

# THE COMPLEXITY OF THE SEXUAL CITY: DEFINING THE SEX INDUSTRY PREMISE

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## ABSTRACT

Sex is now a major driver of the global economy. World cities such as London, Tokyo, New York, and increasingly, Sydney, have a vested interest in legitimising the sex industry and the premises upon which it is based as revenue-generating source. This paper considers a variety of definitions and classifications of sex industry premises within NSW. In order to regulate effectively in the future, policy-makers need to define activities accurately to reduce ambiguity and minimise problems in a highly contentious industry. There is a need to establish boundaries in defining these complex entities and to understand the operation of these premises, ensuring that they are assessed within appropriate planning frameworks. Divided into two broad sections, the paper first explores sex industry activities and its stakeholders and is then followed by a discussion of sex industry premises in detail.

In New South Wales (NSW), one of the major issues associated with the sex industry includes problematic land uses. The Development Control Plan (DCP) for the City of Sydney (COS) is one of the first within NSW to adopt specific and appropriate terminology in order to define sex industry premises. As sex is becoming increasingly commercialised, mainstream, and visible on the 'high street', there is a need for the state to identify and regulate such activities (like gambling) in order to ensure that they become a source of revenue and that their externalities are controlled. At an estimated \$1.22 billion dollars from 2008-2009, the sex industry in Australia clearly has a significant impact on the economy. This paper is a starting point for understanding issues that planners face in professional practice in the assessment of sex industry premises.

## INTRODUCTION

World city rosters as discussed by Hubbard (2011) suggest that there are three tiers of cities that act as 'global command and control centres'; New York, London, and Tokyo are most widely recognised as first tier world cities. Cities such as Paris and Los Angeles find themselves located in a second tier whereas cities like Sydney and Singapore would belong to the third tier on the world city roster. Despite being classified as a 'third tier' city, Sydney trades on its world-city status to convey a message of cosmopolitanism, sophistication, multiculturalism, and liveability. Sydney is also home to one of Australia's infamous late-night entertainment quarters (i.e. vice districts), Kings Cross. Located within the COS local government authority (LGA), Kings Cross offers a variety of adult entertainment venues offering sex industry related goods and services in addition to pubs, nightclubs, and restaurants. As a world city recognized for its vibrant sex industry (through promotion and branding, i.e. Mardi Gras, Queer Screen, Miss Pole Dance Australia, "gay-friendly" establishments etc.), the COS is often considered a model of best practice in encouraging sexual citizenship and legitimizing commercial sex premises through its comprehensive and appropriate planning framework (Hubbard 2010, Harcourt 1999). There are diverse subcultures that not only coexist but willingly utilise and share spaces and places within the urban environment as a result of progressive and inclusive policies regulating sex industry activities throughout the COS LGA.

Generally speaking, urban environments are characterised by complexity, dynamism, concentration and a degree of what cult filmmaker and gay rights activist, John Waters, describes as "filth"—meaning, sex industry activities. Arguably, urban designers, planners, architects and other professions are charged with maintaining a balanced mix of land uses so that different groups and communities can co-exist without too much conflict. Despite brothels and other sexual economy services being legalised in NSW, planners often find themselves caught between community disputes and internal political machinations when development proposals for these activities are submitted for approval (Papadopoulos and Steinmetz 2011). Such negative community and political reactions against brothels and other commercial sex premises are generally predicated on stereotypical

assumptions that such activities will have detrimental impacts on local amenity, property values, criminal activity and even society in general. It is suggested here that planners – professional and academic – have a relatively limited understanding of the complexity of the sexual economy landscape and as such this limits their ability to make more informed decisions about these types of activities when development approval is sought.

## PEOPLE TALKING ABOUT SEX

Much of the academic literature on the sexual services economy emanates from several key disciplines: sociology, geography, anthropology, and psychology. The focus of this research has been somewhat eclectic with analyses of the lived experiences and spatialities of sex workers, brothel operators and clients within the urban environment (Hubbard 2011, 2010, 1999, Weitzer 2009, Barlow 1994, Frances 1994, Jakobsen & Perkins 1994, Perkins 1992, Allen 1984). Methodologically speaking much of this research has been generated ethnographically, biographically, and autobiographically. In simple terms the literature points to three broad types of spaces wherein commercial sex work is available for consumption: (i) the street – this is arguably the most common form of sex work that people identify with; (ii) on-premise – this is sex work that takes place in commercial or home-based brothels and/or massage parlours; and, (iii) cybersex/telephone sex – this is sex obtained for free or payment via the internet or telephone sex chat line.

