



## Information Pack on proposed NSW Sex Industry Regulation

You may have heard about the regulation changing for sex workers and the sex industry in NSW. Before regulatory systems change they are often proposed as a discussion paper and then the public (including sex workers) have the chance to comment on the proposals.

An Issues Paper has now been released.

[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)

In the issues paper- 3 options for regulation were proposed. Option 1 stated that it would “**improve the current system**” but then stated, “**These elements might be equally relevant for adoption as part of the registration or licensing options.**” For this reason, Scarlet Alliance did not support any of the options.

We expressed sex workers concerns with option 1 to the Better Regulations Office. They have now changed Option 1 to state, “**This option does not include registration or licensing**”. See updated page link:

[http://www.betterregulation.nsw.gov.au/targeted\\_review/review\\_of\\_the\\_regulation\\_of\\_brothels\\_in\\_nsw](http://www.betterregulation.nsw.gov.au/targeted_review/review_of_the_regulation_of_brothels_in_nsw).

For this reason, Scarlet Alliance are now able to support the amended Option 1: **Improve the current regulatory system, including improving decision-making in planning for sex services premises and improving the sharing of information between NSW regulators. This option does not include registration or licensing**

This highlights the importance of sex worker input to the inquiry. Our opinions do make a difference!

This is your opportunity to inform the changes and to ensure that the NSW government understands how the proposed regulation will impact on sex workers- as only sex workers know how.

As sex workers, we are the experts and most able to see where new regulation will create problems or just not be practical.

This is an urgent opportunity to identify what you think is wrong with the planned regulatory systems **BEFORE** they become law.

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

### Some of the proposed options include-

-ending 17 years of decriminalisation of sex work in NSW

-introduction of licensing or registration

-proposals for a system of compulsory registration maintained by government and accessible to police

-proposals for a licensing system, with applicants vetted by police

-licenses only available for citizens or permanent residents of Australia

-establishment of a new sex services licensing authority

Your comments must be received by the Better Regulation Office by post or email by

**Friday, 12 October  
2012**

**This information pack is to assist people to have a say on the proposed laws.**

It includes:

1. Information on how to have your say
2. Information on where to send your comment including the postal address or email address
3. An example submission/letter
4. The link to locate the Issues Paper on proposed regulations
5. Information on what regulation is proposed & information on how the proposals may impact on you and your work.
6. Suggestions you can give to people who support sex workers
7. Further reading and reliable research

## **Section 1 - How can you have a say:**

### As a Member of the Community

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

### As a Sex Worker

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

### As a Manager or Operator

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

### As a Scarlet Alliance Member

If you are unable to write on your own behalf, talk to Scarlet Alliance. Scarlet Alliance can collect your comments (without identifying you or where you work) and send these to the Government so that as many sex workers as possible will be able to comment on the legislation.

## **Section 2 – Where to send your letter/submission:**

Send submissions by post or email.

### **Post:**

Better Regulation Office  
GPO Box 5341  
SYDNEY NSW 2001

### **Email:**

[betterregulation@dpc.nsw.gov.au](mailto:betterregulation@dpc.nsw.gov.au)

Your letter/submission must be received before the **12 October, 2012**

### Section 3 – Example letter/submission:

## EXAMPLE ONLY

[Your name or use a pseudonym and state why your name is withheld] Susan Smith,  
[Put your address if you are happy to be contacted or a post box address] 1a House Street,  
[Note if you use your address- submissions will be made public but you could ask for your address to be withheld] Sydney NSW 2000  
[must be submitted by 12<sup>th</sup> October 2012] 12 October 2012

**By Post:** Better Regulation Office

GPO Box 5341

SYDNEY NSW 2001

**By Email:** [betterregulation@dpc.nsw.gov.au](mailto:betterregulation@dpc.nsw.gov.au)

To whom it may concern,

As a sex worker, I am writing to oppose the introduction of licensing and registration in NSW. Decriminalisation is the best model of regulation for the sex industry, when it is applied. For this reason I would support **Option 1: Improve current regulation, no licensing or registration**. I have outlined some of the main points in the issues paper I disagree with and my reasons.

