**Discussion Paper**

**Reforming Regulation of the Sex Industry in the Northern Territory**

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**NT Department of the Attorney-General and Justice**

This paper has been prepared for internal government discussion purposes only and any views expressed are not to be taken as representing the views of the Northern Territory Government, the Northern Territory Attorney-General and Minister for Justice, or the NT Department of the Attorney-General and Justice.

Licensing NT

Department of the Attorney-General and Justice

GPO Box 1154

DARWIN NT 0801

Telephone: (08) 8999 1800

Facsimile: (08) 8999 1888

# INTRODUCTION

The *Prostitution Regulation Act* (the Act) came into effect on 8 May 1992 and consolidated the common law and statute law relating to sex workers that applied in the Northern Territory at that time. The Act regulates activities of escort agencies, the sex workers who work through escort agencies and solo workers. It also contains some general restrictions concerning all sex workers, and prohibits the operation of brothels.

A review of the Act was conducted in 1997, and tabled in the Northern Territory Parliament titled “the Review of the First Five years of the *Prostitution Regulation Act*” (“Five Year Review”)[[1]](#footnote-1). The Review considered a number of matters relating to the sex industry activity in the Northern Territory, and following public consultation, made a range of recommendations relating to this current review, including a recommendation to legalise brothels, and the continuation of certification of sex workers in certain circumstances. Despite the recommendations, no significant amendments to the Act have been made since its commencement.

Although no specific terms of reference have been given for this discussion paper, the issues which were considered in previous reports remain relevant today. The purpose of this discussion paper is to provide an overview of the issues the Government is seeking input on from the community and key stakeholders for the purposes of assessing whether there is a need for amendments to the Act.

Under Northern Territory law it has never been illegal to be a sex worker and a change to this is not being proposed. The discussion paper is intended to consider options to improve the Northern Territory’s legislation in respect of sexual services provided for fee or reward to and by consenting adults.

Coerced and involuntary adult sex work or trafficking for purposes of sexual exploitation are already criminalised in Northern Territory law and no change to this is proposed. Similarly, the sexual exploitation of children is illegal in the Northern Territory and will always be illegal. The Northern Territory *Criminal Code Act* and the Act contain provisions prohibiting the sexual exploitation of children. Given these protections, this discussion paper does not address this issue further.

This paper will explore the issues faced by workers, regulators and the wider community and explore possible options for government to consider in reforming the Northern Territory sex industry as best practice for work health and safety, and include an overview of regulation of the industry in a number of Australian and international jurisdictions.

The role of this paper is to open meaningful dialogue on the future of the sex industry in the Northern Territory and matters raised within should not be seen as future government policy.

# MODELS FOR THE REGULATION OF THE SEX INDUSTRY

Sex work nationally and internationally, is generally regulated under one of three models:

* decriminalisation
* licensing
* criminalisation.

## DECRIMINALISATION

This involves removing the criminal element from the provision of sex services and allowing workers to operate under general business related laws. Sex workers, and associated businesses such as brothels and escort agencies, are regulated in respect of workplace health and safety laws, taxation, immigration, planning, and industrial laws in the same manner as other businesses. New South Wales and New Zealand both include aspects of decriminalisation and significant research including an evaluation five years after the implementation of the model in New Zealand provides evidence of the outcomes of this approach.

## LICENSING

By licensing the sex industry, a jurisdiction determines the legal conditions under which the industry can operate. Regulation and compliance is handled by a government agency and the police. Police are generally used to enforce compliance. Both Queensland and Victoria licence the sex industry but still experience illegal brothels and workers. The Northern Territory and Tasmania partially licence the sex industry in their jurisdictions.

## CRIMINALISATION

The criminalisation model prohibits the sex industry by making it a criminal offence to offer or receive, or both, services of a sexual nature. The offence is committed by the client, or the sex worker, or both. This model will result in sex work being either wholly or partially criminalised. Sweden is a jurisdiction which provides wholly criminalised approach where brothels are prohibited, and the purchase of sexual services is a crime.

Although some would advocate for this model to be adopted in the Northern Territory, it would be a retrograde step and serve no public purpose to re-criminalise sex work. It is not appropriate to 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.

# HOW IS THE SEX INDUSTRY REGULATED - THE PROSTITUTION REGULATION ACT

## WHAT IS ‘PROSTITUTION’ AND WHEN IS IT LEGAL?

Prostitution is defined under the *Prostitution Regulation Act* as the provision of sexual services by one person to another in return for payment or reward. Prostitution is lawful in two circumstances in the Northern Territory:

* The operator of an escort agency business, where the person providing the sexual service has been issued with a certificate by the Commissioner of Police, and the sexual service is not provided at the location at which the arrangement was made.
* The sexual services are provided by an individual, referred to as a ‘solo worker, working alone, however these services cannot be provided at the location at which the arrangement was made.