Irrespective of what segment of the sex industry that people work in they have tended to be stigmatised as undesirables and associated with an immoral and criminalistic industry (Marcia 1994, Perkins 1992). Stereotypes of female sex workers, for example, whether working on the street or in brothels have long been cast as disadvantaged females with limited social opportunity and circumstance (Perkins 1992). For feminist commentators women who work as prostitutes do so because they have been effectively coerced into the sex trade via a complex mix of patriarchy and exploitation by men or criminal organisations engaged in the trafficking of sex slaves. Advocacy groups such as Scarlett Alliance and the Australian Sex Party offer a relatively more positive view of sex workers (including lap-dancers and strippers) arguing that many, if not most women, who act as sex workers do so because of the economic opportunities that it potentially affords them (Wosick-Correa & Joseph 2008). Recently, male sex work has emerged as a focal point of research within the sex industry (Scott et al 2005, Minichiello et al. 2002) and Weitzer (2009) highlights that many sex workers, including male and transgender sex workers, choose to be employed in the industry. Over the past decade, documentaries (Louie Theroux *The Brothel*, *The Scarlett Road* with Sydney sex worker Rachel Wotton) and prime time television series (*Underbelly Razor*) have highlighted (some would argue 'glamorised', i.e Showtime Australia miniseries *Satisfaction*) sex work as a profession, thus providing a very different narrative as to why people are involved in the industry.

Despite that many people engaged in the sex industry may be there of their own volition and brothels are legal within NSW and Victoria, and draft legislation has recently been introduced in WA (July 2011), sex work and sex premises still tend to promote community and political anxieties. To reiterate, the primary reasons for this include: a perception that the establishment of brothels and other types of sex premises will negatively impact on local planning amenity and property values; sex premises attract undesirables such as drug addicts and pimps thus resulting in anti-social behaviour; as an immoral and deviant activity the sex industry has the potential to corrupt children and young people as well as men or women who might be tempted to engage in infidelity with a sex worker.

Given all these 'facts' governments have been compelled to introduce legislation and penalties to regulate the sex industry. From a planning perspective, whilst brothels may be permitted to exist they can only do so legally within zoned precincts. Quite often this generally means light industrial/industrial areas. Attempts to spatially marginalise sex premises appear to be part of a general strategy of keeping these types of activities out of sight and out of mind thereby limiting their negative impacts on amenity and local communities. Licensing costs to operate a brothel or as a sex worker and penalties (financial, threat of closure and/or imprisonment) for those that break the law are set relatively high in an effort to deter criminal elements being involved in the legalised sex industry.

The sexual economy is much broader than this however and as such other forms of sexual economy activities raise different policy questions and challenges for planning. These other sexual economy activities – e.g. swingers clubs, houses of domination and BDSM clubs - might be best described as spaces of 'sexual leisure' or places where participants are able to partake in some form of 'sexual

tourism'. Essentially, these are venues where people have the opportunity to engage in mutually consenting sexual performance and interactions—but are not required or coerced into doing so. An admission fee is charged but there is no direct cost for participating in a sexual act with another person or persons. These types of sex activities take place in nightclubs and similar premises and occur on regular weekly or monthly basis. As our understanding of the sexual economy in the urban environment broadens, there will be new forms of commodified sexual activity that will need to be taken into account. For example, cybersex industries raise an interesting question in that they do result in sexual activity but do not necessarily take place in a traditional sex on premise venue. This type of research will need to be further investigated and explored.

Sex industry premises are a legitimate component of the wider landscape in the urban environment (Frances 1994, Jakobsen & Perkins 1994, Lazarus 1994, Marcia 1994). Authors suggest that Australia's response to the sex industry, and subsequently sex industry premises, is a positive and world-leading example of policy, and legislation, to some degree, demonstrates an increased awareness of the various stakeholders within the industry (Harcourt 1999, Hubbard 1999). Although considered world leading, there are issues with current legislative frameworks: each Australian state varies with their policies in regulating the sex industry (Sullivan 2010). Within NSW, the inconsistency extends further in defining sex industry premises. There is limited awareness and there are varying social attitudes toward the industry throughout local councils, resulting in inconsistent assessment of these permitted premises (Hubbard 2010, Miles 2010, Mannarini et al. 2009, Harcourt 1999).

