

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

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ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Sex Industry Bill 2019

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Litchfield Room, Level 3, Parliament House

Members: Mr Tony Sievers MLA, Chair, Member for Brennan
Mrs Kate Worden MLA, Member for Sanderson
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Jeff Collins MLA, Member for Fong Lim

Participating Member Mr Gerry Wood MLA, Member for Nelson

Witnesses: **Department of the Attorney-General and Justice**
Douglas Burns, Senior Policy Lawyer
Hannah Clee, Senior Policy Lawyer

SEX INDUSTRY BILL 2019

Department of the Attorney-General and Justice

Mr CHAIR: Welcome Douglas and Hannah. On behalf of the committee, we welcome everyone to this public briefing in to the Sex Industry Bill 2019. I would like to introduce our panel. We have Ms Kate Worden, Member for Sanderson, Mrs Lia Finocchiaro, Member for Spillett online and Mr Jeff Collins, Member for Fong Lim, and today we have joining us, Mr Gerry Wood, Member for Nelson.

Welcome to the table to give evidence to the committee: we have Hannah Clee, Senior Policy Lawyer, Department of the Attorney-General and Justice and Mr Douglas Burns, Policy Law Officer, Department of the Attorney-General and Justice.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you both today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and we will take your evidence in private.

For the record and for *Hansard* could you please each state your name and the capacity in which you appear here today. This is a just a public briefing today and we welcome an opening statement, Hannah or Douglas, if you have one, after your introduction. Thank you.

Ms CLEE: My name is Hannah Clee and I am a Senior Policy Lawyer for the Department of the Attorney-General and Justice.

Mr BURNS: My name is Douglas Burns and I am also a Senior Policy Lawyer for the Department of the Attorney-General and Justice.

Mr CHAIR: Hannah, would you like to open with a statement? Or Douglas?

Mr BURNS: The purpose of the Bill is to decriminalise sex work and legalise contracts relating sex work, to enhance worker, client and public health and safety through applying the *Public and Environmental Health Act* to operate as a sex services businesses, allow sex workers to work together or employ support staff and to provide a mechanism to ensure the suitability of operators of commercial scale sex services businesses.

The Bill also continues the prohibition of exploitation of sex workers and enshrines the right of those workers to refuse to engage in sex work if they so choose. It also prohibits the use of children for and in sex work and enables the sex industry to operate in accordance with the laws of the Territory and the Commonwealth as they apply to all individuals and businesses, including but not limited to laws governing employment, occupational health and safety, workers compensation, rehabilitation, planning, taxation and discrimination.

It essentially achieves that through Part 2 of the Bill which establishes the basic operating paradigm of the industry in that sex work is legal, and workers have the right to safely determine if and how they work by overriding the common law prohibition on contracts of sex work, and enshrining the right of sex workers to refuse to undertake sex work, and ensuring that consent is required for the provision of sex work at all times. It also retains all the current offences relating to exploitation of workers and children that are currently in the *Prostitution Regulation Act* and aligns them with the Part IIAA format under the Criminal Code.

The final main aspect of this bill is it acknowledges that the topic is sometimes considered with moral aspects, particularly due to the intimate nature of the services the industry provides. Government is considering this dispassionately but some of those moral concerns do consider worker and client safety. Unlike individual workers who tend to have small client basis and have more personalised relationships with those clients, commercial scale operators are more likely than not to employ a number of workers and have a large client base. The detached nature of that purely commercial relationship calls for some level of guarantee that workers and clients will not be taken advantage of and exploited and that is achieved through Part 4 which deals with suitability certificates.

Mr CHAIR: I will open it up to committee members, but before that I have a couple of questions...

Mrs FINOCCHIARO: This is full-scale decriminalisation?

Mr BURNS: That is correct.

Mrs FINOCCHIARO: There are no provisions in the legislation that relate to location or zoning requirements? It is on a case-by-case basis as put to the DCA, is that correct?

Mr BURNS: That is correct. What it is doing is now aligning the industry with ordinary laws as they apply to everybody. So, in this instance, as your question...

