening statement.

*NSW Police*

Deputy Commissioner Nick Kaldas was sworn and examined.

The Deputy Commissioner made an opening statement.

*NSW Department of Justice*

Mr Paul McKnight, Executive Director, Strategy and Policy, was affirmed and examined.

Mr Daniel Noll, Director, Criminal Law Specialist, was affirmed and examined.

*Kirby Institute and Kirketon Road Centre*

Professor Basil Donovan MD, Professor and Head, Sexual Health Program, Kirby Institute was affirmed and examined.

Dr Phillip Read, Acting Director, Kirketon Road Centre was affirmed and examined.

Professor Donovan made an opening statement.

Dr Read made an opening statement.

*Marrickville Council*

Mr George Lerantges, Team Leader, Compliance, was sworn and examined.

Mr Simon Grierson, Manager, Monitoring Services, was affirmed and examined.

*Council of the City of Sydney*

Mr William Mackay, Manager, Planning Assessment, was affirmed and examined.

Ms Kate Murray, Manager, City Business and Safety, was affirmed and examined.

Dr Teresa Simone, Safe City Manager, was sworn and examined.

*Hornsby Council*

Ms Nichola Clarke, Team Leader, Compliance, was sworn and examined.

Mr Simon Evans, Compliance and Certifications Manager, was sworn and examined.

*North Sydney Council*

Mr Joseph Hill, Director, City Strategy, was affirmed and examined.

Ms Marise van der Walt, Manager, Environment and Building Compliance, was sworn and examined.

As per the earlier resolution on the motion of Ms Smith, seconded by Ms Haylen, to continue the hearing in camera, the Chair ordered that the room be cleared.

The public withdrew.

The Committee proceeded to take evidence in camera.

Persons present other than the Committee: Jason Arditi, Elspeth Dyer, Leon Last.

In camera evidence concluded, the witnesses withdrew.

## **2. Next Meeting**

The Committee adjourned at 4:30pm until Wednesday 2 September 2015 at 9:30am.

## **MINUTES OF MEETING No 4**

9:30am  
Wednesday 2 September 2015  
Room 814-815, Parliament House

### **Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Mr Alex Greenwich MP, Ms Melanie Gibbons MP.

### **Officers in Attendance**

Jason Ardit, Elspeth Dyer, Leon Last, Jennifer Gallagher.

### **1. Apologies**

Ms Eleni Petinos MP, Ms Jo Haylen MP, Ms Kathy Smith MP.

### **2. Minutes of Meeting No 3, 1 September 2015**

Resolved, on the motion of Mrs Pavey, seconded by Ms Gibbons:  
That the draft minutes of meeting no 3 on 1 September 2015 be confirmed.

### **3. Publication of Submissions**

Resolved, on the motion of Mrs Pavey, seconded by Ms Gibbons:  
That submission number 173 be received by the Committee and published in full.

### **4. Public Hearing, 2 September 2015**

Resolved, on the motion of Mr Greenwich, seconded by Ms Gibbons:  
That the Committee take evidence from representatives of Scarlet Alliance, ACON, the Sex Workers Outreach Project, Sydney Sexual Health Centre, the Australian Christian Lobby, BaptistCare Hopestreet, and the Wayside Chapel at a public hearing on 2 September 2015.

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That the Committee permit the audio-visual recording, photography and broadcasting of the public hearing on 2 September 2015.

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That the Committee note that UTS journalism students will be amongst the persons to carry out audio-visual recording of the public hearing on 2 September 2015.

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That the Committee authorise the Chair to conduct interviews with the UTS journalism students concerning the Committee's work.

Resolved, on the motion of Mr Greenwich, seconded by Mrs Pavey:

That the Chair send questions on notice to witnesses following the public hearing on 2 September 2015 as required.

Resolved, on the motion of Ms Gibbons, seconded by Mrs Pavey:

That the Committee secretariat publish the transcript of evidence taken at the public hearing on 2 September 2015, after making corrections for recording inaccuracy, together with the answers to any questions taken on notice at the public hearing, on the Committee's webpage.

#### **5. General Business**

Mr Greenwich noted the evidence of some local councils that they hire private investigators to receive sexual services from workers in massage parlours to prove that those massage parlours are providing sexual services without planning approval. Mr Greenwich asked that questions on notice to Hornsby and North Sydney Councils, following public hearings on 1 September 2015, include a question about how circumstantial evidence provisions in legislation could be improved to obviate the need for private investigator evidence of this nature.

The Committee agreed to include a question concerning circumstantial evidence provisions in its questions on notice to Hornsby and North Sydney Councils.

#### **6. Next Meeting**

The Committee adjourned at 9:48am until its public hearing on 2 September 2015.

### **MINUTES OF HEARING No 2**

10:00am

Wednesday 2 September 2015

Room 814-815, Parliament House

#### **Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair) (until 2pm), Mr Alex Greenwich MP (until 2:30pm), Ms Jo Haylen MP, Ms Eleni Petinos MP (between 1:30pm and 3:30pm), Ms Melanie Gibbons MP.

#### **Apologies**

Ms Kathy Smith MP.

#### **Officers in Attendance**

Jason Arditi, Elspeth Dyer, Leon Last.

#### **1. Hearing**

At 10:00am, the Chair declared the public hearing open and witnesses and the public were admitted.