### **DEFINING SEX INDUSTRY PREMISES (NSW)**

Prior to 1979, the sex industry in NSW was regulated as a criminal activity. Early colonial Australia regarded the act of selling, housing, and purchasing sexual services as both criminal and immoral. Policing of the sex industry was selective because the operation of established and visible businesses was considered a 'necessary evil' (Pinto, Scandia & Wilson 1990). As a criminal activity the regulation of brothels in NSW was initially the domain of the Police under the *Disorderly Houses Act 1943*. According to the Sex Services Premises Planning Advisory Panel (2004), "even orderly, well-run brothels could be closed and the sex workers forced on to the streets...[S]treet work was considered undesirable as it could increase the safety risks to sex workers, impede access by health and social service providers due to the difficulties of maintaining regular contact with transient workers, and create amenity concerns in local areas" (p.1).

Ultimately, closing brothels was deemed not to be the answer to managing this complex industry. The introduction of the *Prostitution Act 1979* legalised the selling of sex, and as a result, was a catalyst for the revision of legalisation of sex industry premises. Put simply, there was a social and political demand to move sex off the street and into premises behind closed doors – i.e. the out of sight, out of mind philosophy. The move to legalising on-premise sex establishments resulted in a mix of different types of brothels of various scales: (i) home occupation sex work (1-person operated); home businesses (2-person operated) and larger scale premises offering a number of working rooms. *How many* rooms allowed in larger scale premises has been reason enough for rejecting development applications with the intention to expand existing premises—Stiletto's in Camperdown, NSW—a case in point.

Legalised by the NSW State Government in 1995 under the *Disorderly Houses Amendment Act 1995* (now referred to the *Restricted Premises Act 1943*) and defined as permitted land use within the state's planning system, the regulation of sex industry premises shifted from the police to local government authorities. Current policy incorporates partial recommendations from the Sex Advisory Panel. The *Restricted Premises Act 1943* defines sex industry premises (sex service premises) as:

*"brothel means premises:*

*(a) habitually used for the purposes of prostitution, or*

*(b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or*

*(c) that have been expressly or implicitly:*

*(i) advertised (whether by advertisements in or on the premises, newspapers, directories or the Internet or by other means), or*

*(ii) represented as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.*

*Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution”.*

This definition can be argued as comprehensive in scope yet simplistic in its consideration for both large-scale sex services premises and home occupations (sex services). This has been heralded as a generally positive move, politically, socially and legally (Scarlet Alliance 2011, Sullivan 2010, Boydell et al. 2009, Sex Services Premises Planning Advisory Panel 2004). The police of course still have a role to play where and when other criminal activities take place within brothels. By placing the regulation of brothels within the planning system local councils are charged with using traditional town-planning and other instruments to manage the location, building standards and occupational health and safety standards of brothels (Sullivan 2010, Boydell et al. 2009, City of Sydney 2006, Harcourt 1999, Hubbard 1999). Councils also have the authority to appeal to the Land and Environment Court (LEC) to close any ‘disorderly’ brothels in response to legitimate and proven objections from the local community

In 1995 when sex industry premises were deemed a legal land use, there was a need to define their type, size, scale, and operation. There was a need to establish a regulatory planning framework and planners would have to assess these premises to ensure that they would operate within appropriate environments. Issues emerged due to limited awareness of the various types of premises that operated under the umbrella of sex industry owners, operators, and workers. The Sex Services Advisory Panel, established in 2002 by the NSW Cabinet Office, made a number of recommendations in defining sex industry premises, recommending incorporation in to the existing planning framework. Definitions recommended included:

- *Commercial sex services premises*
- *Small commercial sex services premises*
- *Home business involving sex work*
- *Home occupations involving sex work*
- *Escort services*
- *Massage parlours*
- *Street sex workers*
- *Safe house premises for street sex workers*
- *Sex-on-premises venues*
- *Strip clubs*
- *Restricted premises (Adult bookshops)*

Although some of these recommendations have been incorporated in planning policy across NSW, they are essentially recommendations *only* and therefore consent authorities have the discretion to decide whether or not they are integrated. Legislation has been revised to include a broader understanding of sex industry premises. Current policy recognises these as businesses, thus having rights to operate within commercial areas. However, there is still a misunderstanding as to how these premises operate at a local scale. There is limited understanding in terms of what type of consent is required or if consent *is* required (specifically with home occupation/home business).