They are as follows: **[examples only]**

**Registration** [Place here your reasons for opposing the clause]  
*[Example: I believe that this will breach my confidentiality and affect my opportunities for future employment, further education and access to justice...]*

**Recommendation:** [Make a recommendation if you believe something else should happen instead of what the government is proposing.]

**Licensing** [Place here your reasons for opposing the clause]  
*[Example: Licensing will negatively affect my access to health services and my ability to contact police or other authorities in the event of a crime...]*

**Recommendation:** [Example] Sex workers and businesses should not be licensed. This clause limits my business without reason. It shows a lack of knowledge of how sex workers operate. I am a business woman and tax payer and as such I require legislation which provides me with safe working conditions - decriminalisation.

List as many points you want to- the more the better.

**At the end of your submission you can make a list of recommendations.**

**Recommendations:** [Example]  
I believe Police and government licensing authorities should not be involved in regulating the sex industry.  
Decriminalisation is the best model for sex workers in NSW.

Yours Faithfully

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

## Section 4 – Where to download the full copy of the Issues Paper

**You can download the Issues Paper from:**

[http://www.betterregulation.nsw.gov.au/targeted\\_reviews](http://www.betterregulation.nsw.gov.au/targeted_reviews)

## Section 5 – Information on what new regulation is proposed & information on how the proposals may impact on you and your work.

*The following clauses from the Issues Paper have been selected by us and summarised. They do not represent the entire Paper - you can get a copy of the full Paper yourself from the link above. This is also not legal advice.*

### How this process came about

The Liberal Government announced an intention to introduce ‘brothel police’ as an election promise during their 2011 NSW State Government election campaign.

The Department of Premier and Cabinet (DPC, via the Better Regulation Office) in consultation with an inter-agency working party has been asked to develop options to improve the regulation of brothels in NSW.

The issue paper states the need for the review is due to concerns about a large number of unapproved (‘illegal’) brothels in NSW and to reduce and/or prevent crime and corruption.

As discussed below, these concerns are not evidence-based, and a new regulatory system is not warranted.

The three main objectives stated by the review are:

- Protection of residential amenity: The location and operation of sex services premises should not have undue negative environmental, social or economic impacts upon residents in the local area. Relevant considerations regarding impact may include the compatibility of the land for use as a sex services premises, and public health and safety issues.
- Protection of sex workers: Sex workers should not be unduly exposed to physical or mental harm while undertaking their work, and should feel empowered to undertake actions that assist with or enhance their protection.
- Safeguarding public health: Sex workers, clients and other members of the community should have low rates of sexually transmitted infections (STIs), including HIV and AIDS.

These objectives fail to recognise that sex workers *are* residents and part of the community; sex workers make positive contributions to public health; States should afford sex workers agency and rights so we can protect ourselves; sex workers should be protected from stigma and discrimination by the State; and Australian sex workers already have lower rates of STIs than the general population (this is recognised by Australia’s National HIV/STI Strategies as being some of the lowest in the world).

You are invited to comment on these definitions/objectives in the Issues Paper.

## The proposed regulatory system

The Department of Premier and Cabinet are proposing 3 Options for sex industry regulation:

-Option 1: Improve the current regulatory system, including improving decision-making in planning for sex services premises and improving the sharing of information between NSW regulators. This option does not include registration or licensing, but might equally be relevant for adoption as part of the registration or licensing options (i.e. options 2 or 3).

-Option 2: Introduce a registration system for owners and operators of commercial sex services premises. The register could be maintained by a community-based peer outreach body or by a Government agency.

-Option 3: Introduce a licensing system for owners and operators of commercial sex services premises. The licensing authority, in determining suitability for a licence, would consider: whether the applicant is a fit and proper person; whether it is in the public interest for the licence to be granted; and whether appropriate arrangements have been made to ensure the health, safety, and welfare of sex workers and clients.

### **Scarlet Alliance now supports the amended Option 1**

The issue paper claim option 1 is “improving current system”. The current regulatory system is a system of decriminalisation, which means no special laws or criminal offences in relation to sex industry premises. Option 1 talks of improving decision making in planning and improving sharing of information between NSW regulators - within the current regulatory system. But then follows the sentence: These elements might be equally relevant for adoption as part of the registration or licensing options.

