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Discussion paper

Should escort or outcall prostitution services in Queensland be legalised?

Extension of the CMC's evaluation of the Queensland Prostitution Act

The CMC is calling for submissions from key stakeholders and members of the public who can provide constructive comment on the possible legalisation of escort prostitution services in Queensland. All submissions must reach the CMC by 22 April 2005.

Background

The Queensland *Prostitution Act 1999* gave the CMC responsibility for reviewing the effectiveness of the Act (s. 141).¹ In December 2004 the CMC published its review, entitled *Regulating prostitution: an evaluation of the Prostitution Act 1999 (Qld)*.

One of the key recommendations of *Regulating prostitution* concerned the potential legalisation of escort services in Queensland:

Recommendation 23: On the information currently available, the CMC is unable to recommend that escorts be legalised in Queensland. However, the CMC is extending its review in order to examine whether Queensland should legalise outcall or escort prostitution services. Submissions will be sought from the public and all key stakeholders on the feasibility of legalising escorts and on the practicability of possible models for the regulation of escort services in Queensland. The CMC will report publicly.

The CMC had serious concerns about the possible risks involved in either legalising escort services or continuing the current situation, where escort agencies and the provision of escort services by legal brothels (other than sole operators) are illegal. The concerns include the following:

- ▶ Legalising escort services might result in an overall increase in the amount of prostitution in Queensland, both legal and illegal. There are illegal operators who have neither the eligibility nor the desire to operate legally, and they are likely to persist with their criminal endeavours.² Sex workers would be unwilling to continue to work illegally if more lucrative legal escort options became available to them, and it is possible that child prostitution and sex trafficking, which are not currently a problem in this state, might increase to make up the shortfall.³

1 Section 141 of the Prostitution Act says: 'The Crime and Misconduct Commission (CMC) must, as soon as practicable after the end of three years after the commencement of this section, review the effectiveness of the Act and give a report on the review under the *Criminal Justice Act 1989*, section 26.'

2 The current probity requirements for becoming a legal brothel licensee are thorough, and applicants with criminal histories (except for prostitution) are unlikely to be successful.

3 Despite the legalisation of escorts and brothels in Victoria, there has been a significant increase in illegal prostitution and organised crime in recent years, including child prostitution and sex trafficking (Home Office 2004, *Paying the price: a consultation paper on prostitution*, p. 85).

- ▶ The risks associated with not legalising escort services in this state, on the other hand, could include a significant deterioration in the current legal brothel industry, because of the lack of financial incentives for licensees to remain open. Illegal escort services, which make up about 75 per cent of the current prostitution industry in Queensland, are a damaging source of competition for legal brothels. Given the very positive impressions of the current legal industry gained by the CMC, this is a significant risk. There is also a risk that, if escorts are not legalised in Queensland, legal brothels will fail to attract sex workers to work in the brothels, because the financial rewards associated with illegal escort services are greater than those from either brothel or sole operator work. Illegal escorts also appear to be more vulnerable to health and safety risks,⁴ and this problem is likely to persist without legalisation and associated monitoring. The same risks apply to the clients also.

The CMC was also concerned about the current lack of effective monitoring or regulatory processes for legal escort services elsewhere (both nationally and internationally), and some evidence that legalising escort services does not necessarily result in either decreased illegal services or increased health and safety benefits for workers (e.g. see recent events in Victoria).

Because of these concerns, the CMC recommended that it conduct an independent inquiry into the issue and now seeks submissions from key informants and interested members of the public.

A full excerpt about the provision of escort services from the CMC's 2004 *Regulating prostitution* report is given in the text box starting on the next page.

Anticipated outcomes of the inquiry

The CMC will release a public report providing recommendations to parliament about the efficacy of legalising escort services in Queensland. Those recommendations are likely to include one or more of the following options:

- ▶ changes to the current legislation that will allow legal brothels to provide escort or outcall prostitution services
- ▶ changes to the current legislation that will legalise independent escort agencies
- ▶ retention of the current legislation which restricts legal brothels from offering escort services, and which makes escort agencies that provide organised outcall prostitution services (as opposed to sole operators) illegal.

4 Illegal sex workers are harder to reach for health education purposes and more likely to practise unsafe sex because of ignorance of the risks (SQWISI submission, in *Regulating prostitution*, CMC 2004, p. 67).

Excerpt from the CMC's report, *Regulating prostitution: an evaluation of the Prostitution Act 1999 (Qld)*, pp. 109–12

Escort services/outcalls

The earlier chapters of this report have illustrated that illegal prostitution has continued since the introduction of the Prostitution Act, primarily in the guise of illegal escort agencies. There are several reasons for this: the ongoing demand for outcall or escort services, financial incentives for both operators and workers, and the limitations of the Prostitution Act itself. The safety of sex workers providing these services is also a key consideration in any debate about the provision of such services.

The highest proportion of all sexual services — estimated to be about 75 per cent — is provided by call out or escort services. Clearly this is the greatest demand for prostitution and, although sole operators provide a proportion of these services, illegal escort operators currently provide the majority of them. Legal brothels are unable to compete for this business because under sections 78.1(a) and 79.1 of the Prostitution Act licensed brothels are prevented from providing outcalls.

As noted in Chapter 4, financial incentives for both the operators and the workers are thought to be one of the key incentives for illegal prostitution. There is some evidence that illegal sex workers earn more money than those working legally (see, for example, Woodward et al. 2004) and, given the demand for these services, illegal workers and operators alike are likely to reap considerable financial rewards for remaining in the illegal industry. In this light it is also necessary to consider the profitability of licensed brothels. Licensees made it very clear to the CMC that, although some of the brothels are doing very well, many have had financial difficulties. One brothel is currently closed and several are said to be for sale because of financial concerns. The licensees expressed the view that under the current regulatory regime a legal brothel is certainly not a 'license to print money' and, indeed, that some were struggling to keep afloat. Should this be so, the incentive to enter the legal industry will be damaged and the potential for the illegal industry to expand will be enhanced.

SQWISI (p. 7) proposed that the Act restricts the profitability of brothels, making them an insufficiently attractive business proposition. They claimed that many licensed brothels are struggling to build a client base and attract sufficient numbers of sex workers and that this may be related to the limited types of services available to them:

If sex industry businesses cannot offer their clients convenience and the wide range of attractive choices that clients are seeking, those businesses will be unable to attract and keep a business base. Without a steady flow of clients, those businesses will be unable to attract and keep sex workers. Without sufficient numbers of sex workers businesses can't develop a thriving client base. The problems are inter-related and circular and compounded by the fact that the licensed brothel sector has failed to become the industry norm. Naturally, competition from the illegal sector is part of the problem ... the only viable long term solution to illegal prostitution is to provide a range of flexible and commercially attractive legal options ... no-one chooses to work or consume services illegally when there are equivalent or better legal choices. (SQWISI submission, p. 7)

It was also suggested that sex workers are reluctant to move into licensed brothels as there is more work available, and hence more income, from the escort business. One respondent to the CMC survey stated:

I don't really know why parlours aren't allowed to do escort services, when sole operators can, yet there are still lots of illegal escort services in business. If it were legalised you would absolutely squash these people doing illegal escorts just by giving them competition.

QABA also noted in its submission that:

the apparent ease of entry into this market and thus its attractiveness to organised crime, suggest that this is an area in desperate need of regulation and control. (p. 9)

All informants to the review, including all government representatives, the PLA, all sex workers and all licensees who were interviewed for this review, were therefore in agreement that the inability of legal brothels to provide an escort or outcall service is the most crucial impediment to the success of the Act.

A number of submissions also pointed out that the legal industry would be better placed to protect the safety of workers during outcalls, which is currently a potentially dangerous situation for sex workers providing these services. While many sex workers operate by a code to protect themselves and some have drivers or security guards to assist them with their safety, many are vulnerable to attack or abuse because they work alone. The murder of a non-street-based sex worker in Queensland in November 2004 illustrates this. On the other hand, we have shown in Chapter 3 that legal brothels have demonstrated their capacity to provide a safe environment for workers. Discussions with licensees during the review also illustrated that they have given considerable thought to how they might extend this protection to workers if they had the capacity to provide escort services from the brothels.

Apart from decriminalisation, there are two major strategies for minimising the illegal industry — enforcement and/or regulation. As illustrated, the QPS has been effective in its enforcement of elements of the illegal industry: street prostitution has been visibly reduced and illegal brothels continue to be closed down. Although enforcement is also directed at illegal escort agencies, the nature of that industry makes effective containment through enforcement much more difficult.

Regarding regulation, as discussed above, many informants to the review suggested that legalising escorts would not only provide for a healthy and safe environment for the workers, but would also increase the viability of the legal sector and reduce the illegal sector. One regulatory model would involve legalising escort agencies generally. This model would be particularly directed at encouraging some of the present illegal operators to seek licensing so that they could operate legally in Queensland.

An alternative model would be to allow existing legal brothels to provide legal outcalls. This model has the attraction of being able to utilise the regulatory scheme that currently exists in Queensland, as well as providing an opportunity to make existing brothels more commercially viable. The models are not mutually exclusive.

Unfortunately, however, none of the submissions to the CMC has provided a clear model for how legalised escorts could be effectively regulated. The CMC's review of the literature and the regulatory regimes of other states and countries indicate that, where outcall prostitution is legal, the law has placed no limit on the number of sex workers whom a licensee or operator may engage at any particular time, and the regulation achieved by those regimes is minimal. If a similar model were applied to Queensland it would have the potential to substantially increase the number of legal sex workers available in

the market at any particular time. The CMC has been unable to estimate just how significantly that legal market might grow, but clearly the potential exists for it to far exceed the market based on the current legal brothels.

In the absence of objective data to the contrary, the CMC considers that there is a significant risk that an overall expansion of prostitution would occur. Legalised escort agencies would, in all likelihood, be highly profitable ventures. There would be a very strong commercial motive for operators to rapidly increase the number of sex workers in order to capture market share. If escorts were to be generally legalised, many existing illegal operators would not be able to enter the legal industry because of their criminal associations or convictions. No doubt that part of the illegal industry would continue to operate illegally. It is thought that a section of the illegal industry at the moment operates from interstate and it could be assumed that they would also continue to be part of the illegal Queensland market. It seems likely that new operators would seek escort licenses. Certainly all the existing legal brothels would be likely to do so. Even if many of the sex workers who are presently working in the illegal industry were to be absorbed into the new legal escort industry, it is likely that continuing illegal operators would vigorously recruit to fill those vacancies. The CMC sees a risk emerging in this area if those illegal operators become more desperate for workers. These risks could include the importation of prostitutes from interstate, the use of illegal immigrants as prostitutes and the recruitment of underage girls. Should escorts be legalised in Queensland, an expansion of the overall number of workers seems likely, and the CMC is not satisfied, on the information presently available to it, that this risk can be effectively negated.

The CMC continues to identify the illegal escort industry as a potential concern and would welcome a model that provides for the effective regulation of a size limited and controlled legal escort industry of a kind that would not precipitate a substantial growth in the overall prostitution market in Queensland. The CMC has not, in the course of this review, been able to satisfy itself that such a model currently exists. However, the CMC recognises that the provision of escort services is at present the most crucial topic for the prostitution industry in Queensland, both legal and illegal. Further investigation of possible options for the introduction of legalised escort services is necessary. This can best occur through the CMC extending its present review to conduct a specific inquiry into the feasibility of legalised escort services in Queensland. The CMC will call for submissions on the suitability of extending legalisation to escorts and on the practical models that may be adopted to achieve this. The CMC will report publicly on the outcome of this further aspect of the review. As presently informed the CMC is not persuaded that legalisation can be safely extended to escort services, and further review may confirm that. However, the extent of the illegal escort industry is a continuing concern which justifies further consideration of the issues involved.

How the inquiry will be conducted

There will be comprehensive consultation with key stakeholders in Queensland and other interested parties, as well as interviews with key representatives in other states (e.g. prostitution licensing authorities in states where escorts are either legal or decriminalised; police services in all states; local/city councils in each state; representatives of sex workers and licensees). These consultations will examine current practices for providing and monitoring escort services, and the benefits and concerns associated with escort services.