Mrs FINOCCHIARO: Sorry, you are breaking in and out there, would you mind speaking closer?

Mr BURNS: What it does, it applies the law as it does to every other business and individual in the Territory. If there are issues over location and things like that, that would fall to the Planning Scheme, under the *Planning Act*.

Mr CHAIR: So the planning aspects are not in this bill?

Mr BURNS: They are not considered in this Bill.

Mrs FINOCCHIARO: Are there amendments to the planning scheme or *Planning Act* corresponding with this legislation?

Mr BURNS: There is an application before the Planning Minister at the moment that will be looking to align the Planning Scheme, to make a few amendments to...

Mrs FINOCCHIARO: Sorry Jen, can you stop typing or move your laptop? Would you mind repeating that?

Mr BURNS: Sorry. There is an application before the Planning Minister at the moment and that will go out to public consultation, in due course, I dare say. That looks to make some amendments to the Planning Scheme, in order to allow the industry to operate as if it was any other business.

Mrs FINOCCHIARO: That would have to be done in the corresponding timeframe to this legislation otherwise how would it function?

Ms CLEE: That is correct, it will happen. I think it takes approximately three months for the Planning Scheme process to fully be accommodated. It should align with legislation.

Mrs FINOCCHIARO: Does that include public consultation via the Planning Commission, is that how those amendments can be made?

Mr BURNS: Yes, it would.

Mrs FINOCCHIARO: The Planning Commission will take this out to public consultation around amending the planning scheme?

Mr BURNS: Yes, subject to the Minister approving release of the application, which is a discretionary thing that is up to the Minister, the application will be exhibited for 28 days in newspapers through the Territory and then it will be open for public hearings through the Planning Commission three weeks after the close of that exhibition period.

Mrs FINOCCHIARO: What is it that would be amended? Would that be creating new zones for brothels, for example, a new zoning area, what exactly would it be?

Mr BURNS: Essentially like that, yes. It would establish commercial sexual services premises as a purpose and would then have a look at which zones that would then be permitted in. There is also some general consideration for location as well.

Mrs WORDEN: I have a question.

Mr CHAIR: Is it in the scope of the bill?

Mrs WORDEN: Yes it is in the scope of the bill. Obviously we have got to this point because the current landscape in the Territory leaves sex workers very unprotected and the steps in the bill are super. It is a massive step forward for the industry in terms of protection as workers. However, I have some reservations about how the legislation will achieve change in that landscape.

Putting aside the *Planning Act* issue, the complications of the legal business and that overlay that we are faced with, how do you see that this legislation will affect and change that landscape that is currently prolific in the Northern Territory?

Mr BURNS: In terms of what?

Mrs WORDEN: At the moment, where is the incentive? That is my concern. At the moment, sex workers have to be registered and we know a lot of them are not being registered for reasons that discriminate against them. I am really pleased that there is a part in the act that talks about the destruction of those records.

With the proliferation of illegal brothels—let us just call them what they are—with sex workers who have no protections at the moment, the landscape changes with this. However, what will stop those operating—if the legislation comes in, how will we effectively get that transition ...

Mr BURNS: Well, they will not be illegal anymore, to start off with. Removal of that prohibition will then empower the workers themselves to exercise their basic human rights to determine how they work and when they work. It will then be a matter for industry to adjust to the new operating paradigm and work forward from there.

Mr COLLINS: Good. There is an assumption there that everyone understands their legal rights and the changes to the act. Is there an overriding regulatory framework that will go with this? How will you regulate that people are, in fact ...

Ms CLEE: There had been consultations with industry and part of it is that they do not want to be overly regulated. So, moving away from the decriminalising opens up so that the industry can operate as a normal business. That means that they will have the usual business practices that will apply in ensuring that occupational health and safety applies. You have the environmental, health regulations that will apply. Obviously, you are looking at Commonwealth legislation with ATO and things like that. All those mechanisms and functions that apply to a normal business will apply to those businesses. They will not be operating illegally underground anymore.

