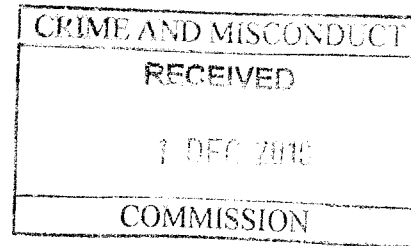




Prostitution  
Licensing Authority  
Queensland Government

30 November 2010

The Hon Martin Moynihan AO QC  
Chairman  
Crime and Misconduct Commission  
GPO Box 3123  
BRISBANE QLD 4001



Dear Mr Moynihan

Please find enclosed the Prostitution Licensing Authority's submission in respect of the Crime and Misconduct Commission review of the *Prostitution Act 1999*.

The submission particularly focuses on the risk of policy failure and the legalisation of outcalls.

Yours sincerely

**Manus Boyce**  
Chairman



## **SUBMISSION TO THE CRIME AND MISCONDUCT COMMISSION REVIEW OF THE PROSTITUTION ACT 1999**

### **Risk of policy failure**

It is the considered view of the Prostitution Licensing Authority (PLA or Authority) that there is a very real risk of policy failure under the current regulatory regime of the *Prostitution Act 1999* (Prostitution Act). The PLA regulates a small and diminishing proportion of Queensland's sex industry. It was originally projected that there would be up to 80 licensed brothels in the state but more than a decade after the commencement of the regulatory regime there are just 23 brothels. For a period of about six months, until 20 May 2010, there were 26 brothels in the state, representing the peak of the licensed sector. Since then, four licensed brothels have ceased operation whilst one new brothel has opened. The sector is smaller today than it was in 2006-07, when there were 24 brothels. Effectively, the licensed brothel sector has experienced no net growth in the past four years. Moreover, the Authority is not currently considering any brothel licence application in respect of any proposed new brothel. The survival of all currently operating brothels cannot be assumed. For the foreseeable future, the prospects of growth of the licensed sector are limited if not almost non-existent. The risk of policy failure jeopardises the worthy objectives of the Prostitution Act.

This situation can be contrasted with the state of Victoria, which also has a licensing regime. According to Consumer Affairs Victoria (CAV) there are 94 licensed brothels operating in that state (albeit that its demographics and population are different to Queensland's). Putting aside demographic differences, there is one licensed brothel for every 58,819 persons in Victoria, whereas in Queensland, there is one licensed brothel for every 195,609 persons.<sup>1</sup> Based on the number of licensed brothels per capita in Victoria, there would be 77 brothels in Queensland (similar to the 80 originally projected). This would mean an additional 54 licensed brothels in the state.

What is a key difference between the licensing regime in this state compared to Victoria? In Queensland, brothels are prohibited from providing outcalls and escort agencies (as opposed to so-called 'social' escort agencies) are outlawed. Conversely, in Victoria, the Business Licensing Authority issues licences to suitable applicants to operate a brothel, an escort agency or a business providing both services. In other words, in distinction to Queensland, licensed brothels in Victoria that provide outcalls and escort agencies are both lawful. On the CMC's own reckoning, 75 per cent of the demand for

---

<sup>1</sup> This is based on an estimated population in Victoria of 5,529,000 with 94 brothels and an estimated population in Queensland of 4,499,000 with 23 brothels. Population estimates are from Australian Bureau of Statistics, *Australian Demographic Statistics*, March Quarter 2010.

prostitution in Queensland is for outcalls.<sup>2</sup> The effect is that the great majority of prostitution in the state occurs outside of the licensing regime.

With licensed brothels effectively restricted to just 25 per cent of the market, there is a risk that the effect of new entrants will merely be to cannibalise that market, to the detriment of the viability of current licensees and without any appreciable impact on the illegal sector of the sex industry. To date, the Authority's probity function has been effective in ensuring that only suitable persons may operate a brothel. There is no evidence of official corruption or links to organised crime in the licensed brothel sector. However, given the high profits that can be made through illegal escort operations, and their knowledge of the sex industry, there is an associated risk that brothel licensees will involve themselves in the illegal sector (or some other illegal activity such as money laundering). Whilst acknowledging that a person is entitled to the presumption of innocence, this is demonstrated by the alleged operation of an illegal escort agency by a person who held a brothel licence (this person has subsequently surrendered their licence following the sale of their brothel). Whilst a licensee, the individual was charged with a raft of offences under Chapter 22A (Prostitution) of the Criminal Code, in respect of the alleged operation of the escort agency, which to date have not been judicially determined. The alleged involvement of the individual in the illegal enterprise is inimical to the system of strict regulation of the licensed sector that applies in Queensland.

