



BUILDING OUR COMMUNITY'S
HEALTH & WELLBEING

Submission to:

NSW Planning System Review

March 2012

About ACON

ACON (formerly known as the AIDS Council of NSW) was formed in 1985 as part of the community response to the impact of the HIV/AIDS epidemic in Australia. Today, ACON is Australia's largest community-based gay, lesbian, bisexual and transgender (GLBT) health and HIV/AIDS organisation. ACON provides information, support and advocacy for the GLBT community and people living with or at risk of acquiring HIV, including sex workers and people who use drugs.

ACON is home to the Lesbian and Gay Anti-Violence Project (AVP), the Community Support Network (CSN), and the Sex Workers Outreach Project (SWOP). ACON has its head office in Sydney as well as branches in the Illawarra, Northern Rivers, the Hunter region and the Mid North Coast.

SWOP provides sexual health information and support to people engaged in sex work. SWOP uses a variety of peer based strategies to provide sexual health education, information and support for NSW sex industry workers. We run a variety of targeted health promotion programs and also provide sexual health information through outreach to sex industry workplaces.

NSW Planning Review

ACON's interest in this review is to ensure that sex industry regulation through the planning system aligns with public health objectives and provides a safe and healthy industry in NSW. The planning system has a major impact on the sex industry, and on our ability to conduct health promotion activities effectively and efficiently.

A partnership approach to HIV/AIDS is the key element of the effective response to HIV/AIDS in NSW. Engaging with sex workers directly has formed a key part of this approach and it is reflected in the NSWⁱ and Commonwealth governmentⁱⁱ HIV strategies. As a reflection of this success in NSW, there has been no recorded instance of HIV transmission between worker and client in NSWⁱⁱⁱ. These achievements have only been possible through concerted peer outreach programs, especially peer based education undertaken by people with targeted language skills and the consistent uptake of these education programs by sex workers themselves.^{iv}

The success of this work relies on premises remaining accessible to a range of external organisations. It is our experience that the inconsistent approaches to planning and regulation for sex work premises, and the imposition of additional barriers to sex industry operators to open and operate legal businesses in some LGAs, discourages compliance and diminishes the readiness and ability of sex work operators to engage openly with sexual health promotion strategies.

ACON wants to see the planning system improved to deliver easier compliance and thus reduce levels of non-compliance by industry operators. This will encourage openness across the industry and ensure broad levels of access to sex work premises

by health and other relevant organisations. This is to ensure a continuation of the important public health outcomes that have been realised to date.

Current Planning System

In 1995 the NSW sex industry was decriminalised. This reform was undertaken to improve the health and safety of workers and clients in the industry, as well as to address issues of crime and police corruption. Local government has since been responsible for approving development applications for sex service premises since.

Unfortunately effective planning regulation has not been realised in many cases, resulting in a number of implications including costly and protracted Land and Environment Court appeals brought by both council and by applicants seeking to operate sex services premises. This has led to operators having less confidence in the planning system.

Brothel planning policies vary greatly between local councils though individual council's Local Environment Plans (LEP). These policies range from creating a reasonable amount of regulation and control through to de facto bans on sex work. In many cases these policies treat brothels quite differently to other legal businesses. When these barriers are unreasonably restrictive, operators have been known to conduct their business without planning consent. Operating without planning consent reduces the openness of that part of the industry and creates barriers to access to sex work premises for the Police, Work Cover and for health promotion workers.

We have observed that there is highly variable treatment of home based sex workers under the current planning system. This variability exists between Local Government Areas (LGA). We have also observed that, within LGAs, sex work premises are treated differently to other businesses with similar amenity impacts.

Sex workers' health and safety is put at risk through the application of anti-clustering policies and policies that restrict brothels to industrial areas. Having brothels in busy areas and located near each other improves workers' safety and allows SWOP and other health services to efficiently conduct outreach and provide education to sex workers. The ability to reach numerous brothels during outreach allows SWOP to reach more sex workers so that safe sex practices can be established and reinforced in more brothels. Compelling brothels to be further apart will result in greater resources being used to maintain current levels of health promotion activities, which is a barrier to maintaining and extending positive health outcomes.

The planning system should be designed so that compliance is consistent, reasonable and feasible for all businesses, rather than allowing individual councils to create onerous planning and zoning obstacles, which often act as a de facto ban on a legal industry and which inhibit the effective and efficient delivery of health promotion and other services.

Recommendation:

- 1) That the planning system is redesigned to ensure that public health outcomes are realised by:
 - i. Regulating home based sex workers on the same basis as other home based workers that have a similar amenity impact;
 - ii. Ensuring that sex industry operators are treated the same as any other business operators;
 - iii. Ensuring that brothels are not subject to de facto bans through the use of anti-clustering policies and/or containment to industrial areas.

ⁱ NSW Department of Health 2006. *'NSW HIV/AIDS Strategy 2006-2009'*. Sydney.

ⁱⁱ Australian Government Department of Health and Ageing 2010. *'Sixth National HIV Strategy 2010–2013'*. Canberra.

ⁱⁱⁱ Donovan B, Harcourt C, Egger S, Fairley CK (2010). *'Improving the health of sex workers in NSW: maintaining success'*. NSW Public Health Bulletin; 21: 74-77.

^{iv} Donovan B, Harcourt C, Egger S, Fairley CK (2010). *'Improving the health of sex workers in NSW: maintaining success'*. NSW Public Health Bulletin; 21: 74-77.

^v Harcourt C, O'Connor J, Egger S, et. al. (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, vol 34: 482-486