Given the Act creates criminal offences in certain circumstances, the Northern Territory model of regulation is a partial licensing and partial criminalisation.

## WHAT IS AN ESCORT AGENCY AND HOW DOES IT OPERATE?

An escort agency is only legal when operated by a licensed operator, and a licensed manager if the operator does not manage the business. The Director-General of Licensing determines applications for a licence to operate or manage an escort agency business, and is responsible for the regulation of these licences. The broader monitoring and enforcement responsibility of the Act is the responsibility of the Commissioner of Police. The Act empowers authorised police officers to enter and inspect an escort agency business to ensure the provisions of the Act are being complied with, and to investigate complaints made to the Commissioner of Police.

The role of the escort agency is to arrange, on behalf of sex workers, the provision of sexual service by the sex worker to the client. The sexual service must be provided at a location away from the agency. An escort agency can only engage a sex worker to provide sexual services where the Commission of Police has issued an appropriate certificate on the basis that the person has not been guilty of a disqualifying offence. The Act makes provision for conditions imposed on such licences, and provides that such a licence must be renewed annually and is not transferable.

## SOLO WORKERS

A solo worker, arranges the provision of sexual services for themselves only, and must also provide the service at a location away from where the arrangement was made. A solo worker does not need to obtain an operator’s licence nor do they need to obtain a certificate from the Commissioner of Police. The Act however prohibits solo workers from employing support staff such as a manager, driver, security person or a receptionist nor does it allow two or more solo workers to work together. Further, solo workers are not able to offer their sexual services from their homes because this would offend the prohibition of brothels described below.

## BROTHELS

The Act prohibits brothels. The Act provides a definition of a brothel, which, in general terms, is a premises to which people resort for the purpose of receiving sexual services. It is a criminal offence to keep, manage or allow a premises to be used as a brothel, for which the penalty is $20,000, and it falls within the remit of the Commissioner of Police to undertake monitoring and enforcement action against such criminal activity.

The Act does, however, provide an exception to this general rule which is contained in the definition of brothel in section 3. The effect of this exception renders lawful sex work which occurs in the room of a hotel, so long as the agreement for the provision of sex is not made in that room. This, therefore, permits sex workers to have a standing arrangement with hotels for the rent of a room on an as need basis.

## THE ROLE OF THE DIRECTOR-GENERAL OF LICENSING

The Director-General of Licensing is to hear and determine applications to be an escort agency operator or manager; to determine the conditions or restrictions to which licences are to be subject; to cancel and suspend licenses in accordance with the Act; to request police to investigate complaints relating to the operation and management of an escort agency; and to liaise and consult with individuals and groups to assist with the carrying of the positions functions. Decisions of the Director-General of Licensing are reviewable by the Northern Territory Civil and Administrative Tribunal.

## ROLE OF THE COMMISSIONER OF POLICE

Enforcement of the Act is the responsibility of the Commissioner of Police. Information about the industry is sought and obtained from various sources. These include, but not limited to, from within the industry, information from informants, information obtained during investigations carried out by members of the police force and information that is publicly available through newspapers.

Under the Act, the Commissioner of Police is able to investigate, and where necessary, prosecute, numerous complaints, such as:

* illegal operation of a brothel
* underage persons being used as sex workers
* solo workers working in conjunction with a business or other solo worker
* breaches of the Act by licences escort agencies, or activity by unlicensed escort agencies.

# THE SEX INDUSTRY IN THE NORTHERN TERRITORY

## SEX WORKER NUMBERS IN THE NORTHERN TERRITORY

In 1993 when the Act first commenced, 18 escort agent licences were issued. As at August 2018, no escort agent licenses currently operate in the Northern Territory. It follows therefore that all lawful sex work activity in the Northern Territory is being offered by private or solo sex workers. The increase in solo workers in the Northern Territory has been a trend experienced since the commencement of the *Prostitution Regulation Act*, and noted in the initial reports from the Escort Agency licensing Board[[2]](#footnote-2).

Sex worker numbers in the Northern Territory fluctuate due to shifting periods of demand and, along with the move to online advertising and the shift to sex workers operating privately, it is difficult to determine the number of sex workers operating in the Northern Territory. It is understood, however, that during peak times, generally coinciding with major events and the tourist season, the number of available workers is bolstered by fly in fly out solo workers.

In the last two to three years, the Northern Territory, particularly in Darwin, has seen significant growth in the number of standalone massage parlours that, alongside their therapeutic massage services, provide erotic or sexual services. Currently there are no licensed escort agencies, and any other business that provides sexual services are not operating in compliance with the Act.

Massage parlours offering massage services are a legitimate business however are not required to be licensed. Such businesses are simply required to meet normal planning, workplace health and safety and business registration requirements. It is important to note that the community concern does not relate to these legitimate businesses that offer legitimate massage services, but rather those venues which, while giving the appearance of offering standard massage services, also offer sexual services as additional extras.

