CRIMINAL JUSTICE
COMMISSION

REGULATING MORALITY ?

AN INQUIRY INTO PROSTITUTION IN QUEENSLAND

SEPTEMBER 1991

ISBN 0-7242-4580-4

Printed by Goprint, Brisbane.

CRIMINAL JUSTICE COMMISSION
QUEENSLAND

Telephone: (07) 360 6060
Facimile: (07) 360 6333

Your Ref.:
Our Ref.:
Contact Officer:

The Hon Wayne Goss MLA
Premier and Minister for Economic & Trade
Development & Minister for the Arts
Parliament House
George Street
BRISBANE Q 4000

The Hon Jim Fouras MLA
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE Q 4000

Mr Peter Beattie MLA
Chairman
Parliamentary Criminal Justice Committee
Parliament House
George Street
BRISBANE Q 4000

Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989-90, the Commission hereby furnishes to each of you its Report, 'Regulating Morality? An Inquiry into Prostitution in Queensland'.

Yours faithfully

SIR MAX BINGHAM QC
Chairman

557 Coronation Drive, TOOWONG, QLD. 4066
PP Box 157, NORTH QUAY. QLD. 4002

Criminal Justice Commission
Queensland

This is a publication of the
Research and Co-ordination Division

Research and Co-ordination Division

Satyanshu K. Mukherjee,
Director

Project Staff

Anne Philtrip
Amanda Carter
Dianne Bennett
Susan Johnson
Jon Moore
Clare Smith
Andrew McLean Williams

FOREWORD

The Report of the Commission of Inquiry ('Fitzgerald Report') drew attention to what other writers have described as the 'over-reach' of the criminal law. By this is meant the tendency for the law to intrude into areas which are more appropriately left to other forms of social control - morality, religion, education and the like.

The Report noted that where such extensions of the proper legal function occur, stresses and strains develop which have the effect of distorting the legal process. Having discovered the existence of such distortion, (in the form of corruption) especially in those parts of the law enforcement system connected with sexual behaviour and gambling, the Commission of Inquiry deduced that this situation might be a case in which the law was being forced to extend beyond the bounds of its effective operation - a case of 'over-reach'.

Accordingly, the Report recommended that this Commission should undertake a review of the relevant law - especially in relation to prostitution and 'SP bookmaking'.

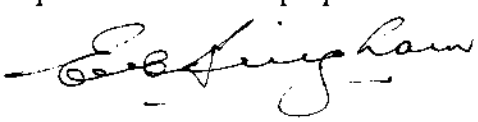
This report is the result of the Commission's investigation of prostitution.

Two major questions are involved. First, is legal intervention required; and secondly, if so, in what form?

The Commission has concluded that there is a need for some legal regulation, and makes some suggestions as to the form that regulation might take. The report presents the factual material upon which the recommendations are based, and the results of experience in Queensland and elsewhere. It also summarises the arguments for and against its conclusions.

The report will no doubt arouse controversy; the Commission hopes that it will also provide enough information for that controversy to have a sound basis in fact.

As the Commission of Inquiry intended, decisions about future legislation, if any, can then be made by Government in the light of an informed public opinion. It must be emphasised that in our parliamentary democracy recommendations from bodies like the Commission are only recommendations; the ultimate decisions rest with the elected representatives of the people.



SIR MAX BINGHAM Q.C.
Chairman

ACKNOWLEDGEMENTS

In the preparation of this report the Commission has received assistance and goodwill from numerous organisations and individuals. In response to the *Information and Issues Paper,* 117 submissions were received. The Commission acknowledges with thanks the contribution these have made. A list of the authors is in Appendix VI.

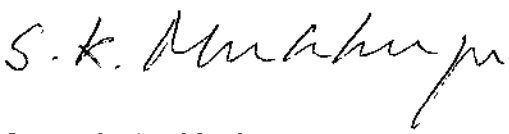
Self-Health for Queensland Workers in the Sex Industry (SQWISI) provided assistance in formulating the interview schedule for sex workers, and in contacting sex workers for the survey. Also, SQWISI contributed to the project through a number of discussions. The Commission expresses its thanks to SQWISI.

Queensland Health provided advice and assistance in familiarising the Commission with health-related matters in prostitution. In particular the Commission is grateful to Dr John Patten for his valuable and timely advice.

Dr Sandra Egger, Dr Linda Hancock and Professor Paul Wilson provided valuable expert advice on various aspects of the report. The Commission thanks them for their input.

Megan Atterton and Lynda McGilvery undertook the painstaking task of preparing the several drafts and the final manuscript. The Commission appreciates their assistance.

Finally, I express my gratitude to Sir Max Bingham Q.C., Chairman, the Commissioners and the Directors for their continued support.



Satyanshu Mukherjee
Director
Research and Co-ordination Division

CONTENTS

EXECUTIVE SUMMARY

This report provides a framework for dealing with prostitution-related activities in Queensland. It is intended to assist the Parliament and the people of Queensland in selecting an appropriate option in this extremely sensitive and potentially controversial area.

In accordance with the philosophy of the Fitzgerald Report the Commission has tried to present the relevant information and its own preferred recommendations. It is very conscious however, that the decisions rest with the elected Government after appropriate debate. It hopes the report will help provide a basis for that debate. Mr. Fitzgerald Q.C. drew attention to the economic, drug-related, health-related, and criminal aspects of prostitution. This report addresses those aspects in the light of the best available information. In the preparation of this report a number of methods were used to draw information on the subject of prostitution, including:

i) a review of the literature on prostitution in Australia;

ii) an examination of current laws and their operation in other jurisdictions in Australia, and in Canada, the United Kingdom and other countries;

iii) release of an Information and Issues Paper seeking public submissions;

iv) meetings and seminars involving individuals and interested organizations;

v) examination of 117 submissions received from individuals and interest groups;

vi) a survey of public attitudes towards prostitution in Queensland and Melbourne;

vii) a survey of sex workers in Brisbane, Cairns, the Gold Coast and Townsville; and

viii) a workshop involving academics, lawyers, health professionals, public servants and researchers.

Over the past few years a number of Australian states and other countries have examined and amended prostitution-related laws. One common theme which runs through these efforts is the recognition that traditional methods of dealing with prostitution, i.e. use of stricter criminal sanctions, have not produced the desired results. Prostitution is a social issue and as such also requires non-legal measures to deal with it. Provision of equal opportunity to women of itself cannot contain or reduce the level of prostitution-related activities, the demand for such services needs also to be addressed. This presents a challenge for the relevant agencies, outside the jurisdiction of this Commission.

In making its recommendations the Commission has had regard to important policy goals toward which changes in law should aim. In particular, the Commission believes that in any attempt to reform law relating to prostitution-related activities the following should be borne in mind:

- that irrespective of what option is selected, the protection of children from exploitation and coercion should be of paramount importance;
- that measures should ensure the protection of sex workers and their clients (and thereby the community) against health risks;
- that any law reform in this area should make sure that prevention of criminal involvement and corruption is given high priority;
- any system of control must ensure the prevention of exploitation of sex workers; and
- that the option selected for dealing with prostitution-related activities should be cost effective.

The Commission's review revealed that basically there were four options, with some overlap, which could address the above policy goals. These were:

- strict enforcement of the criminal law;
- no application of the criminal law;
- partial application of the criminal law; and
- regulation of prostitution-related activities by means other than the criminal law.

The Commission critically examined these options. It gave consideration to the strict enforcement option, and the report lists the estimated costs and likely consequences of that option. For the reasons given, the Commission does not recommend it.

Similarly, the Commission discarded the option of putting prostitution and its related activities completely outside the reach of the criminal law.

Instead, the Commission recommends a combination of some criminal law rules and a system of regulation by a Registration Board.

The Commission recommends that:

- the criminal law should be strengthened to apply with vigour to areas such as street soliciting, prostitution-related activities involving children and disadvantaged groups, activities which involve coercion and/or intimidation, and explicit and offensive advertising;

- consideration ought to be given to making it an offence to be a person capable of exercising lawful control over premises in which a child participates in an act of prostitution;

- for the purposes of the regulatory framework and to reduce the risk of serious criminal involvement there be two categories of sex workers:

  - the individual sex worker operating from his or her home;

  - an organisation involving no more than 10 people, regardless of whether it operates as a brothel, escort agency, co-operative or any other form of organization which offers sexual services;

- the self-employed individual sex worker be permitted to operate from his/her home, subject to local authority planning provisions;

- organizations involving two to 10 persons be permitted to operate from premises either as a brothel, escort agency, co-operative or any other form of organization offering sexual services subject to approval by the Local Authority and a Registration Board;

- a state-wide set of guidelines be developed for all Local Authorities to which they must have regard when considering any grant of approval for the operation of a proposed business. The guidelines should cover such matters as the size of the proposed business, hours of operation, proximity to residential areas, churches, schools, community facilities, businesses, etc.;

- a Registration Board be established to regulate and monitor the operation of organisations comprising two to 10 persons with a view to ensuring that there is no criminal involvement in the sex industry, maximising the safety, self-determination, and employment conditions of workers in the industry and ensuring that all workers and the premises from which they are working are accessible to health workers and other social service providers;

- the Registration Board should be comprised of a representative from Queensland Health (formerly the Department of Health), the Queensland Police Service, the Local Authority (this should be an elected representative), the Criminal Justice Commission, sex workers, and the

Workplace Health and Safety Division of the Department of Employment, Vocational Education, Training and Industrial Relations. An independent senior legal practitioner should be appointed as Chairperson of the Board.