Mr COLLINS: Yes, I get that. It is an industry that has a problem with exploitation. You have a workforce that is—I will not say in large part ...

Mrs WORDEN: Not in every place.

Mr COLLINS: ... but not in every place, certainly suffers from exploitation. How will we get that message across? If an operator is operating currently ...

Mrs WORDEN: As a massage parlour.

Mr COLLINS: Yes. How can we make those workplaces safer for these workers?

Mr BURNS: There is probably two aspects to that. The first one is just the general situation of any business and worker being able to go off and engage with the appropriate authorities to seek to enforce their rights. There is also the industry participants themselves—we have organisations like SWOP, for example, which will be actively going out and engaging with workers and explaining what this new regime is all about, where they stand and what their rights are and how they can go about enforcing those without feeling the threat of impugment or ...

Mr CHAIR: So what ...

Mrs WORDEN: So your expectation is that, all of a sudden, massage parlours will suddenly change over and become legal brothels and be advertised as such?

Mr CHAIR: I suppose the question we are asking is what ...

Mrs WORDEN: Is that what we are expecting from the legislation?

Mr BURNS: Well, ultimately, they will be. If the bill passes, they will be legal brothels.

Mr CHAIR: It brings me back to the question I wanted to ask at the start. What consultation has been done and what has been the feedback from the industry?

Mr BURNS: Okay. There was that Discussion Paper that went out earlier this year. From that ...

Mr WOOD: Is that the Have Your Say or is it a different one?

Mr BURNS: No, that was the one that was on Have Your Say. It was also sent out to a number of organisations and individuals. There was a total of 199 submissions received and 165 of those were on Have Your Say and 34 were written responses.

Those written responses came from a variety of areas, including industry representatives and individuals. Of that, there were about 22, I think, that were in favour of the model that is in the Bill and there were seven that were in favour of another model.

Mrs FINOCCHIARO: Sorry, how many was that? Twenty-two of your 160 plus submissions were in favour of the model adopted and how many were ...

Mr BURNS: No. That was 22 of the 34 written submissions.

Mr WOOD: Mr Chair, could I clarify some points on the submissions? In the second reading it said there were 226 formal and informal responses. I also received a note that said, in relation to question 11 of the Have Your Say site which was, should brothels be decriminalised in the Northern Territory. Yes, 44. No, 86. Unsure, 2. Now you have also given us another range of figures. Is it possible to have a more accurate ...

Mr BURNS: I understand that there were a couple of responses that were double counted that was identified just through this process now. As for specific responses to particular questions, I am not in a position to respond to that. I do not have the information ...

Mr WOOD: I did not ask for specific, I was asking to get the figure uniform—because I am hearing to this figure now, the figure in second reading was 226—then one of these responses to the Have Your Say site about should brothels be decriminalised, it says yes, 44; no, 86; unsure 2.

Ms CLEE: We can take it on notice to confirm the final figures for that.

Mr WOOD: Are we able to get a break down? I would like to see what industry and formal groups have to say because I know the issue about the delicacy of someone writing an individual submission. Is it possible to get the industry submissions?

Mr CHAIR: Industry are going to write in to us. We have put it out for public consultation.

Mrs WORDEN: I thought you were told that you could not have those anyway.

Mr WOOD: No, not quite. Not what the Chief Minister said. I hoped something would come out of that discussion.

Mrs FINOCCHIARO: It was mentioned at the start when I was asking earlier—once this legislation is assented to, if there are illegal brothels, to put it a better way, they automatically become legal brothels without any registration or any other requirements. You were saying they just automatically become legal.

Mr BURNS: They do but they will have to then have to go through the certification process.

Mrs FINOCCHIARO: What process would that be?

Mr BURNS: That is set out in Part 4 of the Bill where the operator will apply to the Commissioner of Consumer Affairs who will then conduct an assessment.

Mrs FINOCCHIARO: So they would still be illegal if they have not gone through that process?