In order to avoid the very real danger of policy failure, and the associated jeopardising of the objectives of the Prostitution Act, it is recommended that there be an element of relaxation of the overly restrictive licensing regime. It is obvious that the current regime does not provide sufficient incentive to draw operators into the legal sphere. It is self-evident that there must be an examination of permitting outcalls from licensed brothels and the licensing of escort agencies.

## **Outcalls**

If it is the case that 75 per cent of the demand for prostitution is for outcalls, as estimated by the CMC, confining licensed brothels to just 25 per cent of the market is anti-competitive and explains not only the small size of the licensed sector but also the lack of incentive for participation in the licensing regime. Only sole operator sex workers may lawfully provide outcalls. The prohibition on outcalls from brothels and the outlawing of escort agencies has left a void which has been filled by illegal operators. Independent research commissioned by the PLA has found that: "Many of the legal brothel operators are dissatisfied with the restrictive regulatory regime and the fact that they are competing with a large, illegal sector".<sup>3</sup> Whilst it is clear from Ms Edwards' report to the PLA that there is not universal support amongst brothel licensees

---

<sup>2</sup> CMC, *Regulating Prostitution: An evaluation of the Prostitution Act*, 2004, p. 110.

<sup>3</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 4.

for the legalisation of outcalls, it is supported by a majority.<sup>4</sup> The legalisation of outcalls would enable licensed brothels to more effectively compete against illegal operators, opening up the 75 per cent of the market which they are currently denied. Brothel operators have indicated that clients, or potential clients, have indicated a demand for outcalls. According to Ms Edwards' report: "Almost all [licensed brothel operator] interviewees commented on the number of calls they regularly receive seeking outcall services (some estimate these as very high, others as smaller)".<sup>5</sup>

Brothel licensees consistently raise with the PLA the difficulty of competing against the illegal sector, especially in the absence of the legalisation of outcalls. They point out that not only do illegal operators not have to pay fees but they do not face a regulatory or compliance burden. Informants to the 2004 CMC review of the Prostitution Act stated that illegal prostitution has, "continued unabated since the implementation of the Prostitution Act".<sup>6</sup> The PLA has seen no evidence in the intervening period that makes it think this situation has changed. All indicators are that there is a thriving illegal prostitution sector, both in the form of illegal brothels and illegal escort agencies, which operate largely with impunity. The large profits to be made from illegal prostitution, as well as the perception that there is a low risk of discovery and prosecution, provide a powerful incentive for illegal operators. Irrespective of the status of the licensing regime, this highlights the need for effective enforcement and sufficient resources to make combating illegal prostitution a priority.

The PLA is confident that legalising outcalls would result in an expansion of the state's licensed sector at the expense of illegal operators. However, for this to happen, the incentives for participating in the legal sector must be greater than the incentives for participation in the illegal sector. The ability to operate openly, rather than in the shadows; with greater certainty of business continuity; a business asset that can be traded; and no risk of arrest for operators, sex workers, and clients are powerful incentives for operating in the legal sector.

Subjecting as much of the sex industry as possible to regulation is in the public interest, especially in terms of providing a barrier to the involvement of organised crime and official corruption, minimising the impact of prostitution on the community, and safeguarding the health and welfare of sex workers and clients. As a regular business, they would be subject to workplace health and safety obligations. The licensing of escort agencies by the PLA would also ensure that they are operated only by suitable persons.

Under present arrangements, outcalls may be lawfully provided by sole operator sex workers who are responsible for making their own arrangements for safeguarding their health and safety. The other alternative is outcalls provided by illegal escort agencies. Sex workers at these agencies are

---

<sup>4</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, pp. 7, 17, 19, 29, and 30.

<sup>5</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 30.