- the Registration Board should be responsible to the Minister for Health;

- the Registration Board should have the overall role of regulating and monitoring the prostitution industry. It should have the following functions:

  - to investigate the suitability of persons involved in the industry, and approve "acceptable person";

  - to issue certificates of registration for premises from or at which sex workers are operating;

  - to issue certificates for registration to owner/operators of registered premises;

  - to maintain a record of workers in the industry;

  - to establish and oversee an Inspectorate to service the Board;

  - to ensure compliance with the regulations;

  - to investigate and determine complaints;

  - to promote the health and welfare of workers and clients by:

    - establishing a Code of Conduct within the industry;

    - actively educating workers, clients and the community at large as to the health issues associated with the industry;

  - to recommend legislative change where appropriate; and

  - to report annually to Parliament;

- the Registration Board should vet all applicants and seek to:

  - determine who is the person controlling the operation;

  - determine who is the owner of the premises;

  - determine the number of persons who will be working on the premises, and the names of those persons;

  - determine the nature of the work relationship of each person who is to be working at those premises; and

determine how the business has been financed, and by whom.

- in the Registration Board's determination of who is an "acceptable person" the Board shall have regard to the following matters:

  - convictions for any indictable offences;

  - whether the person has an association with known criminals;

  - whether the person has previously breached any provisions of this regulatory legislation; and

  - any other matters which the Board thinks relevant;

- in its process of vetting, the Registration Board should have access to criminal intelligence from the Queensland Police Service and the Criminal Justice Commission. A confidentiality provision should apply to the Registration Board.

- a registration fee be payable on certification which is renewable annually in order to generate funds to contribute toward the cost of regulating the industry;

- the Registration Board at all times should have the power to cancel registration for sufficient reason;

- the Inspectorate should be staffed from officers of the appropriate departments represented on the Registration Board. Staff should be rotated regularly back to their departments to minimise the potential for corruption;

- the role of the Inspectorate is to ensure compliance of all sectors of the industry with the requirements of the Registration Board. Under this scheme offences should be created for breaches of the regulations. In particular it should be an offence:

  - for an operator to operate unregistered premises;

  - for a worker to work knowingly from or at an unregistered premises;

  - for a client to use the services provided from unregistered premises; and

  - for breaches of regulations applying to registered premises.

- advertising should only be permitted if discreet and should comply with guidelines set down by the Registration Board. All advertisements must display the registration number of the premises and must not seek to recruit sex workers into the industry.

CHAPTER ONE

BACKGROUND TO THIS REPORT

The Commission of Inquiry (Fitzgerald Commission) in its Report following the newspaper articles by Phil Dickie and the ABC's *Four Corners* program the "Moonlight State" by Christopher Masters, revealed the existence of vice and the apparent inaction by the Police Force in Queensland. The Commission, wherever possible made recommendations for reform. In this respect, the recommendations concerning the reform of the then Queensland Police Force were significant. However, unlike some other Commissions on issues concerning law reform, the Fitzgerald Commission took the most rational approach. Although it recognised prostitution, illegal gambling and the sale of illegal drugs as problem areas, the Commission recommended that any reform in these areas be preceded by comprehensive research.

Commissioner Fitzgerald Q.C., found that the role of the former Licensing Branch in the then Queensland Police Force and its responsibility for enforcing the laws on prostitution was a significant source of corruption. His report confirmed the trends already identified by journalists that:

- prostitution industry operators had links with present and previous senior officers in the Queensland Police Department Licensing Branch;
- the Licensing Branch knew of and tolerated existing parlours and agencies;
- police were paid in money and alcohol by parlour and escort agency operators;
- knowledge of police payment by operators was known to and condoned by higher ranks of the Police Department administration;
- officers-in-charge of the Licensing Branch (Parker, Dwyer and Bulger) "were all paid regularly, and the amount received from graft expanded constantly as more persons and premises were extended protection" (Report of a Commission of Inquiry Pursuant to Orders in Council 1989, p. 65; hereinafter referred to as the "Fitzgerald Report");
- police accepted sexual favours as well as money and property from prostitution industry operators (Fitzgerald Report 1989, p. 207);
- police charged those involved in the prostitution industry who were out of their favour more regularly than those in favour (Fitzgerald Report 1989, p. 65); and
- drug distributors were involved in the operation of some of Brisbane's parlours.

Commissioner Fitzgerald Q.C. recommended that any reform and accordingly, any review of the laws concerning prostitution should address the extent to which any present criminal activities should be legalised or decriminalised, recognising that "the issue of any necessary decriminalisation or legalisation is complex and delicate; to be resolved by detailed and full examination of all competing options and the worth of each such option in the administration of criminal justice" (Fitzgerald Report 1989, p. 190). He also recognised that a correct response to the issues requires a full examination of the competing factors including the need to consider the contributions of a wide range of potentially interested people, groups and institutions, matters which were beyond the resources of the Commission of Inquiry (Fitzgerald Report 1989).

Although the Commission of Inquiry had examined in some detail prostitution-related activities, it did not know the extent and nature of the involvement of organised crime, nor did it know the type, availability and costs of the law enforcement resources which would be necessary to effectively police the criminal laws. Mr Fitzgerald identified some difficulties with this:

> "A review of the criminal laws, particularly those affecting prostitution and SP bookmaking, needs more information if it is to make decisions with reasonable confidence that it is not simply creating more problems. At present that information is not available to this Commission, or to the Government, or indeed to any law enforcement body, Commission or Government in the country." (Fitzgerald Report 1989, p. 190).

The paucity of information that Commissioner Fitzgerald alluded to has not changed substantially since the time of the Commission of Inquiry.

Whilst an examination has been conducted concerning the difficulties in enforcing the present laws, it is difficult to make any realistic assessment of the type, availability and, more particularly, the cost of police resources. It is recognised that the enforcement is time-consuming, relying heavily on such techniques as stake-outs etc, and thus requires a substantial investment of resources if it is to be effective. However, it is impossible to put a dollar figure on that. Furthermore, any assessment should also consider the "opportunity cost" of enforcing laws such as these - that is, the cost to the community of not applying police resources to other offences considered by the community to be more serious.

Bearing in mind these limitations, some attempt has been made in Chapter Ten to estimate the amount of money needed to properly enforce criminal laws to control prostitution. Whilst it is only a 'crude' estimate, it does give some general indication of the substantial additional resources that would be needed to restrict prostitution.

Commissioner Fitzgerald also acknowledged that prostitution is predominantly a social issue. The community therefore needs to examine whether this social issue takes priority over other issues when considering the question of investing substantial additional resources in this area.

Increasing crime in general, youth crime, break and enter, stealing, and domestic violence are issues of serious concern to Australian society. It is therefore essential that citizens make a choice whether additional resources, particularly police resources, be directed to reducing prostitution or dealing with other crimes.

The Need for a Review

Following the Report of the Commission of Inquiry, interest in examining the laws relating to prostitution was expressed by various individuals and groups. Furthermore, difficulties with the enforcement of present laws were highlighted by evidence which showed it to be a source of corruption for police officers. This was confirmed by subsequent convictions of some former officers of the Licensing Branch.

An early submission from the Queensland Police Service said that in Queensland, there are several anomalies in the present law which create difficulties for the Police Service in dealing with prostitution. It is not illegal for a person to engage in the act of prostitution itself. The laws govern where prostitution can take place and try to prevent anyone from benefiting financially from it. Thus soliciting in a public place and living off the proceeds of prostitution are illegal. Somewhat inconsistently some types of prostitution such as that provided by escorts and sole operators who work from home are legal, while other types, such as brothel prostitution and using a massage parlour for the purpose of prostitution are illegal. This submission also pointed out that fines imposed for prostitution-related offences have little deterrent effect, as many sex workers who are convicted and fined keep working in order to earn the money to pay the fines.

The Police Service advised that there are difficulties for police in collecting evidence to substantiate convictions for prostitution-related offences. Previous methods of detection involved the use of police undercover agents who assumed the role of a client. Current methods take longer and are more labour-intensive. To try to gather evidence, police organise stake-outs of premises allegedly being used for prostitution and attempt to interview alleged clients on their way out. Clients are under no obligation to answer questions and when they do, will often only admit to a massage. Another method sometimes employed involves the use of female police officers who apply for jobs as sex workers. They attempt to obtain evidence that the employment offered will entail the payment of money in exchange for sexual services.

Adding to the debate surrounding the laws were statements made by the Minister for Police and Emergency Services Mr Terry Mackenroth, that he would "dearly love" to change the laws (The *Courier-Mail* 7 June, 1991) and the President of the Queensland Police Service's Union Senior-Sergeant John O'Gorman, was reported as saying that police, who could do little to stop prostitution under present laws, were being insulted as the public could see

evidence of it and believed police were refusing to investigate it (The *Courier-Mail* 7 June, 1991).