#### *Scarlet Alliance*

Ms Janelle Fawkes, CEO, was affirmed and examined.

Ms Jules Kim, Migration Project Manager, was affirmed and examined.

Ms Gemma Keegan, Policy Officer, was affirmed and examined.

SELECT COMMITTEE ON THE REGULATION OF BROTHELS  
EXTRACTS FROM MINUTES

Ms Fawkes made an opening statement.

*ACON*

Mr Nicholas Parkhill, CEO, was affirmed and examined.

Mr Dean Price, Policy Advisor, was affirmed and examined.

Mr Parkhill made an opening statement.

*Sex Workers Outreach Project*

Mr Cameron Cox, CEO, was affirmed and examined.

Ms Jackie McMillan, Policy, Media and Communications Officer, was affirmed and examined.

Mr Cox made an opening statement.

*Sydney Sexual Health Centre*

Dr Anna McNulty, Director, Sydney Sexual Health Centre, was affirmed and examined.

Dr McNulty made an opening statement.

*Australian Christian Lobby*

Ms Wendy Francis, Queensland State Director, was sworn and examined.

Ms Francis made an opening statement.

*BaptistCare, HopeStreet*

Mr Matthew Young, Missional Services Manager, was sworn and examined.

Ms Jess Davidson, Women's Services Team Leader, was sworn and examined.

Ms Davidson made an opening statement.

*Wayside Chapel*

Reverend Graham Long AM, Pastor and CEO, was sworn and examined.

Evidence concluded, the witnesses and public withdrew.

**2. Next Meeting**

The Committee adjourned at 3:30pm until its Sydney site visits on Friday 4 September 2015.

**MINUTES OF THE SYDNEY SITE VISITS OF THE SELECT COMMITTEE ON THE REGULATION OF BROTHELS**

Friday 4 September 2015

Sydney Metropolitan Region

**Members Present**

Mr Henskens, Mrs Pavey, Ms Petinos, Ms Gibbons, Mr Greenwich (from 11:45am), Ms Haylen.

**Apologies**

Ms Smith

**Officers in Attendance**

Elsbeth Dyer, Leon Last, Jennifer Gallagher.

**1. Site Visit, 4 September 2015**

The Committee conducted a site visit to three brothels in the Sydney Metropolitan Region to obtain information and insight regarding the practical operation of sex services premises. The Committee also used the opportunity to hear from stakeholders about the nature of the brothel industry in NSW, the protection of sex workers, public health issues, possible legislative change, and other issues of relevance to its Inquiry. In addition, the Committee visited the Kirketon Road Centre, Darlinghurst, to gain information and insight regarding the practical operation of a medical, counselling and social welfare service that assists a large number of sex worker clients.

The Chair, Mrs Pavey, Ms Petinos, Ms Gibbons, Ms Haylen and Committee staff departed Parliament House at approximately 9:30am to begin the site visits, meeting Mr Greenwich for the second meeting of the day at Kirketon Road Centre, at approximately 11:45am.

In chronological order, the Committee and staff made the following visits and met with the following persons, starting at approximately 10:00am:

- Owner, Kings Court Erotic Massage, Glebe.
- Dr Phillip Read, Acting Director and Ms Wendy Machin, Clinical Services Manager, Kirketon Road Centre, Darlinghurst.
- Viewing of 105 Pymble House, Pymble from the street.
- Owners, The Pink Door, Hornsby.
- Owner and managers, The Site, Rose Hill.

Following the Committee's visit to The Site at Rose Hill, the formal site visit program concluded. Mrs Pavey returned to her electorate while the remainder of the Committee and Committee staff returned to Parliament House at approximately 6:30pm.

**MINUTES OF MEETING No 5**

9:45am

Friday 11 September 2015

Macquarie Room, Parliament House

**Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Ms Melanie Gibbons MP, Mr Alex Greenwich MP, Ms Jo Haylen MP, Ms Kathy Smith MP.

**Officers in Attendance**

Catherine Watson, Jason Arditi, Elspeth Dyer, Leon Last.

**1. Apologies**

Ms Eleni Petinos MP.



## **2. Minutes**

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the draft minutes of hearing no 1, 1 September 2015, be confirmed.

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the draft minutes of meeting no 4, 2 September 2015, be confirmed.

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the draft minutes of hearing no 2, 2 September 2015, be confirmed.

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the draft minutes of the Sydney site visits, 4 September 2015, be confirmed.

## **3. Correspondence**

### *Correspondence In:*

- Email to Committee dated 2 September 2015 from Mr Danny Grkovic asking the Committee to close down brothels.
- Email to the Committee Manager dated 6 September 2015 from Ms Robyn Osborne advising of a visit to Sydney by Ms Cecilia Flores Oebanda, a world leader in the area of anti-slavery.
- Email to the Committee Secretariat dated 7 September 2015 from Mr Saul Isbister, President/Public Officer Touching Base, attaching an article by Kristen Edwards, 'Soliciting: What is the Go?'

### *Correspondence Out:*

- Letter to Mr RB Smyth dated 3 September 2015 responding to his letters dated 20 August and 22 August 2015 concerning the Chair's visit to the site of a Pymble brothel.

Resolved, on the motion of Mrs Pavey, seconded by Ms Haylen:  
That the Committee note the correspondence as listed.

