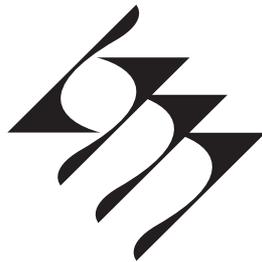


# REGULATING PROSTITUTION

AN EVALUATION OF THE PROSTITUTION ACT 1999 (QLD)

DECEMBER 2004

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

**CMC Vision:**

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC Mission:**

To combat crime and improve public sector integrity.

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The Honourable R Hollis MP  
Speaker of the Legislative Assembly  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Hollis

In accordance with section 141(4) of the *Prostitution Act 1999*, the Crime and Misconduct Commission hereby furnishes to you its report, *Regulating prostitution: an evaluation of the Prostitution Act 1999 (Qld)*.

The Commission has adopted the report.

Yours sincerely



**BRENDAN BUTLER SC**  
Chairperson

# FOREWORD

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Prostitution is a complex phenomenon. Attitudes towards it, and attempts to regulate it, vary enormously around the world, even from state to state within Australia. There is no evidence, however, that any particular approach has been more successful than another. There is, therefore, no panacea that we can draw on, and each state and country must decide independently how best to address it.

In the wake of its tumultuous history, with demonstrated links between prostitution and organised crime and police corruption in this state, Queensland chose to enact the *Prostitution Act 1999* to legislate for a highly regulated licensed brothel industry. The guiding principles of the legislation were to ensure quality of life for local communities, safeguard against corruption and organised crime, address social factors which contribute to involvement in the sex industry, ensure a healthy society and promote safety. Although sole operators were already legal in this state, the Act enabled the growth of a legal and safer alternative to sole operators — licensed brothels — in an attempt to alleviate some of the problems that still beset the illegal sex industry in Queensland at that time.

The Crime and Misconduct Commission (CMC) was required by the Prostitution Act to review its effectiveness. This report is the end result of that evaluation: the Commission chose to undertake its evaluation by collecting and collating information from a variety of sources about the implementation of the Act from its beginnings. This enabled the CMC to assess its successes, its difficulties and its growing pains alongside its implementation.

There is no doubt that Queensland now has a safe and effective legal brothel industry, albeit one that is much smaller than originally envisaged; it is better, we believe, than that of any other state in Australia. Queensland's brothels provide a safe and healthy option for sex workers who choose to work in the industry and for the clients who choose to use their services. There is no evidence of corruption or organised crime within the legal industry and the impact of legal brothels on the community appears to have been minimal. Nevertheless, minor amendments to the Act are required to ensure the legal industry's continued viability and to reduce the incentives for the illegal industry to continue. This report details the Commission's views on how this can best be achieved. The recommendations arising from the review reflect the views of the majority of those consulted for the evaluation as well as information gleaned from international research.

I am confident that this report will provide valuable information about the regulation of prostitution in Queensland as well as adding to the worldwide debate about this universal social phenomenon.

**Brendan Butler SC**  
**Chairperson**

# ACKNOWLEDGMENTS

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Dr Margot Legosz and Ms Rebecca Lowndes were primarily responsible for the evaluation of the *Prostitution Act 1999* and for writing this report.

Dr Paul Mazerolle, Dr Samantha Jeffries, Mr Wayne Briscoe, Ms Laurie Cullinan and Ms Margaret Patane also contributed to the evaluation.

The report was prepared for publication by the CMC's Communications Unit.

Twenty-one written submissions about prostitution in Queensland were provided to the CMC. Many key informants from Government agencies and industry representatives also willingly participated in four phases of the evaluation since 2000, providing ongoing debate about a range of contentious issues during the entire evaluation. Sixty-five sex workers also provided valuable information directly to the CMC via an anonymous survey and many called the researchers involved to discuss issues of great importance to their livelihood.

The CMC is most grateful for the thought-provoking contributions and the ongoing willingness of all informants who provided relevant material and contrasting perspectives on the vast range of issues addressed by this evaluation.

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## ABBREVIATIONS

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ABN	Australian Business Number
ACCC	Australian Competition and Consumer Commission
AFP	Australian Federal Police
ASIC	Australian Securities and Investment Commission
ATO	Australian Taxation Office
CBD	central business district
CCT	Commercial and Consumer Tribunal
CCTV	closed-circuit television
CJC	Criminal Justice Commission
CMC	Crime and Misconduct Commission
CSA	child sexual abuse
HTC	hospitality training courses
IDU	injecting drug user
IPA	Integrated Planning Act
LGAQ	Local Government Association of Queensland
LH&MWU	Liquor, Hospitality and Miscellaneous Workers Union
NEPS	National Employment and Psychological Services Centre Inc.
PAC	Prostitution Advisory Council
PETF	Prostitution Enforcement Task Force
PHA	Public Health Association
PLA	Prostitution Licensing Authority
PPE	personal protective equipment
QABA	Queensland Adult Business Association
OECD	Organisation for Economic Co-operation and Development
QPS	Queensland Police Service
QuIVAA	Queensland Intravenous AIDS Association
RSI	repetitive strain injury
SQWISI	Self-Health for Queensland Workers in the Sex Industry
STD	sexually transmitted disease
STI	sexually transmitted infection
SWAN	Sex Worker Action Network
SWOP	Sex Workers Outreach Project
WH&S	workplace health and safety

## LEGISLATION CITED IN THE REPORT

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*Crime and Misconduct Act 2001* (Qld)  
*Criminal Code Act 1899* (Qld)  
*Criminal Code Act 1924* (Tas.)  
*Criminal Code Act Compilation Act 1913* (WA)  
*Criminal Proceeds Confiscation Act 2002* (Qld)  
*Fair Trading Act 1989* (Qld)  
*Freedom of Information Act 1992* (Qld)  
Health (Infectious Diseases) Regulations 2001 (Vic.)  
Health Regulation 1996 (Qld)  
*Industrial Relations Act 1999* (Qld)  
*Integrated Planning Act 1997* (Qld)  
Integrated Planning Regulation 1998 (Qld)  
Liquor (Approval of Adult Entertainment Code) Regulation 2002 (Qld)  
*Liquor Act 1992* (Qld)  
*Planning and Environment Act 1997* (Vic.)  
*Police Act 1982* (WA)  
*Police Offences Act 1935* (Tas.)  
*Police Powers and Responsibilities Act 2000* (Qld)  
*Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld)  
*Prostitution Act 1992* (ACT)  
*Prostitution Act 1999* (Qld)  
*Prostitution Act 2000* (WA)  
*Prostitution Amendment Act 2001* (Qld)  
*Prostitution Control Act 1994* (Vic.)  
Prostitution Control Regulation 1995 (Vic.)  
*Prostitution Law Amendment Act 1992* (Qld)  
Prostitution Regulation 2000 (Qld)  
*Prostitution Regulation Act 1991* (NT)  
*Statute Law (Miscellaneous Provisions) Act 2000* (Qld)  
*Summary Offences Act 1953* (SA)  
*Summary Offences Act 1998* (NSW)  
*Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001* (Qld)  
*Tobacco and Other Smoking Products Act 1998* (Qld)  
*Wine Industry Act 1994* (Qld)  
*Workers Compensation and Rehabilitation Act 2003* (Qld)  
*Workplace Health and Safety Act 1995* (Qld)

# SUMMARY

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The Fitzgerald Inquiry in the late 1980s highlighted the extent to which organised crime and police corruption had become entrenched in the illegal prostitution industry in Queensland. Then in 1992, following a review of prostitution in Queensland by the Criminal Justice Commission (1991), the government acknowledged the rights of sole operators to work independently in their homes; but there were no steps taken to legalise any other forms of prostitution.

Illegal brothels, escort agencies and street-based prostitution continued to flourish in Queensland through the 1990s and, given strong support by the community (indicated by several Queensland-wide community surveys), the government enacted the *Prostitution Act 1999* to legalise prostitution within licensed brothels, but only under very strict terms and conditions.

It was also a requirement of the Prostitution Act that the Crime and Misconduct Commission (CMC) review the implementation of the Act, as soon as practicable after three years from its commencement, and report on those findings. This report presents the findings of that review.

## Evaluation methods

The aim of the CMC's evaluation was to deliver an accurate assessment of the operation of the Act and the achievement of its core function (to regulate prostitution in Queensland) and guiding principles, these being to:

- ensure quality of life for local communities
- safeguard against corruption and organised crime
- address social factors which contribute to involvement in the sex industry
- ensure a healthy society
- promote safety.

All key agencies and individuals involved in the implementation of the Act were consulted by the CMC on a yearly basis for each of the four years of its review. These included Government representatives from the Prostitution Licensing Authority (PLA), the Prostitution Advisory Council (PAC), Queensland Health, the Queensland Police Service (QPS) and the Local Government Association of Queensland (LGAQ), brothel licensees and their representatives (Queensland Adult Business Association) and sex workers and their representatives (SQWISI, Scarlet Alliance and the Liquor, Hospitality and Miscellaneous Workers Union). The two responsible Ministers for Police and Corrective Services during this period (Mr Tony McGrady and Ms Judy Spence) were also interviewed in 2004 in accordance with the requirements of the Act.

During the review period, the PLA commissioned research with representatives of the community, sex workers and their clients (see Woodward et al. 2004); the results of that research were drawn upon by this review. The CMC also conducted its own survey of sex workers to ensure that sex workers had a direct voice in the review.

The CMC also reviewed 21 written submissions from the public, examined the legislation in other states and countries, collated available local and international empirical evidence about the sex industry, and accompanied police to observe strategies to enforce the law related to street-based sex work in New Farm and Fortitude Valley.

## **Results**

### ***Legal prostitution***

There are now 14 legal brothels operated by 24 licensees in Queensland: three on the Gold Coast, two on the Sunshine Coast, two in Townsville, one in Mackay and six in Brisbane. A number of applications are also pending approval and/or awaiting implementation. Overall, about half of the individuals who applied for a licence were successful, but many applications were withdrawn before the final approval stage.

The number of brothels currently operating, however, is considerably fewer than forecast by the PLA, which means that only about 10 per cent of all prostitution services available in Queensland are currently operating within the legal brothel system. There seem to be a number of reasons why this imbalance has occurred, including limitations of the Act itself. For example, some concerns about employment conditions within brothels and the difficulties of running a business in an excessively regulated environment were raised with the CMC, and such factors may have discouraged illegal operators and workers from 'crossing the line' to work legally. Key recommendations of the report attempt to rectify this imbalance. The limited resources of the PLA may also have affected its capacity to administer the Act at an optimal level.

Nevertheless, the review has indicated that, overall, legal brothels in Queensland provide the safest and healthiest environments for sex workers and their clients, compared with those who give or receive prostitution services on the street or in private. Throughout the four years since the inception of the Act, compliance with the health and safety requirements of the Act within legal brothels has been generally high; breaches have been few and generally of a minor nature. Due to the extensive probity requirements, all licensees have no past or current links with organised crime, and police corruption has been excluded from the legal industry by both the requirements of the Act and the more ethical environment in which the QPS now operates. There is also no evidence of any adverse effects on community amenity by licensed brothels.

Sole operators also continue to operate legally in Queensland, but the exact number of such workers is unknown because there is no requirement that they be registered or monitored by the PLA. The only requirements of the Prostitution Act which impact on sole operators are those that require all sex workers to use prophylactics while providing sexual services, and for all advertisements to be in accord with the guidelines of the PLA. However, some significant concerns were raised with the CMC about sole operators, especially about their safety. Sole operators, because of the very nature of the insular environment in which they operate, are at greater risk of violence while providing sexual services than their counterparts who work in the licensed brothels. There are also some concerns about their sexual health, although these were thought to be minimal.

### ***Illegal prostitution***

Anecdotal evidence suggests that, despite significant police activity since the inception of the Act, illegal brothels and escort agencies continue unabated in Queensland, some fraudulently advertising as sole operators to avoid detection.

It is estimated, for example, that outcall or escort services constitute some 75 per cent of all prostitution in Queensland. A proportion of outcalls are provided by legal sole operators but many escort services are operating illegally. There is also anecdotal evidence to suggest that ‘busted’ illegal operators simply re-open at new locations and/or provide organisational support from interstate or overseas because policing these activities is difficult and the penalties imposed provide little incentive to remain closed. It is these illegal agencies that currently provide the majority of escort or outcall sexual services in Queensland. Anecdotally, the workers in these environments remain at increased risk of abuse and poorer sexual health compared with their legal counterparts.

Street-based prostitution exists in several locations in Brisbane, predominantly Fortitude Valley, New Farm, Spring Hill and Kangaroo Point. These workers are said to constitute only a small proportion of the sex industry — about 2 per cent of all sex workers in Queensland. It is this group, however, that appears to be the most socially disadvantaged, health challenged and at highest risk of abuse and assault. Three street-based sex workers have been murdered since the implementation of the Act, and the recent research reported by Woodward et al. (2004) illustrated high levels of drug addiction, sexual abuse, and poor mental health and social disadvantage among this group. Within the last 12 months, however, targeted and innovative police activity has significantly reduced the number of active street-based workers (alleged to have decreased from 100 active workers to as few as 11 in recent months), without displacement to other locations. Licensees have also reported that some former street prostitutes now work successfully within legal brothels. This is a move in the right direction. However, more targeted social and drug diversion programs are required to enable street-based sex workers to seek safer and healthier lifestyles and alternative work environments.

## Overview of the major issues raised by the review

### *Issues relevant to the progression of the principles underlying the Prostitution Act*

The CMC is confident that the Prostitution Act has upheld its principles. For example:

- The CMC was told that the impact of licensed brothels on the community had been minimal, and that:
  - all legal brothels had undertaken extensive community consultation with their industrial neighbours
  - only one brothel to date had been subjected to a community protest
  - some local businesses had benefited by the co-location of brothels in their area (e.g. increased work for laundries)
  - brothels provide a healthier and safer environment for brothel clients compared with their illegal counterparts.The impact on the community of work undertaken by sole operators in their own homes was also thought to be minimal, but concerns about the impact on the community of street-based sex workers remained high.
- The CMC was told that there is no evidence of police corruption or organised crime in the legal prostitution industry — for either licensed brothels or sole operators. While illegal prostitution may itself meet the definition of organised crime,\* there was little evidence of further involvement of the

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\* The *Crime and Misconduct Act 2001* defines ‘organised crime’ as criminal activity that involves —  
(a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and  
(b) 2 or more persons; and  
(c) substantial planning and organisation or systematic and continuing activity; and  
(d) a purpose to obtain profit, gain, power or influence.

industry in crime such as the drug market, sex trafficking or child prostitution. However, the use of a corporate structure for licensees and police-related issues relevant to organised crime and corruption, such as rotation within the Tactical Crime Squad and the Prostitution Enforcement Task Force, were raised as issues that require attention. Issues relevant to the illegal industry, such as organised syndicates and strategies to encourage the movement from illegal to legal work, were also discussed.

- Regarding the social factors that contribute to participation in the sex industry, concerns were raised about the alleged failure of the PAC to provide adequate oversight of interventions that encourage workers to leave the industry (such as exit and diversion programs), and the perception that the existence of licensed brothels may have inadvertently encouraged sex workers into the industry, even though there is limited empirical evidence for these views. (For example, see the results of the research conducted by Woodward et al, 2004.) However, licensee activities and the sex worker exit program, funded by Queensland Health, indicate that some efforts have been made to help sex workers wishing to leave the industry.
- Matters raised about the health of sex workers included a range of sexual health, screening and occupational health and safety issues (including the health and safety guidelines developed by the PLA, brothel inspections and the ratio of the number of workers to the number of rooms allowed), sexual health training, and the use of personal protective equipment (PPE) such as condoms and dental dams. Limitations in the Act regarding intellectually impaired persons were identified, and the health of licensees, sole operators and illegal sex workers was also discussed, highlighting some health disadvantages among these groups.
- Information received about the safety of sex workers in both legal and illegal industries illustrated the success, to date, of the safety provisions within licensed brothels (despite a few concerns regarding workers' safety at shift change-over and the impact of new smoking legislation on their safety). But there were serious and ongoing concerns about the safety of both sole operators and illegal operators, such as street-based workers and those working in illegal brothels and for illegal escort agencies.

### ***Controlling illegal prostitution in Queensland***

It was acknowledged that illegal brothels and escort agencies continue unabated and that street-based prostitution continues, but appears to have been significantly reduced by recent policing activities. Three major reasons were provided that explained the continuation of illegal prostitution: the nature of the industry itself, which makes policing difficult; ineffective penalties; and financial incentives (such as the provision of escort services and avoidance of taxation). Proposed strategies for controlling illegal prostitution were predominantly based on police activity and on the legalisation of escort services.

### ***Regulation of legal prostitution in Queensland***

Although the CMC is of the view that Queensland's current regulatory model is one of the best in Australia, there were a number of concerns raised by stakeholders. These included the following:

- Concerns were raised about the failure of government-level oversight bodies (such as the Prostitution Advisory Council and the Ministerial Committee) to monitor the implementation of the Act appropriately. Similarly, a proposed inter-agency committee was not created until mid-2004 (and remains only an informal mechanism at this point); many key players felt that this mechanism would have provided a collaborative and collegial approach to the implementation of the Act, which they felt had not occurred.

- A range of difficulties associated with finding an appropriate site for a brothel and seeking council approval were raised, including processes related to development applications, problems with determining whether potential sites should be code or impact assessed<sup>†</sup> and the current restrictions regarding the population threshold.<sup>‡</sup>
- A number of difficulties were raised about the licence application and approval processes, including the extensive time taken to process applications and the intrusiveness of the probity process, a technical concern about the meaning of an interest in a brothel, problems with the re-application process and concerns about the processes involved in, and the delays attached to, the approval of managers certificates.
- Many issues raised were also relevant to the practical application of the Act, including concerns about licence conditions, working conditions and industrial awards for sex workers in brothels, advertising restrictions, financial concerns of brothels and their inability to provide escort services/outcalls, and concerns about the compliance audits of the PLA.
- Issues relevant to the regulation of sole operators such as registration, health regulation and safety were also raised.

### ***Regulatory effectiveness***

By their very nature, regulatory bodies can be subject to criticism by those whom they regulate, and the PLA is no exception. Government agencies and licensees raised a number of concerns about communication and consultation with the PLA during the implementation period, and a range of perceived administrative deficiencies were discussed. There was also a perceived need for a more informative and educative approach to regulation under the Act. On the other hand, the regulatory approach taken by the PLA has resulted in a crime-free legal industry that provides one of the safest and healthiest environments for legal sex workers in the country.

### **Discussion**

The CMC is concerned that financial and regulatory incentives/disincentives mean that most prostitution in Queensland occurs illegally, despite evidence that legal prostitution provides a far safer and healthier environment for sex workers in this state. Research indicates that most sex workers who work in brothels, in escort agencies and as sole operators make an active and informed choice to do so. The CMC is of the view, therefore, that strategies are needed to increase the likelihood that individuals will seek to work legally rather than illegally, to ensure that their health and safety — and that of the community — are protected.

To assess whether other models for regulating prostitution might provide a better model for Queensland, the CMC reviewed the recent experiences of other Australian states and other countries. Regulation currently occurs around the world on a continuum between two extremes — full criminalisation to full decriminalisation (see Figure 1, next page).

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<sup>†</sup> Code assessment means that the land-use activity must comply with provisions and conditions. Impact assessment involves a broader assessment of the impacts of the proposal on the surrounding area.

<sup>‡</sup> Under the *Prostitution Act 1999* local governments for towns with a population of less than 25 000 may apply to the Minister for Police and Corrective Services for the capacity to automatically refuse all development applications for brothels in their area. At 30 June 2004, 204 towns had obtained exemption approval (PLA website, viewed June 2004).

**Figure 1: Alternative approaches to the regulation of prostitution**



However, there is little evidence to date that any of these models provide a better approach to prostitution than the one currently taken by Queensland (at least as far as the legal industry is concerned). Anecdotally, it appears that some of the more extreme models implemented in other countries that do not account for the concept of supply and demand, and the variance amongst service providers and their clients, have led to unexpected and undesirable consequences. For example, in countries that have decriminalised prostitution, street prostitution appears to have increased. This may be due to illegal workers coming out of the shadows, but parallel increases in drug activity and organised crime have also been noted. On the other hand, while there has been a significant reduction in the amount of visible prostitution in countries that have fully criminalised prostitution (such as Sweden), there appears to have been a return to underground prostitution, jeopardising the health and safety of the workers and providing more opportunities for organised crime.

There is also some evidence that Queensland currently provides a better model for the regulation of prostitution than the other states of Australia. First, the prostitution industry in Queensland is thought to be considerably smaller than in other states, such as NSW and Victoria, where illegal prostitution appears to have escalated despite the availability of legal options. Second, the relatively tough approach to the regulation of prostitution in Queensland has resulted in one of the safest and healthiest environments for legal sex workers in the country.

It would therefore seem that Queensland may be on the right track. Nevertheless, given the number and diversity of concerns raised with the CMC about the implementation of the Act to date, further refinements are clearly required. It is vital, however, that these modifications do not simply result in an expansion of the legal industry without a complementary reduction in the illegal industry. The emphasis must be on changing the balance so that the benefits of legality outweigh the benefits of illegality, for both owners and workers.

## Recommendations

The CMC recommends a multifaceted approach to prostitution as the most effective way forward. This will include a range of strategies to increase the likelihood that those who choose to operate and work in the sex industry will see the legal industry as a viable alternative to the illegal industry, including:

- the provision of prevention, diversion and exit programs for vulnerable individuals who wish to leave the industry<sup>§</sup>
- additional strategies to discourage illegal sex work, such as enhanced policing of street-based prostitution
- a number of amendments to the Prostitution Act.

It is the CMC's view that Queensland's current response to prostitution holds the potential to be more effective than the approaches taken by the other states of Australia. However, there is no doubt that amendments to the legislation are required to make the legal industry a more viable option for clients, sex workers and licensees.

The CMC's recommendations provide for a number of minor technical amendments to the Prostitution Act — to increase the number of sex workers allowed, for occupational health and safety reasons and change of shift concerns; for reviews of the licensing fee structures and the compliance processes of the PLA; for streamlined probity and advertising approval processes; and for an extension to three years of brothel licences and managers' certificates, to allow for more appropriate business practices.

There are also recommendations for educative and consultative processes for the PLA and for a whole-of-government approach to prostitution in Queensland.

It was reported to the CMC that the majority of sexual services in Queensland — approximately 75 per cent — are provided as escort or outcall services, and that most of these services are currently provided by operators and workers illegally. As legal brothels cannot currently provide these services, the financial incentives for both operators and workers to continue operating illegally, simply because of the demand for outcalls, is considerable. It was reported by many key informants to the review that an amendment to the Act that provides the potential for licensed brothels to offer these services would be an important strategy, not only to enhance the viability of the legal industry, but also to reduce the amount of illegal prostitution in this state. Unfortunately, none of the submissions to the CMC provided a clear model for how escorts could be effectively regulated. It is the CMC's view that, without the capacity to limit and monitor the number of sex workers providing legal escort services, there is a risk that the legal industry would expand without any corresponding reduction in the illegal industry, potentially leading to vigorous recruiting from interstate, illegal immigrants, and under-age girls. This is a problem that does not currently exist in Queensland, unlike New South Wales and Victoria, where escort services are legal. However, the CMC recognises the importance of this issue to the current industry, and recommends that the CMC's review be extended to examine in greater depth whether Queensland should legalise escorts. The CMC will call for public submissions on this topic and report publicly on its findings in 2005.

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<sup>§</sup> Since 2000 Queensland Health has funded an exit program for sex workers (see Chapter 3 for a detailed discussion).

Regarding street-based prostitution, the CMC does not support the creation of safe houses in Queensland. The creation of safety zones would require the decriminalisation of public soliciting within such zones, and there has been little support for such a move in any of the three community surveys during the last decade in Queensland (Criminal Justice Commission 1991; Queensland Government Statistician's Office 1997; Woodward et al. 2004). There is also some evidence from NSW and the Netherlands that safety zones have led to increased street solicitation in surrounding areas, and that drug use within safety houses may be a problem. Additionally, the provision of safety zones and safety houses does not remove street solicitation; it simply provides an environment in which the services take place. It would be difficult to fund and monitor such a facility in areas close to where solicitation now takes place (e.g. New Farm) to ensure both compliance with the high standards required by the Prostitution Act and support from the community for such a facility. Most importantly, it appears that the amount of street-based prostitution in Queensland is relatively small, and that recent efforts by the police appear to be having some success in discouraging workers from the street environment and encouraging them into the legal industry. It is the CMC's view that this approach should be continued.

Given the volatility of the sex industry worldwide, the CMC is also of the view that the effectiveness of the recommended changes should be assessed again in three years' time to ensure that government is in a position to respond to any emerging difficulties.

## **Summary of recommendations**

### ***Recommendation 1***

**That the Queensland Police Service maintain the rotation of Prostitution Enforcement Taskforce and Tactical Crime Squad officers, but review its rotation policy with a view to some extension of terms served in those units.**

### ***Recommendation 2***

**That the Prostitution Act be amended to allow brothel licensees to operate under a corporate structure. The Act should retain the provision that any business/company that operates a brothel must be sufficiently transparent to enable all associates to be readily identified.**

### ***Recommendation 3***

**That Queensland Health take a lead role in providing effective interventions for sex workers who wish to leave the sex industry, including drug diversion. Interventions such as the Sex Worker Exit and Retraining Program should be appropriately promoted to sex workers, and procedures for receiving referrals from brothel owners should be established.**

### ***Recommendation 4***

**That the policy and research functions of the PLA be adequately resourced to enhance its capacity to review and collate information about a range of issues relevant to prostitution (such as sexual health, workplace health and safety, and workplace relations), and to the social factors that contribute to involvement in the sex industry.**

### ***Recommendation 5***

**That the testing regime for sex workers in licensed brothels be changed to extend the interval between checks to three months.**

***Recommendation 6***

That section 77A of the Prostitution Act be modified to ensure that proscribed behaviour includes ‘an offer’ to have sex without a prophylactic as well as the offence of actual sexual intercourse or oral sex without a prophylactic.

***Recommendation 7***

That the maximum number of sex workers allowed on brothel premises at any one time for a five-room brothel be increased from five to eight. Proportionately fewer should be allowed on the premises of smaller brothels.

***Recommendation 8***

That the Prostitution Act be amended to provide for a PETF officer to seek the advice of a health professional (such as a doctor, a nurse, a social worker or a counsellor) about the decision-making capacity of sex workers who they consider may have impaired intellectual capacity.

***Recommendation 9***

That licensed brothels be required to display a licence number rather than the personal details of the licensees as currently required under section 87 of the Act.

***Recommendation 10***

That proposals for the implementation of safe houses or safety zones for the use of street-based sex workers in Queensland not be adopted.

***Recommendation 11***

That minor changes be made to the Prostitution Regulation 2000 to ensure that there is consistency with references to the functions of the Prostitution Licensing Authority in the *Prostitution Act 1999*.

***Recommendation 12***

That section 64(1)(a) and (b) of the Prostitution Act be reviewed to consider whether the location restrictions for legal brothels should be relaxed.

***Recommendation 13***

That section 64K of the Prostitution Act, the jurisdiction of the Independent Assessor, be extended to include appeals against:

- 1 assessment manager’s decisions about the applicability of code or impact assessment under the Integrated Planning Act
- 2 assessment manager’s decisions about requests to make minor changes to approved brothel premises or requests to change or cancel conditions of a development approval.

***Recommendation 14***

That the Queensland Government undertake a review of the fee structure for legal brothels, with a view to assessing its relativity with adult entertainment licence fees and assessing the impact of licence fees on the development of legal brothels in Queensland.

*Recommendation 15*

That efforts be made to streamline probity requirements without compromising their integrity and that, to this end, the associates of brothel applicants be dealt with directly, providing the applicant is made aware of which associates are to be contacted and the privacy of all parties is respected.

*Recommendation 16*

That section 7(1), paragraphs (i), (j) and (k), of the Prostitution Act be amended to ensure that sex workers are not regarded as 'having an interest in' a brothel simply because they receive remuneration for the sexual services they provide.

*Recommendation 17*

That sections 19(4) and 23 of the Prostitution Act be amended to enable brothel licences to be granted for a three-year period.

*Recommendation 18*

That confirmation of all relevant details about licensees and payment of a licence fee be required on an annual basis and, at the expiration of the three-year licence period, the licensee must reapply for the licence renewal as if it were an application for a licence.

*Recommendation 19*

That section 23(4) of the Act be amended so that the time required to process licence applications is extended from one to three months.

*Recommendation 20*

That approval of manager certificates be subject to a two-tiered system to allow for the approval of an interim certificate prior to the more extensive background check that is required for full certification.

*Recommendation 21*

That section 44 of the Prostitution Act be amended so that manager certificates are subject to a three-year reapplication process.

*Recommendation 22*

That the PLA monitor the time taken to process advertising requests and make every effort to expedite the process.

*Recommendation 23*

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

*Recommendation 24*

That the PLA develop its complaints handling process for dealing with concerns about its own client service in accordance with established guidelines such as those published by the Queensland Ombudsman (2003).

#### ***Recommendation 25***

**That a whole-of-government approach for addressing prostitution-related operational, inter-agency and emerging issues be formalised, and that the inter-agency committee receive continuing support from all of the government agencies involved, to ensure that there is effective cooperation and open communication between them. The operations of the inter-agency committee should also be monitored with a view to maintaining its effectiveness.**

#### ***Recommendation 26***

**That the PLA implement a mechanism whereby licensees and their representatives can participate in regular and constructive consultation with the PLA.**

#### ***Recommendation 27***

**That the Prostitution Act be amended to make it clear that the PLA is entitled to provide information to sex workers, other stakeholders and the community about issues relating to prostitution. This could include the establishment of communication strategies such as an information website or an information line, as well as other opportunities for direct consultation.**

#### ***Recommendation 28***

**That the government undertake a review of the resources and administrative location of the PLA to ensure that it has the capacity to meet its legislative requirements.**

#### ***Recommendation 29***

**That a further review be undertaken in three years' time to assess the effectiveness of the Act.**

### **Outline of the report**

- **Chapter 1** provides a brief overview of prostitution in Queensland, summarises the key components of the *Prostitution Act 1999* and outlines the CMC's evaluation framework.
- **Chapter 2** explores the most recent research about the regulation of prostitution and how well it has been controlled overseas and in other Australian states. The current legislation in other states is documented, along with perceptions of its effectiveness to date.
- **Chapter 3** provides a review of how well the Act has achieved its guiding principles, namely:
  - to ensure quality of life for local communities
  - to safeguard against corruption and organised crime
  - to address social factors which contribute to involvement in the sex industry
  - to ensure a healthy society
  - to promote safety.
- **Chapter 4** examines how well the Act has controlled illegal prostitution in Queensland.
- **Chapter 5** examines how well the Act has regulated legal prostitution in Queensland.
- **Chapter 6** discusses regulatory effectiveness.
- **Chapter 7** provides an overview of the major issues and suggests a way forward.



## BACKGROUND ISSUES AND EVALUATION PLAN

Prostitution, and how to regulate it, continues to generate widespread interest and debate. Indeed, there are few social issues that give rise to so many, and so disparate, views — views spanning concern about public safety, public health, morality, community amenity, corruption and organised crime. In short, prostitution is a unique social phenomenon and the prevailing approaches to its regulation and control have been the source of much discussion.

In Queensland the regulation of prostitution has been an issue of considerable public interest for some time. In recent history, renewed interest in the regulation of prostitution dates back to the Fitzgerald Inquiry (1987–89) and, since then, to research undertaken by the Criminal Justice Commission (CJC) in 1991 and to further research commissioned by the Queensland Police Minister in 1997. Collectively, these events and other social and political developments have led to major reforms to the regulation of prostitution in Queensland, as set out in the *Prostitution Act 1999* ('the Act'), which was passed by the Queensland Parliament in December 1999.

Section 141 of the Prostitution Act requires the Crime and Misconduct Commission (CMC) to review and report on the effectiveness of the Act as soon as practicable after three years from its commencement. This report sets out the findings of that review.

### PROSTITUTION IN QUEENSLAND

In 1989 the Fitzgerald Inquiry found that the role of the Licensing Branch in the Queensland Police Force, in particular its responsibility for enforcing the laws on prostitution, was a significant source of corruption. Recognising the complexity of the task of developing an appropriate legal framework for the control of prostitution, the Fitzgerald Report recommended that the CJC undertake a comprehensive examination of various options and models (see Fitzgerald Report 1989, p. 190). The CJC conducted an inquiry in 1991, seeking to resolve whether legal intervention was required and, if so, in what form.

In conducting its inquiry, the CJC was guided by the following principles:

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

Survey research conducted as part of the CJC inquiry revealed a strong view in the community that prostitution existed across Queensland communities, that it should not be illegal to sell sex from a brothel and that street-based sex work should be against the law.

The Commission also critically examined four models for the regulation of prostitution, including 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 concluded that there was a need for some legal regulation and suggested the form that regulation might take. In its report *Regulating morality? An inquiry into prostitution in Queensland* (CJC 1991), the CJC recommended 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
- there should be two categories of sex workers:
  - the individual sex worker operating from his or her home, subject to local planning provisions
  - organisations involving no more than 10 people, regardless of whether it operates as a brothel, escort agency, cooperative or any other form of organisation which offers sexual services, subject to approval by the local authority and a registration board
- a registration board should be established to regulate and monitor the operation of organisations comprising 2–10 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 comprise a representative from Queensland Health, the Queensland Police Service, the local authority (and 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
- an Inspectorate should be created to ensure compliance of all sectors of the industry with the requirements of the registration board
- 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.<sup>1</sup>

In 1992 the Queensland Government passed the *Prostitution Law Amendment Act 1992*. This Act created a new legal framework for prostitution by inserting a new chapter (22A) in the Criminal Code that dealt solely with prostitution, but the CJC's recommendations for the legalisation of prostitution in certain forms were not progressed. Under the new amendment, single sex workers also remained unregulated.

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1 A full list of the CJC's recommendations appears in Appendix 1.

A survey of community representatives commissioned by the Police Minister in 1997 (Queensland Government Statistician's Office) yielded results that were largely consistent with findings from the earlier survey conducted by the CJC in 1991. The survey found that a majority of respondents agreed that there is nothing wrong with a person paying for sex with a prostitute, but an overwhelming majority (93%) believed that a prostitute should not be allowed to solicit in a public place.

The findings also revealed support for the view that a prostitute should be permitted to provide services from their home, that licensed brothels should be allowed, providing that there were restrictions on where the brothels could be located, that there should be a register of sex workers, and that there should be restrictions on the type of people who can own or operate brothels.

Taking into account the relatively high levels of community support for a restricted legal sex industry, and concern about an increase in illegal prostitution, the government passed the *Prostitution Act 1999*.