<sup>6</sup> CMC, *Regulating Prostitution: An evaluation of the Prostitution Act*, 2004, p. 80.

basically reliant on unscrupulous operators to put in place arrangements for their health and safety. According to Ms Edwards' report to the PLA, "there is no evidence as to whether outcalls are more high-risk than in-house prostitution."<sup>7</sup> However, she goes on to say that:

A risk management approach might suggest that outcall prostitution is more high-risk. The worker is on his or her own, in someone else's place. **In one sense, heightened risk makes for a compelling reason to include outcall prostitution within the regulatory framework rather than to leave it out, so that risks can be appropriately managed.**<sup>8</sup>

CAV has said that, "escort workers face a set of risks that are associated with working alone, in an unfamiliar environment, where they may face unpredictable behaviour".<sup>9</sup> A report into the Victorian sex industry said that: "There were reports of escorts facing violence and aggression when clients were not carefully vetted or when the characteristics of the worker sent did not match those promised".<sup>10</sup> However, the same report said that: "Workers undertaking this work generally felt comfortable with the security offered by agencies and by the employment conditions".<sup>11</sup>

The CMC has previously indicated that it might be prepared to support a "heavily regulated" model for outcall prostitution.<sup>12</sup> If any industry is seen to be too highly regulated it provides an obvious disincentive to involvement in that industry. The profit motive is a central tenet of a market economy. If the burden of regulation outweighs the incentive for involvement in an industry then no one will participate in it. If outcalls are heavily regulated, and not profitable, then operators simply will not provide them legally. The illegal outcall sector will continue to flourish. Whilst it is certainly necessary to regulate outcalls (just as brothels are currently regulated) the right balance must be struck which caters for the health and safety of sex workers whilst also allowing for operators to be profitable with minimal compliance costs. It should also be noted that standard workplace health and safety obligations would apply to businesses providing outcalls.

If other jurisdictions can manage the risks of outcall prostitution, there is no reason that Queensland cannot. Section 7 of the *Sex Work Regulations 2006 (Vic)*, imposes a number of obligations on escort service providers, including that they must:

- ensure regular contact with the sex worker by requiring the worker to confirm their arrival at each new premises and the completion of each visit

---

<sup>7</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 13.

<sup>8</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 13 (emphasis added).

<sup>9</sup> CAV, *A guide to the Prostitution Control Regulations 2006 for Licensees and approved brothel managers*, May 2007.

<sup>10</sup> Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 10.

<sup>11</sup> Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 10.

<sup>12</sup> CMC, *Regulating Outcall Prostitution*, 2006, p. 34.

- provide each sex worker with a mobile phone to enable contact with the escort service provider
- provide assistance as soon as possible to the sex worker if the worker advises that a situation is potentially violent or unsafe, and
- provide the sex worker with a free supply of condoms and water based lubricant.

The Occupational Safety and Health Service of the New Zealand Department of Labour has published *A Guide to Occupational Health and Safety in the New Zealand Industry* which includes a fact sheet entitled, "Safety and Security Guidelines for Sex Workers Who Provide Outcall". It can be found at Appendix 1 of this submission.

Legalising outcalls would also have the merit of giving sex workers greater choice in their working arrangements. Currently, those workers who do not want to work in brothels, and for whatever reason do not want to run their own business as a sole operator, have no choice but to work for an illegal escort agency. These workers are compelled to choose work options that may be unsafe. Additionally, sex workers and clients of illegal operators are each liable to arrest and prosecution. As Jeffrey and Sullivan have said:

It is no small thing for sex workers to be less vulnerable to arrest, prosecution, fines, and imprisonment, to not have to be concerned about the life long impact of a criminal record or the removal of their children in the wake of criminal proceedings.<sup>13</sup>

Illegal prostitution occurs in the shadows. Operators and workers are not readily identifiable. To operate openly would invite unwanted attention from the police. Where prostitution occurs more openly (as it would if outcalls were legalised), it is easier for support services, like Respect Inc, to access sex workers, aiding health promotion and other activities.

Finally, the PLA would like to examine the logic of the conclusion of the CMC in its 2006 *Regulating Outcall Prostitution* report that there is a danger that legalising outcalls from brothels and escort agencies may lead to an overall expansion in the state's sex industry. In her report to the PLA, Ms Edwards' labelled this a "conservative approach" and made the eminently valid remark that it, "might have been made as an argument for criminalising all prostitution in Queensland, not just outcall prostitution".<sup>14</sup> The Authority endorses this remark.

It is basic economics that the size of any industry is a reflection of supply and demand. In the case of the sex industry, the supply of and demand for sexual services. The motivations for entering sex work are discussed later in this submission. They are primarily financial. As Abel, Fitzgerald and Brunton have stated, "research done in many countries with different legislative

<sup>13</sup> Leslie Ann Jeffrey and Barbara Sullivan, "Canadian Sex Work Policy for the 21<sup>st</sup> Century: Enhancing Rights and Safety, Lessons from Australia", *Canadian Political Science Review*, 3(1) March 2009, p. 64.