## **4. Submissions**

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That submissions 175 and 176 be received by the Committee and published in full.

Resolved, on the motion of Mrs Pavey, seconded by Mr Greenwich:  
That supplementary submission 136A be received by the Committee but not published.

## **5. Matters Arising out of the Melbourne Site Visit to be placed on the official record**

Resolved, on the motion of Mrs Pavey, seconded by Ms Haylen:  
That the Chair write to the Victorian Department of Health requesting statistics on rates of sexually transmitted infections amongst Victorian sex workers.

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the notes of the Melbourne site visit be amended to record discussion concerning the absence of a formal outreach program to unlicensed sex services operators in Victoria.

**6. Matters Arising out of Sydney Site Visits to be placed on the official record**

Resolved, on the motion of Mrs Pavey, seconded by Ms Haylen:

That the Committee accept meeting notes drafted by Committee staff concerning the Committee's Sydney site visits conducted on 4 September 2015.

**7. Documents tabled – Hearings 1 and 2 September 2015**

The Committee considered documents tabled at or after its public hearing on 1 September 2015:

*Documents tabled by Deputy Commissioner Nick Caldas, NSW Police:*

- Address to Parliamentary Hearing into the Regulation of Brothels;
- *Daily Telegraph* article by Matthew Bennis, 'Brothel owners banned in Victoria for employing underage prostitutes now running brothels in Sydney' 8 March 2014;
- *Sydney Morning Herald* article by Eamonn Duff, 'Working girls trapped in a cycle of dependence, drugs and exploitation' 30 March 2014;
- *Sydney Morning Herald* article by Eamonn Duff, 'Trafficking: Women lured with student visas forced into sex slavery' 30 March 2014.

*Document tabled by Professor Basil Donovan MD, Professor and Head, Sexual Health Program, Kirby Institute:*

- The Kirby Institute, Faculty of Medicine, University of New South Wales, 'The Sex Industry in New South Wales, A Report to the NSW Ministry of Health'.

*Documents tabled by Dr Phillip Read, Acting Director, Kirketon Road Centre:*

- Letter to Chair summarising the findings of, and attaching an article by Phillip J Read, Handan Wand, Rebecca Guy, Basil Donovan and Anna M McNulty, 'Unprotected Fellatio between female sex workers and their clients in Sydney Australia'.

The Committee also considered documents tabled at its public hearing on 2 September 2015:

*Documents tabled by Ms Janelle Fawkes, CEO, Scarlet Alliance:*

- Scarlet Alliance submission to the Community Relations Commission – Inquiry into the Exploitation of Women through Trafficking, 1 August 2012.
- Scarlet Alliance publication, 'The Principles for Model Sex Work Legislation' 2014.

*Documents tabled by the Chair:*

- Information downloaded from [xmassage.com.au](http://xmassage.com.au) concerning Hornsby Chinese Massage, Suite 8, Level 1, 10 Edgeworth David Avenue, Hornsby and other massage businesses across Sydney;
- Information downloaded from [asianmassagessydney.com.au](http://asianmassagessydney.com.au) concerning Suzi Best Massage Hornsby, Suite 102, 10 Edgeworth David Avenue, Hornsby.

Resolved, on the motion of Mrs Pavey, seconded by Ms Haylen:

That the Committee accept documents as listed that were tabled at or after its public hearings on 1 and 2 September 2015.

**8. Briefing with Deputy Commissioner, NSW Police, Mr Nick Kaldas**

Resolved, on the motion of Ms Gibbons, seconded by Mrs Pavey:

That the Chair write to Deputy Commissioner Nick Kaldas requesting a private briefing for the Committee concerning organised crime involvement in the sex services industry in NSW, and sexual slavery in sex services premises in NSW; and the presence of officers from the NSW Police Sex Crimes Squad and from appropriate local area commands in south-west Sydney; and data on the issues.

**9. Public Hearing 11 September 2015**

Resolved, on the motion of Ms Gibbons, seconded by Ms Smith:

That the Committee take evidence from representatives of Camden City Council, NSW Health, Victoria Police, the Coalition Against Trafficking in Women Australia, Touching Base, SafeWork NSW, Local Government NSW and the Australian Federal Police at a public hearing on 11 September 2015.

Resolved, on the motion of Ms Smith, seconded by Ms Haylen:

That the Committee permit the audio-visual recording, photography and broadcasting of the public hearing on 11 September 2015.

Resolved, on the motion of Mr Greenwich, seconded by Ms Gibbons:

That the Chair send questions on notice to witnesses following the hearing on 11 September 2015 as required.

Resolved, on the motion of Ms Haylen, seconded by Mr Greenwich:

That the Committee secretariat publish the transcript of evidence taken at the public hearing on 11 September 2015, after making corrections for recording inaccuracy, together with any questions taken on notice at the public hearing, on the Committee's webpage.

**10. General Business**

The Committee discussed the reporting timetable for its inquiry and agreed to meet at 4pm on Wednesday 16 September 2015 to discuss report direction.

**11. Next Meeting**

The Committee adjourned at 10:10am until its public hearing on 11 September 2015.

