

OPEN LETTER: TO ALL NSW PARLIAMENTARIANS & DIRECTOR-GENERALS OF RELEVANT DEPARTMENTS

In pre-election promises and recent statements on ABC Stateline, the Hon. Barry O’Farrell has promised that his Government will consult with interested parties as a part of informed policy making. This reassures us that the following information will be taken into account in the interests of ensuring the ongoing protection of the current excellent public health outcomes we have come to expect within the populations of sex workers and their clients in NSW.

We believe as part of the current major review of planning controls in NSW the following concerns should be taken into serious consideration.

We are very concerned about the potential harms of attempting to introduce a licensing regime for the NSW sex industry. In the interests of informed decision making we outline our concerns and rationale for them under the following headings:

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Decriminalisation of sex industry has positive outcomes in NSW

In January 2000 a Brothels Task Force was established by the NSW Attorney General and the Minister for Urban Affairs and Planning. It was comprised of representatives from The Cabinet Office, Attorney General’s Department, Department of Local Government, Department of Urban Affairs and Planning, Ministry for Police, WorkCover NSW, NSW Health, Police Service, and the Local Government and Shires Association. This Task Force was commissioned to monitor the regulation of brothels by local councils and to assess the success of occupational health and safety programs for sex workers, their clients and the public. The Report conclusion in relation to Occupational Health & Safety issues noted:

“Decriminalisation of prostitution has had a positive impact on access for workers to health services and occupational health and safety programs. However, care must be taken to ensure that planning controls do not create barriers to the implementation of effective public health policies and services directed at sex workers in all facets of the sex industry. It is proposed that occupational health and safety programs for sex workers should continue.”

[Source: Report of the Brothels Task Force, 2001, p. 28]

Licensing is a failed model in Australia

An objective review of the experiences of the Victorian and Queensland licensing models will show that they have both failed to: (a) achieve a realistic and workable legal framework that fairly embraces all sectors of the sex industry and (b) protect and support the human and occupational health and safety rights of sex workers in those jurisdictions. In Queensland independent sex workers are not permitted to work together and just recently a female sex worker working alone was raped, beaten and axed and left to die. In Victoria recently a sex worker had a gun pulled on her by a client insisting on unsafe sex. She is taking legal action in which she claims the licensed brothel she was working in did not take adequate steps to support workers in getting clients to use condoms.

Both Queensland and Victoria have a burgeoning illegal industry where outreach workers have difficulties accessing the majority of the industry that remains outside of the licensing framework. By comparison, the findings of the Law & Sex Worker Health study (LASH) led by Professor Basil Donovan (UNSW, National Centre in HIV Epidemiology and Clinical Research) found that in NSW there was extensive peer-based outreach to all sex work venues and that restrictive sex work related laws and policing, such as in Victoria, adversely affect the delivery of health services and health promotion programs to sex workers.

Additionally, the small number of businesses that have sought to establish in Queensland shows that licensing and the costs and controls involved fail as an incentive for people to legitimise their businesses. And, as the examples of abuse and violence above shows, does little to protect and support sex workers occupational health and safety rights.

No evidence in support of licensing of brothels

In regards to the current proposal to introduce a brothel licensing system in NSW one needs to question the rationale. Will it improve the health and safety of sex workers; will it encourage more commercial operators to apply for development consent; will it guide and inform local councils, industry operators and the broader community; and will it improve work place conditions and support safe sex policies and practices?

If this proposal is simply for political expediency or was in response to a minor case of pre-election moral panic, it is putting the lives and livelihood of sex workers in harm's way as it simultaneously ignores the proven benefits of decriminalisation from a public health and human rights perspective. The UN and the WHO are calling on countries around the world to decriminalise the sex industry, as has occurred in NSW and New Zealand, as a best practice approach to minimising the impact of

HIV, and hold up the model of decriminalisation as an example of best practice¹. It would be a great pity if these world-leading gains as evidenced by the reforms in NSW in terms of public health outcomes and enabling the rights and safety of sex workers in NSW were lost.

Any problems with recalcitrant Councils or non-compliant sex industry premises can be fixed within the current legislative framework by providing information and education. This option is a whole lot easier and cheaper than introducing more layers of complex controls and licensing bodies and enforcement processes that will have no benefit to anyone - apart from those who want to close brothels for either anti-competitive reasons or on the basis of their moral objection to the sex industry in general.

Discussions around licensing provide a timely reminder to revisit the points made by the Hon. Don Harwin in the debate leading up to the Brothels Legislation Amendment Bill 2007 and anyone considering licensing of the sex industry ought to reflect on his points - in which he notes:

"It is 12 years since the Disorderly Houses Amendment Act 1995 made the regulation of brothels in our community an issue of local government planning rather than one of morality or criminal law. Reflecting broader community recognition that the presence of a sex industry in a society is inevitable. It is appropriate for the Parliament to prescribe a workable legal framework that protects both the interests of the wider community and the rights of sex workers. It is desirable for the sex industry to be subject of regulations requiring brothels to operate with development consent from local government and appropriate safeguards for workers and clients. Such regulation is good public policy and the industry should remain the object of planning legislation."

¹ The UNAIDS report on the global AIDS epidemic 2010, [Chapter 5: Human rights and gender equality, p.137](#)

Consultation always required to avoid negative unintended consequences

Any discussion concerning the regulation of the sex industry - be it a proposed *enforcement* regime (2009) or proposed *licensing* regime (2011) - must be done in consultation with representatives of the industry and public health officials in order to avoid unleashing unintended negative consequences. Importantly, representatives from Councils which have successfully managed to capture the whole of the sex industry, that is, the private and commercial sectors within their regulatory framework - without negative political or financial consequences - should also be asked to provide guidance.

Both the Hon John Harwin and the member for Pittwater, Rob Stokes highlighted the two most significant problems during debate of the Brothels Legislation Amendment Bill 2007: (a) legislation being written without sufficient consultation with stakeholders and (b) Government providing very little guidance to local councils as to how to use their planning powers to effectively regulate the industry.

Absence of guidance leaves Councils behaving badly

An example of the negative effects of this lack of guidance to Councils can be found in a 2009 submission to the Standing Committee on State Development in an inquiry into the NSW Planning Framework. Sutherland Council responds to the question – “*What difficulties are posed for councils when they have a significantly different regulatory tool to implement their overall plan and vision for an area?*”, or to paraphrase in light of their answer– ‘What do Councils do in order to circumvent the purpose of state-wide planning instruments if they disagree with the intended outcomes of those planning instruments?’

Sutherland Council's comments provide a very frank and illuminating response describing the extensive steps they take to undermine the intentions of such regulations:

"At a policy level the council will attempt to introduce into its development control plan other provisions that will counter the LEP provision. For example, the LEP may permit a form of development that the council opposes (eg brothels) so the council will make development control plan provisions that are so restrictive that no proposal could satisfy the requirements. Should an applicant choose to submit an application obstacles would be created to frustrate the applicant. Should the proposal then come before the council it would be refused so that the applicant was forced to appeal to the Land & Environment Court."²

² Standing Committee on State Development - [Inquiry into the NSW Planning Framework \(Submission 46, p.4, 2009\)](#)

Guidance and support is required – not a new licensing regime

This irrefutable evidence courtesy of Sutherland Council highlights the failings of former Governments to provide the guidance required and exposes the devious manner of refusal by local government to treat the sex industry as a legitimate land use. Licensing however is not an answer to the systemic failure to properly oversee the regulation of sex industry premises in the hands of local government.

The new coalition government has an unprecedented opportunity to remedy the deficiencies in the implementation of the 1995 reforms to ensure better practice - as is currently demonstrated by councils such as the City of Sydney, Newcastle and Wollongong and as identified in the Sex Services Premises Planning Guidelines (Publisher: Dept of Planning , 2004). Reflecting on these council's experiences and guiding principles of the Guidelines provide a way forward to ensure decriminalisation is given the best possible chance of success.

It is remarkable that for over a decade councils have been permitted to continuously hold with contempt the higher intentions of previous NSW Parliaments. Remedial steps must be taken with these councils and be given time to work before the situation can be fairly reassessed. Only after that could consideration be reasonably given to introducing a licensing regime; and only then if new evidence emerged that clearly supported such a drastic move against the proven effectiveness of decriminalisation.

Conclusion and Recommendation

In conclusion, as part of the current extensive review of the Environmental Planning and Assessment Act (1979), a careful review of how councils have been regulating the sex industry since the introduction of the Standard LEP Instrument and the recent tightening of sex industry laws in 2007, should surely be conducted.

Yours sincerely,

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