Subsequently the *Standard Instrument* provides a definition for a ‘brothel’ (sex services premises) and ‘home occupation (sex services)’, identifying the need for clarity and differentiation between the two types of premises. Alternatively, given the wide scope of premises that operate within the sex industry, other definitions provided by the *Standard Instrument* include ‘restricted premises’; these would include activities such as strip clubs and sex shops. Where there are premises that do not fall within the any of the previous classifications, such as sex-on-premises venues (including swingers and BDSM clubs), they can potentially be described as ‘commercial premises’. Ambiguity in definition of sex industry premises leads to non-compliant and often times underground illegal businesses. Refer to Table 1 for Standard Instrument definitions.

Recent changes also include those to the *Brothels Legalisation Amendment Act 2007* which introduced the term 'related sex uses' into the parameters of definition what constituted sexual activities and premises. The definition provided states:

**'related sex uses'** means the following:

- (a) The use of premises for the provision of sexual acts or sexual services in exchange for payment
- (b) The use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment
- (c) The use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services"

Industry stakeholders such as the Scarlett Alliance saw this as a significant reform demonstrating regulatory authorities' awareness of attempting to understanding the wide range of premises that operated within the industry

**Table 1: Land use definitions within the Standard Instrument (2006)**

Land use/Terminology within the Standard Instrument	Definition
<b>Sex services premises</b>	Premises habitually used for the purposes of sex services, but does not include a home occupation or sex services (home business)
<b>Sex services</b>	Sexual acts or sexual services in exchange for payment
<b>Restricted Premises</b>	Business premises or a shop that, due to its nature, restricts access to customers over 18 years of age and includes sex shops and similar premises, but does not include a hotel, sex services (home occupation), or sex services premises
<b>Commercial premises</b>	A building or place used for business or commercial purposes <i>Standard Instrument (Local Environmental Plans) Order 2006 (NSW)</i>
<b>home occupation (sex services)</b>	<i>The provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than two permanent residents of the dwelling and that does not involve:</i> <i>(a) the employment of persons other than those residents, or</i> <i>(b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or</i> <i>(c) the exhibition of any signage, or</i> <i>(d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, but does not include a home business or sex services premises</i>

In defining sexual activities and acts of a sexual nature, a new debate occurs as to what constitutes sex and sexual behaviour as there are conflicting views and definitions amongst social attitudes, legalisation, and sex industry stakeholders. Sex industry services have emerged as legitimate commercial enterprises and should be able to rely on consistent and thorough planning controls; this includes the use of more appropriate terminology in legislation thus moving away from terms such as prostitution, pimp, madam, and brothel. The Sex Services Premises Planning Advisory Panel (2004) recommended that these terms be replaced with sex industry, sex workers, sex services premises, sex-on-premises venues, and premises owner, signifying shifts, attitudes, perceptions, and responses of the industry (Boydell et al. 2009, Hubbard & Sanders 2003, Hubbard 1999). Although terminology has changed to some degree, not all LGAs in NSW have adopted this protocol; this adds to the non-conformity of contentious land use policy. It is evident in the literature that when defining the sex industry its complicated nature has to be considered.

### **Sex: The home business**

Sex industry premises are typically thought of as brothels, however, there are also sex services (home occupation—one sex worker) and sex services (home business—maximum two sex workers), both of which fall under *Restricted Premises Act 1943*; these do not have the obvious impacts that the larger establishments could have (Boydell et al. 2009). Throughout NSW, policies on these types of sex services vary greatly. According to the Brothel's Taskforce Report (2001), private sex workers make up 40 percent of the industry, and yet there are councils who do not allow these types of premises in residential areas. In some councils, sex services (home occupation) does not require development consent, however, if there are two workers (and no more than two) then they are considered a local business (falling into the category of sex services—home business). In other words, if a council does not have a definition for a commercial sex premise, then the default definition is a 'local business' (Brothels Taskforce 2001, p. 13). Current wording of the standard template fails significantly to define and differentiate types of sex industry premises and their activities. This presents issues for planners because sex industry premises can also include sex-on-premise venues.

Sex industry premises can be defined to include a number of buildings that provide a space to conduct acts of a sexual nature or similar acts. Such can include BDS&M clubs, brothels, massage parlours, and swinger clubs. The sexual nature of the activity can vary in terms of the type of sexual acts performed. Sex-on-premise venues, like those mentioned above, provide a place for consenting adults to participate (voyeuristically or physically engaging) in sexual acts. There is an entry fee to the venue, however there is not (typically) a financial transaction to engage in sexual acts. These venues add to the complexity of planning for sex industry premises, as payment upon entry does not necessarily deter payment for sexual services once inside.