**MINUTES OF HEARING No 3**

10:10am

Friday 11 September 2015

Macquarie Room, Parliament House

**Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair) (between 10:10am-12:35pm and 1:30pm-3:40pm), Ms Melanie Gibbons MP, Ms Eleni Petinos MP (between 11:20am-12:35pm, 2:10pm-3:40pm and 4:20pm-5:06pm) Mr Alex Greenwich MP (between 10:10am-11:30am and 2:00pm-5:06pm) Ms Jo Haylen MP, Ms Kathy Smith MP.

**Apologies**

Nil.

**Officers in Attendance**

Jason Arditi, Elspeth Dyer, Leon Last, Jennifer Gallagher.

**1. Hearing**

At 10:10am, the Chair declared the public hearing open and witnesses and the public were admitted.

*Camden City Council*

Ms Nicole Magurren, Director Planning and Environment, was sworn and examined.

Mr Daniel Streater, Manager, Certification and Compliance, was sworn and examined.

*NSW Health*

Dr Kerry Chant PSM, Chief Health Officer and Deputy Secretary Population and Public Health, was affirmed and examined.

*Victoria Police Sex Industry Coordination Unit*

Senior Sergeant Marilyn Ross was sworn and examined (by telephone)

Sergeant Richard Farrelly was sworn and examined (by telephone).

Senior Sergeant Ross made an opening statement.

*Coalition Against Trafficking in Women, Australia*

Ms Jessica Megarry, Member, Executive Committee, Coalition Against Trafficking in Women, Australia was affirmed and examined.

Ms Megarry made an opening statement.

*Touching Base*

Mr Saul Isbister, President/Public Officer and private sex worker, was affirmed and examined.

Ms Rachel Wotton, Committee Member and sex worker, was affirmed and examined.

Ms Julie Bates, Member and private sex worker, was affirmed and examined.

Ms Fleur de Lys, Committee Member and private sex worker, was affirmed and examined.

Mr Isbister made an opening statement.

Ms Wotton made an opening statement.

Ms Bates made an opening statement.

Ms de Lys made an opening statement.

*Local Government NSW*

Mr Noel Baum, Director Policy was affirmed and examined.

Ms Jennifer Dennis, Senior Policy Officer was sworn and examined.

Mr Baum made an opening statement.

Ms Dennis made an opening statement.

*SafeWork NSW*

Mr Peter Dunphy was sworn and examined.

Mr Dunphy made an opening statement.

*Australian Federal Police*

Commander Glen McEwen, Manager, Victim Based Crime was affirmed and examined.  
Detective Superintendent Steve Mewburn, National Coordinator, Counter Exploitation Crime Program, was sworn and examined.

Evidence concluded, the witnesses and public withdrew.

**2. Next Meeting**

The Committee adjourned at 5:06pm until 4pm on Wednesday 16 September 2015.

**MINUTES OF MEETING No 6**

4:00pm  
Wednesday 16 September 2015  
Clerk's Meeting Room, Parliament House

**Members Present**

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Ms Melanie Gibbons MP, Ms Eleni Petinos MP, Mr Alex Greenwich MP, Ms Jo Haylen MP.

**Officers in Attendance**

Jason Ardit, Elspeth Dyer, Leon Last, Jennifer Gallagher.

**1. Apologies**

Ms Kathy Smith MP.

**2. Minutes**

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the draft minutes of meeting no 5, 11 September 2015, be confirmed.

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That the draft minutes of hearing no 3, 11 September 2015, be confirmed.

**3. Correspondence**

The Committee considered the following correspondence:

*Correspondence Out:*

- Letter to Deputy Police Commissioner, Mr Nick Kaldas, dated 14 September 2016 requesting a private briefing concerning sexual servitude and organised crime involvement in the sex services industry.

*Correspondence In:*

- Email from Ms Jane Green, Vixen Collective, dated 15 September 2016 attaching a press release calling for the decriminalisation of sex work in Victoria.

Resolved, on the motion of Ms Petinos, seconded by Mrs Pavey:  
That the Committee note the correspondence as listed.

The Committee also considered the following correspondence:

- Letter from Scarlet Alliance dated 10 September 2015 claiming errors in submission 167, Pink Cross Foundation Australia.

Discussion ensued.

Resolved, on the motion of Ms Petinos, seconded by Mrs Pavey:  
That the Chair forward the letter from Scarlet Alliance to Pink Cross Foundation Australia for comment.

#### **4. Submission**

Resolved, on the motion of Mr Greenwich, seconded by Ms Haylen:  
That supplementary submission 145A be received by the Committee and published in part.

#### **5. Matters Arising out of the Melbourne Site Visit to be placed on the official record**

The Committee noted amendments to the meeting notes of the Melbourne site visit as per the resolution of Mr Greenwich, seconded by Ms Haylen, at Committee meeting no 5, 11 September 2015 (item 5).

#### **6. Documents tabled – Hearing 11 September 2015**

The Committee considered the following documents tabled at its hearing on 11 September 2015:

*Document tabled by Senior Sergeant Marilyn Ross and Sergeant Richard Farrelly, Sex Industry Coordination Unit, Victoria Police:*

- Human Trafficking Information and Awareness Package, 11 September 2015 – N.B. Not for distribution.

*Document tabled by Mr Saul Isbister, President/Public Officer, Touching Base:*

- The Seven Principles of Better Regulation.

*Document tabled by Ms Julie Bates, Member, Touching Base:*

- Document called 'Proclamation of certain provisions of the EP&A Amendment Act 2012'.