In December 1996, a woman providing a semi-nude massage for men was convicted of keeping a brothel. Magistrate Anthony Gilles, who presided over that matter, said: “It is clear that a female topless or wearing lingerie while massaging men is providing a sexual service”[[3]](#footnote-3). This comment provides a good indication as to what type of ‘conduct’ will constitute a sexual service and, where these are being offered at a massage parlour, the criminal offence of keeping, managing or allowing a premises to be used as a brothel will have been committed under the Act.

Anecdotal evidence suggested that in a number of massage parlours, sexual services are offered at the end of the normal massage service. In August 2015, the NT police and Australian Border Protection Force officers conducted raids on 19 parlours across Darwin and Palmerston and uncovered sufficient evidence to suggest some were being used as illegal brothels. Although no arrests or prosecutions in respect of illegal brothel activity were taken following this activity, three people were deported for breaching visa conditions. It is unclear whether the individuals were sex workers, receptionists or managers.

# AUSTRALIAN SEX INDUSTRY LAWS – HOW EACH AUSTRALIAN JURISDICTION REGULATES THE SEX INDUSTRY

States and Territories in Australia adopt one of the three models, as described above, in regulating the sex industry. This table provides a basic outline:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **State** | **Legislation** | **Solo worker** | **Brothel** | **Escort/outcall agencies** | **Regulated by** |
| **NSW** | *Restricted Premises Act 1943*  *Disorderly Houses Amendment Act 1995* | No licence required  No specific planning requirements. | No licence required. Only planning law applies – Local government can apply to *Land and Environment Court* to close a brothel if there have been sufficient complaints. | No licence required. | Local councils are responsible for regulating sex services premises in their area. |
| **Vic** | *Prostitution Control Act 1994* | No licence required but must register with Business Licensing Authority. Up to 2 people may work together. | Must be licensed. Limited to 6 rooms and must be personally supervised. N.B. Section 10(3)(b) requires planning permit as well as a licence to have been obtained before a business owner can avoid a charge of ―living off the earnings and section 80 requires licence and planning permit to avoid declaration as a ―proscribed brothel. | Must be licensed. | Brothels are regulated by local council planning  An exempt prostitution service provider can operate a brothel with up to one other person working in the brothel, apart from them. A licence from the Business Licensing Authority is not required however, a permit to operate a brothel granted under the *Planning and Environment Act 1987* is. |
| **Qld** | *Prostitution Act 1999* | No licence required but must work completely alone. No specific planning requirements. | Must be licensed. Limited to 5 rooms and no more than 8 workers. S 15 provides that licence application need not be considered until (planning) development approval | Illegal | Prostitution Licensing Authority (PLA) was established to regulate prostitution in Queensland by implementing the *Prostitution Act 1999.* |
| **ACT** | *Prostitution Act 1992* | Registration required. No specific planning requirements. | Registration required. Restricted to certain areas. | Registration required. No specific planning requirements. | The Prostitution Act 1992 requires brothels, private workers and escort agencies to register with the Registrar of Brothels and Escort Agencies. The registrar operates from the Department of Fair Trading, however is constituted by The Prostitution Act 1992 and has special powers. The Registrar enforces regulations but can only fine non-compliance with 10 penalty points or less. There are criminal penalties related to non-compliance with registration, for example failure to report annually to the Registrar is punishable by one year in prison (S13.1). |
| **WA** | *Prostitution Act 2000*  *Criminal Code 1913* | No licence required, no specific planning requirements. | Illegal to manage premises for purposes of prostitution under Code. | No license required, no specific planning requirements. | Handled by police. |
| **SA** | *Summary Offences Act 1953* | No licence | Illegal | Illegal | Criminal act handled by police. |
| **NT** | *Prostitution Regulation Act* | No licence required. No specific planning requirements and must work on their own. | Illegal | Licence required. Workers must register with police.  No specific planning requirements. | Licences issued by Licensing Commission following referral to Police Commissioner.  Complaints are investigated by police. |

Although the sex industry in both South Australia and Western Australia is illegal, it occurs with the full knowledge of the regulators. The Western Australia Government is reviewing the legislation pertinent to the sex industry, while South Australian Parliament is considering a Bill to decriminalise the sex industry in that jurisdiction.

# ISSUES FACING THE NORTHERN TERRITORY SEX INDUSTRY

Broadly speaking, there are four core issues facing the sex industry, and consequently the community, in the Northern Territory. These issues include:

* Whether there should be a move towards a decriminalised regulatory model.
* The apparent lack of safety for solo sex workers.
* The police certification process that applies to sex workers who are employed by a licensed escort agency.
* Proliferation of illegal brothels purporting to operate as massage parlours.

What follows is a discussion of each issue and how they may be addressed. Included under each point are questions which aim to promote constructive discussion between key stakeholders and the broader community.