On the other hand, the Premier Mr Wayne Goss was reported as saying that he was not in favour of relaxing present laws:

> "Decriminalisation or legalisation would provide a very fertile field for organised crime elements to run all sorts of prostitution rackets the way they have been in this State. That would bring on even more problems of health and disease." (The *Sunday Mail* 3 March, 1991).

In a more recent statement the Premier does not appear to hold such a strong view. He was reported to have told members of his local Australian Labor Party Branch:

> "We have to wait for the Criminal Justice Commission to report with recommendations as to what should be done - whether it be a change in the law, legislation or whatever.
>
> I think we know the problems associated with prostitution, and sometimes the simplest thing for many is just to legalise it - however I have my doubts as to whether this will work. It is suspected the result would be a legal prostitution industry, as well as the illegal market with the same old problems." (The *Sunday Sun* 30 June, 1991).

Review of Prostitution-Related Laws in Other States

The impetus for change has also gained momentum because of events in other parts of the country. In recent years, New South Wales, Victoria, Western Australia, the Australian Capital Territory and the Northern Territory have all undertaken some form of review of their prostitution-related laws. So far legislative changes pursuant to such reviews have taken place only in New South Wales and Victoria. The Legislative Assembly of the Northern Territory presently has before it a Prostitution Regulation Bill. The South Australian Parliament has before it a Private Member's Bill to remove criminal sanctions from some aspects of prostitution. This Commission concedes that changes in other parts of the country are relevant. However, such changes alone should not constitute sufficient reason for changes in Queensland. Furthermore, changes introduced in Victoria in 1986 do not appear to have produced the desired results. Local needs and characteristics, and the attitude of residents are of significant importance. In a recent *Trends and Issues* paper, the Australian Institute of Criminology summarised the conflicting demands law makers face in dealing with prostitution:

> "On the one hand law-makers in Australia wish to uphold the principles of a liberal democratic society by allowing consenting adults to freely engage in sexual conduct, while on the other hand they are anxious to consider the demands of residents who object to the "nuisance" aspects of prostitution, as well as those who object to prostitution on religious, moral or other grounds. The issue of AIDS has, in recent years added a new element to the prostitution debate and has sparked concern in the community regarding the potential for prostitutes and their clients to spread the disease." (Pinto, Scandia & Wilson 1990, No. 22).

Health

The 1980s saw the advent of the Human Immunodeficiency Virus (HIV) and its sequela, the Acquired Immune Deficiency Syndrome (AIDS). AIDS has been described as perhaps the most serious threat to public health for many years and the estimated number of people who are HIV positive runs into millions world-wide. The particular feature of this public health problem is that the risk of transmission through sexual relationships appears to be high. Although the quantum of research in this area has increased substantially, the results to date are far from conclusive. The spread of HIV has further stimulated research into prostitution and increased calls for a review of the law. In some quarters it is believed that the risk of sex workers becoming HIV positive is higher than for others. This is because of sex workers' exposure to a high number of sexual partners whose sexual histories they may be unaware of and due to a tendency not to use condoms in their private lives. While prostitution remains predominantly a moral, social, cultural and ethical issue, the advent of AIDS has added a new dimension, increasing concerns about the possible health implications of commercial sex (Plant 1990, p. 1).

The Opinions of Sex Workers' Collectives

Prostitution law reform has also been strongly advocated by sex workers' collectives in a number of countries. Collectives have struggled to remove criminal sanctions from the laws relating to prostitution. Their basic premise is that "most of the problems currently related to prostitution arise from the criminalisation of workers who sell sexual services" (Submission from Self-Health for Queensland Workers in the Sex Industry, SQWISI, 26 April, 1991). Their campaigns usually have an agenda built on the following approaches:

- public education regarding the costs of current methods of controlling prostitution;
- removal of criminal sanctions from all aspects of voluntary adult prostitution; and
- normalisation of the occupation and persons involved in prostitution (Weitzer 1991, pp. 23-41).

The Information and Issues Paper

Some of the major needs for review of laws on prostitution have been outlined above. This Commission takes the view that reform of prostitution laws is a matter which has far reaching social consequences. Members of the community need to be informed because reform of prostitution-related laws could require a change in the community's attitude, and in its values. While the two extreme opinions - those of sex workers and those who oppose any liberalisation of laws - receive publicity, the views of the overwhelming majority of the population are

not well known. In a complex issue like this, one cannot seek to elicit an opinion which accurately reflects community opinion just by asking one or two questions. For instance, a majority of members of the community may not even be aware of the implications of reforming laws that relate to prostitution.

On 2 March 1991, the Criminal Justice Commission released an *Information and Issues Paper: Review of Prostitution-Related Laws in Queensland*. The Paper covered such aspects as current laws relating to prostitution and their enforcement; social and community welfare; drugs and sex workers; health considerations; and philosophical approaches to prostitution law reform. Furthermore, the Paper offered options that could be considered. The Paper also summarised the issues for public submission.

The purpose of the Paper was to inform members of the community of the various issues and then to seek input from the public and organised groups. The release of the *Information and Issues Paper* was advertised through electronic and print media. Advertisements concerning the release of the paper and calling for public comment were placed in 26 regional and local papers in Queensland, in the *Courier-Mail* and in the *Weekend Australian*. Copies of the paper were sent to welfare and community organisations, health bodies, church and religious groups, women's organisations and sex workers. A total of 117 submissions were received of which 12 were confidential and three were anonymous. While some may not consider this to be a large number, proportionate to Queensland's population the response rate was higher than the rates in other States when such responses were sought. The public submissions were placed in the Commission's library and members of the community were invited to peruse them.

How Other Jurisdictions Reviewed Laws Relating to Prostitution and What They Recommended

New South Wales

The Select Committee of the Legislative Assembly Upon Prostitution in New South Wales was appointed in March 1983. Its Report was tabled in April 1986. The Committee consisted of eight members of Parliament who were supported by a part-time research team of five people. The Committee also received assistance from officers of Hansard and other Parliamentary staff.

The Committee reviewed the demand for prostitution; why people entered prostitution; the organisation of prostitution in inner-city areas, commercial centres, residential suburbs and country towns; and the effects of prostitution physically, mentally and environmentally on the people of New South Wales.

The Committee received 133 submissions and held 27 hearings at which 83 witnesses gave sworn evidence. *In camera* evidence was taken from 17 witnesses. Inspections were made of organisations which provide outreach

services for drug abuse and sexually transmissible diseases.[1] The research staff conducted 134 interviews with sex workers. The Select Committee visited other Australian jurisdictions, Germany, the Netherlands, Sweden, the United Kingdom and Hong Kong to observe aspects of prostitution. Several large research projects were carried out. These included an estimate of the size of the trade in New South Wales, research on health matters, and the connections between organised crime and prostitution.

The recommendations of the Select Committee have been largely ignored by successive New South Wales governments, and the law is primarily as enacted in the *Prostitution Act 1979* (and re-enacted in the *Summary Offences Act 1988*).

The New South Wales Report took the approach that criminal liability should attach to solicitation for the purpose of prostitution where it was conducted "directly in front of or in close proximity to or directly opposite a dwelling, school, church or hospital" (Report of the Select Committee of the Legislative Assembly Upon Prostitution 1986, p. 261; hereinafter referred to as the "Select Committee"). The approach sought to clarify the ambit of the legislation then in force which prohibited solicitation "near" dwellings, schools, churches and hospitals. The stated aim of this approach was to confine solicitation to commercial areas (Select Committee 1986, p. 259).

The present law in New South Wales is contained in the *Summary Offences Act 1988*. The Act provides that:

> "A person in a public street shall not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution." (Section 19 (1)).

The words "within view from" restricted further the areas where sex workers could solicit. The fine for soliciting outside designated areas was increased and provision was made for the imposition of a prison sentence.

The New South Wales Report stands alone in recommending that the premises of workers operating alone from home should be treated in the same manner as any premises used for the purpose of prostitution (Select Committee 1986, p. 280). The reason for this was the proliferation in Sydney of sole operators in home units, flats and houses. The Select Committee found that these operators caused disruption to neighbours and to the amenity of the locality. The Committee also envisaged that one owner could buy or lease all the units on a floor then rent them to individual sex workers.

The Report recommended that where escort agencies operate solely by telephone, such a business should not fall within the definition of a brothel. The reason for this was that the premises themselves were not being used for the purpose of prostitution and there was little attendant traffic or noise from such an operation. For the few cases where escort services also provided entertainment

---

1 The National Venerology Council of Australia has approved the terminology "sexually *transmissible* diseases". This emphasises the fact that such infections can be transmitted by non-sexual means. This is the accepted usage in Australia.

or accommodation on the premises, it was considered that these should be treated as brothels as they were no longer operating simply as a telephone contact point. It was suggested that escort agencies, which operate like brothels, would be subject to planning controls devised on both a State and local level. Permission to operate would be obtained from local councils (Select Committee 1986, p. 280).

Until 1990 it was unclear whether the common law misdemeanour of keeping a brothel was still available or had been displaced by other legislative reforms. However, in 1990 the New South Wales police successfully launched a prosecution for keeping a brothel (*R v Chapman*, unreported).

