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**NOTAT**

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Emne: Australske erfaringer vedr. rufferi-bestemmelser

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**Indhentede dokumenter:**

- ACT Prostitution Regulation 1992
- ACT Prostitution Act 1992
- Queensland Prostitution ACT 1999
- Queensland Prostitution Regulation 2000
- Queensland Brothel Licence Application F2-V3-November 2012
- Sex Work Act 1994 (VIC)
- Sex Work Regulations 2006 (VIC)
- Issue paper Regulation of Brothels (NSW)

Samtaler gennemført med

ACT – Dale Pegg and Vesna Cvjeticanin, ACT Regulatory Services

NSW – John Gilmore, Sydney Local County

**REGULATION AND EXPERIENCE AROUND FACILITATION OF PROSTITUTION IN AUSTRALIA.**

Australia does not have federal/commonwealth regulations on the facilitation of prostitution. Each state and territory has their own regulations and separate jurisdictions to regulate the industry. Please see below a quick rundown of regulations in several Australian states:

New South Wales (NSW)

Australian Capital Territory - ACT

Queensland (QLD)

Victoria (VIC)

The facilitation of prostitution is criminalised in South Australia, Western Australia and Tasmania and partly criminalised in the ACT and Northern Territory. The ACT Office of Regulatory Services strictly regulates brothels in the ACT.

**NSW** – In NSW the sex industry is regulated at a local council level. The embassy has contact the local Sydney council of City of Sydney for information on their regulations on the subject.

- Premises for sex. The conditions in the Development Approval (DA) sets out the use of the business who occupies the premises. Typically premises used for procurement of sex are located in industrial areas, away from residential, retail and other areas, such as schools.
  - Annexed to the DA will be the fire safety regulations
  - The business is subject to regular health inspections and must have containers for sharp needles.
  - The City of Sydney's current LEP (Local Environment Plan) does not allow prostitution as a home occupation. I.e. you cannot offer sex for sale from the home you live in.
  - Sex premises are not to be used as residence.
- **Issues**
- The complaints received from the public to commercial sex businesses/premises is mainly with regards to the hours of operation (extending the hours of operation) and habitation (workers using it as residence)
  - As the business is a commercial operation, the police does not have ready access to the business, and have to request access via the CoS, as they are the local authority regulating the premises.
  - Police requests for access to a sex business is mainly based on
    - Underage sex
    - Drug use

One of the more difficult issues to police is businesses that in their DA have applied to operate as massage or beauty parlours. Generally they are located in/near retail centres or near schools. It is difficult to control their activity and, if a complaint occurs, often a private investigator is required in the first instance to establish whether the business operates outside the law.

#### Review of the Regulation of Brothels in NSW - October 2012

The NSW Government has committed to improving the regulation of brothels and agreed that the objectives of the proposed regulatory system are the protection of residential amenity, protection of sex workers and safeguarding public health. The Department of Premier and Cabinet (via the Better Regulation Office) was asked by the Government to develop reform options to achieve these objectives.

The review has been considering the regulatory framework that could apply to the sex industry in NSW, within the context of sex work remaining legal. In particular, the review focused on the regulation of sex services premises, which are defined as premises where 'sex work' occurs habitually or has been used for that purpose and is likely again to be used for that purpose. The

review also considered the possible impacts that such regulation may have on other parts of the sex industry (for example, street based sex work), including how it may shift the supply of sex services and the subsequent implications for public policy outcomes.

The review has also been considering approaches adopted in other key Australian and international jurisdictions for opportunities to improve NSW's regulatory framework.

An issues paper was released for comment in late 2012. The purpose of the issues paper was to seek evidence, information and perspectives from stakeholders about the current regulatory framework in NSW for sex services premises and three possible options for reform:

- 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.
- Option 3: Introduce a licensing system for owners and operators of commercial sex services premises.

The review is currently being finalised.

**ACT** – The sex industry in the ACT is regulated by the Prostitution Act 1992. There are two kinds of operators in the ACT -

- Commercial operations, which incl. Brothels and Escort agencies, often within in the same business, and
- Individual operators, who are able to provide services out of their home (the legislation regarding individual operators is currently under review in the context of safety for the operator),

Whether it is a commercial or individual undertaking there is a requirement for the business to be registered (not licensed) annually with the ACT Office of Regulatory Services (Business & Industry Licensing section), which sits under the ACT Ministry of Justice.

It is worth noting that the ACT Office of Regulatory Services require the owner/directors of commercial operations to provide them with their full name and address incl. finger prints. Regulation also requires that the ORS is supplied with the name of the manger/s of the day to day operations.

Worksafe ACT's, which is the authority that enforces the Territory's health and safety regulations, administers the compliance aspect of the industry. On matters such as underage workers, drug related incidence and illegal immigrants; it is the police and Dept. of Immigration and Citizenship that upholds the law.

Noted that within the ACT there are a couple of 'unions' operating Scarlett Alliance and SWOP. It is understood that both of these provide workers with information/education on health and safety.