<sup>14</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 17.

systems regulating sex work indicates that people enter the sex industry primarily for economic reasons".<sup>15</sup> In a sense, that is not surprising because it reflects why most persons work. They have a standard of living to maintain, dependents to support, needs (shelter, food, clothing, etc) that must be met, and wants, and bills which generally need to be paid. All of this requires a source of income. As the New Zealand Prostitution Law Review Committee rightly said: "The most effective way to ensure people do not enter the sex industry is to help them find other means of earning money".<sup>16</sup> A secondary motivation for sex work is flexibility of work arrangements. The way to prevent individuals from selling sex is by maintaining a strong economy with a multiplicity of employment opportunities, especially jobs which have flexible working arrangements so that individuals can more easily cater for their family, educational, and other responsibilities. It would be more likely that women (sex workers are overwhelmingly female) would choose to sell sex during economic downturns when unemployment is rising and jobs are scarce. This is supported by a 2009 study of the sex industry in Victoria, which stated that:

The prevailing economic downturn has impacted upon the sex industry in several ways. A number of operators reported a recent increase in workers seeking entry or re-entry to the industry, driven in their view by current economic conditions. This includes workers with professional qualifications and university students. In addition, more women with children are seeking to enter sex work.<sup>17</sup>

There is no evidence that the legalisation of outcalls would increase the number of sex workers in Queensland. For a start, if a person wanted to perform outcalls they may already do so quite legally as a sole operator sex worker. In fact, this tends to be a favoured option because the person is essentially self-employed and does not have to share the spoils of their labour with anyone else. They also have greater control and flexibility over their working arrangements. Available evidence indicates that the legality or otherwise of sex work is not a determinant of supply or demand. Abel, Fitzgerald and Brunton have said that:

Despite a change from a criminalised to a decriminalised system in New Zealand, the incentives to enter the industry remain unchanged ... In any country, structural and personal factors such as health, family, housing, welfare and labour policies play a more important role in the decision individuals make to enter sex work than its legal status.<sup>18</sup>

The New Zealand Prostitution Law Review Committee has stated that: "Given the relatively static numbers of sex workers pre- and post- PRA [Prostitution Reform Act], the Committee considers **decriminalisation has not become a**

---

<sup>15</sup> Gillian Abel, Lisa Fitzgerald, and Cheryl Brunton, "The Impact of Decriminalisation on the Number of Sex Workers in New Zealand", *Jnl Soc. Pol.*, 2009, 38, 3, p. 528.

<sup>16</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 15.

<sup>17</sup> Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 8.

<sup>18</sup> Gillian Abel, Lisa Fitzgerald, and Cheryl Brunton, "The Impact of Decriminalisation on the Number of Sex Workers in New Zealand", *Jnl Soc. Pol.*, 2009, 38, 3, p. 529.

**significant factor in people's decisions to enter the sex industry".**<sup>19</sup> Later in their report, the Committee expanded on this by saying that:

The fact that few of the sex workers who were interviewed by CSOM [Christchurch School of Medicine] indicated that decriminalisation of the sex industry in and of itself was the reason for entering the industry supports the conclusion drawn in chapter two: that the enactment of the PRA has not led to an increase in the number of sex workers operating in New Zealand.<sup>20</sup>

Harcourt et al. conducted research in three Australian cities, Melbourne, Perth and Sydney, each of which have different legal climates for sex work. Perth is the most prohibitionist of the cities (most forms of sex work are criminalised), whilst Melbourne has a licensing model, and sex work has been decriminalised in Sydney. Harcourt et al. found that:

Despite the different legal climates, an active and diversified sex industry was present in each of the three cities. On a per capita basis the number of brothels was broadly comparable between the cities ... consistent with previous population-based data indicating that men in the three jurisdictions used commercial sexual services at roughly the same rate. **This suggests that the legal climate has no impact on the prevalence of commercial sex.**<sup>21</sup>

According to Donovan et al., "Australian men are among the least frequent consumers of commercial sexual services in the world".<sup>22</sup> A large population survey found that the proportion of men who reported having, "paid for sex is generally similar to the international average".<sup>23</sup> 1.9 per cent of Australian men (clients of sex workers are overwhelmingly men) reported paying for sex in the previous year.<sup>24</sup> 1.8 per cent of men in Queensland reported that they had paid for sex in the past year, consistent with the national average.<sup>25</sup> Interestingly, in Western Australia, where most forms of sex work are illegal, 1.9 per cent of men reported paying for sex in the previous year.<sup>26</sup> This suggests that the legal climate has no impact on demand for sexual services.