The *Disorderly Houses Act 1943* opens the way for similar charges to be prosecuted. Under section 3 (1)(E) premises that are habitually used for the purpose of prostitution or have been used for the purpose of prostitution and are likely to be so used again, may be declared a disorderly house by the Supreme Court. Under this section persons may be charged for owning, occupying or being found on the premises.[2]

Victoria

The Victorian Government appointed the Inquiry into Prostitution on 7 September 1984, and the Final Report was tabled in October 1985. Professor Marcia Neave chaired the Inquiry. The Inquiry's staff comprised three research officers, an interviewer who was assisted in the analysis of the data, a person who specialised in social welfare issues, an editor, three proof-readers, two others who acted as critics of the report, and four consultants and support staff.

The Inquiry's starting point was the legal definition of prostitution. Criminal involvement was not included in the terms of reference and was not a major focus in the Report. Neither were issues relating to taxation as the Report was confined to areas of State law.

To stimulate community discussion on the issues involved in reviewing prostitution laws, the Inquiry's role was publicised through newspapers, television and radio interviews and talk-back programs. Professor Neave also accepted invitations to speak to interested groups.

An Options Paper was distributed to provide interested parties with background information about prostitution in Victoria. One hundred and seventy-one submissions were received in response to the Options Paper and the Inquiry met with 51 of the groups and individuals who wrote submissions.

---

2 In *Sibuse Pty Ltd v Shaw* (1988) 13 NSWLR 98, the New South Wales Court of Appeal upheld a Supreme Court ruling by a 2-1 decision that a brothel was a disorderly house notwithstanding there was no element of disorder over and above the breach of the law (the common law misdemeanour of keeping a brothel).

Special effort was made to contact interest groups and persons who had expertise in areas relating to prostitution, such as welfare groups and community organisations. To obtain the views of local residents, a number of city and country councils and residents' organisations concerned about the effects of prostitution were contacted.

The principal means of systematically collecting information was by use of structured interviews with 115 sex workers and by further informal contact with another 100 sex workers. Surveys of prison inmates in custody for prostitution offences and of hearings into prostitution offences conducted at the Prahran Magistrates Court during 1984 were also conducted.

For health matters related to prostitution, studies of patients presenting at the Melbourne Communicable Diseases Clinic and selected casualty presentations at the Alfred Hospital were carried out.

The Victorian Police Department provided information on police practices. Liaison was also made with the New South Wales Select Committee and with the Special Committee of Inquiry into Pornography and Prostitution in Canada. Visits were also made to New South Wales and Western Australia.

Research included detailed reviews of relevant literature. The Inquiry completed four major studies which comprised interviews with sex workers, youth prostitution, investigation of the links between prostitution and drug abuse, and the environmental effects of prostitution.

The Victorian Report adopted a regulatory approach. It recommended that solicitation should be allowed at the discretion of local councils. Each council should be given the right to pass by-laws which set forth designated areas in which street solicitation could be legally conducted. It would remain a criminal offence to solicit outside these boundaries (Inquiry into Prostitution Final Report 1985, p. 260; hereinafter referred to as "Final Report"). This recommendation in the Victorian Report was rejected by the government.[3] Solicitation for the purpose of prostitution remains an offence in Victoria (*Prostitution Regulation Act 1986*, section 5).

The Victorian Report recommended that a broad framework for regulating the operation of brothels should be implemented in the following ways:

- Only municipalities with populations of less than 20,000 people should be able to deem brothels to be a prohibited land-use. Councils with populations of 20,000 or more would therefore be required to allow applications to be made for permits in designated zones (excluding residential areas). The power of councils to refuse such an application would remain unfettered (Final Report 1985, pp. 307-308).

3 News release issued by the Attorney-General of Victoria dated 30 June, 1986.

- A council considering an application should be statutorily required to consider various factors in determining whether an application for a brothel permit should be granted. These factors included:

  - the size of the brothel;

  - the proximity of the proposed brothel to churches, hospitals and other community facilities;

  - the proximity of the brothel to residential buildings;

  - the public inconvenience that the brothel, when operating, is likely to cause;

  - the proximity of the applicant's proposed brothel to other brothels (Final Report 1985, p. 302).

- An order that premises should be closed should only be made if a Magistrate was satisfied on the balance of probabilities that premises were being used as a brothel for which a permit had not been obtained (Final Report 1985, p. 317).

- Those persons who operate brothels must hold a valid licence to do so. Those persons who assist a licensed operator in managing a brothel must be approved by the licensing body. Thus it would be the function of the local councils to regulate the potential for public nuisance associated with the operation of a brothel. A specially constituted Licensing Board was to monitor and control those who managed and profited from brothels. To operate without risking a conviction, a brothel owner or manager would need to ensure that the responsible council has granted a Town Planning Permit for the brothel to operate, and the Licensing Board has granted appropriate approval to the individual to operate or manage the permitted brothel (Final Report 1985, p. 325).

- Restrictions on premises operated by one or two sex workers should be eased. Sole sex workers working from home should not have to obtain a Town Planning Permit to operate a brothel (Final Report 1985, p. 305). A licence to operate a brothel need not be required for brothels used by only one or two sex workers (Final Report 1985, p. 330). Therefore, sex workers operating from a single premises could choose to work in licensed brothels or for themselves; either by working alone from home (which would not require a permit or licence) or together with another sex worker from a detailed residence (which would require a permit only).

The Victorian Government attempted to reform the laws according to all but one of the recommendations of the report.[4] However, Parliament made several amendments.

---

4 Prostitution Regulation Bill 1986, News Release issued by the Attorney-General of Victoria dated 30 June 1986.

Pursuant to the *Prostitution Regulation Act 1986* local municipalities, irrespective of size, retain the right to prohibit outright brothels in the localities. The Act provides for the Minister for Local Government to block a council prohibition of brothels, but only if, after receiving and considering submissions, the Minister considers that the prohibition does not have the support of the relevant local community (*Prostitution Regulation Act 1986*, sections 61-65). These provisions have not been proclaimed.

Provisions for the statutory establishment of the Brothel Licensing Board (*Prostitution Regulation Act 1986*, sections 15-49) have also not been proclaimed. Also, when the legislation was considered by the Victorian Parliament, amendments were made by the Upper House. These amendments required all persons using premises for prostitution purposes to obtain a licence including premises used by a single sex worker. The Liberal Party Opposition believed that the licensing requirements were unduly stringent for one and two-person operators, (Bryant 1987, pp. 902-903) and consequently, the licensing provisions which differentiate between small and large-scale prostitution establishments were not proclaimed.

In 1988, when commenting upon the practical operation of the Victorian legislation passed subsequent to the Inquiry, Professor Neave observed:

> "The result is unfortunate in two respects. No mechanism has been established to control the management of large brothels. At the same time the failure to permit prostitutes to work legally on a small scale is pushing women into escort agency prostitution or employment in highly visible brothels run by big business. Multi-storey brothels may flourish in Flinders Lane, while prostitutes who wish to see clients discreetly at home, cannot do so. This is hardly likely to increase the control of prostitute women over their working conditions and lives." (Neave 1988, pp. 202-211).

For sex workers in Victoria, the licensing of brothels has reportedly led to a deterioration in working conditions. By the end of April 1989, there were 57 legalised brothels in Melbourne, each employing up to 20 women and operating up to two shifts a day.

Sex workers report that women employed in legalised brothels risk fines for breaches of appearance and behaviour: for instance, fines of $50 have been imposed for failure to remove body hair, or mismatching nail polish on hands and feet. Up to 60 per cent of a sex worker's nightly earnings are deducted by the brothel management.

Female sex workers who work on the streets, outside the system of legal regulation, are now more vulnerable to both police harassment and corruption and violence at the hands of others. Although work on the street now involves higher financial returns, it is reportedly more hazardous (Hatty 1989, pp. 235, 239-240).

Western Australia

In 1976 the Western Australian police introduced a policy of containment and control which was not set down in writing nor made known to the public. The aims of the containment policy were to free prostitution from organised crime and criminal participation, prevent police corruption, guard against female and juvenile exploitation and to prevent the spread of sexually transmissible diseases (STDs). Under Containment only women could run establishments. All sex workers were required to register with the Vice Squad, and to supply name, telephone number, address, licence number, age and to state who the worker lived with before they could start working. The Vice Squad took photographs and was to be notified of any change of address or living circumstances.

In 1987 the then Burke Government supported the decriminalisation of prostitution. Following this move, various discussions were initiated by organisations to ascertain how law reform and possible legal changes in prostitution would affect the people working in this field and the police. Current health issues and the social justice issues for sex workers, consumers and the community were also explored. The Commissioner of Police indicated that Perth had outgrown the containment policy and new measures for the regulation and control of prostitution were needed.

A Community Panel on Prostitution was appointed in March 1990 by the Minister for Police. The Panel first met on 30 March 1990. It relied on the work already undertaken in Western Australia and the material in other reports that was available to it. The purpose of the Panel was to become informed about the community's attitude towards the regulation and control of prostitution in Western Australia and, to report to the Minister about whether or not a system of control should operate.

The Final Report of the Community Panel on Prostitution was tabled on 19 September 1990. It recommended that the Government appoint a Licensing Board to regulate prostitution. This decision was reached after a review of written and verbal submissions, previous reports and work already undertaken on prostitution.