### **The Prostitution Act 1999**

The *Prostitution Act 1999* was passed by the Queensland Parliament on 14 December 1999, with the bulk of the provisions commencing on 1 July 2000. The Act states that its purpose is to regulate prostitution in Queensland (s. 3). The Explanatory Notes of the Prostitution Bill 1999 (p. 1) state that the underlying principles of the Bill are to:

- ensure quality of life for local communities
- safeguard against corruption and organised crime
- address social factors which contribute to involvement in the sex industry
- ensure a healthy society
- promote safety.

The Explanatory Notes (pp. 1–3) provide 'Reasons for the Bill':

the operation of brothels should not be an intrusion into the day-to-day lives of members of the community who do not want to be exposed to the nuisance of brothel activity or advertising. For this reason, the prostitution legislation reform proposal seeks to legalise brothels within strict planning and licensing parameters. The proposed legal brothels will be limited in size and will not be permitted in residential areas, or close to other amenities such as places of worship, hospitals, schools, kindergartens and other places frequented by children. The quality of life for affected local residents, and the amenity of local communities, will be improved by removing this activity from the suburban streets. Street prostitution will be discouraged by expanding the range of legal alternatives for sex workers and their clients, while increasing penalties and enforcement in respect of street soliciting which remains illegal.

Strong government leadership is characterised by constant vigilance against corruption and organised crime. A fundamental principle of the proposed legislative regime is the government's strong commitment to ensuring corruption will not be tolerated through establishment of a legal industry and introduction of appropriate checks and balances.

The government is well aware of the difficulties associated with the control of prostitution. The proposed legislative framework has been developed with a view to controlling and minimising the harm, or potential harm, associated with prostitution, rather than assuming that it can be eliminated.

Health risks associated with the sex industry are extremely high, particularly in relation to sexually transmitted infections including HIV. Through adoption of safe sex practices, risks can be minimised and a properly regulated industry provides the best vehicle for the implementation and monitoring of

appropriate practices and standards. The proposed framework will ensure that the health status of sex workers is regularly monitored and that health risks to workers, their clients and the community are minimised.

While the personal safety risks associated with prostitution are difficult to quantify, it is clearly an industry in which people are at risk of physical violence. Sex workers have the same fundamental rights to personal safety as the rest of the community, and any legislative regime should contain safeguards to ensure that their safety is not compromised.

A properly regulated industry, with sex workers operating in licensed brothels, should minimise the risk of personal harm to sex workers and offer them a level of protection against the range of safety risks associated with the industry, including physical assault.

Street workers are at greatest risk. Under this legislation they will be encouraged to move into the legal industry where their safety will be better protected. Local communities will also feel safer without the presence of street workers, their associates and clients in suburban areas.

The Act provided for the creation of a Prostitution Licensing Authority (PLA), a Prostitution Advisory Council (PAC) and a Ministerial Committee to oversee the regulation of a number of strictly limited legal brothels and to enhance the retraining options for sex workers so that they can change to other careers. The Act also provided for a range of conditions for brothels — including their location, the health and safety of the workers and clients and the closure of prohibited brothels — and contained a number of offence provisions.<sup>2</sup> All other prostitution offences are regulated by the Criminal Code (see Chapter 4 of this report).

## **Prostitution Licensing Authority**

The Prostitution Licensing Authority (PLA) was established by the Act and officially began operation on 1 July 2000. It is governed by an eight-member board appointed by Governor-in-Council under the Act and supported by a staff of eight officers headed by the Registrar. The PLA reports to the Minister for Police and Corrective Services and the Parliament.

At the time of the commencement of the Act, the PLA had a number of functions, including:

- to decide on licence applications
- to approve manager applications
- to monitor the provision of prostitution through licensed brothels
- to conduct disciplinary inquiries in relation to licensees and approved managers
- to discipline licensees and approved managers
- to receive complaints about prostitution

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2 The Prostitution Act provides for the following General Offences:

- publicly soliciting for prostitution, by both client and prostitute (s. 73)
- a range of other offences, such as permitting a prostitute infected with disease to work in a licensed premises; use of prophylactics; advertising offences (ss. 90, 77A, 93)
- nuisances connected with prostitution (s. 76)
- causing duress to persons to have them continue to provide prostitution services (s. 77)
- a brothel owner who has more than 10 staff on the premises at any one time, or more prostitutes than the total number of rooms at any one time (s. 78)
- possessing liquor in a licensed brothel (s. 83)
- publishing a statement to induce a person to seek employment as a prostitute (s. 94).

- to liaise with the Police Service and other agencies prescribed under a regulation to assist them in carrying out their functions in relation to prostitution
- to collect fees under this Act
- to inform the appropriate government departments and agencies about possible offences that are detected while carrying out its functions.

The PLA board includes a range of experts drawn from relevant disciplines. At the time of the commencement of the Act, the board's composition included:

- the Chairperson — an independent, respected member of the community nominated by the Premier
- the Commissioner of Police, or a police officer of the rank of superintendent or above, nominated by the Commissioner
- the Crime Commissioner, an Assistant Crime Commissioner or general counsel nominated by the Crime Commissioner<sup>3</sup>
- a doctor who has at least five years' experience in community health
- a lawyer who has been admitted for at least five years and has knowledge of or experience in administrative law, company law or criminal law
- a senior representative of the Local Government Association of Queensland.

The PLA board meets at least once a month, and at other times as necessary.

### **Prostitution Advisory Council**

The Prostitution Advisory Council (PAC) was established in 1999 to perform a range of functions outlined by the legislation, conduct relevant research and address social problems that induce individuals to take up prostitution (see Chapter 3 of this report for more information about that principle). The Act required members of the PAC to include a representative of prostitutes in Queensland, a person with experience as a sexual health care doctor or social worker working with prostitutes, a person who has knowledge of issues relating to marginalised or disadvantaged young people and a person representing religious or community interests.

The functions of the council, which were outlined in the Act, involved the following: disseminating information about the dangers inherent in prostitution and how to improve personal security; coordinating the development of codes of practice for licensed brothels; promoting and coordinating programs that promote sexual health and help prostitutes leave prostitution; and advising the Ministerial Committee on issues related to the regulation of prostitution.<sup>4</sup>

### **Amendments to the Prostitution Act**

Since the commencement of the Act in July 2000, there have been seven pieces of amending legislation passed by the government. The first three amendments related to changes in the *Police Powers and Responsibilities Act 2000* (Qld) and the

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3 On 1 January 2002 the Crime and Misconduct Commission was formed, based on the integration of the Criminal Justice Commission and the Queensland Crime Commission. The Act was amended to provide that the Chairperson of the CMC or the Assistant Commissioner, Crime, was a member of the board and this position is currently occupied by the Assistant Commissioner, Crime. Importantly, the Assistant Commissioner position has no functional relationship to the conduct of the present review.

4 The Ministerial Committee comprises ministers who administer the following Acts: the Prostitution Act, the *Family Services Act 1987*, the *Health Act 1932* and the *Liquor Act 1992*.

*Statute Law (Miscellaneous Provisions) Act 2000* to correct simple problems such as typographical errors. The *Crime and Misconduct Act 2001* then incorporated amendments to change all references to the Criminal Justice Commission (CJC) in the *Prostitution Act 1999* to the Crime and Misconduct Commission (CMC). There were no notable changes to the substantive provisions of the Prostitution Act in any of these changes.

### ***Prostitution Amendment Act 2001***

The *Prostitution Amendment Act 2001*, passed by Parliament on 15 November 2001 and commencing on 7 December 2001, contained a number of substantive provisions. According to the Explanatory Notes for the Bill (Queensland Government 1999, p. 1), the objectives were to improve the processes for determining applications for both brothel licences and development approvals for brothels, and to amend the Act to clarify existing provisions and cover operational matters. The Explanatory Notes for the Bill also gave details about how the Act would effect these improvements:

- 1 The Act would improve the local government processes for determining development-approval applications for brothels by:
  - defining the term ‘industrial area’, which is the basis upon which a local government determines whether a development application for a brothel is code-assessable or impact-assessable<sup>5</sup>
  - specifying how the exclusionary distances from residential areas and other places are to be measured
  - creating a streamlined review process for decisions about code-assessable applications (via the Independent Assessor).
- 2 The Act would improve the processes for determining applications for brothel licences by:
  - providing that the PLA is not obliged to consider an application until development approval is granted
  - changing the mandatory prohibition on granting licences to applicants who have a conviction for running a brothel to a matter that the PLA must consider when assessing the suitability of applicants
  - updating the list of disqualifying offences and extending it by providing that attempts to commit any of the listed offences are also disqualifying offences.

The role of the Office of Independent Assessor that was established by the *Prostitution Amendment Act 2001* provides an alternative legislative approach for dealing with planning appeals. The majority of appeals against decisions on development applications are heard and determined by the Planning and Environment Court, a body composed of judges of the District Courts. As a result of the amendments, the new provisions of the *Prostitution Act 1999* (s. 64K) create a right of appeal to the Independent Assessor against decisions of an assessment manager (in most cases a local government) on development applications for a licensed brothel.

In the case of a code-assessable development application for a brothel, an applicant who is not satisfied with the outcome of the assessment by the local authority can appeal to the Independent Assessor. The Independent Assessor’s decision cannot be appealed against under this Act or the Integrated Planning Act. However, the Independent Assessor has discretion to vary the process, as required, for the needs of the particular appeal.

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5 Code assessment is when the land-use activity must comply with provisions and conditions. Impact assessment involves a broader assessment of the impacts of the proposal on the surrounding area.

### ***Criminal Proceeds Confiscation Act 2002***

Another minor change to the Prostitution Act occurred when the *Criminal Proceeds Confiscation Act 2002* was passed on 29 November 2003. This Act, which commenced operation on 1 January 2003, amended Schedule 4 of the Prostitution Act by stating that ‘an offence under the Criminal Proceeds Confiscation Act is a “disqualifying offence” for the purposes of the Prostitution Act’.

### ***Police Powers and Responsibilities and Other Legislation Amendment Act 2003***

The only other substantive amendments to the Prostitution Act were contained in the *Police Powers and Responsibilities and Other Legislation Amendment Act 2003*, which was passed on 3 December 2003.

Two changes were made:

- The first amended section 91 of the Act, which had made it an offence to provide sexual intercourse or oral sex without a prophylactic at a licensed brothel (this offence had existed since the Act’s commencement in 2000). Under these changes, it became an offence for a prostitute to provide sexual intercourse or oral sex without a prophylactic, regardless of whether they were working in a licensed brothel or not.
- The second amendment removed all references to the PAC from the Act and transferred the PAC’s functions to the PLA. With this change, the newly expanded functions of the PLA were to:
  - liaise with the Queensland Police Service and other agencies prescribed under a regulation with a view to helping them carry out their functions in relation to prostitution
  - advise the minister about ways of advancing and coordinating programs that promote sexual health care, helping prostitutes to leave prostitution, diverting minors and other vulnerable persons from prostitution (especially opportunistic prostitution), raising awareness among prostitutes, judicial officers, police, community workers and the community about issues relating to prostitution
  - advise the minister about the development of codes of practice for licensed brothels (see s. 101 of the Prostitution Act).

To fulfil these new functions, the PLA’s membership was increased to include two people who are qualified to represent community interests (see s. 102 of the *Prostitution Act 1999*). The two new representatives were appointed by the new Minister for Police and Corrective Services in June 2004.

## **Licensing requirements and conditions**

A licence from the PLA is required by anyone wishing to operate a brothel in Queensland. Licences are granted for one year only. A licensee who wishes to continue operation must seek approval by undergoing the full application process again. The manager of a licensed brothel must also apply to the PLA to become an ‘approved manager’ and, again, certificates are valid for only one year.

The PLA refers each application to the Commissioner of Police to make inquiries about the applicant’s criminal history and any other matters considered appropriate. The PLA is not obliged to consider an application until development approval is secured. In assessing an application, the PLA must consider whether any other licences or adult entertainment permits have been granted in the locality of the proposed brothel, and the extent to which the character of the locality may be affected.

The PLA must refuse a licence application:

- if satisfied that the applicant is not a suitable person to operate a licensed brothel, has an interest in another licensed brothel, or holds a licence or a permit under the *Liquor Act 1992*, or
- if satisfied that, if the application were granted, the combined total of licensed brothels and premises permitted to provide adult entertainment would substantially affect the character of the locality (that is, it would become a 'red light district').

At the date of publication of this report, 24 brothel licences had been issued and 14 brothels had opened for business. Some brothels have more than one licensee (see Table 1.1 below). Some licences are not yet operational (it is expected that a fifteenth brothel will open towards the end of this year) and one brothel on the Gold Coast has closed. Some licence applications (14 individual applications for 10 brothels) are still awaiting either probity approval or the identification or approval of a site. Overall, it would seem that about half of the applications for a licence have been granted.

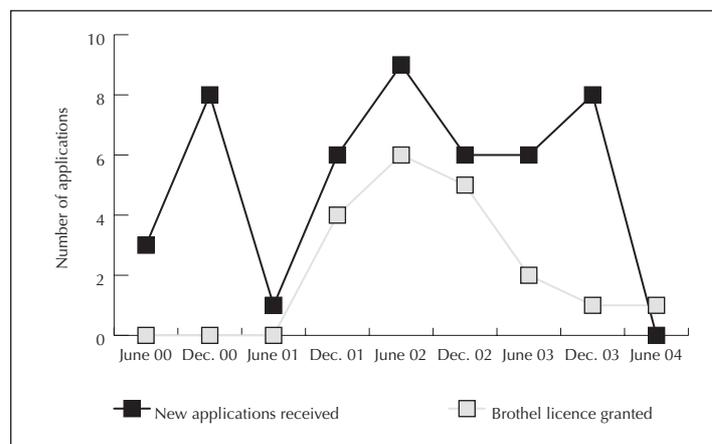
**Table 1.1: Brothel licence applications**

Number of joint applicants	Outcome of licence application				Total
	Granted	Withdrawn	Pending	Granted/opened/closed	
1	15	8	7	1	31
2	2	2	2	0	6
3	1	0	1	0	2
<b>Total</b>	<b>18</b>	<b>10</b>	<b>10</b>	<b>1</b>	<b>39</b>

Source: Data provided by the PLA 9 August 2004

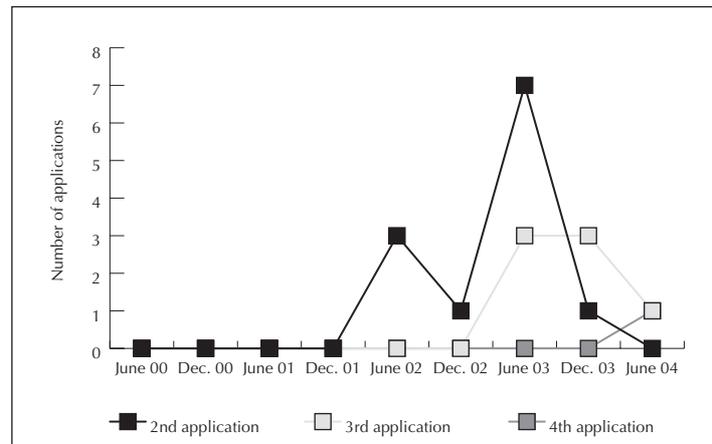
Figure 1.1 shows the number of new individual licence applicants and the number of licences granted for each 6-month period since 2000. At the end of the 12-month licence period, all licensees are required to undertake the full application process again if they wish to continue their business. Figure 1.2 shows the number of reapplications for each 6-month period since 2000.

**Figure 1.1: New individual licensee applications received and granted by the PLA**



Source: Data provided by the PLA 9 August 2004

**Figure 1.2: Second, third and fourth individual licence applications received for renewal by the PLA**

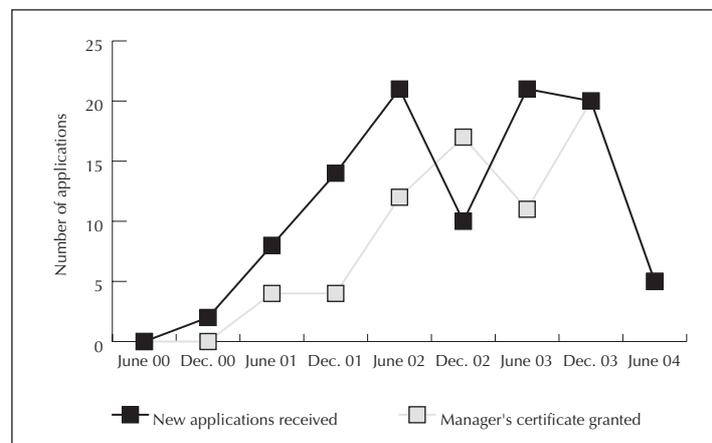


Source: Data provided by the PLA 9 August 2004

At the time of publication of this report, 101 applications for a manager certificate had been received. Of these, 65 per cent had been granted, 20 per cent had been withdrawn and 15 per cent were pending.

Figure 1.3 shows the number of applications for manager certificates and the number granted for each 6-month period since 2000. As with licensees, at the end of the 12-month period all managers are required to undertake the full application process again if they wish to continue as a manager.

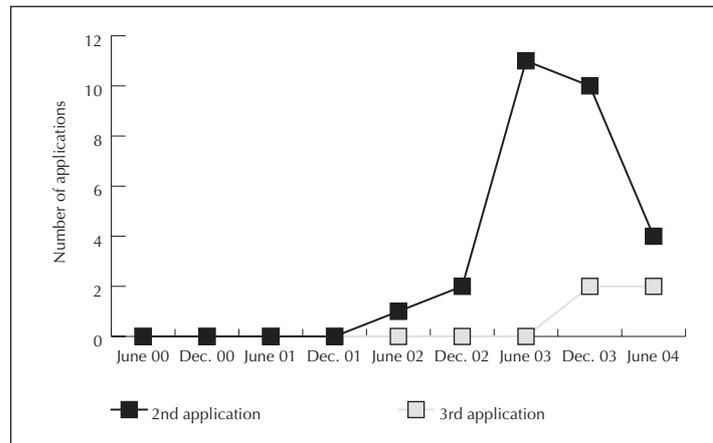
**Figure 1.3: Manager certificate applications received and granted**



Source: Data provided by the PLA 9 August 2004

Figure 1.4 (next page) shows the number of reapplications for each six-month period since 2000 that have been processed by the PLA. It is interesting to note that the number of applicants for both brothel licences and manager certificates dropped significantly during 2004.

**Figure 1.4: Second and third manager certificate applications received and granted for renewal by the PLA**



Source: Data provided by the PLA 9 August 2004

In addition to observing the provisions of the Prostitution Act, licensees must abide by a number of licence conditions that have been developed by the PLA since the Act was first implemented, mostly in response to doubts and complaints raised with the PLA by sex workers, the PLA's compliance officers or other interested parties about the operation of brothels.

The licence conditions cover a range of issues, including PLA access to the brothel, and the brothel's facilities, record-keeping, financial operations, operational plan, workplace arrangements, workplace health and safety, awareness and prevention of the transmission of infections, cleanliness and alteration of business operations.<sup>6</sup>

## SUPPORT FOR THE LEGAL BROTHEL INDUSTRY: ASSOCIATIONS AND INFORMAL REGULATION

A number of agencies provide Queensland's prostitution industry with informal regulation and support. These agencies are described below.

### Licenses' agencies

Some current and prospective licensees have formed their own association, the Queensland Adult Business Association Inc. (QABA), to provide a forum to discuss and act on issues of concern, and to take a proactive approach to self-regulation and industry reform. The organisation says it does this by fostering professionalism, providing education on issues related to prostitution, giving mutual support and encouraging best practice in the industry.

The organisation's Code of Ethics states these goals:

We, the members of the Queensland Adult Business Association Inc., believe in fair and honourable practices, and that the best interests of our industry, service providers, patrons and the community are attained, only by striving at all times to maintain high ethical standards. We aim to be recognised and trusted in exercising a high level of responsible self-regulation of our industry. We are committed to working with all stakeholders in establishing best practice.

<sup>6</sup> A full list of the brothel licence conditions and conditions of an approved manager certificate appears in Appendix 2

QABA has also facilitated the formation of a Service Provider Advocacy Network to ensure that matters of interest to both sex workers and licensees are discussed in an open forum. The Association also plays a proactive role in nationwide sex industry reform and has recently facilitated the Adult Business Summit to explore the legal, social and economic issues that shape the future for the adult industry.

### **Sex workers' agencies**

Sex workers appear well represented by a range of agencies, such as SQWISI (Self-Health for Queensland Workers in the Sex Industry), Scarlet Alliance, SWANs (Sex Worker Action Network) and the Sex Provider Advocacy Network. Recently, the Liquor, Hospitality and Miscellaneous Workers Union (LH&MWU) has also provided considerable support for about 30 sex workers currently working in licensed brothels, including one who has taken industrial action against a licensee.

SQWISI is a community-based organisation funded by Queensland Health to provide health-and-information services to the sex industry and the broader community. SQWISI is the peak representative organisation for the sex industry in Queensland. It consults with all sectors of the sex industry throughout Queensland on an ongoing basis (SQWISI submission, p. 2).

Some sex workers have formed a network to lobby the government for changes to the laws relating to sole operators. This group, SWANs (Sex Worker Action Network), aims to counter discrimination, create a media voice for sex workers, meet regularly and network, and lobby the government to change laws. This group staged a public demonstration in King George Square in February 2004 to draw attention to some of their concerns. They claimed that sole sex workers were 'sitting ducks' under 'discriminatory state laws' and that, because they were unable to work in pairs or hire receptionists, many were being 'forced' to work in legal brothels. In turn, they were critical of licensed brothels because it was their perception that 'brothel managers told workers whom to see and took half their income, without providing worker's compensation, sick pay or annual leave' (*Courier-Mail*, 4 February 2004).

A number of licensed brothel sex workers have joined forces to create the Sex Provider Advocacy Network to discuss and resolve issues relevant to sex workers in Queensland's licensed brothels. This group is completely independent of QABA, but has formed a liaison function with QABA to ensure that matters of common interest are raised and discussed without delay. While in its infancy, the Network has also sought to liaise with government agencies (including the Minister) about issues of relevance to their work.

Scarlet Alliance is the peak organisation representing Australian sex workers at a national level. In general, Scarlet Alliance has more contact with sex workers in Australia than any agency, government or non-government. It plays an active role in Australia's response to HIV/AIDS, produces national resources such as the *Principles for model sex industry legislation* (Scarlet Alliance, undated), informs government and policy makers, at all levels, about the sex industry, and provides training and education to other sex industry organisations.

### **Summary**

Although prostitution is formally regulated in Queensland by the PLA, much informal support is provided by sex workers' agencies (such as SQWISI and Scarlet Alliance) and a legal brothel support agency (QABA).

The next section discusses the scope of the review, the overall evaluation plan and the methods used.

## EVALUATION FRAMEWORK

The aim of the CMC's evaluation of the *Prostitution Act 1999* was to deliver an accurate assessment of the operation of the Act and of the achievement of its core functions and principles.

The evaluation was designed to be comprehensive, integrated and consultative. To assess progress, development and problems over time, the process required several phases of data collection, conducted during each year since the Act's implementation.

The evaluation, which describes the current arrangements in Queensland as a result of the Act, relies upon approaches and methodologies combining diverse elements to provide an accurate and informed review.

### Scope of the review

The CMC's function under section 141 of the Act is to conduct a review of 'the effectiveness' of the Act and to report on that review. A number of issues have been raised during the course of the review that the CMC considers to be outside the scope of its statutory function. The fundamental purpose of the Act is 'to regulate prostitution in Queensland'. In its review, the CMC has focused on whether the provisions of the Act, as presently drafted, are and have been effective in achieving that primary goal of regulating prostitution.

Issues raised about the exercise of powers under the Act may be relevant if they indicate that the statutory provisions are ineffective, but conclusions about the rights or wrongs of particular decisions made by the PLA are not within the scope of this review.

### Evaluation plan

The evaluation plan developed by the CMC examines how well the Act has regulated prostitution in Queensland and whether the Act's guiding principles have been successful. Key considerations were the health and safety of sex workers, the protection of workers from the influence of certain individuals or groups (such as those involved in organised crime) and the impact of prostitution on the community. The evaluation questions designed to elicit information about the achievement of the Act's goals are as follows:

#### **Regulation**

- Have procedures been implemented according to the Act to enable the issuing of brothel licences?
- Have procedures been implemented according to the Act to reduce illegal prostitution (e.g. prohibited brothels)?
- How large a regulated industry has been created by the Act?
- Has there been any reduction in levels of illicit prostitution, particularly in areas where some impact might be expected (such as illegal or prohibited brothels and escort agencies)?
- Has there been a change in the number of sole operators?

#### **Health and safety factors**

- Has the Code of Practice for brothel management been developed and implemented?
- Have health and safety control and inspection regimes been implemented and maintained?

- Have there been any positive or negative health and safety effects on sex workers who participate in illicit prostitution?
- Have there been any health and safety effects on sole operators?

#### ***Social factors***

- Have there been opportunities for legal sex workers, sex workers in illicit prostitution and sole operators to retrain to other careers through the processes established by the Act?

#### ***Community impacts***

- What have been the effects of licensed brothels on local communities and industries?
- Is there any anecdotal evidence of a change (reduction or increase) in the impact of illegal brothels and street sex workers on local communities and industries?

#### ***Organised crime and corruption***

- Is there any evidence of organised crime or corruption within the legal prostitution industry?
- Has there been a change in levels of organised crime or corruption within the illegal prostitution industry?

The key research questions were designed to elicit data for a comprehensive assessment of the effectiveness of the *Prostitution Act 1999*. The evaluation plan originally required three phases of data collection, one each for the first three years of the Act's implementation. When significant changes to the Act were introduced by Parliament in December 2003, it was decided that a fourth round of data collection was necessary, and this was conducted early in 2004. Key sources of information are discussed in the next section of this chapter.

### **Evaluation methods**

Various methods and measures were used during the review, including direct consultations and interviews, surveys, field research (e.g. site visits and police observations), and reviews of administrative data and of relevant research literature.

The key sources of data for the evaluation are described below.

#### ***Interviews/consultations***

The review included four rounds of face-to-face and telephone interviews/consultations with representatives of all of the government agencies involved in the implementation of the Act, as well as with the majority of the licensees in the legal industry, sex workers and their representatives. The first round of interviews took place in June 2001, the second round between June and August in 2002, and the third round in August and September 2003. A CMC researcher travelled to Mackay and Townsville to conduct interviews with regional licensees, managers and police officers. A fourth round of telephone interviews was conducted in May 2004 to assess the response by key informants to changes in the Act that were passed in December 2003.

In compliance with the Prostitution Act, the CMC also consulted with the PLA, the PAC and the Minister for Police and Corrective Services for the evaluation. The CMC met with the PLA during each year of its evaluation, and with the PAC

twice before it was disbanded. The CMC also met with both the Honourable Tony McGrady (former Police and Corrective Services Minister) and the Honourable Judy Spence (Police and Corrective Services Minister at the time of publication).

The evaluation team also met with representatives of the government agencies associated with the implementation of the Act (Queensland Health, the Local Government Association of Queensland and the Queensland Police Service), sex worker representatives (SQWISI, Scarlet Alliance, the Liquor, Hospitality and Miscellaneous Workers Union), licensee representatives (Queensland Adult Business Association) and most licensees, some brothel managers and other groups and agencies (such as brothel owners from interstate, the Department of Tourism, Fair Trading and Wine Industry Development, the Australian Taxation Office and the former Queensland Crime Commission). The meetings occurred several times during the four years of the evaluation.

A full list of the individuals and agencies consulted for the evaluation, including nominated representatives of all relevant agencies and interested parties who contacted the CMC, appears in Appendix 3.

### ***Information provided by public submissions to the review***

In October 2003, the CMC called for submissions from members of the public to provide constructive comment on the operation and effectiveness of the *Prostitution Act 1999* (Qld). Advertisements were placed in Brisbane-based and regional newspapers, letters of invitation were sent to key agencies and a discussion paper was released and placed on the CMC's website. The principles of the Act were outlined as a guide.

Twenty-one written submissions were received. These included submissions from relevant agencies (SQWISI, the PLA and QABA), community-based organisations (the Women's Electoral Lobby, the Family Council of Queensland and the Festival of Light) and a Member of Parliament (Ms Fiona Simpson). There were also submissions from three local councils (Logan City Council, Toowoomba City Council and Cairns City Council) and eleven individuals. The issues raised by the submissions are referred to throughout this report.

### ***Surveys of sex workers***

The CMC drew heavily on data collected previously. For example, surveys of sex workers conducted by the CJC in 1991, a survey of Queensland sex workers published in 1997 (Boyle et al. 1997) and a survey of sex workers conducted by the University of Queensland and the Queensland University of Technology for the PLA in 2003 (Woodward et al. 2004) were assessed and their findings used in this review.

The CMC review team also considered it important to seek information directly from sex workers, given their central role in the sex industry. A survey of sex workers was included in the original evaluation plan by the then CJC. However, given the timeliness of the PLA's sex worker survey (developed in 2003), the CMC's sex worker survey was re-designed to complement the PLA survey to cover the 'gaps' — especially the views of sex workers on the principles of the Prostitution Act.

The CMC sex worker survey was completely anonymous, and a reply-paid envelope was provided with each survey. To ensure that the sex workers were informed about the CMC's research, surveys were supplied to:

- the licensees of all licensed brothels in Queensland
- representatives of agencies that deal with sex workers daily, such as SQWISI (Brisbane, Gold Coast, Townsville and Cairns) and QuIVAA<sup>7</sup> (Brisbane)
- the PLA, who distributed the survey from their booth at Sexpo
- the Liquor, Hospitality and Miscellaneous Workers Union (LH&MWU)
- several sole operators who maintained contact with the CMC during the review.

All surveys were distributed on Friday 27 February 2004 and Monday 1 March 2004, with a covering letter approved by the CMC's Director of Research and Prevention. Sex workers were asked to return the survey directly to the CMC by the end of March 2004. Sixty-five completed surveys were received. This is a low response rate, but to be expected with this type of research.

It is important to mention that research methodologies requiring representative samples to ensure unbiased results are virtually impossible within the sex industry because sex workers are not registered and rarely use their own names while working. There are a number of other important factors that make accessing sex workers very difficult. As a consequence, 'snowball' or 'word-of-mouth' sampling has been the technique most frequently used to reach sex workers for participation in research.

#### ***Collation and examination of relevant administrative data***

A range of administrative data were examined for the review, including information from the PLA (e.g. the number of brothel licences granted and data provided in annual reports) and information on criminal offences (such as the number of prostitution-related offences reported to the Queensland Police Service).

#### ***Review of research literature, survey results and relevant legislation***

CMC researchers accessed a range of background literature on prostitution, including studies of the various pathways to prostitution, results of surveys gauging community attitudes to prostitution and a review of relevant legislation. In addition, the CMC examined various current models for regulating prostitution.

The CMC also drew heavily on data collected in earlier community surveys, including a survey conducted by the CJC in 1991, a community survey conducted by the Government Statistics Office for the Police Minister in 1997, and a survey of clients of sex workers and the community conducted by the University of Queensland and the Queensland University of Technology for the PLA in 2003 (Woodward et al. 2004). The major findings of these surveys are pertinent to the current review and, where relevant, are mentioned in this report. (See Appendix 4 for an overview of the methodologies used for these surveys.)

#### ***Field observations of prostitution law enforcement strategies***

The CMC undertook detailed discussions with the QPS's Tactical Crime Squad (Prostitution Unit) about its research and operations during the last 18 months, both of which have focused on street-based prostitution. In addition, a CMC researcher conducted field observations by accompanying the police squad on a Friday evening operation in Brunswick Street, Fortitude Valley and New Farm.

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7 Queensland Intravenous AIDS Association

## OVERVIEW OF CHAPTER 1

Prostitution is regulated in Queensland by law, and the high level of community support for a legal sex industry that is safe and closely regulated appears to be consistent over time. The CMC review of the *Prostitution Act 1999* included a range of activities over the past four years involving the collection, collation and examination of relevant information. Importantly, the review relies on information drawn from a number of sources, including administrative data, survey data, public submissions, research literature, and interstate and international legislation, and directly from interviews and consultations. Part of the strength of the review lies in the wide scope of its data collection, which ensures that the review is comprehensive, considers all viewpoints and canvasses all issues. The extent to which the review uncovers a consistency of responses gathered from a number of sources representing disparate populations reinforces the case for the suggested changes. In the following chapters, the key issues raised are discussed in detail and various recommendations are made to improve the regulation of prostitution in Queensland.

## A REVIEW OF PROSTITUTION RESEARCH AND LEGISLATION

Prostitution is most commonly defined as the exchange of sexual services for some form of payment, usually money or drugs (Monto 2004). It can take place on the street, in a park, in a car, in a brothel, in a service provider's home, in a massage parlour, in a hotel, or in any location requested by the purchaser of the service or suggested by the service provider.

The actual incidence of prostitution is virtually impossible to estimate, however, because it usually occurs in a clandestine way and few people involved in the industry wish their occupation to be known. The industry is also fairly transient, with many workers and operators frequently moving in and out of it. To date, all attempts to register sex workers have also failed because the majority of workers are philosophically opposed to, and actively avoid, registration, and often prefer to operate illegally rather than register.

This chapter examines research about the prostitution industry, including the most commonly reported reasons for involvement in the industry, the risk factors that increase the likelihood of becoming involved and the barriers to leaving. Research about the health and safety of sex workers is also explored, as well as the impact of prostitution on the clients of sex workers and on the community.

Finally, the chapter includes a discussion of the diverse ways in which prostitution is regulated around the world.

### PATHWAYS TO PROSTITUTION AND BARRIERS TO LEAVING

Research generally indicates that, like any other group of individuals or occupations, people involved in prostitution cannot be easily categorised. Pyett, Haste and Snow (1996), for example, conducted a survey of 321 sex workers from Victoria and found that the women interviewed came from diverse cultural and educational backgrounds and family situations.

Research also suggests that the reasons cited by sex workers for entering the profession are frequently different from those imagined by the public. For example, a survey of sex workers and the general population conducted in 1991 by Perkins (cited by the Australian Institute of Criminology, 2003) found that the number-one motive for working in the industry was economic; the women had entered the sex industry to support families, pursue higher education, pay off debts and buy cars, houses and/or other large expensive items. Perkins reported that:

It was far from unusual to find a prostitute with a specific goal, giving herself a time span in which to earn a high income and acquire the desired object or objective. The reality is then that the vast majority of prostitutes have entered the business for money and remain in it for money. In other words, prostitutes see and treat prostitution as a job option, unlike most non-prostitutes, who see it as an expression of a psychosocial deficiency.

Perkins noted that, although the public imagined that drug taking, pimp manipulation, greed, a tormented childhood and psychological deficiencies (such as low self-esteem) explained why women entered prostitution, when asked why they had entered the industry the prostitutes themselves reported that these 'problems' did not feature.

However, despite diversity amongst sex workers, there is evidence that common factors make individuals especially vulnerable to prostitution. Recent research from the United Kingdom (Home Office 2004) revealed the significance of such factors as violence and other abuse in the home, truancy or exclusion, poor educational achievement, running away, living in care, homelessness, problematic drug use, alcohol abuse and debt. This study also suggested that women (in particular) first become involved in prostitution at a young age (in their teens) and that drug-dependence among street-based prostitutes is common (estimated to be 60–90%).