### **THE CITY OF SYDNEY—A SEXUALLY PROGRESSIVE LGA?**

The COS council is the largest and most densely populated urban LGA in NSW. The LGA covers approximately twenty-six square kilometres of inner Sydney. The LGA caters to a variety of land uses, needs, and different urban characters whilst ensuring that there is minimal conflict between them. It is a circumstance where comprehensive planning policies are required to ensure that the delicate balance in the city's variety of land uses is maintained. Commercial sex premises are an example of a land use within the COS council LGA that require comprehensive controls to ensure minimal conflict and a clear understanding by council, residents, operators, and potential applicants as to what is permitted and in which locations.

The COS is situated within the most vibrant urban environment within NSW where the sex industry has long been part of its history, particularly in Kings Cross and Surry Hills. The city understands the need for a clear understanding of how the industry operates in order to define appropriately how these premises operate and how they can be described through the Adult Entertainment and Sex Premise DCP 2006. The COS can be considered a model of best practise in its attempt to define the various types of sex industry premises, persons, and activities including:

- Bondage and discipline premises
- Brothel
- Operator
- Premises owners
- Manager
- Massage related service
- Sex on premises venues
- Sex services
- Sexual intercourse
- Working room
- Sex services premises
- Home occupation (Sex services) (COS 2006)

The COS has incorporated a number of significant and clear definitions, clearly understanding the complexity of the sex industry and the range of activities within it. The use of sex-on-premise venues, sex services premises, restricted premises, and home occupation (sex services) indicates there is a clear understanding from the council as to the varying types of premises within the sex

industry. These definitions are consistent with current legislation and also take into account the recommendations of the Sex Services Premises Advisory Panel.

### *Zoning of sex industry premises*

The practice of how sex industry premises are defined is a crucial element in how they are placed within the urban environment. As a permitted use with consent within the state of NSW the current planning practice outlines that there must be the provision of at least one zone for sex industry premises within a council area. Often in the case of larger scale premises such as sex service premises industrial zones are selected as preferred locations which are inappropriate given they are vacant in night with limited street activity (Boydell et al. 2009, NSW Department of Planning 2006, Harcourt 1999, Seale 2009, Hubbard 1999, Harcourt 1999).

The current definitions provided with NSW policy identifies the commercial nature of these premises given that they are allowed to operate as a legitimate business. Clearly commercial zones are considered more appropriate given the business operation of commercial sex premises, however are often overlooked within some councils as result of community attitudes (Harcourt 1999, Hubbard 1999). Furthermore the current state practice discourages operation of sex industry premises within residential zones however the scope of 'Home occupation' (sex services) potentially allows for the operation within residential zones (Sullivan 2010, Harcourt 1999). Often there is misunderstanding between workers and council as to what is considered permitted and prohibited. Circumstances arise where these home occupations are considered by councils to have the same impact as a sex service premises (brothel) contributing to misunderstandings and issues of compliance. Clearly there is a need for greater understanding in the difference of these premises and their scale of operation to ensure that these permitted premises are located within appropriate locations.

### **CONCLUSION**

There are three stakeholder groups in the sex industry: those who produce a sex industry product (e.g. adult entertainment retailers, brothel owners, sex workers, strip club owners), those who consume a sex industry service (consenting adults), and those who regulate the sex industry (governments—all levels) Papadopoulos and Steinmetz (2011). Policy provides a number of definitions that have evolved over time, reflecting a generic understanding of the sex industry, and specifically, sex industry premises. Legislation about and regulation of the sex industry continues to have grey areas in which varied interpretations from local councils can occur. Current policies have limitations in their attempt at articulating what and who the sex industry involves: often the needs of sex industry stakeholders and the diversity of the industry are misunderstood. From a legal perspective, there is limited acknowledgement of how sex-on-premises venues operate, creating confusion as to how they are perceived and regulated. This lack of understanding contributes to further isolation of the industry and contributes to the fears alleged from the community. It can also cause a greater confusion for regulators, industry, and the community as to the spaces where sex is included or excluded (Coulmont & Hubbard 2010).

This paper considered a variety of definitions and classifications of sex industry premises within NSW, specifically the City of Sydney LGA. In order to regulate effectively in the future, policy-makers need to define the elements of the sex industry accurately so as to reduce ambiguity and minimise problems in a highly contentious industry. As 'cities are abundant with opportunities to experience sex and sexuality, directly and indirectly, in a range of different contexts' (Maginn & Steinmetz 2011), this paper is a starting point for understanding issues that planners face in professional practice in the assessment of sex industry premises.

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