Some recommendations were amended in April 1991 with the publication of the Final (Draft) Report of the Community Panel on Prostitution. The recommendations discussed below were all taken from the updated version.

Limited decriminalisation of prostitution with controls was recommended. It was envisaged that this would basically be structured through a Licensing Board. Criminal penalties were to be retained for certain aspects surrounding prostitution such as soliciting, explicit advertising, protection of minors and protection of persons from procurement and of running a brothel/escort agency outside the control of the proposed Licensing Board. Premises with more than three workers would be required to register as a brothel. Owners/managers of brothels and escort agencies would be licensed by the Board.

It was recommended that the Licensing Board be comprised of a Chairperson who should be a lawyer appointed by Cabinet; the Commissioner of Police or nominee; a medical practitioner; a representative of women's interests; an elected representative nominated by the Minister for Local Government; two representatives from prostitution, one being a manager and the other a worker; and a community member.

Some operators would not be granted the present freedom of setting up in any residential area but would be subject to approval by a local government authority which would make the decision whether to allow self-employed sex workers to operate from home.

It was recommended that sex workers be subject to weekly health checks and that licensed premises be treated as any other small business.

Australian Capital Territory

A Select Committee of the Legislative Assembly was appointed to examine and report on HIV, illegal drugs and prostitution in the Australian Capital Territory on 28 September, 1989. The Committee consisted of five members, two committee staff members and a secretary. The majority of members constituted a quorum of the committee. The prime reason for examining prostitution was the perceived potential it represented for the spread of HIV.

During the course of its inquiries, the Committee visited each of the known established brothels in the ACT and spoke with workers and owners/managers. Discussions were held with sex workers' collectives in all States and territories except Tasmania.

Visits were made to each of the mainland State and Territory capitals, where discussions were held with government officials as well as other relevant and interested parties.

Fifteen submissions on prostitution were received by the Committee. Concerned at the lack of adequate response from interested individuals and groups, the Committee released a two-part article in the *Canberra Times*. This article resulted in two more submissions. The Committee heard evidence from 47 witnesses.

The Interim Report of the Select Committee on HIV, Illegal Drugs and Prostitution was released in April 1991. The Report recommended that a Licensing Board be established to grant, re-issue, transfer and monitor licences to own and operate a brothel and/or an escort agency. A licence would not be granted to persons who have been convicted of an indictable offence punishable by three years imprisonment or more. Conditions of the licence would include that no person under the age of 18 years would be permitted to be employed there or to be found on the premises. Advertising in the print or electronic media would not be allowed.

It was recommended by the Committee that the laws relating to street prostitution remain in place. Special provisions to prevent sexual exploitation of the young were also included. The Committee rejected a proposal for mandatory health checks for prostitutes.

Canada

The Special Committee on Pornography and Prostitution in Canada met for 20 months and published its report in February 1985. The Committee consisted of seven members and in its research was assisted by 16 academics and students.

The Special Committee held public and private hearings in 22 centres throughout Canada. A research program was undertaken for the Committee by the Canadian Department of Justice. The program comprised five local studies in prostitution; a public opinion survey and a review of prostitution and its control in selected countries outside Canada.

The Committee recommended that the criminal law should not intervene unless some perceptible interference with members of the public or neighbouring occupiers could be proven (Pornography and Prostitution in Canada - Report of the Special Committee on Pornography and Prostitution in Canada 1985, vol. 2, p. 540; hereinafter referred to as "Pornography and Prostitution Report"). Solicitation itself should not be a criminal offence unless the sex worker or potential client stops or impedes a pedestrian or a car on more than one occasion (Pornography and Prostitution Report 1985, p. 539). The Legislature rejected the Committee's recommendation and enacted legislation under which the essential element of the offence of solicitation was communication about bargaining rather than impediment. The solicitation need occur on one occasion only.[5]

It recommended a model for the offences of operating (or aiding in the operation of) premises used for the purpose of prostitution, and knowingly allowing premises to be used or let for prostitution purposes (Pornography and Prostitution Report 1985, vol. 2, p. 547). It would be legal to operate or knowingly allow premises to be used for prostitution purposes if either:

- the premises is the residence of one or two sex workers who work from home; or

- the premises is licensed and operated in accordance with a regulatory scheme established by a provincial or territorial legislature.

The Report suggested limitations would need to be imposed upon operational premises through a regulatory procedure. It recommended that a public approval process to allow for full examination of applications should be built

5 An Act to amend the Criminal Code (Prostitution), Statutes of Canada, 1985, Chapter 50, Clause 1.

into the regulatory structure (Pornography and Prostitution Report 1985, vol. 2, p. 532). While favourably acknowledging the Victorian scheme, (which then allowed for the public examination and vetting of brothel owners through local council land use applications), (Pornography and Prostitution Report 1985 vol. 2, p. 551) the Report did not go so far as to recommend that the regulation of brothels be tied to town planning legislation.

A Common Feature of Reports in Three Jurisdictions

The New South Wales and Australian Capital Territory committees as well as the Victorian Inquiry were unanimous in their reasons for recommending that the offence of living on the earnings be repealed:

- The offence does not limit itself to the evil to which it is purportedly directed; namely the exploitation of sex workers. The offence should be limited. Only those who induce a sex worker, through coercion, violence, or intimidation to support them wholly or partly from the proceeds of prostitution should be criminally liable (Final Report 1985, pp. 263-264; Select Committee 1986, p. 251; Interim Report, Select Committee on HIV, Illegal Drugs and Prostitution 1991, pp. 71-79); and

- It is questionable whether the criminal law has a role in regulating the relationships of responsible consenting adults. If a sex worker consensually gives financial support to lovers, partners or colleagues, the criminal law should not interfere.

Research Approach Taken by the Commission

The Commission of Inquiry in its Report made a number of comments to the effect that in programs and measures designed to introduce reform, the involvement of the people of Queensland is paramount. This Commission has embraced this recommendation in many of its activities. Prostitution law reform is one area in which public involvement is crucial. Seeking submissions in response to the *Information and Issues Paper* referred to earlier, was an effort in that direction.

The Research and Co-ordination Division was severely constrained by lack of resources. Unlike most inquiries on the subject in other jurisdictions, neither funds nor personnel were available to travel to other States or overseas. It was, therefore, decided to concentrate efforts on research, discussions, and existing literature on the subject. In keeping with this approach, some other methods used to seek input are described in this section.

Survey of Sex Workers: The "key players" in this area are the sex workers themselves. Quite often one hears the views expressed by representatives of organised groups like SQWISI (Self-Health for Queensland Workers in the Sex Industry), but little, if anything, is known about the views of individual sex

workers. The Research and Co-ordination Division in consultation with sex workers, prepared a structured interview schedule and then pilot tested it. Subsequently, staff from the Division interviewed a total of 73 sex workers.

It was not possible to travel to all parts of the State and efforts were concentrated in conducting interviews in Brisbane, Cairns, the Gold Coast and Townsville. Analysis of the results obtained from these interviews is presented in Chapter Six.

The other "key players" are the agents of law enforcement. The Commission decided against surveying police officers. However, substantial input was received from the Queensland Police Service in various ways. It provided two submissions and a policy paper. Further, a number of informal discussions between the Division staff and police officers have taken place over the last year. The Division also organised an in-house seminar on prostitution law reform. A large number of the Commission's staff, including police officers, participated in the discussion.

Survey of Queenslanders and Melburnians: Citizens do have views on many social and moral issues but most do not come forward and express them unless invited to do so. Therefore, a decision was made to conduct a survey of perceptions and attitudes of Queenslanders towards prostitution. A market research firm was contracted to carry out this task. Approximately 1500 adults (18 years old and above), selected randomly from throughout Queensland, were asked a series of questions by telephone. The questionnaire for the survey was designed in consultation with the Research and Co-ordination Division staff and pre-tested. The results of this survey are presented in Chapter Four.

Laws relating to prostitution were changed in Victoria in 1986. It was considered desirable to ascertain the attitudes of a sample of Victorians. Under the Victorian legislation the local councils are authorised to issue permits for brothels. Not all local councils in Melbourne have permitted brothels to operate. As the Victorian Inquiry reported, prostitution was predominantly an issue of concern in Melbourne. The market research firm was asked to survey a sample of adults from there. A random sample of about 300 adults was asked about their attitudes towards prostitution. The results of this survey are also described in Chapter Four.

Situation in Other States: Time and funds were not available to conduct a full-scale evaluation of the impact of legislative changes in Victoria and New South Wales. However, the Commission thought it desirable to have at least some considered statements regarding the workings of prostitution-related laws in these two States. The Commission employed two noted scholars on contract to write their evaluations of the operation of those laws. Furthermore, as the police containment policy in Western Australia had attracted considerable attention, the Commission considered it pertinent to examine the Western Australian situation. These three papers are reproduced in Chapters Seven, Eight and Nine.

As can be observed, in spite of serious resource constraints the Research and Co-ordination Division has attempted to use as many methods as possible to obtain input. The results of these efforts have been most valuable in drawing conclusions.

Surveys of public attitudes and perceptions in this area are not very common, and those that are available do not include large samples. None of the Australian jurisdictions, while reviewing their legislation concerning prostitution, conducted or commissioned any systematic surveys of the population.