It is not as if by legalising outcalls a whole new dimension and potential source of demand would suddenly be available to clients in Queensland. The fact is that outcalls are already available to those clients that want them. They

---

<sup>19</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 39 (emphasis added).

<sup>20</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 64.

<sup>21</sup> Christine Harcourt et al., "The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers", *Australian and New Zealand Journal of Public Health*, 2010, Vol 34, No. 5, p. 485 (emphasis added).

<sup>22</sup> Basil Donovan et al., "Improving the health of sex workers in NSW: maintaining success", *NSW Public Health Bulletin*, 2010, Vol. 21(3-4), p. 76.

<sup>23</sup> Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 196.

<sup>24</sup> Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 194.

<sup>25</sup> Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 194.

<sup>26</sup> Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 194.



are legally provided by sole operator sex workers. They are illegally provided by operators of escort agencies which operate in the shadows and whose workers masquerade as legitimate sole operator sex workers and pass themselves off to clients as such. Accordingly, the PLA believes that there is no reason that demand should not remain static if outcalls are legalised.

The experience of New Zealand in decriminalising its sex industry in 2003 provides a valuable case study about the likely impact on Queensland's sex industry of legalising outcalls. At the time that decriminalisation was being considered, there was what can only be described as a scare campaign that decriminalisation would result in a massive expansion of the sex industry. It was claimed that there would be a 400 per cent increase in the numbers of sex workers despite the fact that there was no relevant statistical evidence that would support this.<sup>27</sup> Similarly, it has been asserted that decriminalisation has resulted in a 400 per cent increase in the number of street sex workers in Auckland.<sup>28</sup> The Prostitution Law Review Committee has said that: "This claim cannot be substantiated, and was not based on systematic or robust research".<sup>29</sup> The Committee then goes on to make a telling observation which reflects that all too often claims about the sex industry are based only on opinion (reflective of the ideological persuasion of the individual or organisation) rather than on fact informed by evidence: "The figure of a 400% increase has been re-reported several times, demonstrating the ease with which opinion can be perceived as 'fact'".<sup>30</sup>

The Committee examined the claims about expansion of the sex industry, informed by statistical data, and found that they could not be substantiated. The Committee stated that:

Arguments that decriminalisation has increased the numbers of people in the sex industry are largely founded on the flawed assumption that decriminalisation would increase the numbers of people involved in prostitution. The Committee is satisfied that such assumptions have proved to be unfounded.

One of the consequences of decriminalisation has been the illumination of the workings of an industry which have historically been hidden. Sex workers and brothel operators can now be more open about their occupation. Similarly, street-based sex workers are now able to be more visible since soliciting in a public place is no longer illegal.

Greater visibility of the sex industry is not indicative of growth of that industry. Further, the Committee considers increased visibility to be a desirable consequence of decriminalisation for those who are most at risk in the industry, namely street-based sex workers and under age people involved in prostitution.

---

<sup>27</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

<sup>28</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

<sup>29</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

<sup>30</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

Accurately counting the number of sex workers remains difficult. However, the Committee endorses the findings of the CSOM [Christchurch School of Medicine] that the enactment of the PRA [Prostitution Reform Act] has had little impact on the numbers of people working in the sex industry.<sup>31</sup>

The PLA has great difficulty in reconciling the conclusion reached by the Committee on the impact of decriminalisation in New Zealand with that reached by the CMC on the likely impact of the legalisation of outcalls in Queensland. The PLA also notes that, according to Donovan et al., decriminalisation of the sex industry in New South Wales did not result in an expansion of the state's sex industry. They have said that: "NSW has a diverse sex industry that is limited in its size by modest demand. There is no evidence that decriminalisation in 1995 increased the frequency of commercial sex in NSW".<sup>32</sup>

The CMC *Regulating Outcall Prostitution* report made much of allegations that the licensing regime in Victoria had caused a "huge expansion" of the state's sex industry.<sup>33</sup> The CMC also appeared quite taken by the evidence of the Coalition Against Trafficking in Women, Australia (CATWA). It is worth recalling that this organisation's attitude to prostitution is informed by the radical feminist perspective by which all prostitution is abusive and exploitative and a form of male violence against women. CATWA is an unabashed supporter of the Swedish model, whereby the purchase (but not the sale) of sexual services is illegal. The agenda of the organisation is for the adoption of the Swedish model by all Australian jurisdictions. The evidence of CATWA cannot be regarded as objective. The Swedish model is comprehensively explored at Appendix 2 of this submission. Suffice to say that the rhetoric of the success of the model is not matched by the available evidence and all indications are that it has had a detrimental impact on the health and safety of sex workers.