We expressed strong disagreement with option 1 as stated in the issues paper as registration or licensing are NOT the current regulatory system - they are two completely different regulatory systems - (licensing and criminalisation). Option 1 did not offer the choice solely to improve the current regulatory system.

On the basis of our concerns (and other sex workers that contacted their office) the Better Regulation Office have now amended Option 1 to explicitly state that **Option 1 does not include registration or licensing. They were unable to change the issues paper but have publically stated the amendments to Option 1 on their website; [http://www.betterregulation.nsw.gov.au/targeted\\_reviews/review\\_of\\_the\\_regulation\\_of\\_brothels\\_in\\_nsw](http://www.betterregulation.nsw.gov.au/targeted_reviews/review_of_the_regulation_of_brothels_in_nsw)**

The Issues Paper states that it “does not analyse the potential impacts of the proposed options as the purpose of the consultation process is to gather evidence, information and perspectives from stakeholders to help inform the development of possible reforms for the Government’s consideration. Stakeholders are also welcome to propose an alternative regulatory model for consideration.”

A series of questions are raised seeking input from stakeholders (that's us!). Wherever possible, stakeholders are asked to explain their reasons and provide specific examples or evidence.

### What they are asking

The Issues Paper lists a number of questions for you to respond to, including:

- How would you alter the working definitions that we have proposed for the Government's objectives for the regulation of sex services premises, relating to protection of residential amenity, protection of sex workers, and safeguarding public health?
- Do you have any evidence about sex services premises' impact on residential amenity?
- Do you have any information about whether councils treat sex services premises differently to other businesses with similar amenity impacts?
- When considering applications for sex services premises, should councils use only evidence-based approaches that rely on verifiable criteria about possible amenity impacts? Why or why not?
- Should the principles outlined in the Sex Services Premises Planning Guidelines be incorporated into Government Policy?
- What would be the advantages or disadvantages of requiring councils to permit sex services premises in their local area?
- What would be the advantages or disadvantages of the State placing restrictions on the location of sex services premises?
- What would be the advantages or disadvantages of repealing the current advertising restrictions on the sex industry?
- Do you have any information about trafficking or organized crime more broadly and its association with the sex industry?
- Do you have any information that can contribute to the Review Team's understanding about the issues that impact on sex worker protection?
- Do you have any information that may help compare issues affecting sex worker protection across States and Territories?
- Do you have any information about whether crime is relatively more prevalent in the sex industry compared to other businesses, taking account of the circumstances of sex businesses (such as whether they are operating at night)?
- Do you have any information that may help to explain the level of health outcomes associated with the sex industry in NSW?
- Do you have any information that may help compare public health outcomes across States and Territories?
- Do different regulatory regimes in NSW, Victoria and Queensland and the ACT have any impacts on sex services premises and communities in NSW towns on either side of relevant borders?
- What opportunities are there to ensure an improved and consistent planning approach for sex service premises across local government?
- Do you have any information about whether the current level of enforcement of the sex services industry is proportionate to the risk involved?
- Do you have any information about how regulators could improve their compliance and enforcement activities in relation to sex services premises?
- Do you have any information about how regulators associated with the sex industry could improve their ways of working together?
- If there was a registration system for sex services premises, do you have any information about whether the relevant businesses would choose to register?

- Do you have any information about who should have access to a register of sex services premises?
- Do you have any information about the likely effectiveness of a sex service premises licensing system, particular with regards to sex worker protection?
- Which of the options for regulating sex services premises would best meet the Government's objectives for the proposed regulatory system (protection of residential amenity, protection of sex workers and safeguarding public health)? Please advise your reasons and highlight any impacts of specific types of sex services businesses such as home-based sex work and street-based sex work.
- You are welcome to propose an alternative regulatory model for consideration.

#### Points you can make in your submission

##### Addressing Myths

- Organised crime is not a facet of the sex industry in NSW.
- Trafficking is not a facet of the sex industry in NSW.
- The main cause of 'illegal' or 'unauthorised' premises are overly-restrictive council regulations.
- Indoor environments are not necessarily safer for sex workers. What is safe for sex workers is giving us the opportunities to choose what methods of work are best and safest for us.
- Sex workers do not have rates of STIs/HIV that are 'comparable to' the general population. Sex worker rates of STIs/HIV are *lower than* the general population.