It has also been suggested that childhood sexual abuse (CSA) can be a risk factor for entering the sex industry before the age of eighteen. Potterat et al. (1998), for example, found that sex workers had suffered penetrative CSA at rates twice that of a comparison group.

The research literature also indicates clear differences in the pathways to prostitution for sex workers who work on, rather than off, the streets (in brothels, homes, hotels, etc.); the street-based workers being the more vulnerable (Home Office 2004). Recent research by Woodward et al. (2004) in Brisbane revealed stark differences between legal and street-based sex workers, especially in their motivations for working in the sex industry and their current health and social circumstances. The authors noted that:

- respondents currently injecting drugs were more likely to work in the illegal sector
- older respondents were more likely to work privately
- street workers were significantly more likely to have children and to have more children than workers in other workplaces
- street workers were significantly more likely to have left school earlier than their colleagues who were working legally (on average, about one-and-a-half years earlier).

Woodward et al. (2004) also found that street workers reported starting sex work on average five years younger than their counterparts in the other sectors of the industry, and that needing money to pay for drugs was the primary reason for starting sex work (76% of street workers stated this as a reason for entering sex work, compared with only 2% of legal brothel workers and 9% of sole operators).

Street sex workers were also significantly more likely to state that sexual, physical or emotional abuse was a reason for leaving home (24%) than workers in legal brothels (8%) or sole operators (5%); and that they had been kicked out of home (18%) or couldn't stand living at home any more (21%) more often than the legal brothel workers (1% and 17% respectively) or sole operators (4% and 16%). Compared with the street workers, legal sex workers were twice as likely to report leaving home for positive reasons, such as marriage, or because they had decided that 'it was time to go'.

Importantly, more than half of the respondents to the survey who were working in legal brothels had started work in that sector, suggesting that the introduction of legal brothels may also have allowed a significant number of women to enter the sex industry. However, it is not possible to determine whether these women would have entered the sex industry if there had not been the legal option of licensed brothels.

## Drug use and prostitution

The links between drug use and prostitution are complex. Although the prevalence of drug use among sex workers is difficult to assess, a re-analysis by the CMC of the Queensland disease surveillance data provided to Woodward et al. (2004) found that, among people attending the Brisbane Sexual Health Clinic, about 20–30 per cent of those who identified themselves as sex workers were injecting drug users. Significantly fewer (8–13%) of those who did not identify as a sex worker identified themselves as injecting drug users (see Table 2.1).

**Table 2.1: Proportion of sex workers and others attending Brisbane Sexual Health Clinic (1994–2002) and identifying as injecting drug user (IDU)**

Year	Total number of sex workers	Number of IDU sex workers	Percentage of all sex workers who are IDU	Total number of others	Number of IDU others	Percentage of all others who are IDU
1994	87	2	2.2	1825	1	0.2
1995	163	33	20.2	1749	133	9.5
1996	238	70	29.4	1639	126	11.9
1997	240	56	23.3	1573	123	11.4
1998	229	47	20.5	1509	120	11.0
1999	244	57	23.3	1537	148	13.3
2000	286	77	26.9	1482	90	11.2
2001	321	85	26.5	1685	82	9.9
2002	403	68	16.9	1782	89	8.8

Source: Woodward et al. (2004)

There has been much debate about whether drug use predates entry into prostitution or follows from it. For example, it has been suggested that, in addition to being a risk factor for entry into the profession, drug use among sex workers may escalate once in the industry to help them cope with their day-to-day lives (Graham & Wish 1994). A study by Cusick, Mart and May (2003) examined the links between drug use and prostitution through structured interviews with 125 sex workers. All participants had experience of both sex work and drug use and, for all varieties of drugs, the sex workers reported higher levels of use than respondents from the British Crime Survey. Among the sex workers in the study, 81 per cent reported problem drug use at some stage in their lives (just under two-thirds had a current problem), and earlier use of hard drugs (16.2 years compared with 17.7 years), which was related to early onset of sex work. Interestingly, over half of participants (56%) reported starting 'hard' drug use before they started sex work, 21 per cent said they started drug use after starting sex work, and 23 per cent said that they started both at the same time.

This research also indicated that problematic drug use was strongly linked with the 'outdoor' (street or cruising ground) and 'independent drifter' (from own phone or crack house) sex-worker environments. Eighty-four per cent of those who were still working in these sectors reported current problem drug use, compared with just 13 per cent of those who worked in 'indoor associated' (sauna, massage parlour, flat or escort agency) or 'independent entrepreneurial' (Internet or own phone) sectors.

Cusick, Mart and May (2003) concluded that the experiences of living in care, running away and homelessness were strongly associated with young people becoming prostitutes. The resulting poverty, separation from parental care and exposure to life on the streets appeared to be the key factors in a young person's decision to turn to prostitution as a means of survival.

## **Pathways to child prostitution**

Child prostitution has been identified as a major problem worldwide, including Australia (UNICEF 2004). For example, in 1997 a national inquiry into the commercial sexual exploitation of children/young people throughout Australia found that, of the 451 agencies surveyed, 258 (57%) were aware of cases of young people engaging in commercial sexual activities, and 3100 young people were confirmed or believed to be participating in these activities (Childwise 1997). The data also revealed that young people's involvement in commercial sexual activities was not limited to the inner cities but occurred in every Australian state and territory, and in rural, regional and urban areas.

Findings from the inquiry indicated that the main form of commercial sexual activity of young people was 'sex for survival' and 'sex for favours', a survival strategy to exchange sex for accommodation, food, alcohol, cigarettes, drugs or clothes, or the money needed to satisfy these daily needs. Other factors contributing to this choice of survival strategy included the need for emotional contact and sexual exploration. A few agencies reported that for some young people it was a choice of employment, although most noted that young people participating in commercial sexual activity rarely identify as sex workers. A disturbing finding was that a few agencies reported children 10–12 years and younger engaging in these activities.

According to the inquiry, the key risk factors that predispose young people to commercial sexual activity are homelessness, insufficient income and unemployment, drug use, dysfunctional family backgrounds, histories of abuse (physical, sexual and domestic violence), low self-esteem and social isolation. The complexities and interconnectedness of these issues also emerged. The report concluded with recommendations for housing, income security, education, training, research, law reform, and more, improved and better-coordinated services for 'at-risk' young people.

A recent evaluation of the Youth At Risk Outreach Service (YAROS) in Brisbane (the former Department of Families' key initiative for preventing the entry of vulnerable young people to the sex industry in Queensland) also found that the key factors for young people entering sex exchange were: having left home at a very young age, prolonged periods of homelessness, limited connections with their family of origin, current lack of stable accommodation, regular use of illicit drugs, early school leaving and non-participation in the labour force (PLA submission 2003).

## **Barriers to leaving prostitution**

In addition to the vulnerabilities that can lead individuals into prostitution, a number of barriers to leaving the sex industry have been identified. For example, research with 1963 female sex workers accessing a mobile outreach van in New York found that 'the loss of social support systems for sex workers and the stigma associated with being a prostitute makes it impossible for these women to return to more legitimate lifestyles' (Weiner 1996, p. 100). Sex workers also often return to the industry, despite relatively successful attempts to leave. Recent research in Queensland (Woodward et al. 2004) that sought information about why respondents had returned to work in the sex industry after time out indicated that money was the primary reason, although significantly fewer street workers reported this as a reason than off-street workers. 'Started using [drugs] and needed the money', on the other hand, was nominated as an important reason by more than half of the street workers (55%). Fewer than 4 per cent of the licensed brothel workers and sole operators gave this as a reason.

Woodward et al. (2004) also asked sex workers whether they would like to leave the industry. Overall, more than half reported that they would not like to leave the industry, with legal brothel workers (63%) and sole operators (61%) being the most likely to report that they didn't want to leave the industry. Conversely, at least half of the street workers (51%) stated that they would like to leave the industry. These data clearly suggest that interventions aimed at helping sex workers leave the industry should target street-based workers in the first instance.

## **THE HEALTH AND SAFETY OF SEX WORKERS**

The health and safety of sex workers are important matters for the sex industry. As discussed earlier, sexual abuse and drug abuse are risk factors predisposing individuals to work in the industry. These factors alone have numerous short- and long-term health implications for those with such a history. For example, much of the research literature indicates that sexual abuse can lead to mental illness (such as post-traumatic stress disorder, depression, anorexia and bulimia), physical illness (including poor general health and gynaecological disorders), social disadvantage and addictive behaviours, such drug or alcohol abuse (Dunne & Legosz 2000).

Other health and safety risks for sex workers are being subjected to physical and sexual abuse while providing services, exposure to sexually transmitted infections (STIs) and the effects of isolation and social stigma that remain a feature of the profession. These are discussed below.

### **Sexual and physical violence**

Much national and international research has shown that female sex workers suffer high levels of violence, endorsing the view that violence is an inherent risk of the job (Woodward 2003). Research reveals that reported rates of physical or sexual violence among sex workers range from 65 to 94 per cent (Farley & Barken 1998; Hotaling & Farley 1995; Miller & Schwartz 1995; Millman 1980; Ward & Day 1999).

One explanation for this may be that sex workers are often thought to be sexually available, and many individuals seeking to escape prosecution for raping a sex worker have used this notion successfully as a defence (Woodward 2003). Further, Romans et al. (2001) assert that statutory bodies reinforce this view by failing to adequately prosecute perpetrators of such crimes. However, much of this research has been based on the experiences of sex workers who work on the streets, and the experiences of those who work legally may be different. For example, Pyett and Warr (1997) conducted an exploratory study of 24 sex workers and found that brothel workers were less likely to be exposed to risks than street workers.

In Brisbane, evidence reported to the Fitzgerald Inquiry revealed that sexual abuse by police officers and coercion by brothel owners to provide sex to police officers were a routine aspect of sex work in Queensland in the late 1980s (Hatty 1989). Further research in Brisbane (Host 1999) found that 38 per cent of sex workers had been victimised during the previous 12 months. More specifically, 18 per cent were physically assaulted, 36 per cent sexually assaulted and 46 per cent were both physically and sexually assaulted.

## Sexual health

Contrary to popular belief, much American and Australian research has revealed a higher standard of sexual health among the sex-worker population than among the general population (Bayswan 1999; Kruhse-Mountburton 1992). For example, 'The Feacham report' (Commonwealth Department of Human Services and Health 1995) found that, unlike other countries, Australia had avoided an HIV epidemic among sex workers. An analysis of nationally available data regarding HIV-related knowledge, attitudes and behaviour among sex workers, as well as epidemiological data, revealed that condom use among brothel-based workers had approached 100 per cent and that condom use with non-client partners was probably as good as, if not better than, that reported by others and their sexual partners.<sup>8</sup> Other research (e.g. Pyett & Warr 1997) has also found that sex workers who acquire an STI do so mostly through private partners. However, the Feacham report did identify two groups of sex workers for whom the adoption of safe sexual practices was lower — international sex workers and street-based workers.

Disease surveillance data for Queensland provided to Woodward et al. (2004) were re-analysed by the CMC. The results indicate that the overall rates of chlamydia in sex workers and others attending the Gold Coast Sexual Health Clinic between 1997 and 2001 are very similar (see Table 2.2). The same analyses were conducted for attendees at the Brisbane Sexual Health Clinic (see Table 2.3), and the proportion of females from the general population with chlamydia was actually found to be twice as high as the proportion of sex workers with chlamydia.

**Table 2.2: Proportion of sex workers and others attending the Gold Coast Sexual Health Clinic 1997–2001 who were diagnosed with chlamydial infection**

Attendees at Gold Coast Sexual Health Clinic	1997	1998	1999	2000	2001
Percentage of females identifying as sex workers with chlamydia	1.7	0.7	4.5	4.1	3.6
Percentage of females not identifying as sex workers with chlamydia	2.7	1.8	3.8	2.4	3.3

Source: Woodward et al. (2004)

**Table 2.3: Proportion of sex workers and others attending the Brisbane Sexual Health Clinic 1997–2001 who were diagnosed with chlamydial infection**

Attendees at Brisbane Sexual Health Clinic	1997	1998	1999	2000	2001
Percentage of females identifying as sex workers with chlamydia	0.0	0.4	0.4	2.8	4.0
Percentage of females not identifying as sex workers with chlamydia	1.5	4.1	3.0	5.2	7.7

Source: Woodward et al. (2004)

<sup>8</sup> Other scientific literature supports these findings. For example, O'Connor et al. (1996) reported zero prevalence rates of chlamydial and gonococcal infections at first presentation of female sex workers to Sydney Sexual Health Centre in 1996 and STI rates among female sex workers comparable to those among the general population.

## Isolation

Sex workers often view their work as a solitary business (Dalla 2000). Some researchers have speculated that this isolation and lack of social support may increase the vulnerability of sex workers and lead to emotional difficulties (Woodward 2003). It has been said that sex workers often lead double lives and suffer considerable psychological stress (Scambler & Scambler 1997). Many sex workers also feel anxious about the possibility that significant people in their lives will find out about the work that they do, and this anxiety may have an ongoing impact on their mental health (Castenada et al. 1996; Pheterson 1999; Woodward 2003).

## CHARACTERISTICS OF CLIENTS OF SEX WORKERS

As with studies of sex workers, research into clients has been limited because of the difficulty of contacting and obtaining their cooperation, most of them being anxious to remain anonymous (Monto 2004). Nevertheless, some researchers have argued that, since it is believed that most men do not seek the services of prostitutes, those who do may show some distinctive characteristics. For example, it has been argued that the rate of prostitution is greater in countries characterised by poverty, gender inequality and cultural norms that limit women's legitimate employment opportunities and foster a sexual double standard that accepts promiscuity among males but not among females. It has been suggested that strong religious prohibitions may reduce prostitution, even in poor patriarchal countries (Monto 2004).

Research into the characteristics of sex workers' clients reveals that they are less likely to be married than non-clients, are more likely to describe their marriage as unhappy or unsatisfying, and are, on average, in their late thirties. Research further reveals that clients' motivations vary from being too awkward or shy to establish conventional sexual relationships, to convenience when away from their usual sexual partner, a desire for more extreme types of sexual contact, avoiding commitment, an urge to control, and non-sexual needs such as companionship or sympathy.

Recent research with 200 sex-worker clients in Brisbane found that they appear to be broadly representative of the general population, at least in terms of their educational backgrounds, occupation, income and country of birth, although they are less likely than others to be married or in long-term relationships (Woodward et al. 2004, p. 79). About half of the clients surveyed indicated that they visit a sex worker once a month or more often.

In addition to examining client characteristics, Woodward et al. (2004) explored client preferences, revealing that the sexual health of the sex worker (90%), privacy (77%), personal safety (77%) and protection from criminal prosecution (79%) were important considerations. Fewer than half (43%) of the clients stated that cost was an important factor.

Consistent with evidence presented about sex workers in this chapter, Woodward et al. (2004) found that clients of legal brothels had significantly better health and less risk of future health problems than those visiting either sole operators or street-based workers. For example, they were much more likely to rate their health as excellent, much less likely to report ever having an STI and consistently less likely to have used illicit drugs and to have injected drugs. The clients of legal brothels were also less likely than the others to engage in risky practices such as

sadomasochism, bondage and discipline, submissive sex and the use of sex toys, which also has implications for the health and safety of the workers. The results also illustrate that many clients 'shop around' for commercial sex, with some moving between all sectors, both legal and illegal (Woodward et al. 2004, p. 80).

## THE IMPACT OF PROSTITUTION ON THE COMMUNITY

Community concern about street-based prostitution is generally much greater than community concern about legal prostitution, and numerous surveys attest to the community's desire to eliminate or reduce street-based prostitution (CJC 1991; Queensland Government Statistician's Office 1997; Woodward et al. 2004). People worry that street-based prostitution has the potential to raise the general level of disorder of the area where it occurs and foster a climate of criminality. Of particular concern are links with drug markets and property crime. Also mentioned as matters of concern are kerb-crawlers harassing young women who are not involved in prostitution, prostitutes propositioning men who are not potential clients, and used condoms, dirty needles and other drug paraphernalia being disposed of in residents' gardens. The cumulative impact of these factors can be that an area where prostitution takes place becomes unpleasant and unsafe, deterring families and businesses from moving in, thus contributing to a spiral of decline (Home Office 2004). Eliciting community input about these issues and including community members in decision-making processes are important ways of ensuring that the community's wishes are taken into consideration, and also that community action does not slide into persecution of sex workers (Home Office 2004).

In Queensland, community input has been sought regularly, with a series of community surveys about prostitution being conducted during the last decade. For example, in 1991 the CJC undertook innovative research with Queensland community representatives. The results of that research indicated that:

- an overwhelming majority of community respondents (98%) believed that prostitution existed in Queensland, and most of those (80%) believed that it existed in their own town and was widespread (36%)
- the majority (63%) believed that it should not be against the law to sell sex from a brothel, although more men (70%) than women (56%) held this belief
- a small majority (53%) believed that it should be against the law to sell sex from home
- a large majority (83%) believed that street-based sex work should be against the law
- small majorities were against owners/landlords of premises letting them for prostitution (53%) and against the publication of advertisements for prostitution (56%).

Again, in 1997, almost all respondents to the Police Minister's community survey (98%) believed that prostitution existed in Queensland and most (75%) believed that it existed in their town, city or community. More than half of the respondents (59%) agreed that there is nothing wrong with a person paying for sex with a prostitute, but almost all (93%) believed that a prostitute should not be allowed to solicit in a public place. On the other hand, a small majority (57%) believed that a prostitute should be permitted to provide services from his/her home and that licensed brothels should be allowed (64%), providing restrictions on the location

of brothels were imposed (92%). Most also believed that there should be a register of sex workers (89%) and that the type of people who can own/operate brothels should be restricted (89%).

A third community survey by Woodward et al. (2004), using virtually the same instrument with more than 380 people, found that:

- the vast majority of respondents disagreed with banning prostitution — only one in eight believed that prostitution should be banned
- four out of five respondents did not believe that selling sex from a brothel should be illegal
- four out of five respondents did not believe that it should be against the law to be a client of a prostitute
- the majority believed that trying to attract clients in a public place should be illegal (83%)
- the majority agreed with the licensing and registration of sex workers and brothels (94%)
- the majority agreed with compulsory health checks for sex workers (96%)
- respondents were divided about whether a person should be allowed to sell sex from a home, with just under half (47%) indicating that this should be legal and exactly the same proportion indicating that it should be illegal.

These three surveys have revealed consistent support for a restricted legal prostitution industry. This support appears to be based on the perception that such an industry has various benefits, including a reduction of rapes in the community, the provision of services to those who need it, a healthy environment for prostitutes, greater control of the industry, enforcement of taxes, and employment and economic advantages for the community.

On the other hand, the surveys have also revealed some community disquiet about allowing brothels to operate, a view that appears to be linked with the location of brothels, the spread of STIs, the health of prostitutes and the possibility of various other undesirable effects, such as increases in crime and drug problems, lack of control by authorities, putting children in moral danger, and threatening family life and religious beliefs. Overall, however, the evidence suggests that community misgivings about prostitution centre on street-based prostitution rather than off-street prostitution. The visibility of street-based prostitution and its effect on the character and ambience of the areas where it occurs appear to be of most concern. Reservations about off-street prostitution are different in nature and mostly relate to location, how well it is controlled and the infiltration of crime.

These findings are highly relevant to any government consideration of the regulation of prostitution.

## **Sex trafficking**

In a protocol supplementing the United Nations Convention Against Transnational Organized Crime (see <<http://www.unfpa.org/gender/trafficking.htm>>), trafficking has been defined as:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability

or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

One of the main concerns within the sex industry is trafficking of sex workers. Because this is an illicit trade, the number of women and children trafficked for commercial sex work is impossible to establish with any certainty. However, estimates of the number of people trafficked around the world annually for sexual exploitation and other forms of exploitation vary from 700 000 to 4 million (United Nations 2003). In Europe, the figure has been put at somewhere between 200 000 and 500 000 women and children, while in the United States this figure has been estimated to be about 50 000 women and children in any one year (Carrington & Hearn 2003). National and international sources also agree that the global trade has increased substantially over the last decade, with estimates that trafficking in the global sex industry now generates a US\$5 billion to US\$7 billion profit annually. Further, according to the United Nations, every country is involved, whether as a country of origin, destination or transit. Countries of destination include Australia, Brazil, Cambodia, France, India, Israel, Japan, the Netherlands, Nigeria, Saudi Arabia, the United Kingdom, the United Arab Emirates and the United States (Carrington & Hearn 2003).

There is also significant evidence that national prostitution and international prostitution are inextricably linked (Home Office 2004, p. 75). Maltzahn (2003) claims, for example, that sex trafficking is not restricted to illegal brothels and escort agencies, and reports that trafficked women have been found in a number of legal brothels in Victoria.

The Public Health Association of Australia (PHA) has also reported that there is evidence of sex trafficking within Australia (see <<http://www.phaa.net.au/policy/Trafficking.htm>>). The organisation states that, in 1998–99, 243 people, overwhelmingly women, were deported from this country after being found in brothels, up from 56 in the previous year. However, the PHA also claimed that there have been no prosecutions under the 1999 Commonwealth legislation on sexual servitude and slavery. The only prosecuted trafficking case (against a Melbourne trafficker) resulted in an extremely light sentence for the trafficker — 18 months, fully suspended, and a A\$33 000 fine, payable over a year.

Clearly, the actual number of women trafficked for prostitution to Australia is difficult to estimate. There are a number of reasons for this (cf. Maltzahn 2004a). For example, trafficking is illegal and hard to detect, victims of trafficking may be unwilling to speak about being trafficked either because they fear retribution from traffickers or because they are traumatised by the experience, and the lack of any coordinated effort on the part of government departments makes providing accurate estimates difficult.

As with prostitution in general, there are a number of key risk factors that make people vulnerable to sex trafficking. In her keynote speech to a symposium on stopping the traffic in women for sexual exploitation in 2002 in Melbourne, Aurora Javate de Dios noted that the convergence of poverty, economic dislocation, illiteracy and lack of education makes women vulnerable and increases their susceptibility to trafficking.

In 2003 the Australian Government announced a four-year, \$20 million initiative to fight human trafficking, particularly to address the problem of women being trafficked for sex work. The government plan combines the elements of control, support for victims of trafficking, public education and legislative measures. It also offers a government commitment to ratify the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Inglis 2003). In general, sex trafficking appears to be one of the unfortunate consequences of an industry driven by excessive demand for services with insufficient safeguards to protect vulnerable people.

## CURRENT LEGAL AND REGULATORY APPROACHES TO PROSTITUTION

Although prostitution occurs in all locations, in all countries and in all states, where it can take place legally depends very much on the philosophical perspective and/or legal or regulatory approach of the particular country or state. Broadly speaking, prostitution has been perceived and regulated in a number of ways:

- **As a crime (criminalisation).** Pinto, Scandia and Wilson (1990, p. 7) note that ‘criminalisation of prostitution is favoured by those who believe prostitution is wrong by its very nature and should be stamped out’. This approach has often been based in religion. Criminalisation or prohibitionist policies tend to operate in two ways. First, while prostitution itself is not made illegal, the activities surrounding it are (e.g. living off the earnings of prostitution, brothel-keeping); second, the act of prostitution itself is made illegal (Neave 1988, p. 205). The criminal law also has a crucial role to play in preventing the abuse of children through prostitution and sex trafficking, and in protecting communities (Home Office 2004, p. 54).
- **As a ‘necessary evil’ (legalisation).** This approach results in a variety of legislative responses whereby some prostitution activities are deemed to be legal and others aren’t. Basically, the state regulates and controls the conditions under which prostitution operates (Jordan 1993). Some types of prostitution are made legal (e.g. legal brothels/escort agencies), some types of prostitution are made illegal (e.g. street-based prostitution), but the types of activities that are legal and illegal differ between states/countries, as does the degree and type of regulation.

Categories of prostitution offences can include:

- soliciting (variously called immoral practices, common prostitution, lewd conduct, loitering for the purpose of prostitution, etc.)
- client ‘kerb-crawling’
- brothel-keeping (variously called keeping a bawdy house, a house of ill fame or a disorderly house, etc., but the legal definition of a ‘brothel’ has been problematic, especially for single workers who provide services in their own homes and for escort agencies that do not provide sexual services on the premises)
- living off the earnings (variously called ‘consorting’, ‘harbouring a prostitute’; these offences are aimed at those who depend ‘wholly or in part’ on the income of a prostitute, such as a pimp or a partner who does not have an independent income)
- procuring (especially by coercion, fraud or drugs, or of minors)
- operating or assisting in a brothel (can assist landlords to evict prostitutes).<sup>9</sup>

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<sup>9</sup> For further information on the history of Australian prostitution legislation up until 1991, see ‘Criminalising prostitutes in current Australian legislation’ (in Perkins 1991).

- **As work (decriminalisation).** The view that prostitution is work means that prostitution is neither criminalised nor legalised (i.e. licensed) and workers are afforded the same rights and protection as other occupations (Pinto, Scandia & Wilson 1990, p. 8). Decriminalisation prioritises women's agency (defined as self-determination, free will, power to act independently of the determining constraints of the social structure) and argues that women enter freely into prostitution because the economic rewards of sex work far outweigh those to be had in other economic activities. From this perspective, prostitution provides women with control over their lives by enabling them to achieve economic independence (Boyle et al. 1997, p. 8; Hobson 1987, p. 211). State policy intervention within this framework is minimal and is thought to be warranted only when it serves to protect a woman's fundamental right to choose (i.e. pimping, organised crime and sex trafficking remain illegal).
- **As abuse or exploitation (especially of women).** It has been argued that women cannot freely choose to enter prostitution because of their subservient societal status, and that prostitution is sexual slavery — a way of institutionalising women's economic and social dependence on men (Hobson 1987, p. 211). It has also been argued that prostitution is sexual abuse. For example, Sweden has made it clear with new legislation, starting on 1 January 1999, that prostitution is regarded as an undesirable phenomenon in a civilised modern society by making it an offence to buy any form of sexual service, whether it is purchased in the street, in a brothel or in a massage parlour. The aim of the legislation is to combat violence against women. This approach has been supplemented by increased primary prevention and early intervention programs for women and increased penalties and education for their clients.

However, none of these approaches adequately addresses the full range of reasons for seeking or providing prostitution services, or eliminates all the conditions that lead vulnerable people to become involved in the industry.

### Where does Australia fit?

Historically, Australian legislation followed the English law whereby prostitution per se was not a criminal offence. Rather, a range of prostitution-related activities (such as brothel-keeping, procuring and/or living on the earnings of prostitution) were criminalised (Neave 1988, p. 202). Today, however, prostitution laws in Australia differ from state to state, with part legalisation/part criminalisation being the predominant model. New South Wales, which has decriminalised prostitution, is the exception. Table 2.4 (pages 34–35) summarises the differing philosophical approaches and the effects noted to date. More specifically, Table 2.5 (pages 36–41) documents the approaches taken by states of Australia other than Queensland. (Both tables are at the end of this chapter.) The approach taken in Queensland is the topic under review in this report, and details about Queensland's prostitution industry are documented in the chapters that follow.

## THE EFFECTIVENESS OF VARIOUS LEGAL AND REGULATORY APPROACHES TO PROSTITUTION

As indicated earlier, it is virtually impossible to determine the actual incidence of prostitution, and this makes it difficult to assess the effectiveness of any of the regulatory approaches. Much of the following information is therefore based on anecdotal information and community-based observations only. Furthermore, some of the models of regulation have only been implemented for a short period, and insufficient time has passed to determine their full impact. Nevertheless, to inform future decisions in Queensland, it is important to examine the various effects of prostitution and its regulation elsewhere — even if these are difficult to prove empirically.

### Criminalisation

Although criminalisation has often been touted as the best way to ‘stamp out’ the sex industry, prohibition has not had the desired effect. In 1985, for example, Canada introduced the Communication Law on prostitution (making it illegal to communicate in a public place for the purpose of buying or selling sexual service) as a way to ‘rid’ the streets of sex workers. Critics have argued, however, that the policy has not only failed to achieve this goal but has actually made an already bad situation worse. The number of street workers in Canada has not decreased; instead, prostitution has been displaced out of ‘residential areas into darkly lit industrial back streets’ (Lowman 2003, p. 18).

This phenomenon of displacement is not unique to Canada. Enforcement crackdowns on street-based prostitution in most countries have generally had a temporary effect, resulting in either geographical or functional displacement. Geographical displacement occurs when those involved in prostitution move to an area not targeted in the local crackdown. Functional displacement occurs when those involved in prostitution look to other ways to fund their drug use, most commonly through shoplifting and other types of theft. Neave (1988, p. 205) notes that changing prostitution laws is like ‘pressing on a waterbed: pressure in one place simply moves the industry into a different area ... laws criminalising prostitution have little lasting effect on the numbers of those who choose to buy or sell sexual services’.

Furthermore, criminal prohibition plays a major part in marginalising prostitutes. Lowman (2000, p. 21) argues that the current Canadian Criminal Code contributes to marginalisation in several ways. First, it makes prostitution part of an illicit market. As such, it is left to the mercy of market forces and creates an environment in which brutal forms of exploitation can take place. Second, it fosters the convergence of prostitution with other illicit markets, particularly the drug trade. Third, it alienates prostitutes from the protection of the police because a prostitute reporting an assault or robbery might entail admitting that she or he was committing an offence (communicating). As such, criminal law sanctions may institutionalise an adversarial relationship between prostitutes and police.

Criminalisation can thus result in the sex industry being ‘pushed underground’, and the effects on prostitutes can be significant. Prostitutes ‘working the streets’ are particularly vulnerable to predatory violence at the best of times, but when criminal prosecution is also a possibility, these risks are increased. Lowman (2000, p. 18) argues that the risk of criminal prosecution ‘makes women who work on the street much more susceptible to violence when a conflict with a client occurs’.

Within a criminalisation model, individuals providing prostitution services are frequently punished by a fine or a gaol sentence. This process has also been criticised as having little deterrent value, holding out no prospect for rehabilitation and simply resulting in a 'revolving door', all of which encourage the prostitute to return to the streets to pay for the fine. Similarly, panoptic strategies, such as the use of closed-circuit television (CCTV), may be useful for improving the safety of street-based workers and in collecting evidence about prostitutes and kerb-crawlers, but anecdotal evidence suggests that techniques such as these have simply resulted in the displacement of prostitution to other areas (Home Office 2004, p. 65).

## Legalisation

The rationale underlying much prostitution legalisation policy is to minimise harm, reduce and control criminal involvement and control expansion (Sullivan & Jeffreys 2002). However, research has indicated that the effect has frequently been the reverse. Since legalisation in Victoria (Australia), the sex industry has expanded, the illegal industry has been 'pushed underground', criminal involvement has increased and the industry is now more dangerous (Sullivan & Jeffreys 2002). Furthermore, the workers themselves have noted a loss of control over and choice regarding their work environment. Licensing controls have meant that single prostitutes cannot legally work from home because they cannot afford the permits, rents or licence for commercial premises (Perkins 1991). In legalised brothels, women argue that they no longer have the power to choose clients, rates of pay or when they work. The entire legalisation system, these researchers have argued, is slanted in favour of big business and entrepreneurs.

Brothel-licensing schemes currently operate in the Netherlands, Greece and several states of Australia. These schemes provide for mandatory health checks, safe sex practices and confirmation of age and nationality status of the service providers, deal with problems of location and ensure that licensees have no criminal history or links to organised crime. Arguments against the concept, however, are that licensed brothels sanction the industry, and that growth in the trade is likely to follow the message of acceptability.

Significantly, the Home Office (2004, p. 85) states:

In theory, it might be concluded by some that this would be a step worth taking if such a scheme could really deliver significant improvements to the levels of criminality associated with unlicensed prostitution, to the lives of those directly involved, and to the lives of the communities currently affected by the 'trade'. However, there is real evidence to the contrary.

In respect of the levels of criminality associated with unlicensed prostitution, there is evidence in Australia that it has not proved possible to restrict ownership of brothels to the extent that had been hoped. They remain in the hands of cartels. In the Netherlands, the recent Van Traa Commission found that, contrary to expectations, organised crime associated with prostitution had increased rather than decreased following the licensing of brothels.

In respect of the lives of those involved in the trade, experience in both Australia and Europe suggests that licensing schemes have failed to deliver the safe working environment that they set out to achieve. While some licensed brothels provide some safety and support, there is evidence that some licensed brothel managers actively encourage sex without condoms, and some threaten dismissal if there is reluctance to comply with a client's wishes.

Even more worrying, a UN Save the Children report (1999) found that Victoria and New South Wales were the two worst states for the abuse of children through prostitution. The trafficking of East Asian women for the purposes of prostitution was also found to be a growing problem.

In respect of communities, the greatest disappointment must be that levels of prostitution have grown, with the illegal sector outstripping the legal sector. In 1995 the Attorney-General of Victoria said that the brothel legislation had not prevented the growth of a substantial illegal sex industry. The number of unlicensed brothels in Melbourne was estimated to have trebled in 12 months ... Worst of all, the hope that the existence of safe legal brothels would overcome the lure of street prostitution hasn't been fulfilled. There are a number of reasons suggested for this. Those with problematic drug or alcohol use have no legal option but to work on the streets. Also it is said that the income on the streets can be more lucrative as that made in the brothels and must be split with the house. Whatever the reasons, by 2001 street prostitution had become so invasive in St Kilda, Melbourne, that a committee of enquiry was convened to consider ways to tackle the problem.

A particular problem for any licensing scheme must always be that, without intensive policing, a two tier system is likely to result as many businesses will be unwilling or unable to comply with the licensing conditions.

Additionally, it has been argued (Childwise 1997; Maltzahn 2004) that both child prostitution and sex trafficking into Victoria have increased significantly, and there is concern that the policies of both legalisation and decriminalisation can result in increased numbers of women being trafficked into areas that appear to be prostitution.

An important international issue relevant to legalised prostitution relates to the safety of sole operators. Off-street prostitution is generally considered to be safer than street-based work, but only when there is more than one person on the premises so that they can look out for each other (Home Office 2004, p. 58). It has been suggested by groups who support those involved in off-street prostitution that this might be amended to effectively decriminalise two or three individuals working together, to increase their ability to protect themselves, provided there are effective controls in place to ensure that there is no adverse impact on the local neighbourhood (Home Office 2004, p. 84).

Other important issues relevant to legalisation are the requirements that individual prostitutes be registered (as in Austria) and that they undergo mandatory health checks. There is some evidence that voluntary, confidential testing (rather than mandatory testing) is the most effective way to safeguard public health because mandatory testing tends to produce a two-tiered system of registered and non-registered prostitutes, with the latter having limited access to health care. In Greece, for example, mandatory testing has led most of those involved in prostitution to avoid registration. Similarly, in Germany there are said to be about 50 000 individuals registered and a further 150 000 non-registered. There is also the danger that, as well as avoiding health tests, those who fail to register become harder to reach by both law-enforcement agencies and support services (Home Office 2004, p. 88).