Mr BURNS: I suppose in a technical sense they would not be complying with the law if they did not go through that.

Mrs WORDEN: It would also be false advertising. The issue here is we are trying to correct an anomaly that has occurred. We are not demonising sex workers. In fact, we are trying to support them, legitimate businesses, legitimate practices. My real issue is that it will not just roll over and I am wondering where the incentive is for current illegal brothels to become legal, particularly if they are exploiting workers which is exactly what is at the heart of this bill.

Mrs FINOCCHIARO: That is why I asked the question, Kate. If you are doing something wrong or not right by people and then this law just makes that legal, you are not really improving anything.

Mr CHAIR: Is it not the purpose of the bill to bring that in to line with a legitimate business?

Ms CLEE: Part of that will be that by making it legal is that you will have all the OH&S and other workplace requirements that apply ...

Mr CHAIR: All these new checks and balances in place.

Ms CLEE: That is right. The broader checks and balances that apply to any other business will apply, where currently now they would be working in an underground sense and so there is no way of actually ensuring that employees are being paid appropriately ...

Mrs FINOCCHIARO: But unless there is a whistleblower—say, unless there is effectively, as you mentioned before, Gerry, people understand their rights and they are willing to come forward, in a technical sense, things can continue. That status quo can be maintained even after this legislation.

Mr BURNS: Not necessarily because the framework is there now would be in place to allow those workers to go off and enforce their rights without feeling that they themselves are criminalised at the same time.

Mr COLLINS: You are talking about a workforce that is largely not conversant with their rights in that sense. That is the problem. The problem is—whether it is funding the industry groups to actually work as those advocates, something has to happen to ...

Mrs WORDEN: Centralise it.

Mr COLLINS: That is right, to get these people. Otherwise, if you are working illegally, you have an illegal brothel, you are exploiting your workers—what is in your interest to sign up to become legal and then have your workforce ...

Mrs WORDEN: As an overlay to that, we have indicated that the *Planning Act* changes and we will just park those for today, but let us have the *Planning Act* comes in to force—and it indicates that brothels cannot be near a school, for example. We know that there are those near schools. Then, all of a sudden, where is the incentive for a current operation, which is exploiting women, to flip over and become a registered brothel? I understand what you are saying, it empowers workers. But it empowers workers who have that power to do so.

All I am hoping is that underneath these changes to legislation, there will be an enormous effort on behalf of government to get into these places and make that change. If there is no incentive—and I am thinking some of these places have been in place for quite some time and built an established clientele in a place that suits them—and if they can no longer be there because of subsequent changes to the *Planning Act*, then I fear that the legislation could fail in its intent—and its intent is fantastic and well behind the times.

Mrs FINOCCHIARO: You make an interesting point, Kate, because if it is an illegal brothel currently operating as a bookshop next to a school, for example, and the legislation comes in, theoretically perhaps they are not allowed to be in that location of wherever else, they say, 'We are a bookshop.'

Mr CHAIR: There are workers out there who want this protection who are not exploited. If they are doing the wrong thing, the others do not sign up. I assume that it is illegal and those consequences will play out.

Mr COLLINS: Is there also a potential—sorry, Gerry. If you do not have the *Planning Act* set before you introduce or implement this, is there potential for brothels that are currently operating to sign up and become legal. They are in a position and then you have the *Planning Act* that comes out at some stage later which

says, 'Oh, no, these all have to be somewhere else.' You then have these people saying, 'Well, we have been operating there and legally'.

Mr BURNS: No, we have timed commencement.

Mr COLLINS: Time commencement so they are both together?

Mr BURNS: So they both commence together.

Mr COLLINS: So, this will not be implemented for quite some time then?

Mr BURNS: Probably not until close towards the end of November once the Planning Scheme amendments work their way through.

Mrs FINOCCHIARO: Why are they done together? Presumably, many Territorians would feel that one goes with the other. For example, Territorians might broadly support the principle that workers should be safe in enhancing a lot of those provisions, but have varying views on—and there will be varying views out there—zoning, planning and whatever else. How can we consider the bill in isolation to that factor, which is actually intrinsic?