*Documents tabled by Ms Rachel Wotton, Committee Member, Touching Base:*

- Questions about massage parlours;
- NSW Local and Higher Criminal Court Statistics, January 1994 to March 2015 –
  - number of finalised charges under sections 16, 17, 18 and 18A of the *Summary Offences Act 1988* relating to prostitution and premises for prostitution by outcome;
  - number of persons convicted under sections 16, 17, 18 and 18A of the *Summary Offences Act 1988* relating to prostitution and premises for prostitution by principal penalty;

- *Summary Offences Act Charges 1995-1999* (Bureau of Crime Statistics), sections 16, 17, 18 and 18A.

*Document tabled by Mr Noel Baum, Director – Policy, Local Government NSW:*

- Opening statement to the Inquiry into the Regulation of Brothels, Local Government NSW.

*Document tabled by Dr Kerry Chant PSM, Executive Director, Chief Health Officer and Deputy Secretary, Population and Public Health:*

- Health and Safety Guidelines for Brothels, Guide 2001.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:

That the Committee accept documents as listed that were tabled at its public hearing on 11 September 2015.

#### **7. Answers to Questions taken on notice**

The Committee noted answers to questions taken on notice at the hearings on 1 September 2015 by the following stakeholders:

- Marrickville Council;
- Hornsby Council;
- North Sydney Council.

The Committee also noted answers to questions taken on notice at the public hearing on 2 September 2015 by the following stakeholders:

- Dr Anna McNulty, Sydney Sexual Health Centre;
- Baptist Care;
- Scarlet Alliance.

#### **8. Discussion regarding report direction**

The Committee considered a draft report plan prepared by Committee staff.

Discussion ensued.

The Committee agreed to adopt the draft report plan, taking into account its discussions, to provide a broad structure for drafting of the report.

The Committee also considered a draft timetable for drafting and tabling of the report.

The Committee agreed to the draft timetable for drafting and tabling of the report.

#### **9. General Business**

The Committee discussed dates for a briefing with the Deputy Commissioner, NSW Police and decided that 13 October 2015 or soon thereafter would be suitable.

#### **10. Next Meeting**

The Committee adjourned at until a date and time to be determined.

## MINUTES OF MEETING No 7

4:04pm  
Tuesday 13 October 2015  
Room 1254, Parliament House

### Members Present

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Ms Melanie Gibbons MP, Ms Eleni Petinos MP, Mr Alex Greenwich MP, Ms Kathy Smith MP, Ms Jo Haylen MP.

### Officers in Attendance

Jason Arditi, Elspeth Dyer, Leon Last, Kieran Lewis, Jennifer Gallagher.

#### 1. Minutes

Resolved, on the motion of Ms Gibbons, seconded by Mrs Pavey:  
That the draft minutes of meeting no 6, 16 September 2015, be confirmed.

#### 2. Correspondence

The Committee considered the following correspondence:

##### *Correspondence Out:*

- Letter to Dr Pradeep Philip, Department of Health, Victoria, dated 15 September 2015 requesting information on the rate of sexually transmitted infections amongst sex workers in Victoria, compared with the rest of the population, for the past 10 years.
- Letter to Ms Geneviève Gilbert-Quach, Pink Cross Foundation Australia, dated 18 September 2015 regarding advice received from Scarlet Alliance about errors in the Pink Cross submission (number 167).
- Letter to Mr Nick Kaldas, Deputy Police Commissioner, dated 18 September 2015 requesting additional information regarding the *Tattoo Parlours Act 2012* and issues around the potential for corruption within NSW Police in relation to the enforcement of the Act, and also regarding issues of organised crime involvement in the sex services industry.
- Email to Mr Saul Isbister, Touching Base, from the Committee secretariat dated 1 October 2015 regarding Mr Peter Collins meeting with the Committee.
- Email to Mr Cameron Cox, Sex Workers Outreach Project, from the Committee secretariat dated 1 October 2015 regarding Mr Peter Collins meeting with the Committee.

##### *Correspondence In:*

- Email from Mr Clive Woodworth, GLYDE Health Pty Ltd, dated 21 September 2015 regarding the regulation of the sex industry in NSW.
- Letter from Mr John Hundy, Kings Court Massage, dated 24 September 2015 regarding the regulation of the sex industry in NSW.
- Email from Ms Geneviève Gilbert-Quach, Pink Cross Foundation Australia, dated 28 September 2015 responding to issues raised by Scarlet Alliance about errors in the Pink Cross submission.



- Letter from Mr Saul Isbister, Touching Base, dated 28 September 2015 regarding being recalled to give evidence before the Committee.
- Email from Mr Saul Isbister, Touching Base, dated 30 September 2015 regarding Mr Peter Collins meeting with the Committee.
- Letter from Mr Cameron Cox, Sex Workers Outreach Project, dated 30 September 2015 regarding Mr Peter Collins meeting with the Committee.
- Letter from Mr Charles Casuscelli, Western Sydney Regional Organisation of Councils Ltd, dated 1 October 2015 regarding the regulation of the sex industry in NSW.

Resolved, on the motion of Ms Haylen, seconded by Mr Greenwich:  
That the Committee note the correspondence as listed.