## A MOVE TO DECRIMINALISATION

Advocates of the sex worker industry in the Northern Territory, and indeed across Australia, strongly believe that decriminalisation of the sex industry is the best practice regulatory model. Fundamentally a decriminalised model removes criminal penalties for sex work. The model, in general puts the industry under the same regulatory framework as any other industry type, including rights and obligations in terms of workplace health and safety, industrial relations and general legal rights. New South Wales was the first western Government to introduce such a model in 1995, with New Zealand introducing a similar model, with slight modifications to include a registration framework, in 2003.

It is argued that this model encourages high rates of compliance, reduced opportunities for corruption, increase transparency and importantly improves safety for sex workers.[[4]](#footnote-4) This will, in turn, allow pathways for sex workers to report crimes or breaches of workers’ rights, while creating an environment where workers feel confident to access services such as health, legal and social services, without potential criminal or other repercussions.

Importantly, decriminalisation of the sex industry in the Northern Territory would not mean that the elements associated with the prostitution of children or human trafficking would be set aside. These actions would remain, and be treated, as criminal offences.

It is anticipated that a move to a decriminalisation regulatory model is likely to generate significant discussion and likely opposition from some community members and groups. However adopting such a model would address the issues raised (as highlighted in this discussion paper) and allow workers to benefit from current workplace health and safety practices and normal employee protections by treating them as any other employee or self-employed worker. This was the approach taken by the New Zealand Parliament when it passed the *Prostitution Reform Act (NZ)*, noting that the purpose was not to legislate on the *‘moral stance on prostitution, but rather was legislating to deal with issues associated with the health and safety of sex workers, and their human rights’*[[5]](#footnote-5).

### The New South Wales model

The New South Wales Parliament decriminalised prostitution in 1995 when amendments to the *Disorderly Houses Act 1943,* renamed the *Restricted Premises Act 1943* in 2002, decriminalised brothels and also had the effect of removing police from being the industry regulators. This move resulted in brothels being subjected to the same types of laws applicable generally to businesses, such planning laws, work health and safety, industrial laws and environmental and public health laws.

With the amendments in NSW, it was reported that the model chosen had an unintended consequence of almost completely deregulating the industry – with its only regulation confined to planning controls.

In 2015, the Legislative Assembly of News South Wales Select Committee on the Regulation of Brothels delivered a report arising from the Inquiry into the Regulation of Brothels[[6]](#footnote-6). Importantly, the Commission found there has been positive public health outcomes that have been linked with decriminalisation in NSW and that decriminalisation should remain and that criminal penalties for sex work should not be re-introduced.

However, the Commission also found that, at the time, NSW had 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 perception of only providing massage, karaoke or other adult entertainment.[[7]](#footnote-7)

The Commission found that 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[[8]](#footnote-8). In response to this issue, the Commission recommended that while a model of decriminalisation should continue in NSW, it was important to review the various pieces of legislation that exist with a view to creating the Consolidated Act[[9]](#footnote-9).

The Commission also recommended the decriminalised framework be modified to introduce a licensing system for most premises where sex work takes place, and in doing so, recommended the New Zealand model. The Commission found that a licensing system would help 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[[10]](#footnote-10).

### The New Zealand decriminalisation model with limited registration

New Zealand, like NSW has decriminalised the sex industry. The legislation removed police from having a regulatory role and allows for sex industry businesses to be covered by Workplace Health and Safety provisions. However New Zealand does have, through the *Prostitution Reform Act 2003,* a system of regulation such that operators of businesses of sex work must be licensed, and certain persons are disqualified from holding a licence. There are anti sex slave provisions such that no visa issued to a foreign national may permit them to provide sexual services. The New Zealand legislation also contains provisions relating to health and safety, advertising, prohibitions on under age sex work and powers of entry and inspection of premises[[11]](#footnote-11).

Under the *Prostitution Reform Act 2003,* sex workers have the right to refuse to have sex with a client and cannot be fined for doing so. The Act further protects sex workers by:

* Allowing them membership of trade unions
* Acknowledging employment contracts and legal contracts with clients
* Ensuring the sex industry is covered by the Occupational Safety and Health agency and other relevant Government agencies
* Reducing barriers to exiting the sex industry, for example by allowing immediate access to unemployment benefits.[[12]](#footnote-12)

The Act gives local government the right to make by-laws affecting the signage and location of brothels, although brothels cannot be banned outright by councils. Some councils limit brothels to certain areas, while others have labour regulations affecting any sex worker who works from home. All brothels must display health promotion messages. The Act does not deal specifically with street based sex work. Some councils apply local ordinances to control this part of the sex industry.

The Act also provides for up to four sex workers to work together without requiring an Operator Certificate, provided no worker is in charge of the others. However an Operator Certificate is required if more than four sex workers work together, including circumstances where no worker employs another.