Although the current situation in the United Kingdom formally falls within a legalised framework, some programs have recently been implemented that, to a certain extent, reflect the philosophical approach taken by Sweden (that is, that prostitutes are victims of abuse and need help to leave the industry), especially for street-based workers. For example, there is some evidence that a staged approach to referral to support services (including drug-testing and treatment), which is based on the concerns raised about the vulnerability of prostitutes, has shown early indications of success (Home Office 2004). In this case, the offence of loitering or soliciting entails persistence, which can be shown by the administration of two or more cautions in the first instance. Once persistence has been proven, continued loitering or soliciting can result in conditional cautioning and diversion from the

traditional courts to, for example, a drug court. The United Kingdom has also introduced a process referred to as 'arrest referral', which requires the allocation of a case worker to provide information and advice to each client until she or he enters treatment. Early evidence indicates that such schemes can help break the revolving door between arrest and return to the streets, provided certain conditions are met (Home Office 2004).

## **Decriminalisation**

Decriminalisation aims to improve the health and safety of the sex industry without condoning its existence through a licensing scheme. In New South Wales and New Zealand, brothels operate according to the normal rules and regulations applicable to businesses, including employment law, health and safety regulations and tax laws, although the New Zealand model also includes a certification scheme for brothels employing five or more workers (New Zealand Police 2004). However, the experience in New South Wales has demonstrated some limitations to the control that can be exerted without a dedicated licensing system. There is also some evidence of a considerable rise in the number of sex workers, of brothels (as the behaviour is now seen as condoned) and of STIs among men, a possible indicator of risky sexual behaviour. It has also been said that decriminalisation only deals with the surface problems faced by prostitutes (such as their work-day environment); it does not deal with the deeper problem of why there is a sex industry to begin with, or with the problems faced by many of the street-based workers in particular (e.g. poverty and drug addiction) (Home Office 2004, p. 86).

The PLA in Queensland has noted in its *In-Touch* magazine (No. 6: see <[www.pla.qld.gov.au](http://www.pla.qld.gov.au)>) that, in certain areas in New Zealand, police have introduced a local initiative requiring sex workers to register with them before advertising in the press. This has apparently led to an increase in distrust of police among sex workers and to an increase in the number of sex workers operating on the streets rather than working from more secure premises. As a result, there have been adverse effects on the health and safety of sole operators. Clearly, this is not the intended effect of the new legislation.

In some countries and states which have decriminalised prostitution (e.g. the Netherlands and New South Wales), safety zones and safety houses have been created where prostitutes can solicit and service their clients. A number of difficulties have been observed with this approach, however, including finding an appropriate site (a problem for both residents and street workers) and the illicit sale and use of drugs within the houses. Managed areas have also been found to be highly resource-intensive. Furthermore, there has been criticism of the philosophical basis for safe houses and safety zones in that they tend to normalise the concept of street-based prostitution, which research has shown to be fraught with problems (van Soomeren 2004).

## **Prostitution as abuse/exploitation**

One of the first visible effects of the Swedish legislation, which aimed to combat all forms of violence against women, including prostitution, was to reduce (by about 50%) the number of street prostitutes and (by about 75%) the number of clients. Massive police action and media attention were credited with this response. However, a number of sources suggested that sex workers still operate; they simply can't be seen any more. Prostitution via the Internet, for example, has increased, and some prostitution occurs in restaurants and bars, but the extent is difficult to estimate.

Nevertheless, several polls conducted in Sweden about the legislation have found that about 80 per cent of the population support the law. Of those who want the law repealed, the majority are men, with only 7 per cent of women in favour of repealing the law (Maxim Institute 2003).

Special programs have also been implemented in Sweden to help prostitutes find another way of making a living, and some support has also been offered to their clients. The Swedish Women's Movement claims that the legislation will also deter young women who are not yet in prostitution, even if they are runaways or drug-abusers.

The tables on the following pages complete this chapter's review of prostitution research and legislation, although an overview is provided on page 42. Table 2.4 (pages 34–35) gives an overview of current approaches to prostitution; Table 2.5 (pages 36–41) summarises the philosophy and practical application of prostitution regulation in the other Australian states.

**Table 2.4: An overview of current approaches to prostitution**

<i>Philosophy</i>	<b>Prostitution is a crime (criminalisation)</b>		<b>Prostitution is a ‘crime’ but will always exist (partial legalisation)</b>	
	Can be based on moral or religious views — implies that a prostitute is immoral, a criminal, a whore, etc.		Although ‘somewhat disapproving’ of prostitution per se, acknowledgment that the ‘oldest profession’ will always exist, that some individuals will choose to work in the industry and that there will always be a demand for the services provided. This approach recognises the need to reduce the harm often associated with prostitution (e.g. criminal activities, threats to health and safety) by some form of regulation and/or licensing.	
<i>Policy/ legislative response</i>	Prohibition	Criminalisation	Some legalisation/some criminalisation	Containment without formal legislation
	All prostitution is illegal.	Only activities around prostitution (e.g. keeping a brothel and living off the earnings) are illegal.	Some types of prostitution are legal (e.g. legal brothels/ escort agencies), some types of prostitution are illegal (e.g. street-based prostitution), but the types of activities that are legal and illegal differ between states/countries, as does the degree and type of regulation.	Some types of prostitution (brothels) are sanctioned and subject to quasi-regulation by police, despite the existence of anti-prostitution legislation. There is a limited number of ‘tolerated’ brothels, which are given protection in exchange for information on criminal activities.
<i>Practical application</i>	<p>In theory, both prostitutes and clients can be charged with prostitution offences. In reality, the majority of charges are laid against prostitutes, rather than their clients or their pimps/brothel-keepers, because police claim that the latter are often too difficult to identify.</p> <p>A laissez-faire approach to policing often results because of the general ineffectiveness of the policing of prostitution and frustrations with the inadequacy of the fines and other penalties imposed by the courts.</p> <p>Client education (‘Johns schools’) are sometimes run in conjunction with policing activities.</p>		<ul style="list-style-type: none"> <li>• policing of illegal prostitution</li> <li>• regulation of legal prostitution (including registered brothels, registered prostitutes, etc.)</li> <li>• priority given to occupational health and safety for legal workers</li> </ul>	<ul style="list-style-type: none"> <li>• policing of illegal prostitution</li> <li>• oversight of ‘sanctioned prostitution services’ with the aim of: <ul style="list-style-type: none"> <li>– containing the industry</li> <li>– exchanging information about related criminal activities</li> </ul> </li> </ul>
<i>Where implemented?</i>	e.g. most states of the USA (except Nevada), South Australia, Japan, India, Philippines, Iceland	e.g. Canada, England, Finland, Italy, France	e.g. Austria (all but one state), Switzerland, Singapore, Senegal, Greece, Turkey, France, Belgium (unofficially), Queensland, Victoria, Northern Territory, ACT	e.g. WA (and New Zealand prior to decriminalisation)
<i>Outcomes</i>	<ul style="list-style-type: none"> <li>• Prostitution continues but goes underground, leading to: <ul style="list-style-type: none"> <li>– increased health and safety risks for prostitutes</li> <li>– inability of prostitutes to report violence against them to police</li> <li>– convergence with other illicit markets, e.g. drugs</li> <li>– increased policing activities, often described as ‘entrapment’</li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>• increased state control</li> <li>• implied ‘normalisation’ of prostitution — can lead to expansion of the industry</li> <li>• some legal sex workers report loss of control over their environment/choice of clients</li> <li>• sole operators are found to be at higher risk of violence than brothel workers</li> <li>• illegal prostitution pushed underground, leading to: <ul style="list-style-type: none"> <li>– increased health and safety risks for prostitutes</li> <li>– inability of prostitutes to report violence against them to police</li> <li>– convergence with other illicit markets, e.g. drugs</li> <li>– increased policing activities, often described as ‘entrapment’</li> </ul> </li> <li>• some evidence of increased sex-trafficking of women</li> <li>• some evidence of increased child prostitution</li> </ul>	<ul style="list-style-type: none"> <li>• limits the amount of tolerated prostitution</li> <li>• unlike legalisation, some report that this kind of police control dictates the terms under which prostitution can occur, and makes demands of prostitutes and operators that may be discriminatory, humiliating and manipulative.</li> </ul>

<b>Prostitution is work (decriminalisation)</b>	<b>Prostitution is victimisation/exploitation</b>
Recognises individuals' right to exercise their choice to work in the prostitution industry.	Reflects the belief that all prostitution is abuse/exploitation (especially of women). This philosophy promotes equality between men and women, and emphasises the need for a preventive and early intervention approach.
Decriminalisation	Policies of prohibition and rehabilitation
All prostitution is legal, but can be restricted to certain areas. Only local council and workplace health and safety controls are imposed on the industry. Illegal activities relate mainly to the involvement of minors and sex trafficking.	A heavy emphasis on prohibiting and charging clients rather than sex workers (who are seen as the victims of all such transactions). There are no offences for loitering or soliciting, for example.
<ul style="list-style-type: none"> <li>• harm-minimisation approach</li> <li>• priority given to occupational health and safety for the workers</li> <li>• normal business rules and regulations applied</li> <li>• in some instances, the provision of safe houses/safe streets for street workers</li> </ul>	<ul style="list-style-type: none"> <li>• enhanced primary and secondary prevention programs and exit programs</li> <li>• active policing of offences — only client-related charges exist</li> <li>• improvements to overall social services, policies and legislation re women, violence and victimisation</li> <li>• client education (e.g. 'Johns schools') and fines imposed</li> </ul>
e.g. NSW, New Zealand, the Netherlands, Germany, Russia, Portugal, Spain, Denmark (in practice, as the penal codes that criminalise some forms of prostitution appear to have lapsed)	e.g. Sweden (France, Norway and Finland are also considering this approach)
<ul style="list-style-type: none"> <li>• expansion of the industry — some artefactual, some real</li> <li>• some difficulties in maintaining control of the industry</li> <li>• some evidence of increased trafficking</li> <li>• some evidence of increased child prostitution</li> <li>• some increase in STIs among clients</li> <li>• some increases in pimps/controllers/organised crime</li> <li>• difficulties associated with safety zones/houses, such as finding an appropriate site (difficult for both residents and street workers), illicit drug use/sale within the houses and intensive resources required</li> <li>• fear that managed areas normalise the concept of street-based prostitution (which conflicts with the research evidence)</li> </ul>	<ul style="list-style-type: none"> <li>• reduction in visible/street prostitution</li> <li>• prostitution continues in other venues but goes underground, leading to: <ul style="list-style-type: none"> <li>– increased health and safety risks for prostitutes</li> <li>– inability of prostitutes to report violence against them to police</li> <li>– convergence with other illicit markets, e.g. drugs</li> <li>– increased policing activities, often described as 'entrapment'</li> </ul> </li> </ul>

**Table 2.5: An overview of prostitution regulation in Australia (with the exception of Queensland)**

State/territory	Philosophy	Practical application
NSW	Decriminalisation	<ul style="list-style-type: none"> <li>• Brothels are regulated by local councils and standard business requirements only. (There is no police control.) For example, a local council can apply to the Land and Environment Court to close a brothel if it is having a detrimental effect on the neighbourhood.</li> <li>• Escort agencies are unregulated and do not require planning approval.</li> <li>• Sole operators may require council approval, as premises that constitute a brothel include those used by only one person.</li> <li>• According to the <i>Summary Offences Act 1988</i>, illegal activities include: <ul style="list-style-type: none"> <li>– living on the earnings of a prostitute (brothel owners/managers are exempt)</li> <li>– causing or inducing prostitution</li> <li>– using premises or allowing premises to be used for prostitution when they are held out to be available for massage, saunas, steam baths, exercise or photographic studios</li> <li>– advertising premises for prostitution or for prostitutes</li> <li>– soliciting near or within view of a dwelling, school, church or hospital.</li> </ul> </li> <li>• Street-based prostitution is legal in certain areas (including safe streets and safe houses).</li> </ul>
Victoria	Partial legalisation	<ul style="list-style-type: none"> <li>• The prostitution industry is regulated by the <i>Prostitution Control Act 1994</i>, the <i>Prostitution Control Regulations 1995</i> and the <i>Health (Infectious Diseases) Regulations 2001</i>.</li> <li>• Since 1995, prostitution has been controlled through a combination of planning processes and a licensing system: <ul style="list-style-type: none"> <li>– The Business Licensing Authority issues licences to operators of brothels and escort agencies, and administers the Act's licensing and registration provisions.</li> <li>– The Act creates a dual licensing system for six-room brothels. Small owner-operated brothels are exempt from the licensing regime and can operate legally within the planning requirements of local authorities.</li> <li>– There are certain criteria that must be satisfied before planning approval is given for a brothel, including: any other brothel in the neighbourhood; the effect of the operation of the brothel on children in the neighbourhood; whether the land is within 200 metres of a place of worship, school, kindergarten, children's services centre or other place regularly frequented by children (except in the case of certain land in central Melbourne) and, if so, the effect on the community or on the brothel of being so located; other land use within the neighbourhood involving similar hours of operation and creating similar amounts of noise or traffic; any guidelines about the size or location of brothels issued by the Minister for Planning administering the <i>Planning and Environment Act 1987</i>; the amenity of the neighbourhood; the provision of off-street parking; landscaping of the site; access to the site; the proposed size of the brothel and the number of people who it is proposed will be working in it; the proposed method and hours of operation.</li> <li>– The planning authority must refuse applications for use or development as a brothel: in a residential area, or on land within 100 metres of a dwelling (50 metres in central Melbourne), or, except within certain parts of central Melbourne, on land within 200 metres of a school, church, hospital, etc., or unless special circumstances exist. No more than six rooms are to be used for the purposes of prostitution.</li> <li>– Private escort workers must be registered.</li> <li>– Escorts from brothels are permitted.</li> <li>– It is an offence for a prostitute to work while infected with an STI.</li> <li>– Licences are ongoing until suspended, cancelled or surrendered. Licensees cannot transfer their licence to anyone else or allow others to use their licence.</li> <li>– Any person who operated a brothel before the introduction of the Act, and who made an application for a licence within three months, was deemed at the commencement of the Act to hold a licence until the actual licence could be processed. Thus there are a number of brothels with more than six rooms (the largest legal brothel in Victoria has 18 rooms).</li> </ul> </li> <li>• Brothels or escort agencies without a licence or an exemption are illegal.</li> <li>• Street-based prostitution is illegal.</li> </ul>

### Impact

- The impact of decriminalisation does not appear to have been what was hoped. Anecdotally, there appears to have been an increase in prostitution (although statistics are no longer kept because control was handed over from police to local councils).
  - According to the *Sydney Morning Herald* (31 August 1999), since the legalisation of brothels in NSW in 1995, the number of establishments operating in Sydney has more than tripled to somewhere between 400 and 500, many of which are unapproved and fly-by-night operations. The *Herald* claimed that 'there is now an estimated 10 000 prostitutes in NSW' and that '... unsurprisingly criminal elements retain a disturbing presence in the industry'.
  - Reporter Kaye McClymont claimed that 'essentially; the whole situation [is] out of control in NSW as far as illegal brothels go ... and as a consequence ... state governments and councils are having to spend a lot more money and resources than they ever planned on to bring back some measure of control' (Maxim Institute 2002).
- 
- Initially some councils were reluctant to grant planning permits, and most applicants had to go through a lengthy and costly appeals process. In 1995 the Victorian Parliament introduced legislative changes that included more controls over the planning approval process; councils can now reject brothel applications only on planning grounds, not moral grounds (Queensland Government 1998, p. 81).
  - As at 23 March 2003 there were 180 'persons' licensed to carry on business as a prostitution service provider, 44 of which were brothels, 37 escort agencies and 99 both brothel and escort agency (personal communication, Business Licensing Authority, Victoria, June 2004).
  - Illegal prostitution appears to have flourished. In 2000, the *Herald Sun* (3 April 2000, p. 2) reported that 'illegal prostitution in Victoria is now twice the size of the legal, licensed trade ... Victoria's booming sex industry is operating almost free from regulation ... The lack of policing means brothel bosses can flout the law by employing drug addicts and under-age workers.'
  - By 2001 the Attorney-General's Street Prostitution Advisory Council had noted that 'the street prostitution industry in Port Phillip required immediate reform ... Workers and clients often have sex in the parks, lanes and streets ... Often homeless and/or regular drug users, street sex workers are frequently the victims of abuse, assault or rape. Policing activities have not curbed street activity and, instead, have moved it to other nearby streets. Some residents feel powerless to address the issue of street sex work in their neighbourhood. The current situation is unacceptable to residents, traders and street workers alike ...'
  - According to the Maxim Institute (2002), the owners of Melbourne's licensed brothels formed a lobby group at that time to pressure state and local governments to crack down on the booming illegal industry, but they claimed that there was no-one in a proper position to investigate — police were unwilling to get involved and councils did not have the resources to tackle the problem.

State/territory	Philosophy	Practical application
South Australia	Full prohibition/ criminalisation	<p>All prostitution activity is illegal. The <i>Summary Offences Act 1953</i> (SA) prohibits the following activities:</p> <ul style="list-style-type: none"> <li>• permitting premises to be frequented by prostitutes</li> <li>• soliciting in a public place</li> <li>• living off the earnings of prostitution</li> <li>• keeping, managing or assisting in a brothel (being a place used for the purpose of prostitution)</li> <li>• receiving money in a brothel in respect of payment for prostitution</li> <li>• permitting premises to be used as a brothel.</li> </ul>
Western Australia	Criminalisation/ containment (informal)	<ul style="list-style-type: none"> <li>• The laws governing prostitution are contained in the <i>Police Act 1892</i>, the <i>Criminal Code Act Compilation Act 1913</i> and the <i>Prostitution Act 2000</i>.</li> <li>• Effectively, prostitution itself is not illegal, but certain acts associated with it are: <ul style="list-style-type: none"> <li>– keeping premises for the purposes of prostitution</li> <li>– procuring a person to become a prostitute</li> <li>– permitting a female under 21 years to be in a brothel</li> <li>– living off the earnings of prostitution</li> <li>– permitting premises to be used as a brothel</li> <li>– being the occupier of a house frequented by prostitutes</li> <li>– consorting with prostitutes</li> <li>– soliciting in a public place.</li> </ul> </li> <li>• Since about 1975 the WA sex industry has operated under the informal ‘sanction’ of police via the ‘containment policy’ (not a written, approved policy as such but an informally established arrangement between police and brothel operators). The policy, enforced by the police in the metropolitan area, permits about 13–15 premises (including two escort agencies and one massage parlour) to operate on condition that they adhere to Police Department requirements, including the registration of workers, a prohibition on alcohol or drugs on the premises, regular health checks and no juvenile involvement.</li> </ul>
Tasmania	Criminalisation	<ul style="list-style-type: none"> <li>• Currently, a person who provides sexual favours for monetary gain is not committing an offence in Tasmania, but there are no controls on where sexual services may operate and virtually all of the activities associated with prostitution are prohibited (under the <i>Criminal Code Act 1924</i> and the <i>Police Offences Act 1935</i>), including: <ul style="list-style-type: none"> <li>– soliciting in a public place (s. 8(1)(c) of the <i>Police Offences Act 1935</i>)</li> <li>– living off the earnings of prostitution (s. 8(1A)(b) and (c) of the <i>Police Offences Act 1935</i>)</li> <li>– keeping a brothel or bawdy house</li> <li>– procuring a person for prostitution</li> <li>– permitting premises to be used for prostitution.</li> </ul> </li> <li>• In 1999 a parliamentary inquiry found 95 per cent support for some form of licensing or registration. In late 2003 the Sex Industry Regulation Bill was released for public comment and is expected to be tabled by the end of this year. The aim of the proposed legislation is to protect children from exploitation, and to protect public health and the health and welfare of sex workers by taking a harm-minimisation and social-justice approach. It has been modelled on the ACT’s registration scheme: all operators of sexual services businesses will have to register their name, home address and address of the business; failure to do so will result in a fine of up to \$50 000 or five years’ gaol, or both. Each commercial operator will be required to provide a police report of his or her criminal history, and anyone who has committed a disqualifying offence will be barred from operating a commercial sexual services business.</li> <li>• Under the new law, no sexual services businesses of any type will be permitted in residential areas or within 200 metres of a place of worship, hospital, school, kindergarten or any other facility or place regularly frequented by children for recreational or cultural purposes. Self-employed sex workers will be permitted to operate from their homes in areas zoned residential, provided they comply with the relevant requirements of the local planning scheme.</li> </ul>

### Impact

- There have been various attempts to reform the prostitution laws in SA.
  - In 1996 the SA Parliament's Social Development Committee proposed a regulatory framework for the operation of brothels and escort agencies that included restrictions on the siting and ownership of premises and advertising (Queensland Government 1998, p. 98).
  - In 1998, the Minister for Police established a Ministerial Working Party to consider options for dealing with the issues (Queensland Government 1998, p. 99).
  - During 2001, the SA Parliament debated the Prostitution (Regulation) Bill, which proposed a legalised framework for prostitution using a 'negative licensing model'. The Bill was defeated, however, and it has been reported that there will be no further consideration of the issue under the current government.
  - Anecdotal evidence presented to the Adult Business Summit in Brisbane (Fawkes 2004) suggested that street-based prostitution has 're-established itself' in recent years because police have taken a minimal approach to its regulation.
- Although the containment policy does not allow it, a number of agencies operate outside the regulations. These include people working from their own homes (not unlawful for a single operator), massage parlours (not unlawful per se) and escort agencies. Police have estimated that about 3000 prostitutes operate from their homes.
- In 1997 a Ministerial Working Group was established in response to community concern about prostitution, and a number of recommendations were made, including the establishment of a Prostitution Control Board, which was to be responsible for the licensing of premises, owners and individual prostitutes. A Bill was developed in accordance with the recommendations but it was defeated in the Upper House of Parliament in 2003.
- The Bill was defeated but, according to Scarlet Alliance, the WA sex industry still operates openly and visibly, and brothels and escort agencies still appear to be tolerated openly (<[www.scarletalliance.org.au/laws/wa/](http://www.scarletalliance.org.au/laws/wa/)>, viewed 19 May 2004).
- Anecdotally, both prostitution and organised crime exist in Tasmania under the current laws.

State/territory	Philosophy	Practical application
ACT	Partial legalisation	<ul style="list-style-type: none"> <li>• The <i>Prostitution Act 1992</i> provides for two forms of legal prostitution: <ul style="list-style-type: none"> <li>– Commercial brothels. For a fee of about \$200 per year, brothels must register with the Registrar within seven days of starting business. Brothels can only be situated in two light-industrial areas: Mitchell and Fishwick. The brothels can provide sexual services at the premises or via escort services, and there is no limit on the number of rooms.</li> <li>– Private sole operators. Sole operators must register for a fee of about \$200 per year. Registration entitles workers to provide services from their home or, if providing an escort service, they can work with another person.</li> <li>– There are no inspectorial powers attached to the role of the Registrar.</li> <li>– There is no probity investigation conducted for the registration process.</li> <li>– The only health requirements are for operators of brothels to take reasonable steps to ensure that sexual services are not provided by prostitutes infected with STIs.</li> </ul> </li> <li>• Street-based prostitution is illegal for both the prostitute and the client.</li> </ul>
Northern Territory	Partial legalisation	<ul style="list-style-type: none"> <li>• Under the <i>Prostitution Regulation Act 1991</i> (NT), escort agency businesses must apply to the NT Licensing Commission for a licence to operate. Applicants are assessed for their personal character, including their criminal history. People are ineligible to apply for a licence if they: <ul style="list-style-type: none"> <li>– are under 18 years of age</li> <li>– are not a resident of the Northern Territory</li> <li>– have been found guilty of a disqualifying offence</li> <li>– have an associate (spouse, de facto partner, homosexual partner, business partner or business associate) who has been found guilty of a disqualifying offence.</li> </ul> </li> <li>• There are no planning requirements for an escort agency but both the operator and the manager must be licensed. The agency must operate according to the licence conditions (such as providing workers with a safe work environment), and all sex workers working for the agency have to be certified by police as free from conviction for any disqualifying offence. The Act prohibits advertising for workers and restricts the advertising of prostitution services.</li> <li>• Sole operators are not allowed to provide sexual services in their homes because the <i>Prostitution Regulation Act 1991</i> defines a 'brothel' as: '... premises to which people resort for the purpose of prostitution, but does not include premises forming part of a hotel which are used for the purposes of providing prostitution services ...' (s. 3 of the Prostitution Regulation Act). Unless the service is being provided at a hotel, therefore, the premises would be deemed to be a 'brothel', and s. 4 provides that it is an offence to keep or manage a brothel. Sole operators can provide escort services (or outcalls to hotels) and do not have to be licensed as an escort agency. An 'escort agency' is defined as a 'business that arranges, otherwise than for people attending in person for that purpose ... the provisions of prostitution services elsewhere than on those premises'.</li> <li>• Brothels and street work are illegal.</li> </ul>

### Impact

- At 30 June 2004 there were approximately 32 commercial brothels registered.
- At 30 June 2004 there were approximately 27 private workers registered, although this number is fluid and can change daily as registration is almost instantaneous (Sue Fairleigh, ACT Department of Fair Trading, personal communication, 6 July 2004).
- The approach taken requires minimal resources by both government agencies and operators (Humphries Presentation Speech for Prostitution Amendment Bill 1997, in *Queensland parliamentary debates*, 1998, p. 86).
- Anecdotal information suggests that, given the lack of probity and ongoing auditing, the ACT's prostitution industry is poorly regulated and organised crime (including money-laundering) remains a concern.

- The NT laws have been criticised for the following reasons.
  - As sole operators providing escort services do not need to be licensed, an increasing number of workers have chosen this option. The Escort Agency Licensing Board is therefore regulating a smaller proportion of the industry than was intended.
  - The prohibition of brothels has meant that workers are denied the opportunity to work in the safest environment (Queensland Government 1998, p. 84).
- In 1998, the Attorney-General tabled a report in Parliament about the operation of the *Prostitution Regulation Act 1991*, in accordance with a legislative five-year review. The report proposed the legalisation of brothels and chose the Victorian model as the preferred option. A Working Party was established to advance the proposal (Queensland Government 1998, p. 85). To date, the government has not taken any action in relation to the recommendations made in the 1998 report (personal communication, Department for Racing, Gaming and Licensing, 24 May 2004).
- Media reports of the recent murders of two escorts in the NT have led to calls for a review of the legislation, lending weight to the argument in favour of legal brothels in the NT to provide a safe environment for the workers (see <http://darwin.perthimc.asn.au/index.php?action=newswire&parentview=188>).

## OVERVIEW OF CHAPTER 2

This chapter provides an overview of information and research on prostitution, and describes the wide variety of approaches that have been adopted around the world in an effort to regulate prostitution.

Risk factors associated with prostitution were identified — for example, physical or sexual abuse in childhood, truancy or poor educational achievement, episodes of living in care, homelessness, drug or alcohol abuse and debt. Various barriers to leaving the industry, including the stigma associated with the industry itself, were also discussed. Information was presented about the health and safety of sex workers and their clients, and the impact of prostitution on the broader community. This information demonstrates that prostitution is a complex and dynamic social phenomenon, readily, and sometimes unpredictably, affected by social change and government regulation.

The examples presented in the chapter also demonstrate that, in spite of the range of models available across the world for the regulation of prostitution, there are no panaceas. In addition to the philosophical approach taken by governments, a myriad of other social and cultural factors (e.g. the prevalence of poverty and hunger, access to medical care, drug policies, the frequency of sexual assault, traditions of religiosity) can also have an impact. A form of regulation that works well in one country may not work equally well in another country where the social and cultural context is different.

Furthermore, a comprehensive assessment of the impact and overall effectiveness of any form of government regulation is difficult because of the lack of evaluative evidence. There are limitations to any assessment of impact, given the secretive nature of the activity being measured, the difficulty of measuring the incidence of prostitution, and the very recent implementation of some of the approaches.

Almost a decade ago, Leigh (1996) analysed prostitution in the international framework, and concluded that the countries with the most restrictive legal systems appear to have the most problems with violence against prostitutes, thefts associated with prostitution and exploitation of prostitutes. Conversely, the countries that have the least restrictive measures and afford some means of recourse, and which allow prostitutes to organise for self-protection, appear to have the fewest problems. Leigh concluded that, even in the most extreme circumstances, harm-reduction techniques are the recommended alternative to restrictive laws and enforcement. However, the recent evidence (albeit anecdotal) suggests that this has not worked. Both the amount of prostitution and associated criminal activities (including sex-trafficking, child prostitution and illicit drugs) appear to have increased in some cases. The long-term effect of other approaches, such as the Swedish model, has not yet been assessed.

In summary, the sex industry is complicated, and none of the legislative and regulatory approaches taken to date appear to have dealt adequately with the vast array of issues involved. However, it seems clear that, to be effective, legislative and regulatory approaches to prostitution need to be multifaceted to reflect the complexities of the industry.

## PROGRESSING THE PRINCIPLES UNDERLYING THE PROSTITUTION ACT

This chapter explores the extent to which the Prostitution Act has operated in a manner that is consistent with its underlying principles, which are to:

- ensure quality of life for local communities
- safeguard against corruption and organised crime
- address social factors that contribute to involvement in the sex industry
- ensure a healthy society
- promote safety.

The literature dealing with these issues has been explored in Chapter 2. Issues raised during the consultations, comments made in the submissions and responses by sex workers to the CMC's sex worker survey provide the basis for the discussions that follow. These topics are considered in relation to legal brothels, sole operators and the illegal industry.

### PRINCIPLE 1: TO ENSURE QUALITY OF LIFE FOR LOCAL COMMUNITIES

Local communities can be affected by some aspects of the prostitution industry — street solicitation, kerb-crawling and explicit advertising material, for example, can cause distress to local communities. Survey research reported in Chapter 2 clearly indicates community support for licensed brothels, and strong community aversion to street-based prostitution. This section explores the key community issues relevant to the Act that emerged during the review.

#### Licensed brothels

Although the Festival of Light pointed out that 'it would be difficult to show that the regulation of prostitution has in any way contributed to an *improved* quality of life of any community' (p. 2), submissions to the review overwhelmingly indicated that there had not been any negative impacts to date. QABA claimed, for example, that 'to their knowledge there have been no negative incidents towards female staff of neighbouring buildings, or any examples of damage caused by guests'.

Yearly consultations with the licensees indicated that they had all made comprehensive efforts to inform their local communities about their businesses. Most had met with their neighbours and many had held open days, and all such occasions appear to have been received positively. Indeed, QABA noted that 'anecdotal evidence suggests that mainstream businesses adjacent to brothels have increased turnover due to increased community awareness in the area'.

QABA also reported that brothel licensees often use local suppliers for their provisions and services and that this has provided many incidental employment opportunities in other support industries. For example, one Brisbane brothel out-sources its laundry, and the laundry contractor has had to employ two additional staff in order to meet the brothel's requirements.

Comments by members of authorities such as the PLA and the PETF supported these perceptions. These agencies reported a positive response from all of the

neighbouring businesses of legal brothels that they had interviewed since the implementation of the Act.

The PLA submitted that:

to date the PLA has not received a single complaint from any individual about the operation of a licensed brothel in their community. Neither has there ever been a complaint made to the PLA from a client of a licensed brothel. (p. 3)

SQWISI agreed, and noted that brothels generate only a modest amount of traffic compared with other retail and service businesses of a similar physical size. Further observations were that visitors to brothels do not wish to draw attention to themselves and are usually quiet and well behaved; that brothels dispose of their waste responsibly and are inconspicuous; that signage is (largely) discreet; and that there is no documented evidence that brothels pose any kind of threat to children.

Three-quarters of the respondents to the CMC's sex worker survey also indicated that they did not believe that prostitution had any negative impact on the communities in which they work, although they did raise some concerns for themselves about living and working in the same community. The majority of sex workers who did not live in the same suburb in which they worked, for example, would not consider doing so (85%), given their fear of recognition and their need for privacy and safety.

The only negative responses to legal brothels to date have involved public protests outside a brothel in Mackay and some minor negative comment in local media. An article in the *Sunshine Coast Daily* on 8 May 2002 titled 'Parish priest blasts brothel's location', for example, reported some community concern about the proposed brothel at Kunda Park, but it also reported that businesses close to the brothel were not concerned.

The community protests in Mackay, however, had a significant impact on the viability and profitability of the legal brothel when it first opened. The licensee reported, for example, that, on the evenings of the protests, clients were significantly fewer and a number of sex workers withdrew their services because of the lack of business, many returning to the illegal industry. It was also reported that the protestors had announced their intention to photograph people entering the brothel and place these photos on the Internet, actions that could be considered harassment under the *Fair Trading Act 1989* (s. 50).

In the early stages of the evaluation it was suggested that this problem could be overcome by including licensed brothels as notified areas in the *Police Powers and Responsibilities Act 2000*. The PLA, the PETF and licensees expressed support for this change, but the proposal was not approved by the Minister.

In its submission to the CMC, the PLA also suggested that the Act does not deal satisfactorily with the vulnerability of brothel businesses to harassment and suggested that new provisions for their protection from harassment should be added. It is the CMC's view that this recommendation may have merit, but as there has only been one instance of direct action against a licensed brothel to date — and recent community surveys indicate support for licensed brothels — action on this recommendation is not yet required.

## Sole operators

The review suggests that, like licensed brothels, sole operators have minimal impact on the communities in which they work. SQWISI pointed out, for example, that sole operators rarely 'see more than a dozen clients per week' and that, most importantly, 'clients are discreet because they do not want to attract attention to themselves'. Further, they stated that 'the majority of sole sex workers ... choose

their location sensibly and prefer residential premises where their work causes the least impact (for example, on busy roads). Like their clients, sole sex workers do not want to draw attention to themselves’.

SQWISI also submitted that ‘two sex workers working from residential premises will not cause any significant disturbance to nearby residents. Evidence for this can be seen in the innumerable small, illegal brothels that have operated within residential areas historically and currently without nearby residents even knowing of their existence’.

Indeed, it was the opinion of one sole operator that there are benefits for the community:

... I provide a service to the community which is valuable. People are able to get things off their chests and meet their emotional/psychological needs ... some of my clients are married and yet have to find a release for their peccadilloes — because I provide my service, they are able to find their release and their marriages survive. Without it I am sure that many more people would be driven to divorce and all the fallout that follows. People need to find expression, not repression, and often use my service to find a compartmentalised outlet that does not interfere with the rest of their lives ... some of us really care about our clients and build lasting (business based) relationships with them. If people like me, who keep within the law, are by a law change forced to move, then the society we leave behind will have a much higher percentage of undesirables providing the service — the effect will, I am sure, lead to an increase in other problems.