The Committee also considered the following correspondence:

*Correspondence Out:*

- Letter to Mr Saul Isbister, Touching Base, regarding being recalled to give evidence before the Committee.
- Letter to Mr Charles Casuscelli, Western Sydney Regional Organisation of Councils Ltd, regarding the regulation of the sex industry in NSW.

Resolved, on the motion of Mrs Pavey, seconded by Ms Gibbons:  
That the Committee forward the correspondence to Mr Saul Isbister, Touching Base, and Mr Charles Casuscelli, Western Sydney Regional Organisation of Councils Ltd.

The Committee considered a briefing note regarding allegations made by Scarlet Alliance about errors in the Pink Cross Foundation Australia submission to the inquiry (submission number 167).

Resolved, on the motion of Mr Greenwich, seconded by Ms Petinos:  
That the Committee publish Scarlet Alliance's letter, dated 10 September 2015, and the Pink Cross response, dated 28 September 2015, on its inquiry webpage; and that the Committee advise Scarlet Alliance and the Pink Cross Foundation Australia of its decision.

### **3. Submissions**

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:  
That submission 174 be received by the Committee and published in full and that submission 177 be received by the Committee but not published.

### **4. Briefing by Mr Nick Kaldas, Deputy Police Commissioner and officers of NSW Police Force**

The Committee received a briefing from Mr Kaldas, Detective Superintendent Linda Howlett, Commander of the Sex Crimes Unit, and Superintendent Peter Lennon, Commander of Fairfield Local Area Command concerning sexual servitude and organised crime involvement in the sex services industry.

### **5. Next Meeting**

The Committee adjourned at 5:33pm until Monday 2 November 2015 at 9:30am.

## MINUTES OF MEETING No 8

10:10am  
Monday 2 November 2015  
Room 1254, Parliament House

### Members Present

Mr Alister Henskens MP (Chair), Mrs Melinda Pavey MP (Deputy Chair), Ms Melanie Gibbons MP, Ms Eleni Petinos MP, Mr Alex Greenwich MP, Ms Kathy Smith MP, Ms Jo Haylen MP.

### Officers in Attendance

Catherine Watson, Jason Arditi, Elspeth Dyer, Leon Last, Kieran Lewis, Jennifer Gallagher.

#### 1. Apologies

There were no apologies.

#### 2. Minutes

Resolved, on the motion of Mrs Pavey, seconded by Ms Gibbons:  
That the draft minutes of meeting no 7, 13 October 2015, be confirmed.

#### 3. Correspondence

The Committee considered the following correspondence:

##### *Correspondence Out:*

- Letter to Mr Saul Isbister, President Touching Base, dated 13 October 2015, regarding being recalled to give evidence before the Committee.
- Letter to Mr Charles Casuscelli, Chief Executive, Western Sydney Regional Organisation of Councils Ltd, dated 13 October 2015, regarding the regulation of the sex industry in NSW.
- Letter to Ms Janelle Fawkes, Chief Executive Officer, Scarlet Alliance, dated 14 October 2015, advising of the Committee's decision concerning the submission of Pink Cross Foundation Australia to the inquiry.
- Letter to Ms Genevieve Gilbert, Executive Director, Pink Cross Foundation Australia, dated 14 October 2015, advising of the Committee's decision concerning the submission of Pink Cross Foundation Australia to the inquiry.

##### *Correspondence In:*

- Letter from Ms Kym Peake, Acting Secretary, Victorian Department of Health and Human Services dated 23 October 2015, regarding data held by the Department concerning sexually transmitted infections amongst sex workers in Victoria.

Resolved, on the motion of Mrs Pavey, seconded by Ms Petinos:  
That the Committee note the correspondence as listed.

#### 4. Consideration of the Chair's Draft Report

The Committee agreed to deliberate on proposed amendments to findings and recommendations in the Chair's draft report before considering it chapter by chapter.

Resolved, on the motion of Ms Petinos, seconded by Ms Gibbons:

That the following words be inserted before the findings and recommendations in the list of findings and recommendations at the beginning of the report: "The Committee has made findings of fact and recommendations for action to be taken by the NSW Government as follows:".

Resolved on the motion of Ms Petinos, seconded by Ms Gibbons:

That finding 2 be amended by omitting the words "have a high incidence of vulnerability" after the words "Other sex workers" and inserting instead the words "are vulnerable".

Resolved on the motion of Mr Greenwich, seconded by Ms Haylen:

That recommendation 3, as circulated in the Chair's draft report, "That NSW Health consider mandatory health testing of sex workers, focusing on outreach and education, improved access, targets and incentives, and a system which could supplement other recommendations in this report for the introduction of a brothel licensing system in NSW" be omitted.

Mr Greenwich moved that recommendation 11 (circulated as recommendation 12 in the Chair's draft report) be amended by omitting the words "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" and inserting instead the words "That the NSW Government's Seven Principles for Better Regulation be applied to any proposal for licensing of brothels".

Discussion ensued.

Question put – that the amendment be agreed to.

The Committee divided.

Ayes 3 [Mr Greenwich, Ms Haylen and Ms Smith] Noes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos].

The amendment was negatived.

Resolved, on the motion of Ms Petinos, seconded by Ms Gibbons:

That recommendation 19 (circulated as recommendation 20 in the Chair's draft report) be amended by inserting the words "worker exploitation or" after the word "other" and before the words "criminal activity".