In 2008 the Prostitution Law Review Committee in New Zealand reported on the operation of the *Prostitution Reform Act* (NZ), and found the biggest change to decriminalisation was that the workers themselves felt more empowered about the job they were doing, knew their rights, were willing to seek assistance when necessary and that they felt confident in refusing a client knowing that there was the legislation in place to support them. Relevantly, the Committee found:

*The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously*[[13]](#footnote-13)*.*

The New Zealand experience demonstrates that a decriminalised system, which incorporates a registration scheme for the operators of brothels and escorts has had a positive impact on the health and wellbeing of sex workers, while providing sufficient mechanisms for the effective monitoring and enforcement of the industry.

### Would decriminalisation increase the number of sex workers in the Northern Territory?

There may be concerns that the decriminalisation of the sex industry would increase the number of solo worker operated brothels and the overall number of sex workers. This was an issue that was investigated by the Prostitution Law Review Committee in New Zealand following public concerns when the *Prostitution Reform Act 2003* was implemented.

The Committee found that:

*‘…decriminalisation has not become a significant factor in people’s decisions to enter the sex industry*.’[[14]](#footnote-14)

Surveys showed that the number of sex workers in New Zealand remained static following the introduction of the *Prostitution Reform Act 2003*. This has also been the experience in NSW since decriminalisation with numbers estimated to be at similar levels to the 1990’s.

The introduction of the *Prostitution Reform Act 2003* in New Zealand did not play a significant part in a person’s decision to enter the industry and there is no reason to think that the situation in the Northern Territory would be any different given that solo workers and agency workers are currently legal. Further, the Territory’s small population would ensure that the supply of workers did not exceed the demand of users but it is possible that some people could decide to enter the industry for short periods around times of peak demand, normally in the dry season.

### Consultation questions

The Government seeks submissions as to the best regulatory model for the sex industry in the Northern Territory, with a particular focus on the following matters:

* What would a decriminalised model look like in the NT?
* Are there learnings from other jurisdictions that have successfully decriminalised sex work that can be translated to the NT?
* Does the current regulatory model, providing for the licensing of escort agencies, offer sufficient protection of a sex workers rights, including work health and safety, and more broadly public health?
* Would a decriminalised model improve worker safety, rights and public health?

## SAFETY OF SOLO WORKERS

Under the current legislation, a solo sex worker is prohibited from employing someone to assist them in their occupation, whether as a driver, security personnel or receptionist. Solo workers are not permitted to work with each other and this is putting workers at risk.

The sex industry and support groups have advocated for improved solo worker protection since the NT *Prostitution Regulation Act* was introduced. That is not to say that those workers employed through an escort agency do not have issues of fraud or violence perpetuated against them, but it has been found that solo workers are the most vulnerable.

While offences against solo workers are not frequently reported, there have been a number of significant incidents, particular since the early 2000’s that have highlighted the dangers solo workers face. Examples of incidents were provided by sex industry advocates include robbery, attempted deprivation of liberty, and in some cases, murder. The ability for a solo worker to work with another sex worker, or to employ security, would significantly reduce the risks they face.

Solo workers contend that they are running a legitimate business, sanctioned by legislation and should be afforded the same rights to a secure working environment as any other sole trader. They seek the opportunity to be treated the same as any other small business operator and create a healthy and safe working environment for themselves and allow them to better comply with workplace health and safety requirements.

Regardless of the final model adopted, amendments could be made to allow solo workers to either work with another worker, or to employ a driver or other form of security. Additionally, consideration could be given to permitting a solo sex worker to offer their services from their personal residence through a solo worker brothel registration process. This option is discussed in more detail under brothels.

### Consultation questions

* Should solo workers be able to work with other solo workers, or employ a driver or security personnel?
* Should solo workers be able to offer and deliver their services from their personal residential address?
* How could this be regulated?
* What other protections and rights should be considered for solo workers?

## REQUIREMENT FOR SEX WORKERS TO BE CERTIFIED OR REGISTERED WITH POLICE

The Act requires sex workers who work for an escort agency to obtain a certificate from the Commissioner of Police. The obligation is imposed on the escort agency to obtain the certificate for those sex workers they employ, thereby removing the direct relationship between sex workers and the police. It is illegal for an escort agency to offer the sexual services of a sex worker who has not received a certificate. The Commissioner of Police may refuse the person a certificate if the person has a conviction for violence or drug related offences within the preceding 10 years, however such refusal does not prohibit the sex worker from offering sexual services as a solo worker as there is no licensing or certificate controls for solo workers. Currently, a person’s registration remains on record for life, even if the person leaves the sex industry. There have been cases where registration as a sex worker has been used against sex workers after they have left the industry.

The NT is the only jurisdiction that requires certain sex workers to register with police via a certification process. While some interstate legislation requires the brothel operator to register with police, and most jurisdictions have some police involvement in the licence application process, an individual is not required to complete a registration process similar to that in the NT.