### **Street-based sex workers**

Unlike legal sex workers, street-based sex workers arouse significant community disquiet. The CMC was approached by a representative of a New Farm community action group with concerns about sex workers in Brunswick Street, New Farm and Fortitude Valley. This group has been very active for many years, proactively seeking enhanced police action and community support to remove street-based sex workers from their area. We were told that residents in the area were concerned about the following issues:

- that sex workers sometimes provided sexual services to clients in close proximity to their residences, including their gardens, driveways, car parks and laundries
- that sex workers sometimes used their facilities (such as open laundries) to redo their makeup, etc., before picking up their next client
- that sex workers and their clients often left used condoms, needles, cigarette butts and other debris in close proximity to their homes
- that there were frequent arguments and fights between the street workers, that were disruptive to the community
- that, without access to appropriate hygiene facilities, this behaviour has the potential to seriously compromise the health of street-based sex workers
- that the activities of street-based sex workers compromise the quality of life of residents in the area, as well as the value of their homes.

It was also their view, however, that police intervention has been relatively effective over time. A resident who has observed the number of sex workers in the area over the last 10 years reported to the CMC, for example, that 10 years ago an average of 40 or more sex workers worked the area, whereas currently the numbers are limited to about 8 or 10. It was the opinion of the observer that the numbers had also diminished because legal options (legal brothels etc.) had become available for some of the workers, but that the ones remaining were the ‘hard core’ workers, ineligible to operate legally because of their drug habits. Although this

information is anecdotal, it is supported by evidence presented in Chapter 4, where the issue is discussed in more detail.

### Summary

Research in Queensland during the last decade clearly indicates community support for licensed brothels and strong community aversion to street-based prostitution. The information provided to the CMC's review also indicates that licensed brothels and sole operators reside within their current locations with little community disquiet. The Act, therefore, does not appear to have resulted in any reduction in the quality of life in local communities, although significant concern remains about the impact of street-based sex work on local communities. Proposed strategies to address this concern are discussed in Chapter 4.

## PRINCIPLE 2: TO SAFEGUARD AGAINST CORRUPTION AND ORGANISED CRIME

Corruption and organised crime were synonymous with prostitution in Queensland in the 1980s. Since the Fitzgerald Inquiry, however, government intervention has reduced these links. This section of the chapter examines both corruption and organised crime in relation to the current prostitution industry.

### Corruption

All submissions to the CMC reported that there had been no evidence of corruption in any government agency in relation to either the legal or the illegal prostitution industries in Queensland since the implementation of the Act. It was SQWISI's belief, for example, that 'the government's anti-corruption measures have been highly successful', a belief based on the fact that they have no knowledge of any systematic or isolated corruption involving the sex industry in any part of Queensland since the Fitzgerald reforms. Further, SQWISI reported that the re-emergence of corruption is highly unlikely because licensed operators have few incentives to make corrupt payments because their operations are lawful.

However, SQWISI pointed out that 'there is a slight theoretical risk that operators within the illegal sector might be motivated to make corrupt payments to avoid prosecution and that the best guarantee against this is to bring the majority of sex industry businesses within the legalised operating framework.'

The Festival of Light claimed, however, that 'a regulated system, far from minimising corruption, widens the potential, since doctors, local government inspectors and members of any government prostitution control board would become vulnerable to corruption also' (p. 4). They suggested that:

Queensland authorities must not only point to a lack of evidence of corruption — they must also show they have established fail-safe measures to ensure that corruption cannot occur. The public has a right to see evidence that such measures exist and are working. (p. 4)

The QPS indicated very strongly that the current measures for preventing corruption (including numerous accountability measures such as the existence of the Ethical Standards Command and the CMC) have been successful. Further, with the help of the CMC, the PLA has reviewed its own risks and instituted its own anti-corruption measures. At this point, there is nothing to suggest that these measures have been unsuccessful.

An important issue raised by the QPS PETF in this regard, however, is the detrimental and often disruptive effect of the rotation of police working on the taskforce. They suggested that there would be significant benefits (such as the

retention of 'corporate knowledge' in this area) if the time spent in the unit by officers were extended. A similar suggestion was made by officers in the Tactical Crime Squad (Prostitution Unit). Both units believed that the multitude of anti-corruption measures now in place, which did not exist before the Fitzgerald Inquiry, would be adequate to ensure that corruption was minimised, and that the operational benefits for retaining officers in the squads for a longer period would be of greater value. The CMC considers that rotation of officers continues to be an important inhibitor to the development of corrupt associations. However, the CMC supports some extension of the term of appointment of officers generally, and greater flexibility in regard to the rotation of individual officers.

### **Recommendation 1**

**That the Queensland Police Service maintain the rotation of Prostitution Enforcement Taskforce and Tactical Crime Squad officers, but review its rotation policy with a view to some extension of terms served in those units.**

Another area of concern was raised by the PLA. It submitted that sections 59 and 60 of the Act, which require written authorisation for a beat officer to enter a licensed brothel (to exclude the risk of corruption), are sometimes overlooked by police when responding to a call for service, often out of ignorance of the law rather than for any ulterior motive. Even though there have been circulars to police officers about these matters, the PLA said that they would like to see an increased investment by the QPS in enforcing the Act to ensure that officers have authorisation before they enter a brothel.

The CMC was informed that the QPS has developed a Policing Prostitution Competency Acquisition Program (CAP) unit which offers training for officers on request. Training of more officers involved in enforcing prostitution laws, through this course, should minimise the incidence of this breach of the Act.

## **Organised crime**

According to the *Crime and Misconduct Act 2001*, Schedule 2, organised crime means criminal activity that involves:

- (a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and
- (b) 2 or more persons; and
- (c) substantial planning and organisation or systematic and continuing activity; and
- (d) a purpose to obtain profit, gain, power or influence.

### **Licensed brothels**

In response to questions about the involvement of organised crime in the legal industry in the early stages of the review, some licensees reported to the CMC that they had identified some illegal immigrants in the industry, particularly from Thailand, and had worked very closely with the Immigration Department to have these workers removed. Overall, however, the comments from the former Queensland Crime Commission, the Crime arm of the Crime and Misconduct Commission and the QPS suggest that there is little evidence of any other forms of organised crime in the legal prostitution industry in Queensland. The PLA (p. 5) and SQWISI (p. 14) both agreed and stated specifically that, to their knowledge, there is no sex trafficking, underage prostitution, drug dealing or corruption occurring within licensed brothels in Queensland. SQWISI even suggested that any organised crime within the sex industry, legal or illegal, would be 'aberrational'.

The application and probity processes of the PLA and the QPS appear to have resulted in a very high standard of licensees, with no evidence of involvement

in organised crime or police misconduct. Further, almost all licensees said that they had not had any substantial contact with organised crime since starting their businesses. The only incidents reported during the evaluation period were threats of physical violence towards two licensees by illegal operators; both the QPS and the CMC were informed of these incidents. All of the licensees also reported confidence in their ability to immediately refer any concerns, should they arise, to the QPS.

Despite this view, however, 40 per cent of respondents to the CMC's sex worker survey said that they had been affiliated with organised crime groups at some stage during their career in the sex industry, although slightly more of these respondents said that this had occurred before the implementation of the Act in July 2000 (73%) than said it had occurred since (65%). The activities that these groups had been involved in included importing drugs (59%), selling drugs (58%), using drugs (58%), illegal immigration (8%), child prostitution (4%), illegal brothels/escort agencies (58%) and other activities such as dealing in stolen property and the emotional abuse, sexual harassment and rape of sex workers (27%). These criminal liaisons were reported by workers from all current work environments, including workers in licensed brothels (35%), sole operators (48%), massage parlours (67%), illegal brothels (100%), escort agencies (67%), bar and hotel work (33%) and on the streets (100%). It is important to note, however, that many of the respondents indicated that they work in several environments at the same time, including legal and illegal establishments, and that the illegal activities mentioned had occurred within the illegal industry.

As discussed in Chapter 2, anecdotal evidence suggests that New South Wales, Victoria and Tasmania have much higher rates of organised crime involved in prostitution. Not only is there more illegal prostitution per se (when more than two people profit from illegal prostitution it is defined as organised crime), there is greater involvement in other illegal activities such as illicit drugs, child prostitution, stolen property, and so on. It has been alleged that any problems in Queensland today may stem from those sources. However, the Festival of Light suggested that, should current laws be relaxed in any way, an increase in organised crime within the sex industry could result. They stated:

Sex trafficking, including under-aged girls, has blossomed in Victoria and New South Wales under legal regimes and the 'hands off' approach by police in the ACT [has allowed] free reign to organised crime, drugs and people trafficking. (p. 3)

QABA also believed that 'organised crime ... seek[s] to exert influence indirectly over the legalised industry through influencing others such as the media, service providers, government and other agencies by spreading disinformation about licensed premises.' QABA claimed that this has been compounded by the lack of education about the Act and called for the PLA to institute an education campaign for clients, service providers and the general public about the Act to entrench cultural change.

QABA was also concerned that:

the legislation had been drafted to keep criminal elements out of licensed brothels rather than considering the good governance of brothels. Once licensed to operate a brothel, licensees believed that they should be treated as any other business person. While QABA accepted that there are risks that may need additional surveillance, [they] believed that they don't warrant the discrimination and over-regulation that licensees are subjected to (p. 15).

SQWISI agreed, and suggested that 'the licensing focus should be shifted from who is suitable to operate a brothel to how the brothel is operated'. They stated that in this way 'a culture of legitimacy will gradually develop and that ... sex workers will

feel more comfortable about reporting regulatory breaches or any other extraneous criminal activities that come to their attention ... Under these circumstances police resources will be freed from prostitution law enforcement and can be diverted into the important work of investigating and prosecuting organised crime' (p. 16).

The CMC believes that both thorough probity processes and good governance approaches are necessary to ensure that the untainted character of the legal prostitution industry continues. However, one major concern that was raised with the CMC about the Act requires attention — the concern that certain provisions in the Act make it difficult for licensees to operate under a corporate structure. These provisions were designed to minimise the opportunities for licensees to have 'hidden' associates who may try to operate illegally. In 1999, former Police Minister the Honourable Tom Barton MP said:

the licences are personal to the licensee. They cannot hide behind corporate veils ... We have been absolutely adamant about ensuring that we have the tightest and toughest provisions to prevent the 39 sleazy mates and their sleazy first-up mate from owning brothels in Queensland. (*Queensland Parliamentary Debates* 2 December 1999, p. 5832)

Consequently, section 81 of the Act provides that:

- (1) A licensee must not operate a licensed brothel in partnership with, or otherwise in association with, a person who is not also licensed to operate the brothel.

Maximum penalty — 200 penalty units or 5 years' imprisonment.

- (2) For subsection (1), a person operates a brothel in association with another person if the person directly receives income from the brothel.

Section 8(a) also provides that a person is ineligible to apply for a brothel licence if the person is a corporation and that the provision of prostitution at a brothel other than in a way permitted under this Act may constitute an offence under the Criminal Code.

Therefore, if a company structure were used to receive income from the brothel, the company would be directly receiving income from a brothel.<sup>10</sup> The concern has been raised that in such a case, under section 81(1) of the Act, the licensee may be considered to be operating a licensed brothel 'in association with a person not licensed to operate the brothel' and be in breach of the Act.

Although the motivation for this provision — to prevent otherwise unsuitable individuals from operating and receiving income behind a corporate veil — is commendable, the CMC considers that the Act can be amended in a way that allows brothel licences to operate under a corporate structure while still ensuring accountability and transparency.

It is the view of the PLA and most licensees that the legislation should allow licensees to undertake normal management of their business operations through a legitimate corporate structure that provides the benefits available to any other industry. QABA asserted, for example, that 'many financial and insurance institutions are more comfortable dealing with proprietary companies and the formality of the reporting requirements of ASIC [the Australian Securities and Investments Commission]' (p. 4).

Section 17(1)(h) of the Act states that the PLA are to take into consideration several factors when determining the suitability of an applicant, including '... whether

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<sup>10</sup> A reference to a 'person' generally includes a reference to a corporation as well as an individual (see s. 32D of the *Acts Interpretation Act 1954*).

the business structure for the operation of the brothel is sufficiently transparent to enable all associates of the applicant, whether individuals or bodies corporate, to be readily identified ...' 'Associates' are defined in section 6(1)(b) to include a person who has entered into a business arrangement or relationship with the individual for the provision of prostitution. This provision appears to envisage that business structures that include corporations may be used to operate brothels.

The Second Reading speech by Mr Barton further states that the Prostitution Bill 'allows that a corporation can provide prostitution through a brothel if all its directors are individually licensed, and they each undergo probity and character checks' (*Queensland parliamentary debates*, 10 November 1999, p. 4830).

### **Recommendation 2**

**That the Prostitution Act be amended to allow brothel licensees to operate under a corporate structure. The Act should retain the provision that any business/company that operates a brothel must be sufficiently transparent to enable all associates to be readily identified.**

### **Illegal sex industry**

With regard to the illegal sex industry, SQWISI noted that they had not been able to find any women working in the sex industry in Queensland in sexual servitude or who seem to have been trafficked into Australia. Indeed, they stated that 'SQWISI is not even aware of any plausible rumours regarding such operations in Queensland'. They did point out that there are some illegal brothels in Queensland that exclusively employ Asian sex workers, but that these workers are either Australian residents or foreign sex workers working while on tourist or student visas. They stated that the involvement of these workers is marginal, usually short-term and not related to organised crime.

Nevertheless, the PETF reported that there are many organised syndicates or illegal escort agencies/illegal brothels. Although many sex workers might look like sole operators (because of the way they advertise), they are, in fact, working in syndicates of 20 or more girls, more often than not controlled by interstate organisations (especially from Sydney). The evidence of respondents to the CMC's sex worker survey supported this: about one-fifth (22%) said that they had worked privately in cooperation with others before the Act was implemented, and 18 per cent indicated that they had worked in this type of arrangement since 2000. The types of cooperation described included sharing hotel rooms/phone numbers/drivers with other sex workers, illegal brothels and escort agencies. The majority of sex workers work this way to ensure their safety. It is also important to note that, while most (85%) of the respondents reported entering these arrangements freely, 15 per cent suggested that this had not been the case, explaining that they 'felt obliged' or that 'it was expected of me — peer pressure' or that they had experienced 'a lack of income and ... had to go to work'. The same proportion of respondents reported that they also felt that they could not leave that type of working arrangement whenever they wanted to because they were 'scared' or because 'once you were there you couldn't leave' or because 'you had to pacify the client and complete the service due to the money exchanged already'. The majority of respondents (81%) also said that they had not reported these activities to the police.

Although this cooperative type of work has been an area of intense scrutiny by the PETF in recent years because it is illegal in Queensland, the police acknowledged there have been few charges or convictions since the Act was implemented. Such agencies have the capacity to close down and reopen elsewhere very rapidly, which means that police efforts have limited effect. The police suggested that the

registration of sole operators, or, at the very least, the provision of a registration number for advertising approval for sole operators by the PLA, would ease some of the difficulties of policing this area. This may also be an answer for some of the sole operators, who complained to the CMC about overly enthusiastic policing in this area, which they saw as entrapment. However, any form of registration of sex workers — even for advertising purposes — has broader implications, and the evidence from around the world is that few sex workers would agree to be registered and that, in some instances, registration schemes can force sex workers underground, which would be a dangerous and backward step.

## Summary

Although there was consistency in the view that there was little corruption involved in prostitution in Queensland, the CMC was provided with somewhat conflicting views about the involvement of organised crime in the legal and illegal prostitution industries in Queensland. Whereas it is clear that other states such as New South Wales and Victoria have heavy criminal involvement, most submissions to the CMC from government agencies about the levels of organised crime in the prostitution industry in Queensland suggested that it either does not exist or, at the very most, is minimal. That is, although illegal prostitution exists, which by its very nature is classified as organised crime, there is little evidence of additional activities such as illicit drugs, child prostitution or stolen property in either the legal or the illegal sectors. This is a positive result for Queensland.

On the other hand, at least 40 per cent of sex workers surveyed by the CMC, including both legal and illegal workers, indicated that they had been affiliated with members of organised crime groups at some stage during their career in the sex industry, two-thirds stating that this had occurred since the implementation of the Prostitution Act in 2000. A range of activities, such as importing and selling drugs, illegal immigration, child prostitution, dealing in stolen property and, of course, running illegal brothels and escort agencies, were reported. Legal brothel licensees also voiced a few concerns.

What is clear is that the careful probity checking and ongoing auditing of licensed brothels in Queensland to date has resulted in a clean legal industry, and the agencies involved in achieving this outcome (the QPS and the PLA), and the licensees themselves, should be commended for this result. It would seem that, against all odds (especially considering the parallel experiences in other States of Australia), Queensland has succeeded in this regard.

Nevertheless, recommendations were made for improvements to the Act, including a review of the time police spend in the specialist prostitution squads before they are rotated to other units, and changes to the provisions of the Act to allow licensees to operate with corporate structures.

## **PRINCIPLE 3: TO ADDRESS SOCIAL FACTORS THAT CONTRIBUTE TO INVOLVEMENT IN THE SEX INDUSTRY**

There are a range of social factors that contribute to involvement in the sex industry, including poverty, child sexual abuse and drug use, among others — many of which were discussed in Chapter 2. This section explores the contributing factors, pertinent to the Queensland context, that were raised during the consultations, as well as the importance of sex-worker retraining and exit programs.

## **Financial incentives:**

### **Has the legal sex industry promoted involvement in prostitution?**

Despite the fact that many things can influence a person to become involved in sex work, financial considerations often emerge as the prime motivation. Respondents to both the CMC's sex worker survey (85%) and to the interviews conducted by Woodward et al. (2004) in Brisbane indicated this to be the case, and certainly the financial incentives can be substantial. For example, Woodward et al. (2004) found the average weekly income for legal brothel workers to be in the vicinity of \$1341. Although this amount is less than street-based workers because of the booking fees charged by licensed brothels, it is clearly a high income compared with the average Australian full-time weekly income, currently estimated to be \$952.50 by the Australian Bureau of Statistics (2004).

Establishing evidence for assessing whether the passage of the Prostitution Act has actually created new markets and opportunities for women to enter the sex industry, however, is difficult, but information sought by recent surveys of sex workers provides some clues. For example, as with Woodward et al. (2004), where more than half of the sex workers they surveyed in legal brothels had started work in that sector, about one-third (32%) of the licensed brothel workers who responded to the CMC's survey indicated that they had not worked in the sex industry before the introduction of the Act. Woodward et al. (2004, p. 55) suggested, therefore, that 'the introduction of legal brothels may have allowed a significant number of women to enter the sex industry', especially as safe work environments and working conditions within the legal brothels were also seen as advantages.

However, these results are open to interpretation. For example, one interpretation could be that the legal industry has promoted involvement by women who have never worked as sex workers previously, and in that respect the legal industry has expanded the scope for working in the industry. Under this view, had licensed brothels not existed, these women would not have chosen prostitution as a career (the PLA, for example, stated that 'the only factor that has changed since the implementation of the Act that may have had an effect on attracting workers into the sex industry is the introduction of licensed brothels [themselves]'). However, without comprehensive qualitative and survey data to support this view, it cannot be concluded that these individuals would not have chosen to enter the profession if legal options had not existed.

In support of the view that the legal brothel industry has not attracted new participants to the industry, information about the proportion of new recruits to comparable legal sex work activity (i.e. as a sole operator) can give a crude indicator of a base rate for the purposes of comparison. The profile for sole operators who responded to the CMC's sex worker survey, for example, provides a good comparison. Among this group, approximately 30 per cent had not worked in the sex industry before the introduction of the Act. This finding supports the view that entry into 'legal' prostitution may have occurred whether licensed brothels existed or not, as a similar proportion of sole operators responding to the survey had entered the profession for the first time as those working in legal brothels.

It is simply not possible, therefore, to ascertain with certainty, given the available data, that the legal brothel industry has promoted participation in sex work. In fact, many submissions stressed that most sex workers make a conscious choice to work in the industry, the following quote being typical:

Sex work is legitimate work and ... sex industry businesses are legitimate businesses ... The overwhelming majority of sex workers make conscious and informed choices to enter the sex industry. Many find their work empowering

and enjoy the flexibility and financial independence that sex work provides. (SQWISI submission, p. 17)

However, many sex workers view their work as a short-term occupation only. In the CMC's survey, for example, only about one-third (35%) of the respondents said that they intended to stay in the industry for a long time, whereas 15 per cent said that they planned to work in the industry for a 'short while' and about one-tenth (9%) said that they would like to leave the industry now. Further, slightly more than half (57%) said that they would like an opportunity to retrain for another career. These findings have important implications for the efforts of the government to help workers to leave the industry, one of the priorities of the Act.

### **Sex-worker retraining and exit programs**

Many submissions to the review asserted that the government had not made enough effort to protect vulnerable people from entering the profession or to help workers leave the industry. For example, the Festival of Light submitted the opinion that:

... there is no evidence that fewer people are being enticed into the sex trade since the operation of the new laws. There is likewise no visible evidence that programs to help prostitutes leave the trade exist or have been successful, or that Queensland government drug treatment programs have helped prostitutes become drug free. (p. 4)

Fiona Simpson MP, in her capacity as Shadow Minister for Health and Women's Policy, voiced similar concerns, both in person and in her submission to the CMC. Her view, and that of a number of her constituents, was that prostitution is 'an industry which is built on the pain of women who have been exploited as children' (p. 3). She stated that there are:

... strong public policy issues surrounding our corporate responsibility to minimise harm and promote the well being of our citizens, particularly for young women ... This requires governments to seek to discourage entrance to the prostitution industry and help women and men leave it for more humane occupations and lifestyles. (p.3)

Ms Simpson proposed more research with former prostitutes to provide insight into the difficulties of leaving the industry, as well as into the damaging effects of their previous occupation. This view was supported by a submission from a former sex worker:

... Getting out of the prostitution industry is not easily done because you become addicted to the big money and drugs ... and you don't know where to turn to get help when you are a single mother with two children and no other formal qualifications.

The root problem for most girls in the industry is that they have been sexually abused as children. That was certainly my history. Having hated men for the pain they caused me as a child, the work also became a way I could turn from being a victim to being an abuser myself, taking revenge by being in control and also hitting men in the hip pocket. This is not an uncommon viewpoint of women in the industry.

... The mental abuse of doing this job of living a double life was torture. It messes with your head. You're someone you don't want to be with, you carry the feelings of shame and being unclean as well as fear of clients following you after work. Then there is the fear of your children learning what you do as a living. You hide what you do from your family and friends, and on top of that you have difficulty holding normal relationships. (name and address supplied)

One submission proposed several actions to help workers leave the industry, including the implementation of the Swedish model, which:

- makes it an offence to seek to procure casual sex for money
- includes an ongoing publicly funded education program, particularly targeting disadvantaged women and the young, and highlighting the physical and mental health dangers of a career in the sex industry
- provides greater access to drug rehabilitation to discourage women from prostituting themselves to pay for their habit.

The observation was made that:

It will be difficult to divert people, especially teenagers (18- and 19-year-olds) and the disadvantaged from an industry that has legal sanction and the promise of a healthy and safe work environment. (p. 12)

In 1999 Premier Beattie stated:

There will be a strategy to actually encourage people out of prostitution, to do something else. This clause is there to run particular programs in various circumstances to try to encourage people out. It is an exit program. Obviously there will be more money for that exit program, but we just wanted to set out in the legislation that if there is money left over we will take some of that and use it for the exit program. (*Queensland parliamentary debates*, 2 December 1999, p. 5884)

During the CMC's consultation with the PAC in 2002, the Chairperson of the PAC stated that, even though one minister had been most insistent that the PAC develop programs to help women leave the industry, the PAC's view was that in reality there were not many women with a need and/or desire for such programs, nor would there ever be. The PAC claimed that the perceived need for such programs on a larger scale was based on a misconception (i.e. that there is a large group of exploited, illiterate, drug-addicted sex workers waiting to be assisted into other work). The Chairperson of the PAC stated that 'the committee has learnt that this is quite simply not the case and a more balanced view is necessary'.

However, the research evidence given in Chapter 2 and the results of the CMC's sex worker survey indicate that street-based prostitutes are at serious risk of drug abuse and violence, and that there are many sex workers who would like to leave the industry and undertake retraining and/or exit programs. The PAC may have been misinformed, therefore, and may thus have lost the opportunity to have a significant impact on implementing this principle of the Act.

Nevertheless, it is clear that retraining programs have in fact been provided in Queensland since the implementation of the Act, with or without the knowledge of the PAC. In 2001, for example, Queensland Health reported to the CMC that a 'Sex Worker Exit and Retraining' program had been provided by the Hospitality Training Courses (HTC) Vocational Institute for the 2001–02 financial year. During that period, HTC marketed the program through a variety of organisations, such as licensed brothels, strip clubs, adult shops, women's crisis centres, SQWISI, community centres and the police, as well as 'cold calling' of classified advertisements. They reported that during that period they worked with 100 sex workers, helping them to prepare 205 job applications and attending 74 interviews. Nineteen workers were successful in obtaining a job, but unfortunately six lasted just one week, six lasted one month, seven lasted three months and only one lasted six months. HTC noted that the transitory nature of the industry and the itinerant character of sex workers' lives made it difficult for contact to be maintained and for jobs to be more permanent. Unfortunately the program provider was placed into liquidation in July 2002 and the program was re-advertised for tender in 2002.

Southern Edge Training Pty Ltd won the tender for 2002–03. The state manager for HTC had transferred to Southern Edge and her experience with the previous

program was thought to be beneficial. The program run by Southern Edge was described as a career transition program that assists Queensland sex workers, or those who are considering entering the sex industry, to secure work in alternative areas. It is based on a case-management system whereby a plan is developed for individuals, tailored to meet their needs and requirements. The program provides training in the area of job search and life skills, such as self-assessment and goal-setting, basic first aid, basic computer skills, workplace communications, résumé preparation, job applications, telephone techniques, interview techniques, the job market, workplace health and safety procedures, and socially diverse environments.

A mixture of one-on-one and group training is thought to be the most appropriate. Self-paced workbooks and materials are provided to each client. The program is provided free of charge, although some workers contribute to their training indirectly by seeking external funding. Post-placement support is also offered to ensure that the client makes a smooth transition into their new area of employment.

Training is provided every week in Brisbane, and once a fortnight a trainer will travel to either the Gold Coast or the Sunshine Coast. Townsville also conducts training on an 'as needed' basis, and there are plans to expand to Cairns. All clients are able to access correspondence and telephone support at any time.

In February 2003, Southern Edge conducted a follow-up assessment to determine the success of the previous training program. This was a difficult exercise and only 19 of the 37 previous participants were found. However, of those contacted, 37 per cent were out of the sex industry and working in a career of their choice, with no desire to re-enter the industry. A further 37 per cent requested re-entry to the program (while continuing to work in the sex industry) and 13 per cent said they were happy to keep working in the industry. The remaining 13 per cent were also still working in the sex industry but were thought to benefit from support outside the program.

According to Southern Edge, the biggest barriers appear to be reaching the target group, establishing trust and credibility within the sex worker industry and maintaining motivation, but the personal networks established through the group work were thought to provide some support. Southern Edge claimed that one of the main obstacles is that sex workers feel that their occupation is being censured if an opportunity to leave the industry is offered to them. A former sex worker on staff, however, has been beneficial in developing rapport and assuring the workers that the agency is completely non-judgmental.

Close links have been established by Southern Edge with SQWISI, Biala, adult shops, QuIVAA (Queensland Intravenous AIDS Association), Options, NEPS,<sup>11</sup> the Drug Arm Outreach bus, Working On, the PLA and the Rebels bikie gang, and promotional interviews have been conducted with Centrelink and Job Network agencies. Canvassing potential clients also occurs by means of advertising in newspapers and magazines, and by cold calling of sole operators who advertise in newspapers and on the Internet. By September 2003 Southern Edge had made 741 cold calls, released 2848 flyers and brochures, provided 116 face-to-face services and enrolled 35 sex workers for the training.

Southern Edge has also visited legal and illegal brothels. They stated that many of the legal brothels have allowed Southern Edge personnel to give presentations to

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11 National Employment and Psychological Services Centre Inc. — a consortium of specialist services that help people with mental health problems to find and retain employment

sex workers and other staff, and to distribute marketing material within the brothels ('to date there has only been one cool reception'). However, they noted that it was quite risky for their staff to access illegal brothels and quite difficult to maintain contact because of the brothels' mobility. The main response from illegal workers has been concern about the confidentiality of the information provided. Southern Edge stated:

Not only are they anxious about having their details disclosed to authorities like Health and the Police, they are also concerned by organisations like Centrelink and the Taxation Department. It may take some sessions with illegal workers before they eventually disclose their real names and contact details. Illegal workers ... have some serious issues involved with our judicial systems. They may be people who have overstayed a visitor's permit or who are underage and living on the street (often wards of the state). These groups are very difficult to reach or maintain contact with.

Southern Edge also noted that:

... increasingly we are encountering sex workers from non-English-speaking backgrounds who have almost no English and once the conversation moves away from standard words and phrases they have little to no understanding. However, these girls are very keen to undertake training and often want to look for alternative work options but cannot as they are not qualified, cannot speak the language or have no computer skills.

As a consequence of the increasing encounters with non-English-speaking sex workers, Southern Edge has sought funding, in conjunction with SQWISI, to have some of their material translated and distributed (the 'Asian Sex Worker Re-Entry Program').

In their submissions to the CMC, both the Logan City Council and the Family Council of Queensland called for funding to address the social factors that lead to prostitution, to protect homeless youth who are at risk of being recruited into prostitution and to establish an exit program to help those who want to stop selling their bodies. The Festival of Light also submitted that the Queensland Government should offer prostitutes the same opportunity for rehabilitation as is provided by Linda Watson's House of Hope in Perth, which offers sex workers a chance to get out of prostitution.

Clearly, Queensland does provide an exit/retraining program, but it may benefit from expansion, greater support and enhanced marketing. This program should also complement the primary and secondary prevention activities that are suggested in Chapter 4.

### ***Recommendation 3***

**That Queensland Health take a lead role in providing effective interventions for sex workers who wish to leave the sex industry, including drug diversion. Interventions such as the Sex Worker Exit and Retraining Program should be appropriately promoted to sex workers, and procedures for receiving referrals from brothel owners should be established.**

## **The Prostitution Advisory Council**

Chapter 1 indicated that implementation of the principle of the Act to address the social factors contributing to prostitution essentially fell under the auspices of the PAC. More specifically, the relevant tasks of the PAC were to:

- promote and coordinate programs that promote sexual health care, help prostitutes to leave prostitution, divert minors and other vulnerable people from prostitution, and raise awareness in prostitutes, judicial officers and police (among others) about issues relating to prostitution

- promote the dissemination of information about the dangers inherent in prostitution and security measures to improve the personal safety of prostitutes.

During the initial years of the evaluation, informants suggested that the PAC had not been sufficiently funded to allow it to perform its functions adequately and that additional resources sought from the Minister had not been forthcoming. It was also said that many PAC members had little experience in the prostitution industry and were inadequately prepared to perform these functions.

As noted in Chapter 1, the PAC was disbanded and amendments were subsequently made to the Act to remove its jurisdiction. While the role of the PAC has been taken up, to a certain extent, by the PLA, many submissions suggested that this is not adequate, as it is clear that the PLA has not been resourced to do so and has also suffered from a conflict of interest by having to regulate and encourage the legal industry on the one hand, and encourage sex workers to leave the industry on the other. One submission made the observation that:

... the government is sending mixed messages to young people and the vulnerable by promising them a safe environment in legal brothels when at the same time it is seeking to divert people from and help people exit the industry. (p. 12)

Several submissions recommended that the PAC be reformed to undertake this role, but in a modified form. The PLA, for example, submitted that 'the functions of the PAC could be exercised by an interdepartmental/agency working group responsible to the Minister and that individual representatives could be selected from each of the following departments/agencies: Queensland Health, local government, the Division of Workplace Health and Safety, SQWISI, police, community/church representation and/or an expert in industrial relations' (p. 12). The PLA suggested that such a body could assist the PLA with matters such as community sexual health, workplace health and safety, brothel infrastructure, hygiene, workplace relations and matters relevant to the more effective regulation and control of prostitution. Clearly, liaison with Queensland Health about its exit and retraining programs, among other things, would also be an important function of such a group. As Chapter 5 indicates, an informal inter-agency committee was created early in 2004. The CMC is of the view that, in addition to this body, the PLA's resources to undertake these functions itself could be enhanced.

Importantly, to ensure appropriate functioning, the PLA should have the capacity to consult with experts in the field (including industry representatives such as SQWISI and QABA).

#### ***Recommendation 4***

**That the policy and research functions of the PLA be adequately resourced to enhance its capacity to review and collate information about a range of issues relevant to prostitution (such as sexual health, workplace health and safety, and workplace relations), and to the social factors that contribute to involvement in the sex industry.**

### **Licensed brothels**

Licensees reported that they had made information about industry exit programs available to sex workers on their premises. Further, they stated that they actively seek to provide support for the workers' career and business aspirations (QABA p. 11). For example, QABA's submission stated that some of the staff now employed as managers and receptionists in the licensed industry had previously been sex workers. However, licensees did note some difficulties working with staff who had previously operated in the illegal industry:

It has been a challenge to deal with some of these individuals who are more used to operating in a totally unregulated environment and a world without rules as opposed to the systematised businesses operated by QABA members ... It was noted by one licensee that the staff members who had previously worked in the industry were more inclined to let a service provider on the premises if they said they had forgotten their health certificate than a non-industry staff member would. The former would thereby put the licensee's licence at risk and accept reduced health standards.

Many licensees also agreed that some of their sex workers have been difficult and unreliable, having been accustomed to working in a less regulated industry. Therefore, they suggested that many sex workers will not be able to retain long-term work in the legal industry, and for these reasons the illegal industry will continue to provide an opportunity for them.

QABA also noted that service providers seeking to leave the industry often lack merchantable skills. They suggested that it should be recognised that all people operating in the industry will ultimately leave it and that they should be developing skills. Respondents to the CMC's sex worker survey, for example, indicated that age was an important factor influencing their long-term plans ('wouldn't get much work after 40'; 'can't do this forever'; 'getting too old'). QABA recommended, therefore, that consideration be given to providing training skills that will be transferable outside the industry for those choosing to operate in the industry. This recommendation has merit and has been implemented to a certain extent by the Sex Worker Exit Program currently funded by Queensland Health.

### **Summary**

For many sex workers, prostitution is a choice — many are satisfied and reap financial and other lifestyle gains. However, there are sex workers, especially those who work on the streets, whose vulnerability has led them to a lifestyle that makes it hard for them to leave the industry, even if they would like to.

By supporting the sex-worker retraining and exit program, the government has clearly made a commitment to this principle of the Act, and some successes have been achieved to date. Implementing the program has not been without difficulties, however, and this has created some confusion about its availability. Nevertheless, it is clear that there is significant support for the continuation of the program, and even its enhancement.

An enhanced research and policy function for the PLA to provide information to the sex industry about social issues associated with sex work is also recommended to ensure that this principle is met.

## **PRINCIPLE 4: TO ENSURE A HEALTHY SOCIETY**

There are many important mental and physical health related issues in the sex industry and some diversity in the nature of these across the different types of environments in which sex workers provide services. This section of the chapter examines the pertinent health issues for workers in legal brothels, sole operators and those who provide street-based services that were raised during the consultations and by the submissions to the review.