The Special Committee in Canada was assisted by the Department of Justice in conducting a public attitude survey. The survey included 2018 Canadians over 18 years of age. This was the first large-scale survey carried out in Canada and the Special Committee was satisfied with the representativeness of the survey. The Committee was quite comfortable with drawing conclusions from the survey results and to use these in formulating its recommendations.

The Commission's survey included 1533 Queenslanders, 18 years of age and over. Proportionate to the population, the size of the Queensland sample was equivalent to a sample of over 13,000 Canadians. It is important to note that the Commission's survey provides much stronger evidence for drawing conclusions than the one in Canada.

The Structure of this Report

Chapter Two of this Report begins by describing various legal, moral and health matters related to prostitution law reform. It continues with a discussion of health aspects of prostitution and finishes with a discussion of the practical ways in which legal options could be implemented.

Chapter Three discusses the extent and nature of prostitution in Queensland from the police perspective.

Chapter Four describes the public attitude survey on prostitution and discusses the results. The objectives of the survey were to examine the level of public knowledge and concern about prostitution activities; the public attitude towards potential regulations and which, if any, agency or body should be responsible for enforcing regulations. It examines in detail the demographic characteristics of members of the public sampled in the survey and the options they chose on prostitution.

Chapter Five analyses submissions received by the Commission in response to the release of its Issues and Information Paper. The responses are divided into those which covered terminology, legal aspects, systems of licensing, health, drugs, social welfare and moral aspects.

Chapter Six discusses the survey of sex workers. It covers sex workers' backgrounds, the reasons they enter prostitution, drug use, safe sex practices, views on current laws and relationships with the police.

Chapter Seven to Nine are the papers from consultants engaged by the Commission to write on prostitution in New South Wales, Victoria and Western Australia in the periods since the reports from those jurisdictions were released.

Chapter Ten contains the recommendations and reasons for recommendations.

Appendix I is an historical background to prositution in Queensland. It examines police enforcement and government policy in the area of prostitution from the late nineteenth century to the present.

Appendix II provides a definition of "organised crime" and then goes on to describe the connection between organised crime and prostitution.

References

Australian Capital Territory, Parliament April 1991, *Interim Report of the Select Committee on HIV, Illegal Drugs and Prostitution*, Legislative Assembly, 'Prostitution in the A.C.T.'.

Bryant, T.L., September 1987, 'Planning and Social Issues of the Prostitution Regulation Act 1986' in *Law Institute Journal*, vol. 61 (9), Victoria.

Report of a Commission of Inquiry Pursuant to Orders in Council 1989, 26 May 1987, 24 June 1987, 25 August 1988, 29 June 1989), (Chairperson G. E. Fitzgerald Q.C.), Government Printer, Brisbane.

The *Courier-Mail* 7 June 1991.

Hatty, S., November 1989, 'Violence Against Prostitute Women: Social and Legal Dilemmas', *Australian Journal of Social Issues*, vol. 24, no. 4.

Inquiry into Prostitution Final Report October 1985, (Chairperson M. Neave), vols 1 and 2, Government Printer, Victoria.

Neave, M., 1988, 'The Failure of Prostitution Law Reform', *Australian New Zealand Journal of Criminology*, 21.

Report of the Select Committee of the Legislative Assembly Upon Prostitution, New South Wales, Parliament April 1986.

Pinto, S., Scandia, A. & Wilson, P., May 1990, 'Prostitution Laws in Australia', *Trends and Issues*, no. 22, Australian Institute of Criminology, Canberra.

Plant, M. (ed) 1990, *AIDS, Drugs and Prostitution*, Routledge, London.

R v Chapman, unreported.

'Pornography and Prostitution in Canada', *Report of the Special Committee on Pornography and Prostitution in Canada* 1985, vols 1 and 2, Ottawa.

The *Sunday Mail* 3 March 1991.

The *Sunday Mail* 30 June 1991.

Weitzer, R., 1991, 'Prostitutes' Rights in the United States', *The Sociological Quarterly*, vol. 32, no. 1.

Legislation

Prostitution Regulation Act 1986 (Victoria).

Summary Offences Act 1988 (NSW).

CHAPTER TWO

LAW, MORALITY AND HEALTH - THE BACKGROUND TO PROSTITUTION POLICY

Prostitution Laws in Queensland

The essential concept in prostitution is the gratification of sexual appetite for gain (*Poiner v Hanns; ex parte Poiner* [1987], p. 246). The act of prostitution itself is not illegal in Queensland. Prostitution is ancillary rather than central to each of the offences under discussion. The conduct prohibited by these offences either leads to or results from the act of prostitution. To establish each offence, it must be proved that the conduct was either for the purpose *of* or derived *from* prostitution.

It is not clear whether the gain for which the sex worker performs the sexual service has to be monetary gain. The law suggests some material gain not limited to money, for example, temporary accommodation or food. However, in cases in which the concept of prostitution has been defined by the courts, judges have equated gain with monetary gain (*Poiner v Hanns; ex parte Poiner; R v de Munck* [1918]).

The issue is important. Prostitution among disadvantaged persons may involve an exchange of sexual services for temporary accommodation and food. Some householders may render sexual services to tradespeople who provide them with goods and services. These matters raise the issue of whether they are acts of prostitution.

Prostitution is not characterised by the gender of the participants or the type of sexual service sought or obtained: "Whether a man or a woman is involved or whether homosexual or heterosexual activities are involved are of little consequence" (*Poiner v Hanns; ex parte Poiner*, p. 246).

Statutory Offences

The *Vagrants, Gaming and Other Offences Act 1931-1988* provides in section 5 (1) (c) that:

> A person who knowingly lives wholly or in part on the earnings of the prostitution of another person, commits an offence.

The original purpose of this section was to deter pimps or others from exploiting sex workers. It now has significance for others who may be associated with sex workers.

Proof that a male "lives with or is habitually in the company of a prostitute, and has no visible lawful means of support or has insufficient lawful means of support" (*Vagrants, Gaming and Other Offences Act 1981-1988*, section 55 [iv]) is prima facie evidence that he is knowingly living on the earnings of prostitution. This section effectively requires sex workers' husbands and male de facto partners who are charged with an offence under this section to satisfy the court otherwise.

Others, such as tradespeople and the employees of sex workers were conceivably brought within the effect of the section when Viscount Simonds in the Privy Council formulated what is still a current test:

> "[A] person may fairly be said to be living in whole or in part on the earnings of prostitution if he is paid by prostitutes for goods or services supplied by him to them for the purpose of their prostitution which he would not supply but for the fact that they were prostitutes." (*Shaw v D.P.P.* [1962] p. 264).

In some cases, it is difficult to determine whether or not the person would have supplied the services if the recipient had not been a sex worker. However, in the case of the driver of a car employed to transport escort workers to and from their appointments, it was clear that he would not have supplied the service unless his passengers were sex workers.[1] (*R v Farrugia*, (1979) p. 108)

The section also makes liable a proprietor who accepted advertisements solely or predominantly from sex workers.[2] This is obvious in the case of publications wholly or predominantly designed to advertise services of sex workers. However, it may be harder to obtain a conviction under this section in the case of a publication providing advertising to the general public, some of whom may be sex workers.

Until 1988, many Queensland newspapers ran overt classified advertisements for both massage parlours and escort agencies.

On 12 December 1988, the Brisbane Licensing Branch served *Sun Newspapers* with eight notices alleging that it was living in part on the earnings of prostitution (*Vagrants Gaming and Other Offences Act*, section 8 [a]) by running escort agency advertisements in its classified advertisements section (The *Courier-Mail*, 13 December, 1988).

The notices were served after non-compliance by *Sun Newspapers* with a Licensing Branch request to withdraw the escort agency advertisements from publication. Similar requests had been complied with by newspaper proprietors in Cairns and Townsville and on the Gold Coast.[3] The *Courier-Mail* had, on

---

1 This is so irrespective of who paid the driver *Calvert v Mayes* [1954] I A11 E R 41.

2 In *Shaw v D.P.P.* a man who published a 28 page booklet which was mainly taken up by advertisements placed by prostitutes, failed in his appeal against conviction for living on the earnings.

3 Per Inspector Graeme Williams as quoted in the *Courier-Mail*, 13 December, 1988.

policy grounds rather than at the behest of the police, refused requests to run advertisements concerning prostitution services from 23 September 1988.[4]

Advertisements for prostitution services are now buried in the health and beauty and the personal introduction columns of daily newspapers around the State. Although some advertisements for massage services are now published only after the production of a certificate from the Massage Therapists Association of Queensland,[5] this is not a guarantee that such advertisements do not promote prostitution since sex workers state that this certification is not difficult to obtain. Furthermore, sex workers have reportedly used certified masseurs to place advertisements on their behalf.

In some areas sex workers advertise in Telecom's *Yellow Pages*. Alternatively, some sex workers advertise in the Melbourne *Truth* (which can be purchased in Queensland). Male sex workers can advertise in a nationally circulated homosexual publication printed in another State (for example, the Melbourne-based *Outrage*). Additionally, male and female sex workers advertise in some Queensland regional papers.