##### Licensing

- There is no evidence of a large number of "illegal" brothels in NSW and plenty of evidence that licensing has created a large number of "illegal" brothels in Vic and Qld.
- Licensing has very low compliance and creates a two tiered industry- the minority who can comply and the majority that cannot and are therefore considered "illegal". 90% of the Qld sex industry and 50% of the Vic sex industry operate illegally under a licensing framework.
- Anti-discrimination law, in states that it does exist, does not protect the majority of sex workers who work outside licensed brothels.
- Licensing is sometimes referred to as legalisation, but more accurately referred to as excessive regulation.
- Under some licensing models, sex workers face mandatory STI/HIV testing, are prohibited from working together, face compulsory permanent police registration, are forced to operate in isolated industrial areas.
- The Kirby Institute's 2012 Report to the NSW Ministry of Health states that licensing is a 'threat to public health' and should not be regarded as a viable legislative model.

##### Amenity impacts

- Sex services premises present minimal amenity impacts to the community. Research supports this. We know it is in sex workers and clients best interests to be discreet and minimise any impacts on neighbours. It is mostly the case people are often unaware that sex services premises exist in their suburb.
- Councils often regulate on moral grounds and treat sex services premises differently to other businesses with similar amenity impacts. This is unjustified and discriminatory.



## Health and safety

- Sex workers rates of STI/HIV are lower than the general population and there are high levels of condom use. Studies show migrant sex workers have similarly low rates of STIs and HIV. Decriminalisation supports this.
- In their 2005 comparative study of brothels in Perth, Melbourne and Sydney, Harcourt et al. found that of three Australian approaches to sex work legislation (criminalisation, licensing and decriminalisation), decriminalisation led to the best health outcomes.
- Sex worker access to health providers and outreach is best supported by decriminalisation.

## Decriminalisation

- We currently have a system of decriminalisation in NSW, which we have had for 17 years.
- Decriminalisation was introduced because of corruption by police and by removing police as regulators has successfully addressed corruption. Police are inappropriate regulators of the sex industry and we are glad they're out!
- We have a very strong base of evidence and experience that supports decriminalisation as the best model of regulation of the sex industry. We have equally strong evidence of the failure of licensing and registration in other states.
- Decriminalisation is supported by the United Nations, and NSW is world renowned for its best-practice model. A move away from decriminalisation is to step back 17 years in sex worker health and safety.
- Decriminalisation is what sex workers want. The current regulatory system is the best and we do not need a reform to the current system in NSW.
- Decriminalisation has brought improved work safety, high rates of safer sex practice and low rates of sexually transmitted infections and no evidence of organised crime.
- Decriminalisation means sex workers can access support in the event of a crime.
- Decriminalisation means that sex industry businesses are already regulated like other businesses, subject to existing regulatory mechanisms such as local council planning and zoning regulations, WorkCover and the Australian Taxation Office. Suggested improvements would be if these mechanisms were applied fairly and sex industry businesses were actually treated like any other business.
- A decriminalised system amplifies opportunities for outreach, magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination.

## Suggested improvements

Your submission could also recommend:

- **Add new category to the *Anti-Discrimination Act (NSW)* to include protection on the basis of 'lawful sexual activity', or 'occupation, vocation, calling or trade'.**
- **Remove discriminatory provisions against sex workers within the standard LEP.**
- **Appoint a sex industry liaison officer within the Department of Planning.** This position would require a demonstrable understanding of the NSW sex industry and the intent and justification of decriminalisation.

Their role would be to assist Councils to abide by the guiding principles for sex industry planning identified in the SSPPG.