## Licensed brothels

### *Sexual health issues*

The Act makes it an offence for a prostitute to work while infective with a disease (s. 90). The Act also places an indirect obligation on sex workers to have regular health screening [s. 90(3)] and on licensees to ensure that screening has taken place [s. 89(3)]. Sex workers are issued with health certificates by their general practitioner, SQWISI or some other sexual health provider, and current protocols require sex workers in licensed brothels to obtain a certificate every six weeks.<sup>12</sup>

However, sexual health checks do not mean that a sex worker is not, or cannot become infected with an STI. The PLA noted in its submission that a sexual health certificate does not provide greater safety to clients of sex workers, given that samples taken during a sexual health examination cannot be analysed on the spot, and that clinicians cannot provide sex workers with a certificate that states that he or she is not infective with an STI. Rather, clinicians provide sex workers with a certificate that states: 'At the time of the examination there was no evidence of an STI.'

Several submissions to the CMC were concerned that the sexual health of prostitutes, even those working legally, cannot be guaranteed. These comments included: (a) the incubation period for diseases such as gonorrhoea (2–8 days) and syphilis (2–8 weeks) means that 'any girl who is cleared on a Monday morning could have the infection passed on to her by her first client that afternoon, [which] means she will go on infecting every client until she returns to the clinic'; and (b) condoms are not 100 per cent effective. A submission from one former sex worker stated, for example:

I estimate that 3–4 condoms out of a box of 24 would break, even though the condoms were of good quality ... This is not unusual ... You can also get diseases from mouth and other skin contact and there are STIs caught from pubic areas. Condoms do not prevent these infections. To guarantee that prostitutes will be disease free for each client in a legal brothel is naïve.

Even though the information provided in Chapter 2 has shown that both legal and illegal sex workers have relatively low levels of STIs, because they practise safe sex when providing sexual services, determining specific details has been compromised by relatively poor disease surveillance systems in Queensland. Indeed, one submission to the CMC exclaimed that 'the lack of genuine statistical data as to the diseases caused through prostitution is condemnable'. It is understood, however, that Queensland Health is in the process of upgrading its processes for collecting data on sexual health, and future surveillance may be significantly improved.

The PLA and Queensland Health, however, expressed some disquiet about the frequency of the testing regime. As discussed earlier, they commented that sex workers are only infection-free until their next sexual contact and that the six-weekly interval was merely arbitrary. Queensland Health and SQWISI (p. 20) argued that three-monthly intervals for testing should be sufficient, considering the test periods recommended for most STIs and the cost of the tests to the public health system.

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<sup>12</sup> About one-third (34%) of the respondents to the CMC's sex worker survey said that they had attended SQWISI to obtain a certificate, one-half (54%) said that they had attended a Queensland Health sexual health clinic, and one-third (34%) said that they had been to their local doctor. A small proportion (6%) said that they went elsewhere, such as interstate (some respondents indicated that they worked interstate as well as in Queensland), Biala and the AIDS Medical Unit (multiple responses to this question were allowed).

Although disease surveillance is problematic, the sexual health of sex workers in licensed brothels appears to be relatively good. Given the arbitrary nature of the current testing regime, the actual limitations of the tests themselves, and the recommendations of the acknowledged experts in the area (Queensland Health), the CMC supports the view that the intervals between sexual health checks should be extended to three months. Public health advice is that this will make no difference to the sexual health of the sex workers but will provide improved access for sexual health services.

#### **Recommendation 5**

**That the testing regime for sex workers in licensed brothels be changed to extend the interval between checks to three months.**

The ownership of sexual health certificates was another contentious issue for a number of informants to the evaluation during the early stages of the review. It appeared that some licensees had demanded that the certificate belong to them because a current health certificate was the only defence to a charge under section 89 of the Act, 'permitting a prostitute infective with a disease to work in a licensed brothel'.<sup>13</sup> As only one copy of the certificate is issued, however, workers were reluctant to hand them over, many needing to retain them so that they could work in other locations. The PLA recently developed a licence condition to settle this issue, stating clearly that ownership of the certificates should remain with the sex worker:

Condition 24: Ensure sex workers hold a current sexual health certificate. A licensee or manager is required to sight each original sexual health certificate and to retain, for a period of one year, a photocopy of the original sexual health certificates endorsed by the licensee or manager who sighted the original for all sex workers working at the brothel.

However, sex workers do not have to provide their real or working names to obtain health certificates and sexual health clinics do not require the production of a Medicare card for service. The Festival of Light pointed out that 'prostitutes can cheat on mandatory medical checks ... [For example] infected sex workers [can] ask uninfected sex workers to undertake the check for them.' They also claimed that 'certain doctors can be compromised and then used to sign false certificates' (p. 6). The PLA agreed, submitting that forgery of sexual health certificates has been identified as a problem by PLA compliance officers and has been raised with them by at least one sexual health clinic.

Queensland Health advised the CMC that they are aware of the risks relating to sex workers and health checks (and they have raised the issue with the PLA), but it is their belief that the provision of anonymous sexual health services remains a necessary public health intervention. There is currently no intention to alter this policy.

One possible solution to the problem of fraudulent sexual health certificates would be the registration of all sex workers, not just those working in brothels. As has already been discussed, however, this is a problematic issue.

Another solution may be the use of photo identification with health certification. This would entail minimal cost (passport photos are easily arranged through chemist and photographic retailers) and would not require identifying details, such as the name or address of the sex worker.

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<sup>13</sup> A licensee (or manager) is taken to have known that the prostitute was infective with an STD (sexually transmitted disease) unless the licensee proves that, at the time the offence is alleged to have been committed, the licensee believed on reasonable grounds that the prostitute had been medically examined or tested at intervals prescribed under a regulation to ascertain whether the prostitute was infective with an STD.

Despite this range of concerns, it was very clear that all licensed brothels have imposed stringent processes to ensure that safe sex practices occur within their premises. All licensed brothels contacted for the review have also instituted internal incident-reporting systems for events such as physical or sexual abuse or condom breakage. This ensures that support will be provided to staff as required and that a record of such incidents will be used to inform plans for future internal best practice.

### ***Sexual health screening services***

As Medicare does not cover routine sexual health screening, many sex workers rely on sexual health clinics for screening and certificates, without which they cannot work in the licensed sector. However, sexual health screening services in Queensland are struggling to cope with the demand from the sex industry. At many clinics throughout Queensland a waiting list of three weeks for an appointment is not uncommon. If a worker misses an appointment he or she may not be able to be screened within the six-week period of the last test. SQWISI asserted that many workers in this position will turn to short-term work in the illegal sector until they can get a certificate. SQWISI (p. 19) also stated that a delay of three weeks before commencing work in a licensed brothel places an unreasonable burden on workers who are new to the licensed sector, and to the licensees. Licensees already face considerable disadvantage in recruiting workers because of the prohibition on advertising for staff. Many workers facing a three-week delay will find illegal work instead — and the brothel misses valuable staffing opportunities.

The respondents to the CMC's sex worker survey provided some insight into this issue. Even though almost half of the respondents (45%) thought that access to health care for sex workers had improved since the introduction of the Act (and a similar proportion, 45%, believed that it had stayed the same), a few (9%) noted that it had deteriorated and almost one-half (45%) indicated that they had had trouble making appointments to have their sexual health checkups since the implementation of the Act in 2000 — three times more than those reporting similar problems before the implementation of the Act (14%). Responses to open-ended questions about the reasons for this were illuminating. On the one hand, respondents were overwhelmingly positive about the actual services provided — for example, some stated that there 'seem to be more services available and a larger group of organisations specifically providing non-judgmental and sensitive health care', that 'since [it was] made legal there's more awareness of the sex industry' and that 'SQWISI was brilliant'. On the other hand, there were indications that the 'clinics are open less [now] and are also being used by more people' and that 'you have to book ahead now' and 'it is hard to get a booking with a sexual health nurse or doctor' and that 'often there are no appointments available and the services are overloaded'.

One distressed sex worker contacted the CMC about the problem of limited services. She had been refused work in a legal brothel, even though she had been rostered on to work, because her certificate was out of date. She immediately attended emergency centres of both public and private hospitals for screening, but was turned away because her situation was not classified as an emergency. She claimed that if it was a requirement of the Act that she be screened to work lawfully, then public services should be available to enact that requirement, especially as the sexual health clinics have very limited clinic sessions available.

In some parts of regional Queensland the problem is even more acute. The Sunshine Coast, for example, has two licensed brothels and the local clinic operates only on certain days in each part of the coast it services, and has only one clinician, who is male. Gladstone has no sexual health clinic, so sex workers must travel to Rockhampton for screening (SQWISI p. 19).

SQWISI also noted that, even though sole operators and illegal sex workers are not legally required to be screened, many do so routinely to safeguard their own health (and some illegal establishments require certificates) and that this, combined with the pressure from the legal sector, has exacerbated access problems. They also suggested that, if amendments to the Act are introduced and succeed in bringing more sex workers into the licensed sector, this problem will become even more acute. SQWISI believes, therefore, that an increase in sexual health services across the State is required. While this idea has merit, the CMC's recommendation to lengthen the required testing period from six weeks to three months, if enacted, should improve the situation in the field.

### ***Sexual health training***

Sexual health training for sex workers emerged as an important health issue during the review. All licensees who were contacted stated that they have in place training programs for sex workers through SQWISI and, in addition, many have developed their own programs to encourage worker awareness about these issues. Results from the CMC's sex worker survey revealed, however, that about one-third (29%) of respondents had not attended any sexual health training courses. Of those who had attended a training course, about one-third had undertaken the training before the implementation of the Act and about one-half had done so since the introduction of the Act. The majority of respondents (62%) had attended courses at SQWISI and a few had attended courses at a licensed brothel (6%), at QABA (2%), at Queensland Health (3%) and interstate (8%). Given the importance of sexual health for all sex workers and the sustainability of the legal industry, training will remain an issue that requires commitment from a range of stakeholders.

### ***Personal Protective Equipment (PPE)***

Personal Protective Equipment (PPE) emerged as an especially contentious issue during the review. PPE includes items such as condoms, dental dams, water-based lubricants and latex gloves, as well as items required for the maintenance of equipment and facilities, such as disinfection agents. Most respondents to the CMC's sex worker survey (82%) indicated that they have always used safe sex practices (i.e. condoms, dams or other prophylactics) while providing sexual services. Among the minority of respondents who indicated that there had been at least one occasion when they had not practised safe sex since the introduction of the Act, the reasons provided included client request (58%), money (25%) and personal preference (33%). Not one respondent indicated that the unavailability of prophylactics was a reason for practising unsafe sex.

Under section 77A(4) of the Act, the licensee must take reasonable steps to ensure that prophylactics are used and, according to section 77A(5), must not discourage their use. Under licence condition number 28, a licensee must provide condoms, dental dams, lubricant and disposable gloves in each workroom at no charge to the sex worker. Many sex workers and licensees consulted for the review were concerned, however, about who supplied and paid for PPE. On the one hand, the CMC was told that in some brothels PPE was not supplied free of charge and that sex workers had to either purchase the supplies themselves or forfeit their income in some other way to make up for the costs incurred. On the other hand, where PPE was provided there were concerns about the possibly unreliable or inferior quality of the product supplied, especially when provided in kit form, which is a relatively new PLA requirement. There were also some concerns about the lack of clarity in the licence condition, and many informants said that a clearer definition of 'a variety of PPE in sufficient quantities' would improve the likelihood of compliance.

There remain competing views on this issue among the sex workers, licensees and the PLA, and resolving the matter clearly depends on whether sex workers are identified as employees or subcontractors. As sex workers are currently considered subcontractors the analogy was drawn with the requirement that builders or plumbers who are subcontractors must provide their own tools of trade. Further consultation between the PLA and industry representatives (licensees and sex workers) is required to resolve this problem.

On a related issue, under section 77(A)(1) and (2) of the Act, sex workers and their clients are required not to engage in a sexual act without a prophylactic. The PLA has been concerned that there may be problems with enforcing this provision. For example, it was the PLA's belief that the Act only makes it an offence when sexual intercourse or oral sex actually occurs without a prophylactic; it does not make it an offence for sex workers or clients to merely have the intent (or to make an offer) to have sex without a prophylactic. The police agreed with the PLA's concerns.

In October 2004 this issue was tested before the courts. In that matter, a (male) sex worker offered to provide oral sex to a customer without a prophylactic. The sex worker was prosecuted under section 77A of the Prostitution Act. The magistrate ruled that an 'offer' was not the same as 'providing' and the matter was dismissed. While it is uncertain whether or not an appeal will be made by the QPS, it seems for the moment that on one view 'offering' to provide sex without a condom is not behaviour caught within section 77A.

The Prostitution Act requires clarification in this respect and the CMC recommends changes to the Act accordingly.

#### **Recommendation 6**

**That section 77A of the Prostitution Act be modified to ensure that proscribed behaviour includes 'an offer' to have sex without a prophylactic as well as the offence of actual sexual intercourse or oral sex without a prophylactic.**

### **Occupational health and safety issues**

#### **Health and safety guidelines**

In October 2002, the PLA released a document entitled *Health and safety guidelines for brothels*. The aim of the guidelines was to provide brothels with a set of best-practice standards for a safe and healthy environment for sex workers, other employees, clients and visitors. Some concerns about the resources required to complete the guidelines (originally a task assigned to the PAC), the timeline and consultation practices for their development, and their relevance to other mainstream legislation were raised by informants to the review, but these issues are discussed further in Chapters 5 and 6 of this report.

It is important to note, however, that the code of practice had not been developed when the first brothel opened, and that the PLA was forced to accept an interim code for licence conditions.

#### **Brothel inspections**

Workplace Health and Safety Queensland administers the *Workplace Health and Safety Act 1995* and has an inspectorate located throughout the state that can respond to incidents or complaints or as part of an audit program. When people fail to meet their obligations under the Workplace Health and Safety Act, inspectors may use a range of compliance and enforcement options to secure compliance. It was suggested by some licensees that, provided additional anti-corruption safeguards and prostitution industry specific training were implemented,

this department could have the capacity to assess the relevant occupational health and safety hazards within licensed brothels. It is the CMC's view, however, that consultation between the PLA and mainstream services regarding best practice, along with the improvements to the PLA's compliance program (see Chapter 5), would be the most appropriate steps forward. Access to brothels by an excessive number of independent agencies could create confusion and increase the risks of corruption and organised crime.

### **Number of workers and rooms**

In 2003 the *Australian Women's Weekly* published a story about Linda Watson, a former madam, who stated:

What people don't realise is that there is a great physical change when you become a working girl ... within two months doing four or five, or in the case of young girls, maybe ten men a day, six days a week, you start to hurt ... the pain is horrific. It's like a wound ... You have the physical part that makes girls turn to alcohol and mull on the job.

Once referred to as Repetitive Strain Injury (RSI), occupational overuse refers to a range of conditions, including discomfort, sprains, strains and dysfunction, which can affect all parts of the body. Overuse can occur when people perform repetitive tasks or forceful movements. In the sex industry, like many others, some repetitive activities cannot be avoided. Employers are required, therefore, to provide information, training and a variety of strategies to avoid overuse injury in the workplace. Of particular relevance is the number of workers and the number of rooms allowed on licensed premises.

Under section 78(1)(c) of the Act it is an offence for a licensee or an approved manager of a licensed brothel to have more service providers at the brothel than the total number of rooms permitted to be used for providing prostitution. Section 64(1)(d) of the Act states that the number of rooms in the brothel must be five or fewer. SQWISI believes this is an unnecessary restriction that impedes staffing flexibility. They stated that a brothel with, for example, 'seven sex workers rostered on peak shifts will be more generous with time off and less likely to pressure workers to continue working if they feel unwell' (p. 8).

All licensees, managers and key government informants to the review considered that workers must have the opportunity to rest during a shift, or even stop work altogether should an incident occur that requires them to seek urgent medical attention (e.g. a condom break or spill). They indicated that on a busy night there could be 8–10 clients in the waiting room, and that sex workers work continuously throughout their shift. Most importantly, licensees reported that when only five workers are rostered per shift it can be difficult to organise replacements at the last minute in the event that workers don't turn up or call in sick. Apparently this happens frequently, and it means that fewer workers are available to service the clients. Although licensees and managers do not require them to work continuously, sex workers may feel obliged to do so when it is busy. If more workers were available it is more likely that they would be able to take more-regular breaks.

QABA, SQWISI and the PLA recommended that the number of working rooms be increased from five to six or eight and that the number of workers on the premises be permitted to exceed the number of working rooms provided. SQWISI pointed out that 'overheads such as advertising and managerial and support staff could be used more efficiently and at a much lower cost per appointment' (p. 8), and the PLA suggested that it will enhance the brothels' financial viability.

However, some submissions to the CMC's review were vehemently opposed to any increases in either the number of rooms or the number of workers in legal brothels. For example, one submission stated that:

... those who applied and were subsequently successful in securing a brothel licence were well aware of the restrictions regarding room capacity and sex worker staff levels ... What all players should expect is an open and level playing field that is fair to all, not one where competitors can individually or collectively manipulate or change the rules to disadvantage others ... Quite clearly, some brothel licensees enjoy an advantage over their competitors due to the prime location of their business regarding public access, while some remain disadvantaged due to their isolation within industrial estates ... What is apparently clear is that some licensees are destined to build mega brothels that will disadvantage other legitimate operators ... Those businesses seeking change to legislation regarding brothel size and sex worker shift capacity should perhaps consider leaving the industry as an alternative.

The CMC does not agree with the views put forward in this submission. The suggestion that legal licensees should leave the industry if they are dissatisfied appears to be counter to the spirit of the Act, which is to draw as many of the illegal operators and workers as possible into the legal industry. It is also counter to the aim of ensuring occupational health and safety for the workers within the industry.

It is the CMC's view that enabling more sex workers to be rostered on than the number of rooms available may solve some of the licensees' organisational problems and lessen some of the workplace health and safety problems of the sex workers. There is the risk, of course, that there will be too many workers for the number of clients available on less-busy nights, which could lead to some dissatisfaction among sex workers (because of dwindling income opportunities) and perhaps cause even more staffing problems for licensees in the longer term. Nevertheless, the CMC is of the view that the number of sex workers allowed on brothel premises at any one time should be increased to no more than eight for a five-room brothel, but that the maximum number of working rooms should remain at five.

#### ***Recommendation 7***

**That the maximum number of sex workers allowed on brothel premises at any one time for a five-room brothel be increased from five to eight. Proportionately fewer should be allowed on the premises of smaller brothels.**

#### ***Intellectually impaired persons***

The PLA brought to the CMC's attention some concerns that licensees, SQWISI and sex workers had raised with them about the potential for intellectually impaired people to be working as sex workers in legal brothels. Under the Criminal Code (s. 229F) an 'intellectually impaired person' is defined as a person with a disability that is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these that results in a substantial reduction of the person's capacity for communication, social interaction or learning and the person needing support'. A person who procures an intellectually impaired person for prostitution is liable to a maximum penalty of 14 years' imprisonment.

The PLA claimed that there may be situations where PETF officers suspect that a person could be defined as an 'intellectually impaired person', but the Act does not provide for a PETF officer to interview the worker or request a doctor's examination. Investigations are therefore difficult, resource-intensive and frustrating. The PLA requested that the Act be amended to include this capacity for PETF officers.

This issue is fraught with difficulties. Advice from the Adult Guardian (personal communication, 13 October 2004) was that, in accordance with their preferred procedures, the police should be able to call upon a health professional (such as a nurse, a doctor, a social worker or a counsellor) who has developed a relationship with the intellectually impaired person concerned to advise on that person's capacity for making an informed choice about working in the sex industry. This may require more than a doctor's consultation. The CMC agrees.

### **Recommendation 8**

**That the Prostitution Act be amended to provide for a PETF officer to seek the advice of a health professional (such as a doctor, a nurse, a social worker or a counsellor) about the decision-making capacity of sex workers who they consider may have impaired intellectual capacity.**

## **Sole operators**

Sole operators are legal in Queensland, but, apart from recent amendments to the Prostitution Act that now make it compulsory for sole operators to use safe sex practices at all times while providing services, their sexual health is not regulated or monitored in any way.<sup>14</sup> That is, there is no requirement for sole operators to be tested or to provide a sexual health certificate. Many informants to the evaluation were concerned about this and suggested that such testing should be mandatory.

On the other hand, SQWISI and Scarlet Alliance said they believe that the majority of sole operators maintain regular health checks and that the level of STIs in this population is relatively low when compared with the general population. It is also the CMC's view that a requirement for mandatory health certificates for sole operators would be difficult to enforce and monitor. Registration of sole operators would be required for such regulation to occur, and this issue is contentious. On the one hand, registration would readily allow for health monitoring. On the other hand, most (but not all) sex workers say that they would refuse to register, without ceasing to work in the industry. Thus, registration may in fact result in an increased illegal industry, with even less access to health and safety services.

There also appear to be other health risks for sole operators. SQWISI stated, for example, that:

- the demand for solo work is intermittent and workers under financial stress may face ultimatums from clients to practise unsafe sex or the client may take his business elsewhere
- new workers may not have accessed health education and may not have had the benefit of educative interactions with other workers, which means that they will have under-developed skills in negotiating safe sex, identifying signs of disease and preventing client interference with prophylactics
- sole operators often suffer workplace stress induced by the unpredictability of income and long hours spent manning phones to ensure that no business is lost
- the isolation of solo operators is highly stressful — they have no-one to whom they can off-load because more often than not their family and friends are unaware of the nature of their work (p. 21).

SQWISI believes 'that the majority of sole operators would prefer to work in brothels or escort agencies where incomes are more predictable and where there is less pressure to practise unsafe sex' (p. 21).

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<sup>14</sup> In the early years of the review, all informants strongly recommended that the Act be amended to make it a requirement for all sex workers, including sole operators and illegal operators, to use safe sex practices. As noted in Chapter 1, amendments to the Act in December 2003 have now achieved this.

However, the research suggests that some sex workers do prefer to work on their own, that there certainly is a demand for variety in the nature of services provided — see, for example, the client survey conducted by Woodward et al. (2004) — and that the health of sole operators must remain a priority. The CMC does not, therefore, favour any changes to the health regulation of sole operators.

### **Illegal sex workers**

Consensus emerged during the review that the Act has had little impact on the health of workers in the illegal sectors of the sex industry. Even though the Act was amended in December 2003 to make it an offence for all sex workers and clients to sell or buy sexual services without the use of a prophylactic, SQWISI said it believed that this change will have no effect on the conduct of workers already working illegally (p. 20). SQWISI stated that ‘although the sexual health of sex workers generally is relatively good, occupational health and safety standards in the illegal sector are uneven and problematic’ (p. 20), and cited a number of factors contributing to this, including:

- illegal sex workers are harder to access for health education purposes
- operators do not necessarily supply health information and may actively try to keep workers from accessing information
- uneducated workers are more likely to practise unsafe sex because of ignorance of the risks
- uneducated workers are less likely to be able to identify signs of disease in clients
- operators may not supply prophylactics
- operators may pressure workers to work without prophylactics, either generally or on specific occasions
- criminality works against the development of organisational and industrial safe sex cultures.

Other submissions commented more specifically about the hygiene of street-based sex workers:

Street sex workers are susceptible to infection due to the sharing of needles, or careless hygiene practices when having sex in confined spaces such as the back seat of a car.

Street based sex workers have hygiene problems when they haven't got access to water to clean themselves [after servicing a client] ... sometimes they use my laundry ... I find used condoms, cigarette packets and makeup.

Those consulted for the review were also generally critical of harm-minimisation approaches for street-based sex workers. Observers noted that these approaches appear to simply provide the tools of the trade to workers (such as condoms, lubricants and needles), rather than information and assistance for those wishing to leave the industry, or offers of alternative treatments, such as drug diversion, for those in need. The Queensland-based research results indicate that a sizeable proportion of street-based sex workers would like to leave the industry (see Woodward et al. 2004). Additional services that provide the impetus for them to take this step may be required, rather than the simple provision of tools of the trade, which, although reducing the harm, may facilitate the continuation of the trade.

In response to these problems, several submissions called for greater emphasis on public education and increasingly active educative roles by Queensland Health and SQWISI. SQWISI have also stated quite strongly that ‘the only effective way to ensure high standards of occupational health within the sex industry is to bring the

majority of sex workers within the scope of a legalised, regulated industry' (p. 21). The CMC supports this view and anticipates that changes within the legal industry as recommended by this review will encourage more illegal workers to move to the legal industry.

## Summary

This section of the report has explored a number of matters bearing on the health of sex workers and their clients. Without doubt, sex workers in the legal brothels in Queensland have relatively sound sexual health, partly because of the strict regime required for sexual health screening and certificates, but also because of what seems to be an ingrained culture of ongoing testing by most sex workers in Queensland. This is very good news for the workers, the clients and the broader community.

With regard to the legislation, there are a number of provisions that need to be amended if the health of workers in legal brothels, and the health of sole operators, is to be improved. The CMC has made a number of recommendations for change in this chapter, and there are more recommendations in the following chapters. The health of street-based sex workers remains, of course, a serious concern, and the CMC believes that it is necessary to make treatment more readily available and institute other diversionary programs for these individuals.

## PRINCIPLE 5: TO PROMOTE SAFETY

The murders of three street-based sex workers in Brisbane since the implementation of the Prostitution Act illustrate only too well the importance of safety for sex workers in Queensland. This section of the chapter examines the issue of safety for workers in legal brothels, sole operators and those who provide street-based services, as raised during the review.

In its sex worker survey, the CMC sought information about levels of victimisation, both at work and in the personal environment of Brisbane-based sex-workers. Levels of both physical and sexual assault were relatively high. For example, about half of the respondents had experienced some form of physical assault either before (55%) or since (45%) the implementation of the Prostitution Act in July 2000. Before July 2000, these assaults had primarily been perpetrated by their partners (32%), but 20.5 per cent of those working as a sex worker at the time had experienced a physical assault by a client. These assaults had occurred across a variety of working environments, but mostly against sole operators. Since July 2000, the proportion of respondents reporting a physical assault by a client was just as high as before the implementation of the Act, and, again, sex workers at greatest risk of physical assault were those working as sole operators (see Tables 3.1 and 3.2).

Although fewer respondents to the CMC's sex worker survey reported sexual assaults than physical assaults (which is expected, based on prior research), the number of sexual assaults reported was still relatively high (see Tables 3.3 and 3.4). For example, 35 per cent reported experiencing a sexual assault before July 2000 and 12 per cent reported experiencing a sexual assault since July 2000. Again, clients, partners, relatives and friends were the predominant assailants. Since July 2000, the proportion of respondents experiencing a sexual assault while at work (for those new to the industry) was the same as those experiencing a sexual assault before the implementation of the Act, but it is important to note that the events occurring in licensed brothels did not occur in Queensland.

**Table 3.1: Experiences of physical assault while providing sexual services — results of the CMC sex worker survey**

Perpetrator of assault	Percentage of assaults since July 2000		
	Percentage of assaults before July 2000	Respondents working as a sex worker before July 2000 (n = 44)	Respondents working as a sex worker before and since July 2000 (n = 44)
Client in any location	20.5	20.5	20.0
Client in an interstate licensed brothel	2.2	0.0	0.0
Client in a Queensland licensed brothel	0.0	0.0	0.0
Client in an illegal brothel	4.5	0.0	0.0
Client of a sole operator	11.4	13.6	5.0
Client of sex worker working in cooperation with others	0.0	0.0	0.0
Client of sex worker on the streets	2.3	0.0	0.0
Client: Other	6.8	4.6	20.0
Another sex worker	6.8	0.0	0.0
Pimp/boss	4.5	0.0	0.0

Note: one respondent did not complete this section of the survey.

**Table 3.2: Experiences of physical assault external to the sex industry — results of the CMC sex worker survey (all respondents, n = 65)**

Perpetrator of physical assault	Assaults before July 2000 (%)	Assaults since July 2000 (%)
Partner	32.3	16.9
Relative	12.3	6.2
Friend	4.6	1.5
Other	6.2	4.6

**Table 3.3: Experiences of sexual assault while providing sexual services — results of the CMC sex worker survey**

Perpetrator of assault	Percentage of assaults before July 2000	Percentage of assaults since July 2000	
	Respondents working as a sex worker before July 2000 (n = 44)	Respondents working as a sex worker before and since July 2000 (n = 44)	Respondents working as a sex worker since 2000 only (n = 20)
Client in any location	11.4	2.3	5.0
Client in an interstate licensed brothel	4.5	0.0	0.0
Client in a Queensland licensed brothel	0.0	0.0	0.0
Client in an illegal brothel	0.0	2.3	0.0
Client of a sole operator	2.3	2.3	5.0
Client of sex worker working in cooperation with others	2.3	2.3	0.0
Client of sex worker on the streets	0.0	0.0	0.0
Client: Other	4.5	0.0	0.0
Another sex worker	0.0	0.0	5.0
Pimp/boss	2.3	0.0	5.0

Note: one respondent did not complete this section of the survey.

**Table 3.4: Experiences of sexual assault external to the sex industry — results of the CMC sex worker survey (all respondents, n = 65)**

Perpetrator of physical assault	Assaults before July 2000 (%)	Assaults since July 2000 (%)
Partner	12.3	1.5
Relative	10.8	0.0
Friend	7.7	0.0
Other	7.7	3.4

## Licensed brothels

### *Safety of sex workers*

According to the PLA (p. 7), licence applicants are required to submit a business and operational plan that addresses ‘security and safety from violence, including arrangements that are/will be in place to ensure the safety of persons directly involved in providing prostitution’. The brothel licence conditions also require licensees to:

- take all steps necessary to ensure the health and safety of all sex workers and other staff engaged, not only while such persons are at the brothel, but when arriving at or leaving the premises, whether during daylight hours or during hours of darkness
- not, either directly or indirectly, compel a sex worker to service a client or compel a sex worker to provide a particular service
- provide appropriate workplace induction for sex workers and staff new to a brothel, and maintain a record of the training provided

- provide sex workers who are identified as being new to the sex industry with information about: sexual health, detection of STIs, dealing with difficult or violent clients or situations, the right to refuse clients and the right to refuse to provide particular services and maintain a record of the training provided.

Through the audit and inspection process, these licence conditions, along with the requirements outlined in the Prostitution Regulation 2000 with regard to alarms (s. 13), are enforced. However, the PLA (p. 8) noted that ‘while every step has been taken to ensure that sex workers are protected from violence, incidents cannot be entirely avoided ... The measures in place in the brothels may not entirely eliminate violence from the working lives of sex workers’. The PLA is confident, however, that the safest working conditions in the sex industry are found within licensed brothels. SQWISI agreed.

Most of the respondents to the CMC’s survey (77%) also identified licensed brothels as the safest places to work, many giving explanatory comments, such as: ‘you can go to work knowing someone’s there if something goes wrong’; ‘you’re surrounded by other people so if you screamed someone would assist’; ‘because it is legal you can seek help in dangerous situations without fear of prosecution’; ‘clients are more aware of workers’ rights’; ‘licensed brothels have full security systems and witnesses’; ‘it’s a controlled environment’; ‘there’s safety in numbers’; ‘security and people surround us’; ‘you have protection’.

The other safest work environment identified by sex workers was private work in cooperation with others (31%) — an illegal activity, but one that was clearly seen as a priority by the respondents because of the safeguards provided. Few respondents (9%) identified work as a sole operator as a safe place to work and none identified the streets or bar work as safe places to work (see Table 3.5 below).

**Table 3.5: Sex workers’ views on the safest work environments — results of CMC sex worker survey, 2004**

Workplace	Percentage of respondents indicating this as the ‘safest place to work’
Licensed/legal brothel	77
Private in cooperation with others	31
Massage parlour	12
Escort agency	12
Illegal brothel	9
Sole operator	9
Adult entertainment	5
Bar/hotel work	0
Streets	0

All licensed brothels certainly appear to have significant security measures in place to protect both staff and clients, such as security cameras, visitor recording information, duress alarms and managers on site. A number of licensed brothels also have systems in place to provide a confidential and supportive environment in which workers can report incidents that could compromise their safety. Importantly, all licensees reported confidence in the QPS to respond to any safety concerns.

However, it is important to note that fewer than half of the respondents to the CMC’s sex worker survey said they had undertaken any form of sex-worker safety training (42%), although more of those who had undertaken training had done so since the implementation of the Act (70%) than before (41%). Most indicated that

they had undertaken this training at SQWISI (70%), but some reported training at a licensed brothel (7%) or at QABA (11%) and about one-quarter (26%) had undertaken a range of martial arts courses.

The majority of legal brothels are located in industrial areas, and this was of some concern to many consulted for the review. Cairns City Council submitted the opinion, for example, that brothels should be centrally located in mixed-use commercial areas that have a range of other 24-hour activities to ensure the safety of brothel employees and surrounding residents. SQWISI agreed, noting that industrial locations can 'create a heightened risk of violence against brothel workers. These areas are usually completely deserted at night and there is a significant risk of sex workers being followed home from work and stalked or attacked' (p. 23). One respondent to the CMC's sex worker survey made a similar observation: 'Girls leaving work at 1–2 am are not accompanied and their cars are visible from the street.'

A related problem raised by all informants was the risk that at change of shift more than five sex workers may be on the premises at once (to allow for showering, waiting for cabs, preparation for work and so on) and that this is a clear breach of the legislation, placing licensees at risk of losing their licence. Concern about the safety of the workers, however, appears to override this risk and licensees have not been prepared, to date, to allow workers to place themselves in danger by waiting outside for cabs in the early hours of the morning. Similarly, the police have not, to date, prosecuted any licensees for breaches of this nature. Fortunately, there have so far been no reports of actual harm. However, the amendment to the Act made by Recommendation 7, which will allow for up to eight sex workers to be on brothel premises at any one time, should alleviate these concerns.

Concerns about the safety of sex workers outside brothel premises have been compounded by the enactment of the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001* (Qld), which amended the *Tobacco and Other Smoking Products Act 1998* (Qld) in May 2002. This amendment prohibits smoking in 'enclosed spaces' (see s. 26R of the *Tobacco and Other Smoking Products Act 1998*), but excludes certain premises, such as 'licensed premises'. 'Licensed premises' means premises licensed under the *Liquor Act 1992/Wine Industry Act 1994*, or a place with a permit under the *Liquor Act 1992*, section 97/*Wine Industry Act 1994*, not licensed brothels under the Prostitution Act.

Initially, brothel licensees were required to provide a sheltered and enclosed area where smokers could go without their presence being seen as a breach of the Prostitution Act. Licensees are now concerned that sex workers are no longer permitted to sit within those areas to smoke and must go outside to do so. They view this as providing a potential conflict with the soliciting offences contained within the Prostitution Act [including public soliciting for purposes of prostitution (s. 73) and nuisances connected with prostitution (s. 76)]. Licensees were also concerned that this is now a serious workplace health-and-safety issue, as workers now smoke outside late at night, possibly alone and out of view.