Leslie Ann Jeffrey and Barbara Sullivan have rejected the claims made by CATWA about the expansion of Victoria's sex industry, referring to the dubious evidence presented by that organisation. They have stated that:

A particular set of claims about the consequences of prostitution law reform – derived from radical feminist ideology – were regularly repeated by witnesses at the Canadian inquiry [Canadian Parliamentary inquiry into the sex trade]. These claims included that legalising or decriminalizing the sex trade would lead to more trafficking, more child prostitution and an overall expansion of the sex industry. **However, there is no evidence that any of these scenarios have appeared in Australia in the wake of policy reform.**

Mary Sullivan [of CATWA] (2007, 139) has recently published a radical feminist analysis of the situation in Victoria and she argues that legalization in that state has created a "massive expansion of prostitution". But the 'evidence' she uses to support this claim is drawn from a set of independent

---

<sup>31</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 41.

<sup>32</sup> Basil Donovan et al., "Improving the health of sex workers in NSW: maintaining success", *NSW Public Health Bulletin*, 2010, Vol. 21(3-4), p. 74.

<sup>33</sup> p. 22.

business publications that provide no sources or research-based references and no information about how their figures were actually obtained. As the publication also contains some glaring inaccuracies in its description of the sex trade it cannot be regarded as a reliable source. Other publications have used unsubstantiated assertions (see CATWA, 2005), newspaper commentary (see Mary Sullivan and Sheila Jeffreys [of CATWA], 2002) or cited increases in criminal prosecutions and/or the number of legal brothels as 'evidence' of an 'expansion' of the sex trade.<sup>34</sup>

In her report to the PLA, Ms Edwards' said that the claims of Sullivan and Jeffreys of CATWA, "were not supported by regulators in Victoria. Interviews undertaken as part of this project ... suggested that if there had been growth in the industry since legislation was passed, it has been modest".<sup>35</sup> At a later point in her report, she stated that the majority of interviewees in Victoria and NSW did not think that there had been any expansion of the sex industry.<sup>36</sup> She said that: "Those interviewees who did think there had been an expansion were legal operators and their advocates".<sup>37</sup> It is in the self-interest of these persons to talk up the size of the illegal sector in calling for more police resources to be directed at combating illegal operators. The Authority has spoken independently to CAV about the size of the illegal sector in Victoria. An officer of CAV told the Authority that:

The unlicensed sector is quoted by the industry association as being around 350, however this number is unsubstantiated and we don't believe we are anywhere near that figure for unlicensed brothels in Victoria. To CAV's knowledge, there has not been any noticeable growth in the illegal sector.<sup>38</sup>

A recent report into the Victorian sex industry has found that there are widely divergent opinions about the size of the illegal sector but limited evidence to support these opinions. The report stated that:

There is limited quantitative evidence of illegal activity. Estimates of illegal activity vary widely from low estimates amongst law enforcement agencies to higher estimates from industry representatives. However, it is possible that illegal activity is more widespread than some estimates based on evidence from respondents.<sup>39</sup>

Available evidence indicates that there is no danger that by legalising outcalls, the size of Queensland's sex industry will be increased. However, greater openness and visibility of the industry may foster that impression. There are genuine public policy benefits of subjecting a larger proportion of the industry to regulation, as identified earlier in this submission. The PLA does not believe that if outcalls are legalised, there will no longer be an illegal sector. Irrespective of the state of the law, there will always be individuals who will

---

<sup>34</sup> Leslie Ann Jeffrey and Barbara Sullivan, "Canadian Sex Work Policy for the 21<sup>st</sup> Century: Enhancing Rights and Safety, Lessons from Australia", *Canadian Political Science Review*, 3(1) March 2009, p. 63 (emphasis added).

<sup>35</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 17.

<sup>36</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 51.

<sup>37</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 51.

<sup>38</sup> email correspondence, 19 November 2010.