- **Revise, update and apply the existing SSPPG** as an ongoing resource for councils.
- **Support and fund the development of a sex worker run education program to:** inform councillors of the rationale behind decriminalisation; explain the legislative framework and Standard LEP; explore the impact of planning on the public health prevention strategies, the Occupational Health and Safety of workers and their clients; discover the reality of amenity issues; and case law.
- **Repeal the advertising restrictions from the *Summary Offences Act (1988): Section 18.*** Deleting this un-used law, thus removing unnecessary discrimination, is consistent with the intentions of decriminalisation. Advertising publishers would still be able to exercise editorial control to ensure sex industry advertisements meet the publication's standards for content.
- **Decriminalise street-based sex work in NSW.** Currently some forms of street-based sex work remain illegal in NSW. To achieve full decriminalisation, street-based sex work in all locations must be decriminalised.

## Section 6 – Suggestions you can give to people who support sex workers

### 1. Get a Copy of the Issues Paper

See the injustice for yourself. You can download the Bill from:

[http://www.betterregulation.nsw.gov.au/targeted\\_reviews](http://www.betterregulation.nsw.gov.au/targeted_reviews)

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

Submissions do not have to be long or time consuming, and are an important way to let the government know you do not support what has been proposed.

### Deadline Friday 12 October 2011

Send submissions by post or email.

#### Post:

Better Regulation Office  
GPO Box 5341  
SYDNEY NSW 2001

#### Email:

[betterregulation@dpc.nsw.gov.au](mailto:betterregulation@dpc.nsw.gov.au)

### 3. Write Letters to the Editor

Send to the Daily Telegraph, Sydney Morning Herald or Community Newspapers opposing the proposed regulation. Anyone can do this, and a number of different angles are possible.

### 4. Write a letter to your local member or local politician – you can find them on-line

<http://www.parliament.nsw.gov.au/prod/parlment/members.nsf/V3ListCurrentLAMembers>

<http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/Members>

### 5. Keep Informed

The Scarlet Alliance website will include updated information: <http://www.scarletalliance.org.au>

### 6. Spread the Word Around –

Post about the problems with the proposed laws on your facebook and twitter and let people know.

## Section 7 – Further reading and reliable research

Basil Donovan, C Harcourt, S Egger, C Fairley, (2010), 'Improving the Health of Sex Workers in NSW: Maintaining Success', *NSW Public Health Bulletin* 21(3-4) 74–7.

Basil Donovan, C Harcourt, S Egger, L Watchirs Smith, K Schneider, JM Kaldor, MY Chen, CK Fairley, S Tabrizi, *The Sex Industry in New South Wales: A Report to the NSW Government*, Kirby Institute, University of New South Wales, Sydney, 2012, <http://www.kirby.unsw.edu.au/sites/hiv.cms.med.unsw.edu.au/files/hiv/attachment/NSWSexIndustryReportV4.pdf>.

Christine Harcourt, S Egger, B Donovan (2005), 'Sex Work and the Law', *Sexual Health* 2(3) 121–8.

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

Erica Red and Saul Isbister, 'Why Sex Workers Believe Smaller is Better: The Faulty Implementation of Decriminalisation in NSW' *HIV Australia*, Volume 3 No. 3, March-May 2004.

Kirby Institute, *HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report*, University of New South Wales, 2011, [http://www.kirby.unsw.edu.au/sites/hiv.cms.med.unsw.edu.au/files/hiv/resources/2011AnnualSurveyReport\\_0.pdf](http://www.kirby.unsw.edu.au/sites/hiv.cms.med.unsw.edu.au/files/hiv/resources/2011AnnualSurveyReport_0.pdf).

Penny Crofts, 'Brothels and Disorderly Acts', *Public Space: The Journal of Law and Social Justice* (2007) 1:2 at 1-39.

Sex Services Premises Planning Advisory Panel, *Sex Services Premises Planning Guidelines*, NSW Department of Planning, 2004, [http://www.scarletalliance.org.au/library/ssppg\\_04](http://www.scarletalliance.org.au/library/ssppg_04).

Susanne Dodillet and Petra Ostergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop *Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges* The Hague, March 3 and 4, 2011, [http://www.plri.org/sites/plri.org/files/Impact%20of%20Swedish%20law\\_0.pdf](http://www.plri.org/sites/plri.org/files/Impact%20of%20Swedish%20law_0.pdf).

UNAIDS, Joint United Nations Program on HIV/AIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, 2009, [http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf).