

Touching Base seeks support to amend New South Wales - NSW procurement laws.

The Touching Base Committee believes the ambiguous wording of "Section 91A" of the NSW Crimes Act 1900 unreasonably limits the rights of people with communication and/or mobility impairments to access normal adult sexual choices.

As the law stands in NSW the ability of service providers and carers of people with disabilities to assist their clients to pursue the sexual lifestyle of their choice is unreasonably restricted by apparent threat of prosecution under Section 91A of the NSW Crimes Act 1900 as follows:

*NSW Crimes Act 1900 Section 91A - Procuring etc
Whosoever procures, entices or leads away any person (not being a prostitute), whether with that person's consent or not for the purposes of prostitution, either within or without New South Wales, shall, notwithstanding that one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to imprisonment for seven years.*

This wording of Section 91A is ambiguous and leaves the clause open to various legal interpretations:

" Whosoever procures, entices or leads away any person (not being a prostitute), whether with that person's consent or not for the purposes of prostitution.. "

Each of the service providers in NSW depends upon their own legal counsel for policy guidance on this matter. This leads to an inconsistent range of assistance being provided to people with a disability who wish to pursue their legal right to choose to access a sex worker / surrogate partner in NSW. For examples of the range of assistance on offer, see later.

Anti-Pimping intention- unconsidered handicap

This procurement law was initially developed as an anti-pimping measure. Unfortunately it exhibits no consideration of the fact that some people with visual, and/or hearing, and/or speech and/or mobility impairments require the assistance of a third party to make inquiries for an appointment with a sex worker/sex surrogate or to visit a brothel. Some people with disabilities also require third party assistance with personal preparation prior to and after the appointment and assistance travelling back and forth. Some people with disabilities also require assistance with transfers and positioning.

Service Providers - regulation in NSW

The legal requirements of service providers to provide a full range of assistance to people with disability are clearly defined in the NSW Disability Services Act 1993, (see above)

In relation to supporting people with disability to access the services of a sex worker, there have been varying legal opinions regarding "Section 91A" and this can lead to major inconsistencies between the policies or practices of service providers. Some find no problem with "Section 91A", as it is clearly an anti-pimping provision, so they don't consider it a genuine barrier to carers fulfilling legal obligations to support their clients' choices. Others simply choose to ignore it or they may be genuinely ignorant of this old law, either way they appear to support their clients in pursuing this sexual lifestyle option.

They may be surprised to discover that some other service providers have been given legal advice that makes it seem either risky or impossible for them to fulfil their legal requirements to arrange lifestyle choices for their clients in accordance with the objects of the Disability Services Act 1993 Sect 3, **Items (a), (b) i, ii, & iii, (c), (d), (e) and (f).**

NSW Department of Community Services - DOCS Sex Worker and Sex Aids policy for service providers

When we look at the NSW DOCS policy regarding the rights of clients with a disability to access Sex Workers and Sex Aids, we see how Section 91A of the Crimes Act may be read to contradict implementation of current DOCS policy.

"11. SEXWORKERS AND SEX AIDS"

11. 1 A consumer's choice and right to use a sex worker or sex aids is to be respected and treated with confidentiality by staff members.

11.2 The employment of sex workers is to be closely matched to meeting a consumer's sexual needs. Sex workers are to be considered as only one of a range of options in meeting the sexual needs of a consumer and should not be the first strategy for meeting a consumer's need for intimacy.

11. 3 The employment of a sex worker is not an appropriate strategy for meeting a consumer's identified need for developing friendships.

11. 4 It is not legal to place an advertisement for a sex worker.

11. 5 Staff roles and responsibilities do not extend to providing physical assistance with masturbation and sexual positioning. Visual aids and appropriate resources are available to assist staff members to address these issues according to the needs of the consumer and should be incorporated in the Individual Plan. (See 13. resource and Support Services. Department Of Community Services - Policies for Working with People with Disabilities Version 2 Oct 1996 6.25 – 11).

Section 91A inhibits use of sex surrogates and surrogate partners

Section 91A also inhibits the employment of sexual surrogacy as a treatment option for Sex Therapists, Doctors and Sexual Health Counsellors during 'sexual habilitation' or 'sexual rehabilitation' therapy for clients with relationship issues, sexual functioning problems or clients in recovery from prior sexual abuse.

The fact that sex workers are already being used as sexual surrogates or surrogate partners by Sex Therapists, Doctors and other health care professionals in NSW can be confirmed by the NSW branch of the Australian Society of Sex Educators, Researchers and Therapists - ASSERT.

Without a change to "Section 91A" the above mentioned health professionals that choose to enlist the services of sexual surrogates or surrogate partners may potentially remain at risk of facing criminal charges of procurement, possibly leading to claims of professional misconduct and/or insurance complications in the event of accident or injury.

Service Provider responses to Section 91A

NSW Spastic Centre - Sexuality and Human Relations Project

In April 2002, the NSW Spastic Centre released a report from their Sexuality and Human Relations Project Officer, Paul Kelly. Their legal advice led them to announce the following policy decisions.

NSW Spastic Centre Strategy - "Commitment to Informed Choice"

Service User meetings were held to discuss sexuality and

disability and in particular to galvanise support to lobby for change in State government law that prohibit the Spastic Centre assisting Service Users accessing sexual services.

Service Users were made aware that it is unlawful to make a phone call and arrange for a person with a disability to access the services of a prostitute."

NSW Spastic Centre Strategy – "Commitment to Influence Change

"The Spastic Centre recognises that the right of service users to freedom of sexual expression is not easily exercised within the current framework of community attitude and law. The Spastic Centre also understands that those same issues hinder aspects of its service provision around sex and sexuality.

The Spastic Centre is committed to supporting the lawful activities of persons with a disability to influence political and community groups to: a) Influence community beliefs and attitudes through an awareness of these issues for persons with a disability, and b) Influence law-making bodies to bring changes to laws that needlessly infringe on the rights of persons with a disability. " - Spastic Centre (NSW) Sexual and Human Relations Policy Statement April 2002.

For a full copy of the NSW Spastic Centre Report – see pdf [**Sexuality and Human Relations Project Report.**](#)

Other service providers/care agencies can take a very different approach to assisting their clients.

The following example shows the procedures a carer recently went through in order to obtain the services of a male escort for her male client - 27yo, who has intellectual disabilities acquired by a brain injury:

"Essentially had to be able to say to the Public Guardian that Mr X was making an informed choice, that he knew what the risks were, that we had done what we could to minimize the risks and were requesting permission to use a legal sex worker. Had to assure them I had thought out the pros and cons of an 'out' service largely that it meant Mr X couldn't later arrive at 'in' premises unannounced with no money, etc. The initial guardian had said get the sex counselling and education done

and "then we will talk."

But as it panned out, she was on annual leave when I rang to say we were now ready to go ahead. The Duty Guardian for that day said that with all the above noted, the Public guardian even with `service' function couldn't stop a person from accessing a sex worker. Had to convince the Office of the Protective Commissioner that \$xxx. 00 seemed a fair price for service being offered and also that paying cash was preferable as a means of helping Mr X gain an understanding of what the service costs and how often he could afford it. Had to negotiate with the care agency to find a carer comfortable and with suitable interpersonal skills to be rostered on for the shift - particularly for once sex worker has left in case Mr X wants to discuss the experience. Also negotiated carer to leave premises but stay local and available on mobile. " (Extract from a letter from a carer sent to the Touching Base Committee - 29.04.2002)