Resolved, on the motion of Ms Petinos, seconded by Ms Gibbons:

That recommendation 21 (circulated as recommendation 22 in the Chair's draft report) be amended by omitting the words "That the government continue the current role of councils where they assess and grant the location of and" before the words "planning approvals" and inserting instead the words: "That councils continue their current role of assessing the location of and granting the".

Resolved on the motion of Ms Petinos, seconded by Ms Gibbons:

That recommendation 35 (circulated as recommendation 36 in the Chair's draft report) be amended by inserting the words "or for another use specified by the Court" after the words "massage parlour".

The Committee proceeded to consider the Chair's draft report chapter by chapter.

Resolved, on the motion of Mrs Pavey, seconded by Ms Gibbons:  
That chapter one be adopted.

Chapter two proposed.

Resolved, on the motion of Ms Gibbons, seconded by Ms Petinos:  
That paragraph 2.13 be amended by omitting the words "Ms Geena Leigh" after the words "For example,".

Resolved, on the motion of Ms Gibbons, seconded by Ms Petinos:  
That footnote 11 be amended by omitting the words "Ms Geena Leigh" after the words "Submission 27".

The Committee proceeded to deliberate on proposed amendments to chapter two circulated at the meeting by Mr Greenwich and Ms Haylen.

Discussion ensued.

The Committee adjourned at 10:42am and returned at 11:23am.

The Committee continued to deliberate on proposed amendments to chapter two circulated at the meeting by Mr Greenwich and Ms Haylen.

Resolved, on the motion of Ms Haylen, seconded by Mr Greenwich:  
That a new paragraph 2.24 be inserted into chapter two: "The Committee received evidence that decriminalisation has profoundly improved the safety, well-being and health of sex workers and their clients as well as improved police integrity with respect to the industry. Decriminalisation has reduced the prejudice experienced by sex workers and has the support of the vast number of sex workers. The report states that the *Commonwealth Criminal Code Act 1995* empowers the Australian Federal Police to investigate criminal activity – particularly related to sexual servitude – with NSW Police and the Department of Immigration and Border Protection. Given the positive impacts of decriminalisation and the existing powers of law enforcement, any move towards licensing sex workers must be dismissed".

Resolved, on the motion of Ms Haylen, seconded by Mr Greenwich:  
That a new paragraph 2.25 be inserted into chapter two: "The Members for Sydney, Summer Hill and Gosford maintain that the chapter advocates the case for a licensing regime without adequately addressing the benefits of the current framework of decriminalisation. These members are of the view that the report overstates the susceptibility of sex workers and brothels to criminal activity such as money laundering, sexual servitude and outlaw bikie gangs. These members are of the view that the report gives disproportionate weighting to the views of NSW Police (Deputy Commissioner Kaldas), to the exclusion of other organisations which balanced this view. These members are of the view that little concrete evidence is presented to support these claims and the experiences of sex workers are simplified to suggest

overwhelming vulnerability. These members are of the view that the Committee received evidence of complex intersections of marginalisation, however, the report does not elucidate how licensing would stop an underground industry or protect sex workers”.

Resolved, on the motion of Ms Gibbons, seconded by Ms Petinos:

That a new paragraph 2.26 be inserted into chapter two: “The Members for Ku-ring-gai, Oxley, Holsworthy and Miranda do not agree with the views expressed in paragraph 2.25 and in particular are of the view that the susceptibility of brothels and sex workers to criminal activity such as money laundering, sexual servitude and outlaw bikie gangs cannot be emphasised enough in order to protect the welfare of sex workers. These members are of the view that the evidence of the NSW Police, on balance, was the most cogent and reliable evidence received on these matters (see paragraphs 4.23-4.47 below)”.

Ms Gibbons moved that chapter two, as amended, be adopted.

The Committee divided.

Ayes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos] Noes 3 [Mr Greenwich, Ms Haylen, Ms Smith].

Motion agreed to.

Chapter three proposed.

Resolved, on the motion of Ms Haylen, seconded by Ms Gibbons:

That a new paragraph 3.87 be inserted into chapter three: “Investigating other policy options, including the establishment of an expert team within the Office of Local Government to advise on brothel inspections and enforcement may assist the existing system to work more effectively. Providing local governments with increased resources and authority to enforce existing laws would improve councils’ capacity to counter any rise in unauthorised brothels and sex services premises”.

Ms Haylen moved that a new paragraph 3.88 be inserted into chapter three: “The Members for Sydney, Summer Hill and Gosford are of the view that the report does not sufficiently differentiate between approved brothels and unauthorised venues that allegedly offer sexual services, such as massage parlours and karaoke bars. While an argument may be extrapolated for regulation of the latter, evidence to the Committee showed the current system of regulating brothels through the LEPs and DCPs of local councils works, with complying brothels receiving few complaints and impact on amenity. Council concerns are undeniably with non-complying brothels and with the fact they lack the resources and expertise to enforce their regulations, not with complying brothels themselves. The report also fails to describe how licensing will deliver the desired effect of reducing the alleged criminal activity within brothels. Given the evidence presented to the Committee, moving to a licensing regime will result in an increase in unauthorised brothels as unscrupulous operators seek to evade licensing systems and sex workers seek to avoid stigmatisation. The report notes that Victoria experiences a ‘proliferation of unapproved massage parlours offering sex services’ despite their licensing regime (paragraph 3.77)”.