Key stakeholders

The CMC will seek submissions from, and will consult with, the following key stakeholders in the prostitution industry in Queensland:

- ▶ Prostitution Licensing Authority (PLA)
- ▶ Queensland Police Service (QPS)
- ▶ Queensland Health
- ▶ SQWISI (Self Help for Queensland Workers in the Sex Industry)
- ▶ Local Government Association of Queensland
- ▶ sex workers
- ▶ brothel licensees
- ▶ industry representatives (e.g. for brothel licensees and sex workers)
- ▶ the Queensland public.

Interstate agencies, regulatory bodies, service providers, service operators and government departments involved in the provision and regulation of escort or outcall services will also be consulted.

In addition, other key informants and the general public are invited to make submissions to the inquiry. This discussion paper will be distributed widely, including on the CMC's website.

A public hearing will be conducted by the CMC to provide key stakeholders with the opportunity to present their views about the legalisation of escort services in Queensland. Proposed models for the regulation and monitoring of escort services in Queensland will also be examined in that public forum.

How to make a submission

The CMC is keen to hear your views about the possible legalisation of escort or outcall prostitution services in Queensland. We are particularly interested in the following issues, and request that you address these points if at all possible, in addition to providing any other relevant information of your own:

- ▶ In your opinion, should Queensland legalise:
 - the capacity for legal brothels to provide escort or outcall prostitution services?
 - independent escort or outcall prostitution agencies?Please explain why you hold these opinions.
- ▶ If you believe that legal brothels should have the capacity to provide legal escort services:
 - Do you think the number of sex workers providing services for a brothel at any one time should be limited?⁵ If so, how should this be done?
 - Do you believe that sex workers providing escort services for legal brothels should be monitored, to ensure compliance with the Prostitution Act (e.g. health and safety reasons, or limitations to the number of workers allowed to provide services at any one time)? If so, how should this be done?⁶
 - Do you have a view on the potential roles of various agencies, such as the PLA and the QPS, in the monitoring of escort services provided by legal brothels? (e.g. What kind of information would need to be collected and reviewed? How could their current compliance functions be applied and/or modified?)
 - Do you think sex workers providing escort services for brothels should be registered?⁷ If so, how could this be done?
- ▶ If you believe that independent escort services should be legalised:
 - Do you think the number of sex workers providing services for an independent escort agency at any one time should be limited? If so, why do you hold this opinion?

5 The Prostitution Act currently limits the number of sex workers allowed on the premises of a brothel to a maximum of five for a five-room brothel.

6 The Prostitution Licensing Authority currently monitors sex workers, by random and targeted compliance visits to legal brothels. These visits enable compliance officers to ensure that no more than five sex workers are on the premises of a five-room brothel at any one time, and to review the licensee's records to ensure that the sex workers on the premises have up-to-date health certificates.

7 Sex workers are currently not required to be registered in Queensland. For a discussion about this issue please see *Regulating prostitution* (CMC 2004), p. 118.

- Do you believe that sex workers providing escort services for an independent escort agency should be monitored to ensure compliance with the Prostitution Act (e.g. for health and safety reasons or any limitations on the number of workers allowed to provide services at any one time)? If so, how should this be done?
- Do you have a view on the potential roles of various agencies, such as the PLA and the QPS, in the monitoring of escort agencies? (e.g. What kind of information would need to be collected and reviewed? How could their current compliance functions be applied?)
- Do you think sex workers providing escort services for an independent escort agency should be registered? If so, how could this be done?

If you are willing to attend the public hearings to present your views, please say so in your submission and provide your contact details. Note, however, that attendance will be limited, and the CMC retains the right to determine who will appear.

If you are willing to have your written submission displayed on the CMC's website, <www.cmc.qld.gov.au>, make a note of this in your submission too.

Please send your submission to:

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We are also happy to receive anonymous submissions, either in writing or by telephone: **(07) 3360 6031**.

All submissions must reach the CMC by 22 April 2005.