Although not a requirement, the three agencies (ORS, WorkSafety and police) involved in overseeing and regulating the sex industry have initiated quarterly meetings; in essence to have a co-ordinated approach to the industry and as a preventative measure (everyone across issue before they escalate). For reason of confidentiality only few people within each agency assigned to the sex industry. It was recommended that this collaborate initiative be considered by others.

**Queensland** – The Prostitution Licensing Authority (PLA) was established to regulate prostitution in Queensland by implementing the *Prostitution Act 1999*.

There are two forms of legal sex work in Queensland:

- Private work (sole operators) – where a single sex worker works alone – is legal in Queensland, but it is an offence to publicly solicit for the purposes of prostitution.
- Sex work conducted in a licensed brothel is legal in Queensland.

The PLA has developed the document *Guidelines for the Operation of Licensed Brothels in Queensland*. These provide brothel licensees and approved managers with a set of best practice guidelines for a safe and healthy environment for sex workers, employees, clients and visitors and also provide information to support operations in line with the brothel licence conditions.

The Guidelines have been prepared in consultation with a wide range of agencies, with many people contributing to the final outcome. The Guidelines are provided once a person has been granted a brothel licence. Responsibility for the implementation of these Guidelines rests with brothel licensees and their managers.

The PLA monitors the provision of prostitution through licensed brothels in Queensland. The PLA may also conduct disciplinary inquiries in relation to licensees and managers and receive complaints about prostitution.

There are two separate processes that must be satisfied before a brothel can commence operation legally. A person who wishes to establish a brothel must apply to the local authority for approval to locate a brothel in particular premises and must also apply to the PLA for a brothel licence.

Brothels in Queensland are limited to a maximum of 5 service rooms. Escort services, or 'out-calls', are not permitted. If you have approval to operate a 5 room brothel, you must not have more than eight sex workers at the brothel at the one time. The total number of all staff at a brothel, including the manager, receptionist and all other workers must not exceed thirteen at any one time.

Any person who operates a brothel and who will be receiving direct income from a brothel must be licensed under the *Prostitution Act 1999*. A sole operator who carries on the business of providing prostitution does not require a brothel licence. If you propose to operate a brothel in partnership with, or otherwise in association with, any other person, each person must be individually licensed and pay the prescribed fees.

A licensed brothel business must be personally supervised by the licensee or an approved manager at all times that it is open for business. If you wish to work as a brothel manager, you must apply to the PLA for a manager's certificate.

Like any other business, the decision as to where a brothel may be located is largely a matter for local authorities, subject to the Sustainable Planning Act 2009. A development approval will not be granted by the local authority if the proposed brothel -

- is in or within 200 metres of the closest point on any boundary of a primarily residential area or an area approved for residential development or intended to be residential in character; or
- is within 200 metres of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten or any other facility or place regularly frequented by children for recreational or cultural activities;
- measured according to the shortest route a person may reasonably or lawfully take, by vehicle or on foot, between the application land and the other land; or
- the application land is within 100m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities, measured in a straight line; or
- has more than five rooms, which are to be used for providing prostitution.

Also, it is possible for the local authority of a town with less than 25,000 residents to automatically refuse development applications for brothels, if the local authority has sought and received approval from the Minister to be an exempt town under the Sustainable Planning Act.

Whenever a licensed brothel is open for business, either the licensee or an approved manager must personally supervise the brothel at all times. Should a licensee or approved manager not be in attendance at the brothel, both the licensee and the approved manager (whose duty it was to personally supervise the business at the time) commit an offence.

If a licensee dies or becomes incapable of discharging the duties of a licensee because of physical or mental incapacity, the approved manager may apply to the PLA for authorisation to act as the licensee of the brothel specified in the licence. Should the PLA authorise this, the licence will be endorsed to show that the approved manager is acting as licensee for the period endorsed on the licence. The approved manager is then subject to the obligations of a licensee under the *Prostitution Act 1999*.

The Prostitution Act places restrictions on the nature of advertising allowed for prostitution services. The rules for advertising sexual services are established in the advertising section of this website.

### Prostitution Regulation 2000

The *Prostitution Regulation 2000* contains some additional requirements for brothel licensees, and should be read in conjunction with the Prostitution Act. The Prostitution Regulation is also available on the internet from the on-line legislation pages of the Queensland Government website at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

**Victoria** – In Victoria, the facilitation of prostitution is regulated by the Sex Work Act of 1994 and Sex Work Regulations of 2006.

This Act legalizes and regulates the operations of brothels and escort agencies in Victoria. A brothel must obtain a permit from the local council (Section 21A). A brothel or escort agency must not advertise its services.

Owner-operated brothels and private escort workers are not required to obtain a license, but must be registered, and escorts from brothels are permitted. If only one or two sex workers run a brothel or escort agency, which does not employ other sex workers, they also do not need a license, but are required to be registered. However, in all other cases, the *operator* of a brothel or escort agency must be licensed. The licensing process enables the licensing authority to check on any criminal history of an applicant. All new brothels are limited to having no more than six rooms.

Canberra, April 17, 2013