Discussion ensued.

Question put – that the amendment be agreed to.

The Committee divided.

Ayes 3 [Mr Greenwich, Ms Haylen, Ms Smith] Noes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos].

The amendment was negatived.

Mrs Pavey moved that chapter three, as amended, be adopted.

The Committee divided.

Ayes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos] Noes 3 [Mr Greenwich, Ms Haylen, Ms Smith].

Motion agreed to.

Chapter four proposed.

The Chair announced amendments to chapter four.

Mr Greenwich moved that paragraphs 4.57 to 4.63 be omitted and the following words instead inserted: "This chapter identifies potential problems with sexual servitude and criminal activity in brothels. But too much weight is given to comments by Nick Kaldas who is calling for greater police powers in regulating the sex industry. There are repeated references to the lack of regulation in the sex industry making it a haven for trafficking, servitude and drug taking with Mr Kaldas' comments that if a register existed of so-called legal brothels, criminal activity could be better addressed taken as a given. Yet Victoria Police identified that criminal activity occurs in Victoria under its heavily regulated model, including in both unlicensed and licensed brothels. We have not seen any evidence that criminal activity is worse in NSW in comparison to Victoria. It is noted that when the AFP were asked 'Of the 6 identified sex-trafficking investigations in NSW, how many involved a conviction, and how many were related to brothels or massage parlours?' the AFP's response was: 'None of the six matters resulted in a conviction. In five of the matters, no human trafficking offence was identified or disclosed. The sixth matter was a foreign law enforcement request for assistance in relation to an international matter.' The chapter aims to focus on the protection of sex workers but fails to explain how deregulation has avoided creating a two tiered industry with licensed and unlicensed brothels, in turn protecting sex workers from intimidation and exploitation and ensuring they feel safe to access health and welfare services".

Discussion ensued.

Question put – that the amendment be agreed to.

The Committee divided.

Ayes 3 [Mr Greenwich, Ms Haylen, Ms Smith] Noes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos].

The amendment was negatived.

Mrs Pavey moved that chapter four, as amended, be adopted.

The Committee divided.

Ayes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos] Noes 3 [Mr Greenwich, Ms Haylen, Ms Smith].

Motion agreed to.

Chapter five proposed.

Mr Greenwich moved that paragraphs 5.77 to 5.80 be omitted and the following words instead inserted: "Leading sexual health experts have made it clear that any further regulation of sex services could compromise the health and wellbeing of sex workers. The Committee has heard that introducing a licensing system with criminal sanctions will discourage those working in the unlicensed sector from accessing services".

Discussion ensued.

Question put – that the amendment be agreed to.

The Committee divided.

Ayes 3 [Mr Greenwich, Ms Haylen, Ms Smith] Noes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos].

The amendment was negatived.

Mrs Pavey moved that chapter five be adopted.

The Committee divided.

Ayes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos] Noes 3 [Mr Greenwich, Ms Haylen, Ms Smith].

Motion agreed to.

Chapter six proposed.

Mr Greenwich moved that all words in chapter six be omitted and the following words instead inserted: "The Committee calls for better resources to help councils deal with enforcing planning laws for brothels including guidelines from the Office of Local Government. The Committee also calls for a coordination unit to be established, potentially within the NSW Police Force, to coordinate reports of criminal activity related to sexual servitude which can liaise with other agencies including local government, immigration and organised crime units. Decriminalisation is world's best practice and has proven health and welfare benefits for sex workers and their clients. The Committee notes its history as being introduced in response to police corruption and intimidation of sex workers and that it has the support of health

services. The Committee also recommends 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 *Summary Offences Act 1988* and consider instituting advertising provisions along the lines of those contained in section 11 of New Zealand's *Prostitution Reform Act 2003* and having regard to the New Zealand provisions relating to internet advertising of adult products and services".

Discussion ensued.

Question put – that the amendment be agreed to.

The Committee divided.

Ayes 3 [Mr Greenwich, Ms Haylen, Ms Smith] Noes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos].

The amendment was negatived.

Mrs Pavey moved that chapter six be adopted.

The Committee divided.

Ayes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos] Noes 3 [Mr Greenwich, Ms Haylen, Ms Smith].

Motion agreed to.

Mrs Pavey moved that the Committee adopt the draft report as amended and signed by the Chair for presentation to the House, and that it authorise the secretariat to make appropriate final editing and stylistic changes as required.

The Committee divided.

Ayes 4 [Mr Henskens, Mrs Pavey, Ms Gibbons, Ms Petinos] Noes 3 [Mr Greenwich, Ms Haylen, Ms Smith].

Motion agreed to.

Resolved, on the motion of Ms Petinos, seconded by Ms Gibbons:  
That, once tabled, the report be published on the Committee's webpage.

Resolved, on the motion of Mrs Pavey, seconded by Ms Gibbons:  
That the Chair issue a press release announcing the tabling of the Committee's report, for dissemination by the Committee secretariat.

## **5. General Business**

Ms Haylen thanked the Chair and the Committee staff for their work and the Clerks for their procedural advice. The Chair thanked the Committee members for their work.



SELECT COMMITTEE ON THE REGULATION OF BROTHELS  
EXTRACTS FROM MINUTES

**6. Next Meeting**

The Committee adjourned at 12:26pm until a date and time to be determined.