### ***Safety of licensees***

According to section 87 of the Act, the licence is to be displayed in a conspicuous place inside the front entrance of the brothel. Many licensees were concerned about the ready availability of this information, given the possibility that disgruntled clients (who may have been refused entry) or illegal operators may obtain personal information about the licensees that may put the safety of the licensees, their families and their employees at risk. The CMC agrees that a minor amendment to the Act could eliminate the perceived risk without substantial change to the spirit

of the Act. Details about licensees required by the PLA could be maintained within their records only, which are currently unavailable to requests made under the freedom-of information-legislation.

### **Recommendation 9**

**That licensed brothels be required to display a licence number rather than the personal details of the licensees as currently required under section 87 of the Act.**

### **Sole operators**

Respondents to the CMC's sex worker survey were asked to identify whether, since the implementation of the Prostitution Act in 2000, safety for sex workers had improved or deteriorated. The answers were divided. Overall, a number of respondents indicated that it was now either more dangerous (12%) or much more dangerous (6%) for sex workers than it had been before the implementation of the Act. On the other hand, many believed that it was now either somewhat safer (25%) or much safer (14%). About one-third (32%) believed it to be about the same. The explanation for the division in these responses was made clear by the supporting comments, which suggested that it is now much safer for those working in licensed brothels (as illustrated above) but much more dangerous for those working on the streets or as sole operators. The risks now faced by sole operators were repeatedly described as greater and completely unacceptable. For example:

Private workers should never work alone, yet they must by law?

Girls used to work in pairs, now it's illegal and they don't so they are much more vulnerable.

Sole operator laws are insanely dangerous.

I feel for safety purposes two girls should be able to work together — some people simply can't conform to the restraints of a legal brothel.

It is terrible that in Qld private workers cannot work together in one premises — they need to do this together to ensure safety, prevent isolation (mental and physical) and to provide a reliable and consistent service to clients i.e. no one can work 24 hours, two girls can easily do 12 hours each. In other states girls are warned to NEVER WORK ALONE yet in Qld that is the law. It's dangerous.

This legislation does not provide any protection for sole operators — what is the harm in going halves in an apartment and knowing that there is someone else there to call for help? This legislation makes it safer for brothel work but far more dangerous for sole operators — we are pretty much out on our own with little option for creating a safe environment.

[As a sole trader] it is financially unacceptable and impractical to use security officers — it would scare clients away from coming to see me.

Importantly, one respondent also noted the risks of providing escort services without the protection that might be afforded by licensed brothels:

Because licensed brothels cannot do escorts if you wish to do them you are left unprotected or [have to] rely on an illegal agency.

As discussed earlier in this chapter, the CMC's sex worker survey indicated an increased risk of physical assault for sole operators. The point is illustrated by this recently published newspaper article:

#### **Man jailed for attacks on prostitutes**

... In the District Court in Brisbane yesterday Mark Walding Turner was jailed for 10 years after pleading guilty to nine offences, including rape, sexual assault, deprivation of liberty, and entering premises with intent to commit a crime, against women who worked as single prostitutes in units at Coorparoo in Brisbane's inner southeast ...

Prosecutor Sal Vasta said ... Turner bound and gagged the woman, placed a pillow over her head and stole cash. Mr Vasta said when the doorbell rang, Turner left, and the woman, still tied and gagged, was able to 'shuffle' her way out of the unit to get help from neighbours. He said during the attack Turner asked the woman why she worked as a prostitute and warned her she had to expect such attacks ...

In the second attack on March 7, 2002 ... Turner bound and gagged the woman, 32, before raping her twice and also sexually assaulting her ...

Chief Judge Patsy Wolfe said it made no difference that the victims were prostitutes. She said the attacks had been terrifying and degrading and it was amazing the women were still able to function as well as they did. She sentenced Turner to 10 years' jail, which automatically made him a serious violent offender who has to serve 80 per cent of his sentence before being eligible for parole.

*(Courier-Mail, 28 April 2004)*

SQWISI's submission to the CMC stated that 'the requirement [for] sole operators to work alone places them at unnecessary risk of violence ... Sole operators are forced to work in isolation and thus are extremely vulnerable to rapes, assaults, kidnapping and robberies' (p. 24). The submission stated that even though, according to the law, sole operators can employ a licensed security guard, 'this is utterly unaffordable in practice' (p. 24). As well, the CMC received submissions from sole operators that raised concern about the bone fides of security guards themselves:

Anyone practically can get a crowd controller's licence by just doing a two day course — it doesn't mean that they are model citizens. Paid security guards are only there for the money whereas a partner or close friend will in some way care more and be better protection for us.

Simply having a crowd controller's licence doesn't make them trustworthy ... a lot of people that become security guards are thugs themselves (i.e. martial arts practitioners with violent tendencies).

SQWISI suggested that the 'presence of another sex worker or a receptionist or minder would deter most would-be perpetrators and would go some way to alleviating the extreme vulnerability of these workers' (p. 24).

Victoria provides a model for two workers to work together legally (exempt brothels), but problems in monitoring this system have led to a decline in the number of approvals being granted. There has been a recent move towards requiring these sex workers to be licensed (Business Licensing Authority Victoria, personal communication, 9 December 2004).

The unregulated nature of sole operators in Queensland makes it difficult for law enforcement officers and the PLA to know who is working as a sole operator and who is working illegally in cooperation with others. Any move to give legitimacy to smaller brothels (such as two sole operators working together in a residential area) will make the policing of the illegal industry even more difficult. However, ensuring the safety of sole operators is clearly a major priority. Within the current legal framework in Queensland (unlike Victoria), it is possible for two workers to open a two-room brothel and conduct a business legally, providing they abide by all of the regulations and limitations of the Act. Although the costs and constraints of doing so were reported to be prohibitive, amendments to the Act recommended by the CMC (see Chapter 5) may make this option more financially viable for sole operators. Sole operators are therefore encouraged to explore this option further.

## Illegal sex workers

SQWISI (p. 23) raised a number of issues relevant to the safety of illegal sex workers. They were particularly concerned that ‘criminalisation of the sex industry is a significant contributory factor to violence against workers in the illegal sector’. They explained that avoidance of prosecution is a business priority for illegal operators and that the safety of the workers is often compromised. As an example, they stated that many escort agencies do not use drivers because they expand the range of people available to give evidence against owners. Furthermore, they claimed that a worker with a driver cannot plausibly claim to be working as a sole operator, thus placing them at an increased risk of prosecution.

SQWISI also stated that it is:

... deeply concerned by a growing perception among workers in the illegal sector that violence is an inherent risk of their work. Workers who are already stigmatised and degraded by the criminalisation of their activities are further degraded by violence. Most workers believe that reporting violence to police is futile and that it may place them at risk of prosecution. Operators of illegal sex industry businesses also actively discourage workers from reporting offences ... On the streets, violence against sex workers has steadily been increasing since the introduction of the Act (e.g. the three murders that have occurred). (p. 24)

SQWISI believes, therefore, that the increase in violence may be indirectly due to the prosecution of street workers. They stated that prosecutions have not decreased the number of street workers, but the imposition of fines has increased their vulnerability. According to SQWISI, street workers generally have low levels of financial resources and imposing fines, far from deterring street work, forces them back onto the streets to earn the money to pay their fines. They claimed that this increased financial pressure has led street workers to take risks that they would otherwise consider unacceptable. SQWISI advocated well-lit safety zones where street-based sex workers can work without fear of prosecution. They also believed that a safe house should be established in the zone that could distribute condoms and operate a needle exchange. Alternatively, they suggested that condoms and needles could be distributed from a van permanently located within the safety zone (p. 24). However, there is evidence that safety zones and safety streets have failed to achieve their desired outcomes. Safe houses and safety zones are discussed in detail in Chapter 4.

## Summary

Safety from physical and sexual violence remains a priority for sex workers in Queensland. The murders of three street-based sex workers and a number of physical and sexual assaults on sole operators in Queensland since the implementation of the Act illustrate the ongoing vulnerability of sex workers — sole operators and street-based sex workers, in particular — and the need for even greater efforts to protect them.

There is no doubt that licensed brothels provide the safest working environment for sex workers in Queensland. The relevant provisions in the Act — and the licensees’ responsible approach to these requirements — have been successful.

The supply of, and demand for, sexual services require legal options other than licensed brothels, however, and sole operators currently fill this gap. Ensuring their safety is an area of concern. The review was informed by many that, for safety reasons, sole operators should be allowed to work together in pairs. Within the current legal framework, this is actually possible if two workers are prepared to open a two-room brothel and abide by the requirements of conducting a business

within that type of regime. While the constraints and costs of doing so were reported to be prohibitive, sex workers are encouraged to consider this option further as otherwise the current legislation does not provide for the capacity to adequately monitor or audit sole operators working together.

A number of other safety concerns may be allayed relatively simply. For example, the Act needs to be amended to allow for shift changes at brothels and the need for the display of licensee details can be overcome by using a licence number only.

The solution to the safety of street-based sex workers is a greater challenge. Despite calls for the provision of safety zones or safety houses, the CMC believes that the evidence so far indicates that these strategies may lead to increases in street-based work and its associated problems, not decreases. The policing strategies employed by the Tactical Crime Squad and enhanced educative and diversionary strategies that assist sex workers to either work legally or to leave the industry altogether would be a preferred way forward. These issues are discussed in more detail in Chapter 4.

### OVERVIEW OF CHAPTER 3

The evaluation of the Prostitution Act has revealed that Queensland, overall, has managed to uphold the principles of the Act within its relatively small boutique legal brothel industry. Legal brothels do not appear to have had a deleterious effect on the quality of life of communities, there is no evidence of specific incidents of police corruption or organised crime within the legal industry, some efforts have been made to deal with the social factors that lead to involvement in the sex industry, and sex workers in the legal brothels are arguably the healthiest and certainly the safest in the country. This is, in part, a reflection of the stringent probity and monitoring requirements of the Act, which have resulted in licensees with no criminal histories and no links to organised crime or corruption. It is also a reflection of the dedication of the licensees and their managers, whose desire it has been to create a highly professional industry and to be at the forefront of best practice in Australia.

Complications arise, however, when we consider sole operators and illegal workers, such as escort agency and street-based workers.

The impact of sole operators on the community appears to be minimal, there is no evidence of organised crime or corruption within their ranks (although serious problems arise from illegal agencies that masquerade and advertise as sole operators), and their sexual health is generally thought to be good but less regulated and therefore at greater risk than workers in legal brothels. Unfortunately, however, the safety of sole operators does appear to be compromised, and these workers are more likely than their counterparts in legal brothels to be at risk of assault. For safety reasons, many suggested that sole operators should be able to work together in pairs. Within the current legal framework, this is actually possible, but the costs of doing so appear to be prohibitive as they would be required to obtain a brothel licence and comply with all the brothel requirements. Nevertheless, sole operators need to consider the benefits that may be attained by working together as a small legal brothel, especially in the light of recommended changes to the Act which appear in Chapter 5 of this report.

Illegal escort and street-based sex workers also remain at risk, and complaints about the negative impacts on the community were common. These workers are also more likely than those working legally to come into contact with organised crime, they are difficult to identify and approach for rehabilitation or retraining purposes, and their health and safety are often seriously compromised. The Prostitution Act has had limited impact on these workers.

## CONTROLLING ILLEGAL PROSTITUTION IN QUEENSLAND

**In Queensland, illegal prostitution is prohibited by both the Prostitution Act and the Criminal Code. It is enforced, in particular, by the QPS's Prostitution Enforcement Taskforce (PETF) and the Tactical Crime Squad (Prostitution Unit), but also by general-duties police officers where necessary.**

**This chapter includes a brief description of formal mechanisms for controlling illegal prostitution, discussing the relevant legislative provisions and the various law-enforcement entities. It then goes on to consider the major issues that arose during the review concerning the control of illegal prostitution in Queensland.**

### LEGISLATION

The Prostitution Act deals with illegal as well as legal prostitution, providing a range of general prostitution offences for its control. The Criminal Code also provides offences for procuring and participating in illegal prostitution.

More specifically, the *Prostitution Act 1999* contains the following offence provisions:

- it is an offence to enter or leave a prohibited brothel, or to use premises as a brothel after a declaration has been given. The court may declare premises to be a prohibited brothel if it is satisfied that a person is operating a brothel without a licence, or that it is a brothel in contravention of planning legislation (ss. 66 and 69)
- a person must not publicly solicit for prostitution, including males and females, prostitutes and their clients, persons acting for prostitutes and persons acting for clients of prostitutes (s. 73)
- a person must not cause unreasonable annoyance to another person or cause unreasonable disruption to the privacy of another person in the vicinity of a place that is reasonably suspected of being used for prostitution (nuisances connected with prostitution, s. 76)
- a person must not cause or threaten wilful injury or wilful damage to property, intimidate or harass or make false representation or use false pretence or other fraudulent means, either directly or indirectly, to make another person continue to provide prostitution (duress, s. 77)
- a prostitute must not provide or obtain prostitution involving sexual intercourse or oral sex unless a prophylactic is used; and a person obtaining prostitution involving sexual intercourse or oral sex must not interfere with the efficacy of a prophylactic or use or continue to use a prophylactic that the person knows, or could reasonably expect to know, is damaged (s. 77A)
- a person must not publish an advertisement for prostitution that describes the services offered or is not in the approved form (s. 93)
- a person must not publish a statement intended or likely to induce a person to seek employment as a prostitute (s. 94)
- a person providing prostitution must not hold out or publish advertisements that their business is connected with massage services (s. 95).

The relevant offence provisions under the Criminal Code include:

- section 229E, which defines prostitution as intercourse, masturbation, oral sex or any act performed for sexual satisfaction involving physical contact under an arrangement of a commercial character
- section 229G, which provides for criminal sanctions for procuring prostitution unless done by a licensee or manager of a licensed brothel, the maximum penalty being seven years
- section 229H, which provides for criminal sanctions for participating in the provision of prostitution unless it happens at a licensed brothel in accordance with the terms of the licence; this section covers financiers, drivers and persons who take bookings on behalf of the prostitutes, not the workers themselves
- section 229I, which provides for criminal sanctions for persons found in, or leaving after having been in, places reasonably suspected of being used for prostitution by two or more prostitutes; this applies to prostitutes and clients unless the place is a licensed brothel
- section 229K, which provides criminal sanctions for having an interest in premises used for prostitution by two or more prostitutes
- section 229L, which provides for criminal sanctions for permitting young people (not adults) or intellectually impaired people to be at a place used for prostitution by two or more prostitutes.

## LAW ENFORCEMENT

Before the commencement of the Prostitution Act, the Special Operations Team of the QPS undertook investigations into illegal prostitution. After implementation of the Act, the Team became the Prostitution Enforcement Task Force (PETF).

The PETF oversees the policing of prostitution across the State. It is currently staffed by 24 people (both civilians and officers) and has two teams, Operations and Probity. The Operations team investigates allegations of illegal prostitution occurring in illegal brothels, escort agencies and adult entertainment venues, as well as any allegations of sex-trafficking. The Probity team undertakes probity checks of applicants for brothel licences and adult entertainment permits and investigates any alleged breaches of the relevant legislation. The PETF operates both proactively and reactively. As an anti-corruption measure (arising from the Fitzgerald Inquiry), PETF officers are rotated through the unit every 18 months.

The Tactical Crime Squad (Prostitution Unit) in Metro North Region polices street-based prostitution. There are currently four police officers attached to this squad. Like their PETF counterparts, officers of the Prostitution Unit are rotated as a safeguard against corruption, male officers every 18 months, and female officers more frequently (after 6 months, on average) because of the intense nature of the work they undertake posing as street-based sex workers.

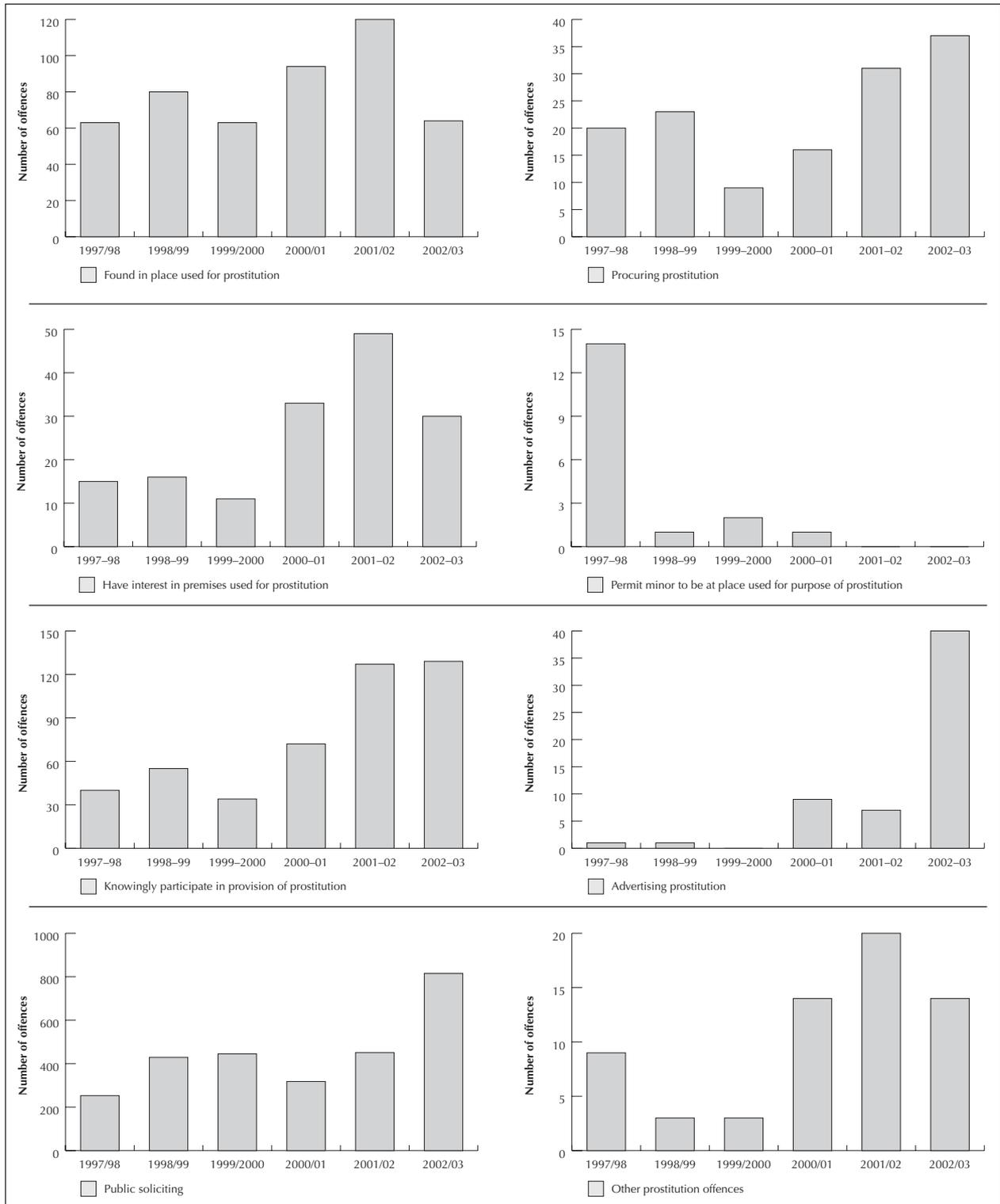
Both the QPS PETF and the Tactical Crime Squad (Prostitution Unit) report persistent and frequent enforcement activities of illegal prostitution since the implementation of the Act and this is supported by official statistics and other government sources.

Information reported in Figure 4.1, for example, reveals that police charges have increased for a number of prostitution-related offences. These are reflected in:

- increased charges against the clients of illegal brothels ('being found in a place used for prostitution'), which at 120 offences in 2001–02 has doubled from about 60 charges in the year before the Act commenced

- charges against illegal brothel owners and managers ‘having an interest in premises being used for prostitution’, which increased from 10 charges in the year before the Act’s commencement to about 50 in 2001–02 and ‘knowingly participating in the provision of prostitution’, which tripled from fewer than 40 charges in 1999–2000 to 120 charges in both 2001–02 and 2002–03
- charges for street-based prostitution (‘publicly soliciting’), which doubled from around 400 offences in 1999–2000 to 800 offences in 2002–03.

**Figure 4.1: Prostitution offences reported by the QPS, 1997–98 to 2002–03**



Source: Queensland Police Service *Annual statistical reviews*, 1997–98 to 2002–03

The number of charges laid for offences such as ‘procuring prostitution’, ‘advertising prostitution’ and ‘other prostitution offences’ have also increased significantly (see Figure 4.1), reflecting the relevance of these functions of the Act — that is, limiting the nature and extent of advertising for prostitution services and reducing the likelihood that people will be enticed into the industry without their full consent. The only prostitution-related offences that have declined are those relating to ‘permitting minors to be at a place used for the purposes of prostitution’, which may reflect a positive change in the industry, given the clear evidence of increased scrutiny of the industry by specialist police squads.

It is important to note that these increases in prostitution-related offences since the implementation of the Act reflect increased police-enforcement activity — they do not necessarily reflect actual increases in prostitution-related activities. That is, it cannot be said that simply because police charges have increased over time there has also been an increase in prostitution in Queensland. As indicated earlier, measuring the actual prevalence of prostitution is difficult and reporting methods and police activity can impact on the official statistics.

## MAJOR ISSUES RAISED BY THE EVALUATION

The remainder of this chapter considers the major issues that arose during the review concerning the control of illegal prostitution in Queensland. As mentioned previously, the review has been comprehensive and draws on a range of information, including survey results, administrative data and public submissions. When all this information was considered, the major issues that emerged were:

- the extent to which illegal prostitution still exists in Queensland
- why illegal prostitution still flourishes in Queensland
- strategies to control illegal prostitution, specifically illegal brothels, escort agencies and street-based prostitution.

### The extent of illegal prostitution in Queensland

According to all informants to the review, including the PETE, illegal prostitution activities in Queensland have continued unabated since the implementation of the Prostitution Act, despite the increase in policing activities illustrated by the official statistics. While many street-based sex workers, illegal brothel workers/operators and escort agency operators/workers have indeed been charged with prostitution-related offences since the implementation of the Act, it does not appear to have deterred them from returning to the industry. The PLA noted, for example, that ‘many of the operators with whom [they] have discussed the legal framework for prostitution have been “busted” ... [and] then “started up again elsewhere”’.

According to the PLA, a large component of the illegal industry consists of:

- the provision of sexual services by two workers who prefer not to work as sole operators because of the dangers inherent in that work, and who do not wish, either for financial reasons or for other commercial reasons, to establish a brothel solely in respect of two persons
- two workers who work in association with each other in a cooperative way, by having a single point of contact and a single security facility
- a network of people connected by mobile phones to a central console or telecommunications service centre which takes bookings and then diverts them to a particular worker by personal mobile phones. These sex workers are in various locations, each attempting to present as a legal single operator

‘ ... This is the modern day “brothel without walls” which nonetheless remains a thriving hive of commercial activity characterised by a widely distributed network ... the centre need not necessarily be in Queensland [and] ... centres on the provision of outcall or escort services.’ (p. 2)

With regard to the extent of illegal brothels and escort agencies, Debbie Neilson (a licensee of a legal brothel) has estimated that the ratio of illegal operators to licensed premises in Queensland is 100 to 1 (*‘Sex trade crisis’, Sunday Mail*, 15 September 2002), although there is no reliable way to confirm this estimate. With regard to the extent of street-based prostitution, a QPS officer (personal communication 30 March 2004) reported that street prostitution, along with its associated behavioural and safety issues, continues to be active in the Brisbane Central Police District (especially in Brunswick Street, Fortitude Valley and to a lesser extent St Paul’s Terrace, Spring Hill). It was also noted that residents and business owners regularly complain to the police about needles and condoms being found in their yards or that sex workers are servicing buyers on their premises. Further, the crime statistics and evidence from police officers operating in the street prostitution environment indicate that there is a high level of ancillary drug and property crime associated with the locations where street prostitution occurs and with the street workers themselves. It was thought that the nexus between drugs, money and property crime is very strong in these environs, but that high levels of prosecution, the use of move-on powers, and the use of current policing strategies have significantly impacted on the incidence of street prostitution at these locations. However, it was also noted that, in the absence of a continuous policing presence, street prostitution may continue to flourish.

In its submission to the review, the Festival of Light asserted that ‘although 13 legal brothels have been established under the Act, the pseudo-legal red-light area in Fortitude Valley continues to operate without signs of abating ... street prostitutes still accost passing men, and “gutter crawlers” still accost passing women’. In a similar vein, the Cairns City Council submitted that the Act has had no impact on the street-based, opportunistic services in various areas in the inner city of Cairns.

In summary, therefore, both illegal brothels/escort agencies and street-based prostitution continue to present challenges to communities and to law enforcement across Queensland. Although there is some anecdotal evidence that the extent of highly visible street-based prostitution is diminishing in some areas, the practice has clearly continued.

## **Why illegal prostitution flourishes**

According to the key informants to the review, there are a number of reasons that illegal prostitution continues to flourish in Queensland. Three major reasons were repeatedly suggested and these are discussed below.

### ***The nature of the industry makes policing difficult***

A major reason for the persistence of illegal prostitution, especially illegal escort services, is the difficulty of providing effective law enforcement for an industry that is highly fragmented, decentralised and mobile. Many escort services provided in Queensland are organised and run by parties in other States of Australia and even overseas. The PETF reported that, in such an environment, traditional policing activities, such as collecting evidence and conducting surveillance, are costly, time-consuming and often unproductive. The nature of these organisations, therefore, make policing the industry quite difficult. QABA agreed, noting ‘that the PETF appears to be at a disadvantage in dealing with [the] increasingly sophisticated criminal elements that use a variety of techniques to evade prosecution’ (p. 8).

### ***Ineffective penalties***

The second reason suggested for the persistence of illegal prostitution is that the penalties are ineffective. The Criminal Code states that an offence against Chapter 22A (Prostitution) must be dealt with summarily, unless the defendant informs the Magistrates Court that he/she wants to be tried by jury (s. 552B(5) of the Criminal Code). Effectively, prostitution offences will only proceed to the District Court if the offender elects for a trial by jury or if the magistrate abstains from the jurisdiction because the seriousness of the offence may result in the offender not being adequately punished on summary conviction for a prostitution offence. The Code further provides that a person on summary conviction under section 552B, if the court is constituted by a magistrate, is liable to a maximum penalty of 100 penalty units or 3 years' imprisonment (s. 552H). If the court is constituted by justices under section 552C(1)(b), the person is liable to 100 penalty units or 6 months' imprisonment. The maximum penalties are documented in Table 4.1 below.

During the consultation process, a constant theme of respondents was that the penalties imposed on people in the illegal industry are too low to be effective, especially given the income received by operators in the illegal industry and the costs associated with operating legally. The PETF noted that, even though some maximum penalties involve substantial custodial terms, offenders who are brought to trial are generally only fined and gaol terms are rare. The consequences of limited penalties are that illegal operators are not deterred and simply re-open, albeit under a different name. Almost all informants interviewed by the CMC and many agencies making submissions to the evaluation (such as the Festival of Light and the Family Council of Queensland) considered that tougher penalties for illegal brothels and escort agencies would help to reduce the illegal industry. However, there are limitations placed on judges and magistrates, who must have regard to sentencing principles when imposing penalties. Many of these concerns involve complex socio-legal issues that cannot be addressed without a sophisticated analysis of all the factors concerned.

On the other hand, penalties for street-based sex workers were thought to be not only ineffective but also dangerous because many prostitutes have to return to the streets to earn the money to pay their fines. It was suggested during the review that a different approach be used for street-based prostitution, involving relatively lenient fines for prostitutes, along with options for attending counselling, and more severe penalties for persons exploiting the work of prostitutes (Festival of Light submission, p. 2). These suggestions support concerns raised about street-based prostitutes in the previous chapter.

**Table 4.1: Prostitution offences and penalties**

<b>Offence</b>	<b>Maximum penalty</b>
Procuring another person to engage in prostitution (s. 229G Criminal Code)	Imprisonment for 7 years
Knowingly participating (directly or indirectly) in the provision of prostitution by another person (s. 229H Criminal Code)	First offence: imprisonment for 3 years Second offence: imprisonment for 5 years Third or subsequent offence: imprisonment for 7 years
Being found in places reasonable suspected of being used for prostitution by 2 or more prostitutes (s. 229I Criminal Code)	First offence: imprisonment for 3 years Second offence: imprisonment for 5 years Third or subsequent offence: imprisonment for 7 years
Having an interest in premises used for the purposes of prostitution by 2 or more prostitutes (s. 229K Criminal Code)	First offence: imprisonment for 3 years Second offence: imprisonment for 5 years Third or subsequent offence: imprisonment for 7 years

Knowingly permitting a person who is not an adult or is an intellectually impaired person to be at a place used for the purposes of prostitution by 2 or more prostitutes (s. 229L Criminal Code)	Imprisonment for 14 years
Publicly soliciting ('soliciting' includes offering and accepting) (s. 73 Prostitution Act)	First offence: 15 penalty units Second offence: 25 penalty units Third or subsequent offence: imprisonment for 6 months or 30 penalty units

*Note:* Offences 229G, 229H, 229I, 229K all provide a maximum penalty of 14 years' imprisonment if any persons involved in the offence are not adults, or are intellectually impaired persons. For example, 229H(2) states that if a person who is not an adult or is an intellectually impaired person is, to the offender's knowledge, engaged in the provision of the prostitution, the offender is liable to a maximum penalty of 14 years' imprisonment.

### ***Financial incentives***

The third explanation for the persistence of illegal prostitution is financial. Observations were made during the review that the relatively high cost of operating a legal brothel (which can be between \$17 000 and \$20 000 per annum for the licence), in contrast to the low costs of establishing and re-establishing illegal escort services, creates a disincentive to move into the legal industry. QABA noted, for example, that 'the low cost of re-establishing illegal escort agencies ... allows illegal operations to continue to flourish' (p. 8).

For people directly involved in the sex industry — both sex workers and owners/managers — there are many factors that explain why financial rewards are, or appear to be, greater in the illegal industry. For example, one point raised during the review was that illegal operators have greater freedom to advertise than legal operators, and that this acts as an impediment to attracting clients, workers and operators from the illegal industry into the legal industry. The demand for escort services also provides other financial rewards. For example, it has been reported (by SQWISI and the PLA, among others) that up to 75 per cent of all prostitution services in Queensland are provided as an outcall or escort service. Apart from the relatively small proportion of legal outcalls provided by sole operators, the majority of these services are provided by illegal escort agencies and brothels. As legal brothels cannot currently provide these services, the financial incentive to continue operating illegally, simply because of the demand for outcalls, is considerable.

Financial incentives for sex workers are also critical. Woodward et al. (2004, pp. 27–28) documented the average income of sex workers and the average number of clients seen per week by the legal/illegal nature of the services provided. The authors found statistically significant differences in the number of clients seen by sex workers in a busy week, with street-based workers seeing six more clients on average than legal brothel workers (35 vs. 29) and 11 more than sole operators (35 vs. 24). Similarly, street-based sex workers reported that in the last seven days they had earned, on average, an income of \$1814, whereas the corresponding income for legal brothel workers was much lower at \$1341. Sole operators were midway between the two at \$1541. Fees for service also differed by legal status: street-based sex workers received a median of \$130 (range \$40–\$150) for a half-hour service, compared with licensed brothel workers, who received a median fee of \$79 per half-hour service (range \$60–\$150). Again, private workers earned midway between these two. The authors noted that the lesser income received by legal brothel workers was due to booking fees charged by licensed brothels.

A related issue is the fact that legal brothels encourage sex workers to pay taxes and facilitate their capacity to do so, which is not the case in the illegal industry. QABA believes that there is a belief in the industry that total anonymity is required

for service providers to ensure their safety, but they argue that this is not necessarily the case given the availability of silent electoral enrolment, unlisted phone numbers and the privacy of health information. QABA suggested that 'by operating under the myth of anonymity, operators are successful at avoiding attention by the tax office'.

Further, 'many QABA members reported instances of being told by people operating without registered business names that it is not attractive for them to operate in the licensed industry because they would [then] have to pay tax'. One individual submission to the review also suggested that many street-based sex workers receive social security benefits in addition to their income from sex work to conceal their involvement in illegal prostitution, and thereby avoid taxation. These allegations have been confirmed by the Australian Tax Office (personal communication, 29 June 2004).<sup>15</sup>

On the issue of financial aspects of the industry, the PLA noted that:

the Act provides little incentive ... to seek legal status ... For successful regulation ... illegal operators must be attracted into the licensed industry by allowing them to continue to conduct their current business, albeit in a scrutinised context. To do this would require flexibility in the licensing process which would allow for a range of different business operations that exist in the sex industry. The current restrictions placed on the licensed brothels to industrial areas, the maximum number of workers and the prohibition of outcalls, has had serious financial implications for many licensed brothels. (p. 1)

Clearly, financial issues present a major challenge to encouraging illegal sex workers to enter the legal industry on a more permanent basis. For the legislation to be most effective, sex workers and brothel operators must see the benefits of working within the legal framework. More recognition among individuals working within the industry that the benefits of working legally exceed the benefits of working illegally will strengthen the current legislative approach.

## **Proposed strategies for controlling illegal prostitution**

### ***Controlling illegal brothels and escort agencies***

Given the diversity of reasons for the persistence of the illegal prostitution industry, a range of strategies could be used to control illegal prostitution and encourage the illegal industry to become legal. The provision of escort services by licensed brothels was strongly recommended as one way that the illegal industry could be reduced. (This is discussed in detail in Chapter 5.)

The PLA also submitted to the CMC review that the QPS has effectively ceased making applications to the Magistrates Court for premises to be declared a prohibited brothel and that this provision should, therefore, be deleted from the Act. The CMC is not convinced that the deletion of this section of the Act would

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<sup>15</sup> For example, the Australian Taxation Office (ATO) is currently reviewing the adult entertainment and prostitution industries Australia-wide and has identified considerable levels of non-compliance and poor recordkeeping among sex workers within licensed brothels and adult entertainers (licensees, on the other hand, have illustrated good compliance). The audit revealed a high proportion of workers in these industries (reported to be around 80%) drawing benefits from Centrelink (including unemployment, single parent and disability pensions), in addition to the cash in the hand that they receive from the sex industry. The ATO will undertake a complete audit in Queensland in the next 12 months and heavy penalties may apply. As the recent research report by Woodward et al. (2004) indicated that the income of most sex workers exceeds \$50 000 per annum, the ATO will require sex workers and adult entertainers to register an ABN and pay tax accordingly (ATO, personal communication, 29 June 2004).

be appropriate, given the community's views about illegal prostitution and the concerns of those working legally in the industry who desire that illegal brothels be removed. In short, the position of the CMC is that efforts to reduce the illegal prostitution industry and displace it to the legal prostitution industry should be encouraged and supported. Removing the power of the police to declare a prohibited brothel would be counter to this aim.