As part of the registration process, a person is required to complete a statutory declaration, prescribed under the Act, which asks questions that are no longer considered appropriate e.g. ‘*what is your weight?*’, ‘*what is your natural hair colour?*’ etc. Sex worker support organisations make the valid point that, in almost any other occupation, a prospective employee would have the right to refuse to answer questions of this nature and any employer would likely face scrutiny from the appropriate regulator.

Workers and industry support agencies state that the registration process is discriminatory and no longer appropriate in today’s employment climate and can also impact on future employment prospects because it remains on a person’s record for life. Concerns have informally been raised of instances where sex workers, who have left the industry, have had their details illegally revealed, thereby affecting their ability to gain work in other industries, particularly where a police clearance is required.

Victoria is another jurisdiction which requires sex workers to be registered, creating criminal offences for those who offer sexual services who are not. This system was criticised by the New South Wales Select Committee on the Regulation of Brothels in 2015, with the Commission not supporting the creation of a register of sex workers in NSW in any form[[15]](#footnote-15). In reaching this position the Commission found:

* 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[[16]](#footnote-16).

### Consultation questions

* Should workers have to register with Police to engage in sexual services?
* Should registration information be destroyed once the sex worker leaves the industry?

## ILLEGAL BROTHELS

### What is the problem?

There is community concern regarding the apparent increase of illegal brothels operating as massage parlours. In addition to this, solo workers are prohibited from operating from their homes as this would constitute an illegal brothel.

There are concerns that under the current legislation, there are insufficient powers provided to effectively investigate such business operations, and therefore prosecute illegal activity. Under current legislation, a successful prosecution requires establishing that the owner or proprietor had knowledge of the sexual service occurring. This is generally frustrated by the businesses being structured in such a way that the cost for sexual service is negotiated directly between client and masseuse, independent of the owner/proprietor. Further to this, it can be difficult to secure the required evidence of any crime when workers willingly undertake illegal sex work in order to obtain their end goal, usually to gain permanent Australian residency, while presenting as legitimate workers under work visas in health or beauty roles.

The decriminalisation of brothels would allow for the establishment of specific places where people could go to receive sexual services. It would not necessarily mean the end of escort agencies or solo workers but would provide a legal place rather than the purported illegal activity currently found in the Territory. Workers may see the legalisation of brothels as a way to offer their services in a more transparent manner without fear of retribution from the owner/proprietor or the authorities. These locations would be regulated and the workers within these businesses would have access to industrial protections.

### How are brothels regulated

Recommendations to decriminalise brothels have previously been made in the Northern Territory. The first recommendation for the decriminalisation of brothels was made in 1993 in first annual report of the former Escort Agency Licensing Board. The Five Year Review also recommended the decriminalisation of brothels[[17]](#footnote-17) in 1998, and suggested the Victorian model would be appropriate given these types of services are already being provided in ‘illegal brothels’ i.e. some massage parlours.

Victoria provides a licensing model for brothels, however it does so within a partially criminalised system which continues to require the registration of workers, and creates criminal offences for those who offer sexual services but who are not licensed or registered to do so.

The Victorian approach is in contrast to the New Zealand approach which is a system of registration or licensing of brothels. The New Zealand approach is generally considered to be a better regulatory approach, as noted in 2015 by New South Wales Select Committee on the Regulation of Brothels[[18]](#footnote-18).

### Solo worker operator brothels

A solo worker is currently prohibited from arranging and offering their services from their personal residence. A number of jurisdictions permit solo workers to operate legally and offer services from their home or a hotel. It is understood that in jurisdictions where ‘one person’ brothels are permitted, it is not uncommon for workers to have one room dedicated for the provision of their services and the street front maintains the appearance of a normal residence.

It has been suggested by industry support organisations that, to avoid discrimination and to protect their safety, workers looking to establish a ‘one person’ brothel should be classed as an exempt development in those zones where other home occupation businesses are permitted.

The Prostitution Law Review Committee found that sole operator brothels in New Zealand:

*‘…are not a new phenomenon and have not caused widespread problems in the past. Most are so discreet that they go unnoticed*’[[19]](#footnote-19).

Workers deciding to be a ‘one person’ brothel would be expected to undertake all normal processes and meet all normal legislative requirements for running a home business in the Northern Territory. The Committee felt the same and wrote:

‘…*In the committee’s view, a SOOB* [Small Owner Operated Brothel] *should be regulated in the same manner as any other business run from home…*’.[[20]](#footnote-20)

It would be anticipated that if legislation was amended to allow for brothels in the Northern Territory, then the number of ‘one person’ brothel would be small given the number of existing workers.

### Consultation questions

The Government seeks submissions regarding the legislation of brothels with a particular focus on these matters:

* Should brothels be decriminalised in the Northern Territory?
* What model of regulation would be most appropriate for the Northern Territory?
* Should brothels operate like any other business under existing laws?
* Should one person brothels be permitted in the Northern Territory?
* Should consideration be given to 18+ only ‘precincts’?