<sup>39</sup> Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. vii.

choose to operate outside of the law. As Ms Edwards' has stated: "All jurisdictions report having a 'legal' and an 'illegal' industry, and that there is great tension between the two".<sup>40</sup> Again, to the extent that legalisation of outcalls makes the industry more visible combined with the continued existence of an illegal sector it is likely to give rise to superficial perceptions of an overall expansion of the sex industry which will be seized upon by opponents of the sex industry. The PLA is not alone in its support for the legalisation of outcalls, as is obvious from Ms Edwards' report:

Except for a minority of brothel licensees and about half of sole operator sex workers, none of the stakeholders interviewed as part of this project had any objections to the legalisation of outcalls. These included PETF within QPS, the Department of Justice and Attorney-General (JAG) and the Local Government Association of Queensland (LGAQ).<sup>41</sup>

### **Room numbers at brothels**

Under August 2007 amendments to the Prostitution Act, the maximum number of sex workers permitted at a licensed brothel at any one time increased from five to eight for a five room brothel (s. 78(2) of the Act). The number of permitted staff on premises also increased from 10 to 13 (s. 78(1)(b) of the Act). However, the maximum number of allowable rooms did not increase in line with the increase in the number of sex workers. Brothel licensees have informed the PLA that they are unable to fully utilise the increase in the number of sex workers in the absence of an increase in the number of rooms. In her report to the PLA, Ms Edwards' said that, "all interviewees [brothel licensees] commented that the ability to have as many as eight workers on the premises had never worked, with problems then arising with an inadequate number of rooms to match the number of workers".<sup>42</sup> Even with a full complement of sex workers, during busy periods clients have to wait. It has been the experience of licensees that clients are unwilling to wait for lengthy periods and will instead go elsewhere.

Accordingly, it is submitted that the maximum number of allowable rooms in each licensed brothel should be increased to 8. This will restore the ratio of sex workers to rooms which originally applied under the Prostitution Act (that is, one room for each sex worker). An increase in rooms would not be expected to result in an increase in demand for sexual services at brothels. Rather, it would have the effect of allowing brothels to better cope with demand at peak periods. In addition, permitting a greater number of rooms will allow clients a greater range of choice in rooms ('theme rooms') and permit a further degree of differentiation between brothels. Licensees would continue to cater for the occupational health and safety of sex workers by ensuring that rosters provide appropriate rest breaks.

---

<sup>40</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 51.

<sup>41</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 17.

<sup>42</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 19.

Not all brothels will have the capacity to increase the number of rooms, because of physical or financial limitations. However, the vast majority of licensed brothels have the physical capacity to increase the number of rooms, and should not be precluded from doing so because a relative few do not have that capacity.

For the PLA, there would be a slightly increased compliance burden because the compliance officers would be required to check a greater number of rooms to ensure that licensees are complying with their statutory and regulatory obligations. However, the compliance officers would have to conduct an audit of the brothel regardless of the number of rooms. In any case, the additional fee revenue from extra rooms would more than offset any additional compliance costs. The measure would not create any additional probity burdens or costs to the PLA.

## ● Brothel licence fees

The PLA is heavily reliant on fees to fund its operations. Fees for brothel licences and approved manager's certificates represent a contribution to the cost of probity and the regulation of brothels. Originally, the total fees payable for a brothel licence for a five-room brothel were \$16,500. Currently, the total of those same fees stands at \$28,663. Consistent with government policy, fees increase annually in accordance with the CPI. These fees are a large impost on brothel businesses and it is open to question whether they are both an inhibitor to entry and a financial burden which makes it more difficult for brothel operators to stay in business.

● The Queensland Adult Business Association (QABA), an organisation which represents the interests of brothel licensees, has previously argued that high licence fees and regulatory burdens are a disincentive to involvement in the licensed sector and mean that most prostitution occurs illegally.<sup>43</sup> In his second reading speech, the then Minister for Police and Corrective Services, the Hon Tom Barton MP, rejected arguments that the cost of brothel licences would be prohibitive.<sup>44</sup> The Minister's reference to this indicates that issues of cost-effectiveness were contemplated by the Government at the time of enacting the Prostitution Bill. The issue of cost-effectiveness was also considered in the Regulatory Impact Statement for the original *Prostitution Regulation 2000*, which stated that, "in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers".<sup>45</sup>

When the PLA commenced operation on 1 July 2000 there was an expectation that it would become self-funding through revenue derived from brothel licence and manager's certificate fees, based on an assumption of up to 80 licensed brothels operating in Queensland. Self-funding of the

---

<sup>43</sup> QABA RIS response, p. 10.

<sup>44</sup> *Hansard*, 10 November 1999, p. 4832.