Mr BURNS: Yes and no. They are slightly different conversations, I suppose. The Bill sets up the overarching environment and then you have the separate process through the Planning Scheme to address those particular items that may or may not arise.

Mr WOOD: I have a different view on things. I do not think it is an ordinary industry, it is not like making shoes, it is about sex, that is what it is about and that deals with the exploitation generally of women.

I would just make a first comment about the planning. I think you have a danger here, because under the *Planning Act* you can have pre-existing non-conforming rights. If someone has a massage parlour in Knuckey Street or somewhere, they can apply and automatically convert to a brothel. Under the *Planning Act*, you are already existing and unless you want to expand that you could continue to exist.

That is part of the *Planning Act*. I would be concerned about how this actually operates to remove massage parlours from places which probably should not be there in the first part. I make that point.

My concern is, as we have mentioned before, there is both a legislative aspect and moral aspect and I do not think this legislation can move away from the moral aspect as well. It does deal with some fairly important issues.

I wrote down some questions, but perhaps this one—this only turned up for me today—from a lady down south in Fitzroy. I do not think she will mind me releasing her name. Her name is Caroline...

Mr CHAIR: No, you have to withhold her name.

Mr WOOD: There is no other name to it. It was a response to the Economic Policy Scrutiny Committee and I presume it would be one of our submissions...

Mrs WORDEN: But only if we vote for it to be public.

Mr WOOD: It has not get her full name on it. She says:

... decriminalises activities in the sex industry constitute state action towards expanding, not reducing, the exploitation of women in prostitution through giving the sex industry free range to expand its business operations. At present brothels are banned in the Territory, therefore, at the very least, the bill allows their development which would represent expansion in the size of the Territory's sex industry and therefore a greater number of women at risk of exploitation.

What I am asking is why are we actually not looking at a policy which does not encourage this industry to exist? This to some extent now opens it up for far more people to be involved in this industry. From a government's policy perspective and from the moral perspective, why are we looking at expanding this type of industry?

Mr BURNS: I do not necessarily think it is something that is expanding the industry. Certainly, the experiences elsewhere, including New Zealand, on which this model is loosely based, did not actually see the industry expand. Numbers of workers and businesses stayed reasonably constant throughout the near 15 years it has been in operation.

The base issue is, yes there is a moral element to it. Since the industry was first formed, there have been many different ways of trying to regulate and prohibit it. They have not worked, the industry still survives. From the discussion paper that went out, government had detailed consideration of the various models that are out there that looked to try and enhance worker safety. Government has fallen on this particular model to use.

Mr WOOD: The problem I have, on that point, is that in the second reading, they talk about public submissions. Even as a member of parliament, I am not allowed to see those submissions. How can I have an informed discussion over what I regard as a very serious bill—it is not about changing traffic offences, this is a serious bill—without actually having the right to read what many people might say. There might be people in the industry who actually oppose this bill, I do not know. The way it is mentioned in the second reading is that if there is one group on one side who oppose it, but not in the industry, and there is the industry who were looking for changes.

I have not seen any of that detail, I am not allowed to see that detail. Why can we not see some of that detail, even as a member of parliament, to understand peoples' views on this matter?

Mr BURNS: That is something you would have to take up with the Attorney-General.

Mr WOOD: I have tried. I raise another issue. In the second reading it talks about—as you would know—about the Nordic version. In there, it states—and the minister wrote it down:

Research on the effectiveness of the Nordic model indicates that, rather than decrease risks of violence, the criminalisation of client behaviour increases such risks as it further isolates workers as clients seek to minimise their exposure to detection.

I have looked at various countries. The two countries I mainly looked at are Northern Ireland and Ireland because you can read their legislation in English. It is much easier to get an understanding of why they introduced this legislation. But when someone says 'research on the effectiveness of the Nordic model', can you point me to the where that research came from? Can I look up that research?