The Inquiry into Prostitution in Victoria considered the question of advertising and recommended that discreet advertisements for prostitution services (as dictated by regulation) be permitted. However, it also recommended that advertisements for prostitution services be prohibited from any publication which is produced with the financial support of either government or semi-government organisations (such as the *Yellow Pages*) (Final Report 1985, vol. 1, p. 281).

Under section 5 (1) (b) of the *Vagrants, Gaming and Other Offences Act 1931-1988*, it is also an offence to be:

> A person who solicits another person for immoral purposes or for the purpose of prostitution when that other person is in a public place, or is within view or hearing of a person in a public place.

The section affects sex workers who literally work on the street and those who, from doorways and windows, negotiate the sale of sexual services with potential clients walking in streets or on footpaths outside the premises.

Sex workers cannot be charged under this section unless they are physically present during the solicitation. An advertisement or notice soliciting clients seeking prostitution services is not an offence under this section (*Weisz v Monahan* [1962] p. 644).

---

4 Information received from Mr. Brian Fairbrother, the Classified Advertisement Manager of the *Courier-Mail* and the *Sunday Mail*, on 24 July, 1990.

5 Information received from Mr. Brian Fairbrother, the Classified Advertisement Manager of the *Courier-Mail* and the *Sunday Mail*, on 24 July, 1990.

Sex workers' clients may also be charged under this section. In Queensland any person who approaches sex workers with an offer of money in exchange for their sexual services arguably solicits for the purposes of prostitution.

Males who "kerb-crawl" (travel slowly in a car, stopping intermittently to negotiate with sex workers for sexual services) or who approach one sex worker or more in the street to negotiate the exchange of sexual services for money may be guilty of an offence under this section.

It appears that solicitation for the purpose of prostitution provides the only charge that can potentially be levelled at the clients of sex workers.

Under the *Criminal Code 1899-1989*, section 231 provides that:

> Any person who keeps a house, room, set of rooms, of any kind whatsoever, for purposes of prostitution is guilty of a misdemeanour, and is liable to imprisonment for three years.

A similar provision is contained in the *Vagrants, Gaming and Other Offences Act 1931-1988* which provides in sections 8 (1) (a) and (b) that:

> Any person who -
>
> - keeps or manages, or acts or assists in keeping or managing any premises for the purposes of prostitution; or
>
> - being the tenant, lessee or occupier of any premises, knowingly permits such premises or any part thereof to be used for the purposes of prostitution -
>
> is guilty of an offence.

Receptionists and co-ordinators of parlours are often charged under the first limb of the above section.

Those to whom ownership or operation of a parlour can be traced can be charged under either limb of the above section.

The Full Court of the Supreme Court recently held "that premises can be kept for the purposes of prostitution within section 8 (1)(a), even though no acts of sexual intimacy for reward occur there and the parties who are ultimately to be involved in the acts do not meet there, provided that the purpose of keeping the premises is to use them for arranging acts of prostitution to be carried out elsewhere by a plurality of women".[6]

---

6 *Ferricks v Guzikowski; ex parte Guzikowski*. Unreported decision of the Full Court of the Supreme Court delivered on 21 November, 1990. In making this decision the members of the Court distinguished a number of earlier cases which had held that it must be shown that that prostitution actually took place on the premises in order to sustain a conviction under this section.

In that case the premises of an "escort agency" had been used only for making arrangements by telephone and for keeping accounts and records. The Court held that was sufficient evidence upon which to convict the manager of an offence under section 8 (1)(a).

The courts have consistently refused to extend the operation of the above sections to a single sex worker working at home. This is the case even though the legislature appears to have intended that single sex workers should be charged under these sections.[7]

With the passage of the 1931 *Vagrants, Gaming and Other Offences Act*, the legislature clearly wished to extend criminal liability to sole sex workers keeping, using or occupying premises for the purposes of prostitution.[8]

However the sub-section designed to fulfil this intention section 8 (4);[9] was given a different meaning by the courts. In *Parker v Jeffrey* ([1963], p. 32) Philp J observed:

> "If the legislature had intended to make it an offence for a woman to use her residence or any other place for the prostitution solely of herself it could easily have said so in clear terms; I am unable to spell out such an intention from the words of section 8 (4)."[10]

The matter was the subject of some discussion in *Ferricks v Guzikowski ex parte Guzikowski* (supra) where earlier cases were reviewed. The Honourable Mr Justice Derrington said that a distinction may still be drawn in the case of a woman who uses her own premises for acts of prostitution.

> "The view that she keeps such premises to live in and that the acts of prostitution are merely incidental to this is valid and consistent with the principle applied in the present case. It then becomes a practical test as to whether one of the purposes for keeping of the premises is prostitution or whether in all the circumstances that is merely an incidental use rather than part of the purpose." (*Ferricks v Guzikowski; ex parte Guzikowski*, unreported).

Such clear comments were not made in respect of a lone woman operating out of premises, not her home, and it was suggested in *Storey v Wick* ([1977], p. 47) that it would constitute "keeping premises for the purposes of prostitution".

---

7 In 1907, the Supreme Court was called upon to consider the ambit of the provision prohibiting keeping a bawdy house in the *Criminal Code*. One of the four sitting Justices explained that he had sat on the Commission which had made recommendations about the draft code prior to its passage through Parliament. Parliament had accepted the Committee's recommendations in total. He explained that it was intended that the section should implicitly extend to persons who engage in prostitution and who work alone from premises. (*R v Thick*) [1907] St R Qd 198 per Neal, J., p. 102. His colleagues disagreed - they reasoned that if the legislature had intended the section to extend to sex workers operating from premises alone, then the language of the section ought to have expressly included such workers. *R v Thick* ibid per Cooper, C.J., p. 201, & Chubb, J., p. 203.

8 See Second Reading Speech by the then Home Secretary the Hon. J.C. Peterson, **Queensland Parliamentary Debates** vol. CLX 1931, p. 1423.

9 This section reads, "It is immaterial whether the premises kept or occupied for prostitution are kept or occupied by one person or more than one person".

10 Mr. Justice Connolly concurred with this reasoning in the unreported decision of *Bell v Stewart; ex parte Bell* delivered on 13 October, 1989 in the Full Court of the Supreme Court. Parliament has not amended s. 8 (4) since *Parker v Jeffrey* nor, indeed, since the subsection's inception in 1931.

Section 8 (1) (c) of the *Vagrants, Gaming and Other Offences Act 1931-1988* also states that:

> Any landlord or agent for a landlord who lets or collects rent from premises knowing that the whole or part of the premises is or will be used for the purposes of prostitution is guilty of an offence.

Whilst sole sex workers using their homes for prostitution may not contravene the law, the above section can nevertheless be used to close their businesses. Some sex workers working legally from home report that police have informed their landlords that their rented premises are being used for prostitution purposes.

The landlord must then serve a seven day eviction notice on the tenant - sex worker, or face the possibility of being convicted for letting premises knowing that the premises are being used for prostitution purposes (*Vagrants Gaming and Other Offences Act 1931-1988*, section 8 (3)).

Those sex workers who have been affected by this procedure argue that if their business operations are legal they should not be subjected to the constant fear of being evicted. Further, they point out that the law treats tenants less favourably than the owners of premises.

Finally, they argue that they are not the only people who are "punished" through eviction, since when they are evicted from their homes, their children face dislocation from schools, friends and familiar environments.

This provision was also used in 1978 and 1979 to persuade landlords to evict tenants from many massage parlours.

Sex workers who are owners of the homes or premises from which they work cannot be subjected to this procedure.

Section 8A, *Vagrants, Gaming and Other Offences Act 1931-1988* states that:

> "Any person who uses for the purpose of prostitution, or of soliciting for prostitution, any premises held out as being available for the provision of massage, sauna baths, steam baths, facilities for physical exercise or services of a like kind, or held out as being available for the taking of photographs or as a photographic studio is guilty of an offence."

Under this section, sex workers in premises such as massage parlours and health studios are charged. To establish that an offence has been committed, it must be proved that the massage parlour or health studio was used for the purposes of prostitution. Some difficulty has been experienced in gathering evidence to prove that a massage parlour or health studio provides sexual services.

In the past, police agents have posed as clients and paid for the massage. If offered sexual services by the masseuse, they accept and after any additional payment is made, the agents then declare themselves. This practice was stopped

in 1989 on the instruction of the Police Commissioner. Since then, police have focussed more upon collecting evidence from clients.

This section accounts for more than half of the prostitution-related offences coming to the attention of the Police from 1977-78 to 1988-89. Section 9 of the *Vagrants, Gaming and Other Offences Act* creates an offence for a person who has control of or acts in the care or management of a "lodging house"[11] knowingly to permit it to be the habitual resort of, or place of meeting for reputed prostitutes. It is also an offence for the person knowingly to allow such lodging-house to be used for the purposes of prostitution. It appears that very few, if any, charges have been laid under this section in the last decade.

It is also an offence to procure a person, whether male or female to become a prostitute.[12] The section provides for heavier penalties where the person procured is a child. In *R v Broadfoot* ([1976], p. 753) it was held that the word "procure" is a word in common usage and a jury had to use their common sense when interpreting it. There was nothing wrong with a judge using the word "recruit" when directing the jury on the issue of whether there had been a procurement.