<sup>45</sup> p. 4.

administration and regulation of the licensed sex industry was a key plank in its establishment. A decade on, the licensed brothel sector is still not self-funding. The PLA continues to rely on an annual government grant. For the PLA to be self-funding through revenue derived from brothel licence and manager's certificate fees, it is estimated that the annual brothel licence fee would need to be increased to \$58,226; an increase of approximately 103 per cent of the current licence fees. If there were a greater number of brothels, the costs of licensing could be apportioned amongst that larger number, with the likelihood that fees could be reduced accordingly.

Whilst some brothels are very profitable, others are experiencing genuine financial hardship. QABA has previously acknowledged that there are brothels in the state that are struggling financially.<sup>46</sup> In May 2008, a brothel closed following the automatic cancellation of the brothel licence as a consequence of the insolvency under administration of the licensee. From the perspective of the PLA, there have been instances where licensees have not been able to pay their fees on time. There are community benefits which accrue from the licensing regime and to the extent that the whole community benefits it could be argued that should be reflected in the fee structure. This would involve revisiting the (so far unrealised) intention that the licensed sector should be self-funding. Any going back on the commitment to self-funding would inevitably entail a greater reliance on government funding by the PLA.

### **Licensed brothel location and community amenity**

For any business, location is a crucial determinant of success. Restrictions on the permitted location of licensed brothels mean that they are effectively confined to industrial areas. This means that some of them are in unappealing, out of the way, and difficult to find locations. This may limit their appeal to clients or potential clients. It is no accident that the most successful brothels are the most favourably and conveniently located. On the one hand, it might be argued that restricting licensed brothels to industrial areas is incongruous given the permitted location of sex-on-premises venues, swingers clubs, adult entertainment venues, and adult shops. Unlike brothels, adult shops and adult entertainment venues have a tendency to be highly visible. On the other hand, community perceptions about brothels, sex workers and clients, although not reflective of the reality, would make it difficult to relax restrictions on the permitted location of brothels.

Restrictions on building style, signage and lighting mean that licensed brothels are extremely discreet. From the perspective of clients, the last thing they want is for the building they are entering to be immediately recognisable to all and sundry as a brothel. In Queensland, brothels are so discreet that most people would drive past them without any idea as to their function. There are two brothels on Abbotsford Road, Bowen Hills, for example, that thousands of persons would drive past everyday without the slightest idea that they are brothels. In fact, the only reason that they might stand out is because

---

<sup>46</sup> QABA RIS response, p. 8.

of their lack of signage in comparison to surrounding businesses. Experience has shown that licensed brothels have no appreciable impact on community amenity. In the decade long history of the licensed sex industry there has not been a single complaint from any person regarding the impact on amenity of any operating brothel in the state.

## **Registration of sex workers**

Ms Edwards' said in her report to the PLA that some brothel licensees had said that registration of sole operator sex workers should be required.<sup>47</sup> The PLA does not support registration of sex workers, be they workers in brothels or sole operators. There is no compelling policy rationale and is a basic issue of civil liberties. It would further stigmatise sex workers, and raises key concerns in respect of privacy. It would be overwhelmingly rejected by sex workers. It is likely that there would be a low level of compliance and most workers would choose not to register. If you were to ask any sex worker organisation what is the most important issue facing workers they would nominate stigma and discrimination. This was an issue raised by sex workers in the recent Victorian study, which said that:

The single biggest issue for sex workers is the challenge of stigma. Workers resented perceptions of sex workers as diseased, criminal, victims, drug addicts, promiscuous and without a moral code or values. They felt they are looked down upon by the broader community.<sup>48</sup>

Respect Inc, the Queensland sex worker organisation, has told the PLA that: "Stigma and discrimination is possibly the main health issue for sex workers. How can you have a sense of wellbeing when you feel despised?" Stigma associated with selling sex is so extreme that most sex workers keep their participation in the industry a secret even from family members and close friends. Requiring their registration would merely add to the stigma and discrimination they already experience and intensify the sense of the 'otherness' of sex workers.

The likely impact of registration is that sex workers would be driven underground. This is extremely problematic from a harm minimisation perspective. The deleterious impact of driving sex workers underground is well known. It is more difficult for support services to access them, it leads to reluctance to undergo sexual health checks, it makes them more vulnerable to violence, coercion and pressure to have unsafe sex, and it compromises their ability to seek the assistance of police. Depending on the penalty that applies for non-registration, it may also mean that sex workers would have a criminal record which would affect their ability to exit the industry by finding other employment.

---

<sup>47</sup> Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 19.

<sup>48</sup> Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 17.