# WHAT WOULD A NEW *PROSTITUTION REGULATION ACT* LOOK LIKE?

### 7.1 CHANGE OF NAME

The terms ‘prostitute’ and ‘prostitution’ are seldom used in the industry. The term ‘sex worker’ is preferred and more appropriate.

If significant changes to the industry were to be legislated, consideration of a different name for the new act would be appropriate. Given that it would reflect significant reforms to the industry, the Sex Industry Reform Act, may be considered however this is not as critical as to the contents of the new piece of legislation.

## BROTHEL SPECIFIC LEGISLATION

If brothels are decriminalised, there will need to be a number of other legislative considerations including where they can be located and what worker’s rights apply. The following provides a consideration of the more important aspects however it must be noted that there may be other considerations that have not been captured at this initial stage, and further consultation is likely to be required.

### Broad overview

In the event that reforms to the NT sex industry include the decriminalisation of brothels, it would be appropriate that the NT Government retain some control of the regulation through the provision of suitable legislation. This would include working with NT WorkSafe and Local Government.

Under the current legislation, brothels and street based work are prohibited. It may be considered that some control should be retained for these two elements to ensure that workers are protected and criminal activity is minimised. Appropriate legislation would also allow government to monitor the number of operating brothels.

Legislation for the establishment of a brothel could allow operators and workers to provide services to clients in a manner that is safe for all involved, has regard for the health of workers and clients and provides safe guards, where appropriate, for the wider community.

Current legislation provides that a brothel is a place where people go to, arrange, pay for and have sex. The traditional image of a brothel is more often a sex industry business where a number of sex workers are employed. It is likely that the number of brothels of this scale would be minimal in the NT given the limited population and low worker numbers.

The objectives of the legislation could broadly provide for:

* minimal licensing requirements for brothel operators; or
* appropriate workers’ rights and protections that provides for the welfare and occupational health and safety of workers and promotes safe sexual practices;
* sex workers supported to refuse service without penalty;
* suitable zoning considerations to ensure brothels are established in appropriate locations; and
* advertising standards.

### Minimal licensing requirements for brothel operators

Brothel operators could be required to be registered except where it is a ‘one person’ brothel, or a small operation. This could be a relatively straightforward process to encourage take up of registration and allows government to monitor numbers and could be similar to what has existed for those persons wishing to operate wholesale liquor operations in the NT.

Consideration could be given to disqualifying people with certain criminal convictions from operating a brothel. This would mirror a number of existing NT licences which cannot be granted to persons with certain criminal history.

### Appropriate workers’ rights and protections that provides for the welfare and work health and safety of workers and promotes safe sexual practices

Brothel owners and workers should be encouraged to implement and practice safe sex. Appropriate signage and materials regarding risks associated with sexual services should be available to clients upon request and workers should be encouraged to maintain good sexual health. Safe sex practices through the use of condoms should be mandatory in all brothels. Brothel operators should also be required to monitor worker health.

### Provides for workers to refuse service without penalty

Hand in hand with the protection of workers’ rights should be the ability for workers to be able to refuse to provide a service to a client without fear of retribution.

Further, where the worker feels that they have been victimised, bullied or suffered repercussions for refusing a client, the legislation should provide clear support for the worker to lodge a complaint. Additionally, legislation should provide that any place of employment will have formal support/complaint provisions.

### Outlines suitable zoning considerations to ensure brothels are established in appropriate locations

Under full decriminalisation, the establishment of a brothel would be subject to normal business practices and regulation, including where it can be established. While the New Zealand legislation provides for local authorities to make by-laws restricting where a brothel may be established, there is a concern that providing this full power to local councils could possibly see brothels restricted to industrial areas which could pose safety issues for workers and clients.

Like all jurisdictions, the NT has zoning laws which set out areas where certain businesses may, or may not, be established. The NT Planning Scheme sets out the framework for the establishment of policies that affect land use. While any brothel legislation should not specifically dictate where a brothel can be established, it is appropriate that guiding principles be provided. These principles would ensure a balance between protecting community expectations and allowing the brothel operator to run their business without ongoing interference from opponents.

These could be considered as zoning principles:

* Whether the location is likely to cause a nuisance or serious offence to ordinary community members using the area where the brothel is located.
* Whether a brothel is completely at odds with other types of businesses and services in the area.
* Whether getting to and from the brothel is hazardous or requires significant travel time when compared to other available forms of entertainment undertaken by adults.

These guiding principles would generally apply to those brothels where multiple workers are available and not necessarily where a single worker may establish a practice from their residential home. Given that information from the industry indicates that solo workers do not openly advertise at their residence that services are available, it would be difficult for the surrounding neighbourhood to know what is occurring behind closed doors, as with any private residence.