In summary prostitution-related offences in Queensland fall into two categories:

1. Activities Directly Associated with Prostitution which are Illegal:

    - soliciting or loitering (*Vagrants, Gaming and Other Offences Act*, section 5);
    - being a prostitute who behaves in a riotous, disorderly or indecent manner in a public place (*Vagrants, Gaming and Other Offences Act*, section 5);
    - soliciting within view or hearing of a person in a public place (*Vagrants, Gaming and Other Offences Act*, section 5);
    - using premises held out for other purposes for the purpose of prostitution (*Vagrants, Gaming and Other Offences Act*, section 8A).

---

11 The term "lodging-house" was defined in s. 77 of the consolidated *Health Acts 1900 to 1934* (now repealed but not re-enacted) as:
"any house, tent or edifice (not being the premises of a licensed victualler under the provision of The *Licensing Act of 1885* or any Act amending or in substitution for that Act) in which persons are ordinarily harboured or lodged for hire for a single night or for less than a week at one time, or any part of which is let for any less term than a week at one time". (**Allen's Police Offences in Queensland**, 34th Edition, Law Book Co. Ltd, Australia 1971, p. 91.)
This section also applies with respect to a lodging-house under a by-law of a Local Authority or under any ordinance of the Brisbane City Council.

12 For more detailed explanation see s. 217 *Criminal Code*.

2. Activities Ancillary to Prostitution which are Illegal:

- living either wholly or partly on the earnings of a prostitute (*Vagrants, Gaming and Other Offences Act*, section 8);
- keeping or managing a brothel (*Vagrants, Gaming and Other Offences Act*, section 8);
- keeping a bawdy house (*Criminal Code* sections 231 and 235);
- being an occupier of a house frequented by prostitutes (*Vagrants Gaming and Other Offences Act*, section 5);
- being a tenant, lessee or occupier who permits premises to be used for prostitution (*Vagrants, Gaming and Other Offences Act*, section 8);
- being a landlord who knows premises to be used to for prostitution (*Vagrants, Gaming and Other Offences Act*, section 8);
- being a keeper of a lodging house who permits it to be the resort or place of meeting of prostitutes (*Vagrants, Gaming and Other Offences Act*, section 9);
- procuring a person to become a prostitute (*Criminal Code*, section 217).

Philosophical Approaches to Prostitution Law Reform

The central issue to be considered is whether it is appropriate for the criminal law to regulate consensual sexual conduct carried out for material gain in any circumstances.

Although the opposing views of some persons are noted, it is generally agreed that sexual contact between adults and minors should be prohibited. There appears also to be consensus that individuals should be prevented from forcing others to work as sex workers.

Given that, the extent to which sexual behaviour between two consenting adults should be regulated by the criminal law remains to be determined.

Against Removal of Criminal Sanctions

It is argued that because prostitution can involve adultery, fornication and irregular sexual behaviour, prostitution weakens the ideal and practice of family life. While the effect on the family may not be immediately evident, deception, cleverly practised at one time, may set off a series of events which may cause people to mistrust each other later.

Proponents of criminalisation argue that society (as well as individuals), is harmed by prostitution. They argue that as society is the victim in the long-term, the behaviour can and should be the subject of criminal prohibitions (Oaks 1975).

Those who subscribe to this view believe that the government should use laws to shape values, behaviour and attitudes within the community. They argue that if criminal sanctions are removed, more people will think it is acceptable to enter prostitution. Those who advance this argument believe the law is an instrument to uphold morality. They believe that laws cannot be made without reference to what the community believes is morally right as opposed to what it believes is morally wrong. Some also believe that the removal of criminal sanctions would only create new opportunities for corruption.

For Removal of Criminal Sanctions

Others argue that, even if there is a degree of harm to society caused by prostitution, it does not warrant stigmatisation as "criminal". They believe that the enactment of criminal laws is not the only way of making people conform with social mores, since licensing, civil liability and administrative regulations also limit and fashion moral conduct (Hawkins 1976, p. 9). One commentator has argued that to impose criminal sanctions for acts of private morality is a misallocation of social resources:

> "The prime function of the criminal law is to protect our persons and our property; these purposes are now engulfed in a mass of other distracting, inefficiently performed legislative duties. When the criminal law invades the spheres of private morality and social welfare, it exceeds its proper limits at the cost of neglecting its primary tasks. This unwarranted extension is expensive, ineffective and criminogenic." (Morris & Hawkins 1970. p. 1).

Some who advocate the removal of criminal sanctions deny that prostitution threatens the social order based upon the family. In some cases, they argue prostitution may in fact preserve that social order:

> "If her client had an affair with the woman next door, he might disrupt two families. By coming to her he threatens neither." (Honore 1978, pp. 133-134).

Among those who support the removal of criminal sanctions, are some who believe that prostitution is present in all societies and it is better to control and regulate it than drive it underground.

Policy Directions

If criminal or other laws should be enacted to regulate and/or prohibit features of prostitution, what aspects should they address?

The Inquiry into Prostitution in Victoria, while opposing criminal sanctions, took the position that prostitution is exploitative of women and should not be

encouraged as an occupation (Final Report 1985, vol. 1, p. 243). It concluded that sex workers were often victims of income and gender inequalities, which should be addressed by law. Reformers have suggested that an extension of employment opportunities available to women could diminish the number who choose to be sex workers.[13]

In the course of the Commission's interviews with sex workers, a few said that they would remain in prostitution whether or not the range of employment opportunities for them was expanded. They were dissatisfied with the limited economic and social status of other employment open to women. They believe the community should accept that prostitution involves legitimate transactions between providers and consumers of services.

If the community did accept that prostitution involved a legitimate transaction other compelling questions would need answers. For instance:

- Should sex workers be allowed to advertise their services? Proponents of the view that prostitution is inherently exploitative of women would argue for prohibitions concerning such advertisements. Those who adopt the view that prostitution should be seen as a legitimate business would argue that, if sex workers are legally to earn their living, they should have access to means by which they can legally attract clients.

- Should independent advice and assistance be made available to people about to enter prostitution? Some suggest that counselling should attempt to divert new workers by focusing upon career and skill acquisition opportunities outside prostitution. Those in favour of a legitimate prostitution business suggest that counselling be directed predominantly towards health and safety education in addition to emotional reactions that new workers will experience.

Why does Prostitution exist at all?

According to the traditional argument, society must make prostitution available to those who cannot express their sexuality in other ways so that they do not become rapists or do not sexually abuse children.

The New South Wales Select Committee and several feminist commentators (Pateman 1988, p. 198; Allen 1990, p. 197) have questioned the prevailing perception that prostitution is inevitable because some men's sexual drives cannot be suppressed. Indeed, some feminists have suggested that historical, sociological and sexological evidence shows that this "need" to purchase sexual services is socially constructed and stimulated and not biological or innate. In support of this argument, the New South Wales Select Committee pointed to the climate of sexual freedom in the 1970s and the AIDS scare in the 1980s which could increase or reduce the demand for prostitution.

---

13 For example, ibid, Inquiry into Prostitution Final Report, Victoria, October, 1985, vol. 1 of 2, p. 244.

The Committee concluded that social policy had a responsibility to reduce the demand for prostitution services as far as possible. For this reason, the Committee did not support State institutionalisation of prostitution by measures such as registration of sex workers and compulsory health checks. However, it did support the removal of criminal penalties associated with it and the imposition of other forms of control. The Committee felt that to support State sanctioning would have endorsed the view that, in order to gratify their sexual needs, men were entitled to purchase the sexual services of women.

Health

Incidence of HIV and AIDS Among Sex Workers and Their Clients

Like others, sex workers are potentially at risk of contracting the Human Immunodeficiency Virus (becoming HIV positive) and subsequently developing Acquired Immune Deficiency Syndrome (AIDS). The risks are higher for sex workers. This is because of their exposure to a greater number of sexual partners whose sexual histories they may be unaware of, through possible intravenous drug use and because of a tendency not to use condoms in their private lives.

Despite these risk factors, the prevalence of HIV among female sex workers in Australia has been found to be very low. A survey (Perkins, Lovejoy & Marina 1990) of 153 female sex workers in Sydney, Canberra and on the New South Wales north coast found that none were HIV positive or had AIDS. To date, no evidence of a *sexually acquired* HIV infection in a female sex worker in Australia has been found (Donovan 1990). However, this finding is based on sex workers who attend STD clinics and who identify themselves as sex workers.

There have, however, been several cases detected in Australia of former sex workers who are HIV positive (Harcourt & Philpot 1990). Where female sex workers are infected, they usually attribute this to intravenous drug use.

Some evidence indicates that sex workers place themselves at greater risk of becoming HIV positive and developing AIDS during private sexual relations than at work. The aforementioned 1990 survey found that while more than 97 per cent of the women used condoms at work, less than 47 per cent did so during private sexual relations (Perkins, Lovejoy & Marina 1990).

Sex workers' reasons for placing themselves at greater risk in their private lives were that protected intercourse reminded them too much of work, that sex was more enjoyable without condoms and that condoms were unnecessary in a monogamous relationship.

The clients of sex workers also raise a number of public health concerns. Two Australian men have been diagnosed with advanced HIV disease attributable to unprotected contact with female sex workers in Germany and Holland (Donovan, B. 1990, p. 17). Departments of Health in Australia are becoming