Mr BURNS: You certainly can. There is a lot of it publicly available. One example would be the Report—and I will give you the details of that—by the Prostitution Law Review Committee which was established under the New Zealand *Prostitution Reform Act*. That is publicly available. It is a little tricky to try to get it through the New Zealand Parliament website, but it is available. If you google 'Prostitution Law Review Committee Report', that will be available. That is a very detailed document that goes into not only the experiences that New Zealand has seen, but also discusses the other models and other jurisdictions internationally.

Mr WOOD: My only concern is that Northern Ireland and Ireland have not had this in for very long. I would have thought there would at least be some evaluation of how it operated in those two cases.

Mr BURNS: Indeed, the New Zealand committee, which was comprised of 11 members, I think, from a diverse group of people that ranged from a retired Deputy Police Commissioner through to a nun. They noted that it needs about 15 years for the reform to bed itself in properly, to see its full effect.

They conducted their mandated review that started roughly three years after commencement and that took five years for them to do that review. They noted marked differences, even in that period.

Mr WOOD: All right. I will have a look at that.

Mr CHAIR: I am mindful of time.

Mr WOOD: Yes, well, I have some technical ones

Mr CHAIR: Quick ones because I just want to make sure the panel gets their fair share of questions too.

Mr WOOD: Sorry. Well, you can kick me out any time. There are some technical ones here. You have made a distinction between children under 14 and children over 14 in relation to the penalties. Why is there any distinction at all in relation to the penalties?

Mr BURNS: Because we have retained the current offences and that is a distinction that is in the *Prostitution Regulation Act* now. I dare say that they are there, historically, to represent the difference in age and mental and physical maturity of the child ...

Mrs FINOCCHIARO: Sorry, that mike keeps dropping out every time you speak. Either that or you are not close enough maybe. I am not sure.

Mr BURNS: The age distinction of 14 years is in the current *Prostitution Regulation Act*. I dare say it was there to reflect the differences in maturity in physical and mental development of the child at that age.

Ms CLEE: It is also consistent with the way it is structured in the Criminal Code with similar offences relating to children.

Mr CHAIR: Great, okay. Well, we will wrap up, Gerry. It is a public briefing ...

Mr WOOD: I have a couple more. This is the only chance I get to ask the government about a piece of legislation that is very important. That is why I have come in.

About advertising, what will be allowed? I open up the pages now and you see nearly topless women and all sorts of sexy words about attracting people to massage parlours. To me, if we are trying to discourage people from being in this industry, will there be limitations on what can be advertised and how it can be advertised?

Mr BURNS: The current restrictions will be retained.

Mr WOOD: Well, that is not ...

Mr BURNS: If it is not being practiced, then that is a matter for enforcement.

Mr WOOD: Okay. My last one—again I will quote from this lady who wrote. She said:

The bill proposes to destroy records generated under the Northern Territory's 1992 legislation. While we might welcome the expunging of the criminal records of people prosecuted in the sex industry, this destruction of records will erase the criminal histories of pimps and traffickers in the Northern Territory. This will make more difficult the task of excluding such criminals from the sex industry deregulated in the Northern Territory.

Would you like to make a comment on that please?

Mr BURNS: We are not expunging criminal records, we are just removing the police records of registration of people who work in the industry.

Mrs WORDEN: Because they currently have to be registered to the police.

Mr WOOD: Yes, that is alright.

Mr CHAIR: Thank you Mr Wood. Kate?

Mrs WORDEN: I would like seek to ensure that the *Planning Act* comes out at the same time.

Mr CHAIR: Obviously it is out for submissions and we will be looking forward to those submissions.

Mrs FINOCCHIARO: Tony, could I just ask one last question? In terms of compliance, does that mean the Health department, or whomever else it might be, can come into a premise and conduct inspections and other regulatory checks?

Mr BURNS: Yes.

Mr CHAIR: Thank you Douglas and Hannah. It is an interesting bill, we will look forward to the submissions and we will be in contact. Thank you Gerry for joining us.

The committee suspended.