A solo worker should be able to operate a ‘one person’ brothel without being subject to the zoning guidelines as proposed for larger brothels.

### Advertising standards

To minimise the impact on the wider community, any brothel related legislation should contain provisions to the advertising of brothel services. There are currently advertising restrictions with regards to adverts in print in the NT that limit the descriptions used in advertisements for solo workers and similar and it would be appropriate that similar restrictions would apply if brothels were legalised.

Outdoor signage, such as A-Frames, billboards etc, would continue to be the domain of the local council and it would be envisaged that their by-laws would be updated should brothels be approved.

It must be recognised however that a significant number of advertisements appear online, often on national and international websites over which government has little or no control. Some local solo workers already have Facebook pages and it must be recognised that any advertising controls would be limited.

### Summary

It must be noted that decriminalising brothels in the Northern Territory is unlikely to deliver an increase in sex workers. It is likely that the activities that currently occur in private residences, hotel rooms or through escort agencies would remain the same.

While brothels are illegal under current legislation, there are no doubt a number of ‘*one person*’ brothels already operate in the Territory, notwithstanding those perceiving to operate as massage parlours only. There are a number of online advertisements where the advertiser refers to an apartment however, given mobile technology, it is simple enough for a worker to arrange services outside on the footpath, driving in their car or while walking down the street.

Technically, this does not breach current legislation, but there is little doubt that some arrangements are made in the apartment/house in which the services are carried out but would ultimately be extremely difficult for authorities to prove. Legislation to decriminalise brothels will help to regulate the sex work that is already taking place. It is unlikely to result in an increase of solo workers or an increase in the kind of public advertising that would offend ordinary members of the public. It would, importantly, increase the health and safety of workers by removing the fear of being persecuted or criminally charged.

### Consultation questions

* Are there any other proposals the Government should consider to improve the safety and wellbeing of workers?
* Are there other legislative considerations that should be looked at if brothels were decriminalised?
* Should workers in the sex industry be bound by different workplace health and safety laws to other employees and self-employed persons?
* Are there locations where brothels should not be permitted to be established?

# ADDITIONAL CONSIDERATIONS

## Contemporary framework

The sex work industry has evolved over the years it is therefore necessary to ensure governing legislation and policies are relevant to avoid outdated and ineffective regulation, as currently is the case. Sex work is a valid occupation and sex workers are entitled to the same protections of their health, safety and rights without discrimination as any other profession. With a number of Australian and international jurisdictions reviewing and taking action to improve the regulatory framework in which sex workers operate, it is timely for the Northern Territory to do the same.

The legitimate commercial sex industry is entitled to a progressive and socially responsible regulatory framework which protects the rights and safety of sex works, their clients and the broader community.

1. Review of the First Five years of the Prostitution Regulation Act 22 April 1998 [↑](#footnote-ref-1)
2. Escort Agency Licensing Board. Third Report of the *Prostitution Regulation Act*: 9 May 1991 to 8 May 1995.~p.7-8. [↑](#footnote-ref-2)
3. Prostitution In the northern territory: AN overview of the 1990s; Annie Bonney, Research Paper No.17 April 1997 [↑](#footnote-ref-3)
4. The Select Committee on the Regulation of Brothels: Inquiry into the Regulation of Brothels Report 1/56 – November 2015 found that positive public health outcomes were linked with decriminalisation in NSW [↑](#footnote-ref-4)
5. Page 136 - Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003 – New Zealand [↑](#footnote-ref-5)
6. Select Committee on the Regulation of Brothels: Inquiry into the Regulation of Brothels Report 1/56 – November 2015 [↑](#footnote-ref-6)
7. Ibid page 8 [↑](#footnote-ref-7)
8. Ibid page 97 [↑](#footnote-ref-8)
9. Ibid page 99 and 101 [↑](#footnote-ref-9)
10. Ibid Chapter 6 [↑](#footnote-ref-10)
11. *Prostitution Reform Act 2003 (NZ)* [↑](#footnote-ref-11)
12. Barnett Decriminalising Prostitution in New Zealand 2007 [↑](#footnote-ref-12)
13. Ibid page 168 [↑](#footnote-ref-13)
14. Page 39 - Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003 – New Zealand [↑](#footnote-ref-14)
15. Page 124 Select Committee on the Regulation of Brothels: Inquiry into the Regulation of Brothels Report 1/56 – November 2015 [↑](#footnote-ref-15)
16. Ibid page 125 [↑](#footnote-ref-16)
17. Page 22 Review of the First Five years of the Prostitution Regulation Act 22 April 1998 [↑](#footnote-ref-17)
18. Page 109 Select Committee on the Regulation of Brothels: Inquiry into the Regulation of Brothels Report 1/56 – November 2015 [↑](#footnote-ref-18)
19. Page 142 - Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003 – New Zealand [↑](#footnote-ref-19)
20. [↑](#footnote-ref-20)