### ***Controlling street-based prostitution***

It is clear from the research about sex workers and community attitudes that, although the number of street-based sex workers is proportionately quite small (estimated to be only 2% of the total number of sex workers in Queensland: personal communication, Scarlet Alliance, 31 March 2004), controlling and/or regulating them under Queensland's laws may need a different approach. While the Explanatory Notes for the Prostitution Bill (p. 2) state that '... street prostitution will be discouraged by expanding the range of legal activities for sex workers and their clients, while increasing penalties and enforcement in respect of street soliciting which remains illegal', it is clear that this has not happened to the extent desired. The PLA noted in its submission, for example, that:

... the notion that the Act was passed to eliminate street prostitution has no substance. Street sex workers are rarely employed in licensed brothels. It has been reported to the PLA that street sex workers do not have the requisite skills to comply with the requirements imposed on licensed brothel workers (e.g. complying with a roster system, adhering to the sexual health regime, remaining alert on the job, restrictions on drug and alcohol use at work) and therefore do not seek work in a brothel. Street prostitution is directly related to illegal drug use and drug addiction ... Implementation of the Act has not, and will not, address the problem of street prostitution and therefore has not addressed community concern about this aspect of the sex industry. (p. 4)

Given the relatively high rates of drug use, homelessness and health disadvantage among street-based sex workers, the PLA suggested that law-enforcement activities, such as the imposition of fines upon these workers, will be ineffective and counter-productive. High rates of drug use, which make workers ineligible to work in licensed brothels, along with a disinclination to share income earned from sex work with anyone else, have also made the transition from illegal street-based sex work to the legal environment of a licensed brothel less attractive.

In 2003–04, the QPS formed the Street Prostitution Project Group at the Tactical Crime Squad in Metro North Region to formulate strategies for the better management of street prostitution in Brisbane. The group interviewed street workers, residents and buyers, sex worker support groups, community aid groups and local business groups, and undertook considerable research and operational work to provide a basis for piloting a range of approaches to address the street-based prostitution in its area.

The CMC observed the operation of the Squad in the Fortitude Valley and New Farm precincts and was impressed with the positive efforts made to date. The squad's approach reflects the Swedish model to prostitution, which makes it an offence to buy, rather than to solicit, prostitution services (this approach has been discussed in Chapter 2). It is the squad's view, based on many years of liaison with street-based sex workers in Brisbane, and supported by much research, that the majority of street-based sex workers are drug dependent and seriously disadvantaged. They believe that all efforts should be made to assist them to leave the industry. They also acknowledge that fines for sex workers in these cases are inappropriate and can have serious consequences, because workers simply have to return to the streets to earn the money to pay the fines.

The CMC's observation of the street-based operation of the Tactical Crime Squad indicated a highly professional approach by the police. In addition to the imposition of a fine, an educative approach to the clients was taken by the arresting officers in an effort to curb any future approaches to buy prostitution services from street-based sex workers. This multi-faceted approach is supported by the CMC.

Recent information about the activities of street-based workers suggests that by mid-2004 there were only 19 street-based workers operating in Fortitude Valley, 11 of whom were active at that time (QPS, personal communication, 11 June 2004). Police estimated that there were approximately 100 workers operating when they began their operations in November 2002, which suggests positive changes in a brief time period.

In addition, the CMC was informed by several legal brothel licensees that they were approached by a number of street-based workers after the recent police activity in Fortitude Valley, and some have taken up work within the legal brothels (personal communication, 29 June 2004). This is a positive result that demonstrates how effective law enforcement can help reduce illegal, street-based prostitution.

### **Safe houses and safety zones**

Other approaches to controlling street-based prostitution have been implemented in the Netherlands and trialled in and around Sydney's Kings Cross area. These include safe-house brothels, road closures and safety zones where it is legal for street-based workers to pick up and service clients without police action.

In the Netherlands, for example, areas referred to as Toppelzones were created to overcome community and police concerns about the nuisance (such as condoms, needles, drug-dealers, pimps and kerb-crawlers) and violence associated with street-based prostitution. These zones permit street-based prostitution to occur legally in specific pick-up and service areas (usually located in industrial areas), and provide facilities for medical and legal services (such as advice about pregnancies, STIs and drug addiction) and a 'living room' for the prostitutes. To force prostitutes and their clients into these areas, city bylaws and ordinances forbidding working on the streets elsewhere and kerb-crawling were also more strictly enforced.

However, recent reviews of some of these zones have been highly critical (see, for example, van Soomeren 2004). The problems identified include difficulties in finding and maintaining a site because of moral objections to, and protests against, street-based prostitution from politicians and residents in neighbouring areas; concern about the non-viability of prostitutes and clients travelling long distances to get there; the fact that most of the prostitutes working in the zones were not drug-addicted, which was counter to the aim of attracting drug-addicted workers so that they could receive aid and/or counselling (most drug-addicted prostitutes continued to work the streets as before); an increase in illegal immigrants using the zones; and an exponential increase overall in the numbers of workers, making the zones difficult to monitor and regulate. In 2002, for example, the Toppelzone in Amsterdam became impossible to handle because, on busy nights, the number of prostitutes working the zone could be 150, when it had been originally designed to accommodate a maximum of 80. These observations led van Soomeren (2004) to argue that the zone was generating opportunities for prostitution and perhaps making the profession attractive. However, the large number of prostitutes at the Toppelzone led to dangerous situations and to intolerable levels of competition among prostitutes. Fights for customers started among prostitutes, and customers and pimps alike took advantage of the chaotic situation. The number of incidents of

trafficking of women was also alarming. Over time the zone started to attract pimps and women on a European and even worldwide scale, becoming a pull factor in its own right. Additionally, the illegal immigration status of most of the prostitutes presented too many possibilities for extortion, mistreatment and exploitation.

The evaluation evidence makes it clear that the success of the Tipplezone in Amsterdam appears to have been its downfall, and it was subsequently closed in 2003. At the same time, laws against street-based prostitution continued to be enforced and anecdotal evidence suggests that the prostitutes have moved either indoors to hotel and escort work or to other major cities to conduct their work on the streets. Importantly, street-based prostitution in Amsterdam has almost disappeared, and with it the influx of international and trafficked sex workers.

An alternative model — the provision of safe houses located close to a major city street where street-based soliciting is legal (Oxford Street) — has been implemented in Sydney. Safe houses have been nominated by street sex workers as promoting safety for sex workers, as other venues, such as cars, may facilitate the use of a concealed weapon or other violence against a street worker. It has been recommended that safe houses be set up in areas that are zoned industrial or commercial so that sex workers are not soliciting in residential areas (*Law report*, Radio National, 14 January 2003, p. 2).

Despite initial support for this model from the local council, concerns have emerged in recent years about Sydney's safe houses and soliciting zone. These concerns relate mainly to the injecting drug use of workers and their clients on the premises of the safe houses and to increased street soliciting in areas surrounding the safety houses and soliciting zone. It was rumoured that, as a result of these concerns, the council may close the safe houses down (*Law report*, Radio National, 14 January 2003, p. 2). However, this has not yet occurred (Sydney City Council, personal communication, 27 October 2004), and indeed there appear to have been some positive outcomes with regard to community amenity (such as reduced visibility of services and a reduction in waste) and the health and safety of the workers. However, an impact evaluation has not yet been conducted and community opinions have not been sought.

Early in 2004, the Chair of the PLA called for the provision of a safe house for Brisbane's street-based prostitutes. As noted in the previous chapter, SQWISI also advocated for well-lit safety zones and safe houses to increase the safety of street-based sex workers, providing the safe house has a 'no injecting' policy and is adequately funded to provide appropriate staffing to monitor it and to provide services such as drug diversion and exit programs.

It is the CMC's view, however, that safe house or safety zone trials should not be implemented in Queensland. There are a number of reasons for this, including the negative effects of the programs conducted in Sydney and the Netherlands. Additionally, unlike Sydney, street soliciting is currently illegal in Queensland and legislative change would be required to make it legal before any consideration could be given to a safe house or safety zone. Given the strong community sentiment against street soliciting, as illustrated by three community surveys in Queensland in the last decade, such a change is unlikely. Further, the provision of safety zones and safe houses does not remove street solicitation; it simply provides an environment in which the services can take place. Clearly, it would be logistically difficult to fund and monitor such a facility in areas close to where solicitation now takes place (e.g. New Farm), to ensure both compliance with the high standards of the Prostitution Act and support from the community for such a facility. The safe houses in Sydney are privately owned, thus their sustainability is questionable. Most importantly, the amount of street-based prostitution in Queensland is relatively small, and recent efforts by the police appear to be

having some success in discouraging workers from the street environment and encouraging them into the legal industry. The CMC believes that this approach should be continued. Queensland should not risk the increases in prostitution (including sex trafficking) that have occurred in the experimental zones of Sydney and the Netherlands, and should continue to provide appropriate policing, diversionary and rehabilitative options to help sex workers leave the street environment.

***Recommendation 10***

**That proposals for the implementation of safe houses or safety zones for the use of street-based sex workers in Queensland not be adopted.**

## **OVERVIEW OF CHAPTER 4**

A common view expressed by informants to the CMC's evaluation was that prostitution continues unabated in illegal brothels and escort agencies and to a lesser extent on the streets of Brisbane. A range of reasons were suggested for this, along with various strategies to control it — all of which were based on the premise that incentives to encourage the illegal industry to become legal should be promoted.

Regarding street-based prostitution, the CMC is of the view that efforts that embrace a multifaceted approach including public education, penalties for clients and diversionary options for sex workers, should be encouraged. Enhanced primary prevention programs and rehabilitation programs should also be considered.

While a proposal has been made to trial safety zones or a safe house in Brisbane, the CMC believes that such a strategy should not be implemented because of the range of problems encountered elsewhere. It is the CMC's view that activities that enhance the acceptance or normalisation of street-based prostitution should be avoided.

## REGULATION OF THE LEGAL PROSTITUTION INDUSTRY IN QUEENSLAND

The new legal brothel industry in Queensland has endured many challenges and overall remains small. Nevertheless, the CMC has witnessed, during its four years of evaluation, a remarkable evolution. Although the industry has been tension-riddled from its inception, with many complaints about restrictions imposed by the Act itself, the evaluation has shown that legal brothels now operating in Queensland provide a sustainable model for a healthy, crime-free and safe legal licensed brothel industry (see Chapter 3 for more information about the guiding principles of the Act). Its success lies, however, not only in the concepts inherent in the Act and its regulation, but also in the dedication of the new industry in Queensland that has sought to provide a ‘state of the art’ model for the sex industry of Australia. As shown in Chapter 2, there are currently no better models.

Despite this successful evolution, there have been several hurdles to overcome. Clearly, the implementation of the new licensing system started slowly — the Act had been in place for more than 12 months before the first legal brothel opened its doors and there are currently only 14 operational brothels in Queensland. Strong criticisms of both the Act and its implementation were also received from virtually all sectors interviewed by the CMC during the first three years of its review. However, the consistency of the criticisms voiced by all of the government agencies, brothel licensees, sex workers and communities consulted for the review, including those raised by the licensing authority itself, is important to note. Despite various inter-agency differences, there was also clear consensus on how the Act could be improved.

This chapter gives an overview of the major issues raised with the CMC about the regulation of the legal prostitution industry in Queensland. It includes examples of practical problems associated with applying the Act (such as finding a site for a legal brothel that complies with its requirements) and the difficulties of licensees who, upon entering the industry, discovered enormous impediments to running a business. The chapter also makes recommendations for change that are based on the consensus of opinion achieved through the consultation process.

Chapters 3 and 4 provide complementary information about the illegal industry and the success of the Act’s guiding principles. It is important that the issues raised in this chapter are also considered in the light of those findings.

### GOVERNMENT-LEVEL OVERSIGHT

The Prostitution Act stipulated a range of functional processes and structures for overseeing and supporting the legal brothel industry. As described below, the various entities formed to carry out these processes encountered some difficulties after the passage of the Prostitution Act.

## The Prostitution Advisory Council

It was initially intended that the Prostitution Advisory Council (PAC) would provide advice, conduct research and address social issues relating to prostitution. It was the perception of some that the PAC did not realise its objectives; and a degree of conflict between the PAC and the then minister became apparent. At the end of their terms in mid-2002 not all the members of the PAC were reappointed. About 18 months later the Act was amended to abolish the PAC. Both the performance of the PAC and the decision to abandon it attracted much criticism from key informants to the CMC's review.

For example, the CMC was told that there were significant delays (up to four months) in the reappointment of PAC members, which proved to be highly disruptive to their work. Also, according to the PLA, the statutory functions of the PAC were broad and poorly defined, and the PAC became unwieldy because of the diversity of its membership and personality clashes between members. Licensees pointed out, however, that by disbanding the PAC the Government had failed to implement the Act according to its requirements. Although some of the functions of the PAC were subsequently received by the PLA, the PLA suggested that some functions (especially enhancing the capacity of sex workers to exit the industry) appeared to be in conflict with the role of a regulatory body required to facilitate the development of the legal industry.

The PLA also drew attention to an anomaly in the amendments that came into effect in December 2003. The *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* removed all references to the PAC after it was abolished, and the amendments ensured that the PAC's functions were bestowed on the PLA. Under the amendments, the new functions of the PLA include:

... to liaise with the police service and other agencies prescribed under a regulation with a view to helping them in carrying out their functions in relation to prostitution. [Part 7, Division 1, s. 101(g)]

However, the agencies prescribed in the Prostitution Regulation are described as being 'agencies with which the **Council** must liaise' (s. 10 and Schedule 1).

The PLA considers that this drafting error could cause problems in the future, as there are no specified agencies with which the authority must liaise. The CMC agrees that minor changes to the Prostitution Regulation 2000 should be made in order that it corresponds with the *Prostitution Act 1999*.

### **Recommendation 11**

**That minor changes be made to the Prostitution Regulation 2000 to ensure that there is consistency with references to the functions of the Prostitution Licensing Authority in the *Prostitution Act 1999*.**

## The Ministerial Committee

The Act provided for a Ministerial Committee to oversee the implementation of the Act. Ms Simpson, Shadow Minister for Women, noted in her submission that the Police Minister, Tom Barton, said in 1999 that the PAC would report to a Ministerial Committee of Ministers for Police and Corrective Services, Tourism, Sport and Racing, Health and Families, Youth and Community Care. The PAC was to advise the Ministerial Committee about the coordination and promotion of programs to help sex workers leave the industry. Ms Simpson claimed, however, that 'the reality has been far different (p. 3)'. She stated:

... it is clear that the Ministerial Committee which was supposed to have provided a coordinated implementation of the objects of the Act and policy of

government has been dysfunctional and the objectives unfulfilled in relation to helping sex workers leave the industry. The government's stated policy to help women leave the industry and slow the recruitment of women into prostitution has no evidence of implementation. (p. 5)

The PLA also submitted that the Ministerial Committee, which comprised four Ministers with quite separate interests and focuses, met only once during the operation of the PAC and that the PAC had found the committee to be an unsuccessful reporting mechanism (p. 12). Indeed, the PAC commented directly to the CMC in 2002 that lack of direction from the Ministerial Committee had been a significant problem for them.

### **An inter-agency committee**

A number of informants believed that, in addition to the Ministerial Committee, there ought to have been an inter-agency cross-government committee to provide input into prostitution-related issues of relevance to the agencies associated with implementing the Act. Unfortunately, this committee was not formed until mid-2004, yet most agencies believed that, at least during the first two years of the review, it would have provided them with a forum in which to raise their concerns about the legislation and the way it was being implemented and operationalised. In 2001, the CMC was informed by the Department of Premier and Cabinet that it had tried to establish this committee, but that the idea had met with significant resistance from the PAC. The CMC was also informed by the PLA that the concept of the committee had been rejected by the minister.

Nevertheless, all government agencies, including the PLA, continued to push for the creation of an interagency committee; and in 2004, under the new minister, this committee was finally created in an informal capacity.

### **Amendments to the Act**

Interviews conducted during the first stage of the evaluation suggested that problems associated with local council approval processes were insurmountable. The amendments in 2001, however, were seen in a positive light by all key informants, to the extent that the Local Government Association of Queensland (LGAQ) reported to the CMC in the third round of interviews that concerns about council approval 'were no longer an issue'. The relevant amendments were seen, therefore, as significant and necessary improvements. Some councils still have serious misgivings about the morality of licensed brothels, however, and would like to see further changes to the Act to accommodate their wish to reject all applications for brothels in their local authority areas (this issue is discussed further on page 96).

The 2001 amendments that allowed individuals with a criminal history for 'running a brothel' under the previous legislative regime to be eligible applicants were also seen in a positive light by most of the government authorities who were interviewed, as it was thought that such applicants could bring benefits to the industry through their understanding of the nature of the industry and its workers. During initial consultations about this issue, however, licensees disagreed with this view because they were keen to maintain an extremely high standard amongst their ranks. Their belief was that, unless rigid standards remained, their reputation as a group could be compromised.

The amendment in 2003 introducing mandatory use of prophylactics by all sex workers and their clients was also fully supported. The elimination of the PAC, as discussed previously, was questioned by some. Other minor problems with the amendments are noted throughout this report.

It is important to note that the PLA and the brothel licensees reported to the CMC during all stages of the review that they had not been consulted about amendments to the Act and that this lack of consultation was, for them (and especially for the lead agency — the PLA), a major problem. Indeed the PLA claimed that it had been ‘deliberately excluded from the consultation and was not even informed when the Bill was passed in 2003’. Amending legislation without consultation with industry representatives, including the lead agency charged with implementing the Act, especially in such a difficult and contentious area, is not desirable. It was the former minister’s view, however, that he had consulted widely.

## **FINDING APPROPRIATE BROTHEL SITES AND OBTAINING COUNCIL APPROVAL**

According to many licensees, finding an acceptable location for a brothel and obtaining council approval presented a major challenge. There was a strong view that the restrictions of the Act have made it difficult for potential licensees to find a site that will be approved by local councils. For example, the *Gladstone Observer* (7 May 2004) wrote:

The proponent of Gladstone’s first brothel, XXXX, says her proposed plan for a brothel will not proceed because she has not been able to find a suitable location for the council-approved legal brothel.

Some licensees reported to the CMC that they had checked up to 20 sites without success and that the amendments to the Act (in December 2001) had actually made finding a site more difficult. Purely Blue (Queensland’s first licensed brothel), for example, would not now pass the approval process. The various reasons for this, and its implications, are discussed below.

### **Development applications**

#### ***Code or impact assessment***

Although the PLA is responsible for issuing brothel licences to individuals, the actual location of brothels is decided by local authorities as part of the development application process.

The *Integrated Planning Act 1997* (Qld) makes provisions for ‘code’ or ‘impact’ assessment of development applications for a change of use of premises. This means that, when a development application for a brothel is made to a local authority, the assessment manager at the local authority decides whether the application will be ‘code’ or ‘impact’ assessed. If the proposed brothel is to be situated in an area that is predominantly industrial in character, the Integrated Planning Regulation 1998 directs the local authority to apply a set of conditions that are listed in the Prostitution Regulation 2000. If the application meets these conditions, the local authority must approve it. However, if the brothel is planned for an area that is not designated ‘industrial’, the local authority must use an impact assessment to decide whether the application should be approved. Impact assessment means an assessment of the environmental effects of a proposed development, and how those effects will be handled. Impact assessment requires applicants to publicise their intention to change the use of a premise and to call for submissions about it from members of the public (*PLA annual report 2001–02*, p. 33).

The Toowoomba City Council submitted to the CMC that Schedule 1 of the Integrated Planning Regulation 1998 should be amended to make the material change of use for a licensed brothel in an industrial area subject to impact

assessment, and therefore open to ‘the typical public notification and submission process’.

However, the Prostitution Act allows for the creation of a legal prostitution industry in Queensland. The Act was implemented to address concerns about the illegal industry, such as the potential links between prostitution and organised crime/corruption, the deleterious effects of illegal prostitution on the health and safety of sex workers and the impact of illegal prostitution on community amenity. It was the Government’s view that brothels situated in industrial areas should be code assessed to ensure that councils with a population of more than 25 000 could not refuse brothel applications — otherwise there simply would not be a legal industry and illegal prostitution would continue unabated. The government’s view is endorsed by the results of three community surveys in Queensland in the last decade, which indicated strong support for prostitution to be allowed to take place in legal brothels in non-residential areas. The CMC agrees with the government that all applications for brothels in industrial areas should remain code assessable to ensure that a legal industry can be viable.

### ***Finding a site for a brothel***

Under section 64 of the *Prostitution Act 1999* the assessment manager of a local authority must refuse a development application if:

- (a) the application land:
  - (i) is in, or within 200 m (measured according to the shortest route a person may reasonably and lawfully take) of the closest point on any boundary of, a primarily residential area or an area approved for residential development or intended to be residential in character; or
  - (ii) is within 200 m (measured according to the shortest route a person may reasonably and lawfully take) of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities; or
- (b) the application land is within 100 m (measured in a straight line) of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities; or
- (c) for land in a town with a population of less than 25 000:
  - (i) the local government for the local government area has required that all applications within the area be refused; and
  - (ii) the Minister has agreed that the applications should be refused; or
- (d) more than 5 rooms in the proposed brothel are to be used for providing prostitution.

A problem faced by potential applicants is locating a site that fits these legislative requirements. Some of the areas where brothels are currently located are isolated and removed from busy areas, and some brothels have reported difficulty in attracting clients and workers to these areas. According to the licensees consulted for the review, restrictions on advertising and signage compound these difficulties. SQWISI submitted that, based on the minimal impact of licensed brothels on communities, the 200-metre rule has impeded the growth of the legal brothel sector and, thereby, sustained the illegal industry. SQWISI recommended that a street distance requirement of 100 metres, and a closest point distance of 50 metres, would strike the right balance between amenity protection, community concerns and the commercial needs of brothel operators. SQWISI stated that ‘this

would also help to ensure that illegal brothels cannot continue their exclusive dominion in the high demand parts of cities' (p. 12). The PLA agreed, stating that '100 metres as the crow flies, in addition to the 200 metres by lawful route, has frustrated applicants seeking appropriate premises, in particular in Brisbane and the Gold Coast'. The PLA recommended that consideration must be given to including commercial areas and the Brisbane CBD (with appropriate signage controls, etc.) as potential areas for brothel premises as per the Victorian system. The PLA recommended an amendment to section 64(1)(b) of the Act by substituting the phrase 'place regularly frequented for cultural activities' with 'a place established predominantly for the use of children for recreational or cultural activities'.

The PLA was also concerned that the amendment to the Act in 2001, which required the distance of 100 metres to be measured in a straight line, is particularly onerous. They stated that 'it fails to recognise that ... there can be extra factors that can make this ... excessive. For example, while a brothel may be within 100 m (as the crow flies) of a place of worship, the two buildings may be separated by a five-lane highway or a creek.' The PLA noted that, had this requirement existed in 1999, one of the existing brothels would not have been approved.

There is, therefore, a strongly held view that amendments to the Act which relax the distance requirements for brothels somewhat would allow greater opportunities for legal brothels to be developed and become profitable — ideally at the expense of illegal brothels but without expanding the overall industry. This is supported, to a certain extent, by the findings of the review in Chapter 3 which have indicated little impact on local communities by legal brothels to date. However, one possible reason why community attitudes toward legal brothels are not negative may relate to the minimal impact that brothels have had on community amenity so far. Further relaxation of site provisions may, therefore, give rise to community concerns that could, conversely, stifle the incremental growth of the legal industry. To ensure that existing businesses are not damaged, any changes to the legislation must also be fair to those who have operated under the current regime.

Clearly this is a contentious issue that requires extensive review to ensure that location restrictions for brothels balance the competing arguments which require, on the one hand, the capacity for the legal industry to be viable within relatively restrictive location requirements, and, on the other, an assurance that community amenity will not be compromised.

### **Recommendation 12**

**That section 64(1)(a) and (b) of the Prostitution Act be reviewed to consider whether the location restrictions for legal brothels should be relaxed.**

### **Assessment appeals**

To overcome concerns about the capacity of local councils to over-ride code assessed brothel applications, the Office of Independent Assessor was established by the *Prostitution Amendment Act 2001* (see Chapter 1). The new provisions of the Act (s. 64K) created a right of appeal to the Independent Assessor about the decisions of an assessment manager (in most cases, a local government) for development applications for a material change of use of premises for a licensed brothel, where the application is code assessable. The task of the Independent Assessor is to provide ease of accessibility, informality and efficiency while maintaining quality of decision making, particularly in terms of fairness. Before the creation of the Independent Assessor, appeals from decisions about development applications were heard and determined by the Planning and Environment Court, a body comprised of judges of the District Courts.

Appeals can be made to the Independent Assessor against:

- (a) the assessment manager's refusal, or the refusal in part, of the application; or
- (b) a matter stated in a development approval for the application, including any condition applying to the development; or
- (c) a decision to give a preliminary approval when a development permit was applied for; or
- (d) the length of a currency period; or
- (e) a deemed refusal (s. 64K).

However, the Toowoomba City Council submitted to the CMC that there should not be a separate appeal process for brothel owners. They believed that:

Appeals and dispute resolution should be handled on a consistent basis, which promotes confidence, rather than in an ad hoc fashion for different development types.

Contrary to the Toowoomba City Council's submission, the PLA recommended that the jurisdiction of the Independent Assessor should be extended to include the capacity to hear appeals against the initial decisions of assessment managers about whether premises should be 'impact' or 'code' assessed. The PLA stated that, even though the Independent Assessor has worked well to date, local authorities have sometimes over-ridden the process by deeming the premises to be impact assessable, even when it is clearly a code assessable premises. The current planning framework does not allow the applicant to appeal this decision.

The CMC agrees with the PLA that an appeal of this decision could adequately be made to the Independent Assessor, and considers that amendments to the Prostitution Act should ensure that the jurisdiction in section 64K reflects this.

The PLA was also concerned about applications to make additional changes to brothel premises (such as adding a number of toilets) after approval for development has been provided by a local authority. In such cases, the applicant is required to seek approval under sections 3.5.24 (Request to change development approval, other than a change of condition) and 3.5.33 (Request to change or cancel conditions) of the *Integrated Planning Act 1997*. If the local authority refuses to grant the approval, the applicant is limited in their rights of appeal to the Planning and Environment Court, under sections 4.1.30 and 4.1.33.

The reason for this anomaly is that code assessment only applies to a 'material change of use of premises for a licensed brothel in an industrial area'. (See Schedule 1 of the *Integrated Planning Regulation 1998*.) If the development approval for the premises is already in place, then the Independent Assessor has no jurisdiction to hear any appeal.

The PLA noted that in 2003–04 an appeal was lodged to the Independent Assessor in relation to a council's refusal to amend plans for a site already approved as a brothel. In that matter the assessor wrote that he had no jurisdiction in any matters involving appeals against refusals to change or cancel conditions for code assessable brothels. It was the Independent Assessor's view that this matter should be considered by parliament in further detail (*PLA annual report 2003–04*, p. 49).

In summary, the PLA suggested to the CMC that the Independent Assessor's jurisdiction should be extended to include: (a) the actual decision of the assessment manager as to whether the premises should be subject to impact or code assessment and (b) the jurisdiction to hear appeals in respect of all development applications from brothel owners, including applications to change or cancel conditions contained in the original development approval or undertake development work after the building has been completed.

The CMC agrees that the role of the Independent Assessor be maintained and extended to ensure consistency and fairness in the development application approval processes for legal brothels.

### **Recommendation 13**

**That section 64K of the Prostitution Act, the jurisdiction of the Independent Assessor, be extended to include appeals against:**

- 1 assessment manager's decisions about the applicability of code or impact assessment under the Integrated Planning Act**
- 2 assessment manager's decisions about requests to make minor changes to approved brothel premises or requests to change or cancel conditions of a development approval.**

## **Population threshold**

Under the Prostitution Act, the local government for a town with a population of less than 25 000 may apply to the Minister for Police for permission to automatically refuse all development applications for brothels in the area. According to the PLA's website ([www.pla.qld.gov.au](http://www.pla.qld.gov.au)), 204 towns had so far obtained approval from the Minister for Police for this exemption from the standard procedures.

The Festival of Light suggested that the capacity for small towns to apply for this exemption:

... was a move towards ensuring a higher quality of life. It gave power to the people to make decisions on issues affecting them. Such a move is to be lauded. (p. 3)

Several submissions from individuals and councils (e.g. Logan City and Toowoomba City) suggested that the ability to apply for an exemption should be extended to include all towns and cities, including those with more than 25 000 people. It was alleged that there had been widespread opposition from local governments with a population of more than 25 000 to the provision setting a population limit for exemption and that they have consistently called for section 64(1)(c) of the Act to be amended to remove what they saw as an approach that discriminates against large local government authorities. Toowoomba City Council stated, for example, that:

The Act should be amended to remove the threshold of 25 000 populations and allow larger population centres the same opportunity as smaller towns to seek to refuse all applications for brothels. The threshold is considered arbitrary and inequitable.

Logan City Council made a similar comment:

The Prostitution Act is inconsistent with the vision for Logan, i.e. to develop as a city for families, lifestyle and business.

The scope of the Act should be expanded to permit *all* local councils to veto applications for licensed brothels, rather than just those local councils in areas with populations equal to or less than 25 000.

These views were not expressed to the CMC by the LGAQ during its annual consultations with representatives of the association. Conversely, the LGAQ agreed that the current exemption provisions were adequate. However, one individual's submission expressed the opinion that:

... while it would appear the government's reform proposals enjoyed a degree of support from the executive of the Local Government Association of Queensland (LGAQ), it could be reasonably contended that rank and file member Councils took a different view.

Undoubtedly, the issue of local authorities contributing in a meaningful way to local planning matters is an important consideration. However, as discussed previously, the Act was implemented to address concerns about the illegal industry and three community surveys within the last decade have indicated strong support for legal brothels in Queensland. It is important to acknowledge both the government's approach and the community's views. Extending the provision for exemption to all councils could have deleterious consequences on the viability of the legal brothel industry and enhance the illegal industry.

Therefore the CMC does not support the need for increased powers of veto to all local councils. It is important to balance the needs of the Queensland Government to promote conditions that allow a legal brothel industry to develop, keeping in mind the important considerations of community amenity, crime prevention and the health and safety of sex workers, along with the overall need to reduce the illegal brothel industry, while taking into account the need of local authorities to provide meaningful input into the process. If community conditions do not provide for legal brothels to operate profitably, undoubtedly market forces will work toward their eventual closure.

## LICENCE APPLICATION AND APPROVAL PROCESSES

### The application process

#### Fees

The current fee structure for licensed brothels has been set with the hope that the PLA will be self-funding (see the discussion in *Queensland parliamentary debates*, 2 December 1999, p. 5853). However, according to the PLA's annual financial statements (see PLA 2003, 2004) fees received by the PLA represent only about 20–30 per cent of its revenue, with most revenue coming from government contributions.

The full cost for a one-year brothel licence (which can be in the vicinity of \$15 000– \$20 000)<sup>16</sup> is payable at the time of application and most is refunded if the application is unsuccessful. According to *Queensland parliamentary debates* (10 November 1999, p. 4832), Parliament considered that the fees would not be 'excessive and would not preclude many people who choose to go through with the expense of establishing a brothel'. The CMC was told, however, that the current costs of establishing and operating within the legal framework represent a key challenge for many applicants. This was endorsed by a survey of applicants by the PLA in 2002 which illustrated fees as a major barrier for almost half of the respondents (41%).

Informants to the CMC's review also thought that licence fees were excessive when compared to the current penalties for illegal prostitution, and that this discrepancy

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16 The following information is available on the PLA's website (viewed 11 November 2004):

- brothel licence fees must be paid annually
- the application fee is \$1575.90 per applicant
- the licence fee is \$5253.10 plus \$2101.20 per room (maximum of 5 rooms)
- fees are increased annually in line with the cost price index.

*Example 1:* Two applicants want to run a three-room brothel:

- Application fee: \$3151.80
- Licence fee: \$11 556.70
- Total fee payable: \$14 708.50.

*Example 2:* Three applicants want to run a five-room brothel:

- Application fee: \$4727.70
- Licence fee: \$15 759.10
- Total fee payable: \$20 486.80.

encourages illegal operators to continue to operate illegally, rather than shift into the legal industry (see further discussion in Chapter 4).

The PLA also raised an issue about application fee refunds with the CMC. Currently, the process for obtaining a licence involves locating a suitable site, obtaining local council approval for that site, completing a detailed application form and awaiting the results of a comprehensive probity process. Sometimes applicants withdraw their application during this lengthy process. The PLA recommended that the application and brothel licence fees should be reversed, so that the full licence fee becomes the application fee and the smaller application fee becomes the licence fee, because the current fee structure does not enable full cost recovery for the PLA if an applicant withdraws their application. It is the CMC's view that such a move may create further disincentives for individuals interested in establishing legal brothels, especially if the losses associated with a failed or withdrawn application are excessive, and consequently does not support this proposal.

It is also important to consider the licensing fees required for adult entertainment. The CMC's review of the adult entertainment industry has indicated that the licensing fees are significantly less than those required for brothel licences (see CMC 2004). Given the similarities between the industries and their regulation, it is the CMC's view that it is timely for the government to review the current rationale for the fee structure for both brothel and adult entertainment licences.

#### ***Recommendation 14***

**That the Queensland Government undertake a review of the fee structure for legal brothels, with a view to assessing its relativity with adult entertainment licence fees and assessing the impact of licence fees on the development of legal brothels in Queensland.**

#### ***Probity***

The application process currently involves screening the following people associated with a brothel application: the applicant, the brothel site owner, their legal or de-facto spouses, their prior spouses, their parents, their siblings, their adult children and their associates. Details such as occupations, company shareholdings, sex industry business experience and criminal histories are required. This process can take about six months to complete.

Although all key informants agreed that probity checks are an important element in the effort to safeguard the industry against organised crime, there appeared to be conflicts between the requirement for probity checks and operational imperatives.

All licensees, the PETF and the PLA were asked about the application process. It was evident that the process was particularly intrusive, embarrassing and difficult for the first licensees, Purely Blue. However, it was stated that the application process and inter-agency relationships have since improved and many licensees who have applied subsequently have found the process much easier and friendlier.

Licensees and managers expressed concern, however, about the time involved in processing applications. Although this has improved since the first applications were processed, it has been, and remains, particularly difficult for licensees to employ staff and conduct business given the associated time delays (up to six months).

In addition, licensees reported that, given that they have been through the probity system with a clean record, they felt it was unnecessary to repeat the process. Licensees are not concerned about the probity process itself. Indeed, they applauded such measures as being in their own interests because they bring about

a high standard among brothel owners. Their objections related to the way they were treated personally. They felt that there was still the view that anyone involved in the prostitution industry must be inherently 'bad' and that this view must be overcome if the legal industry is to survive.

SQWISI also submitted the opinion that the licensing and development application procedures are 'complex, lengthy, intrusive, uncertain and onerous'. They said that confidentiality about the application for a licence is difficult to maintain during the exhaustive process and can 'constitute a substantial deterrent to prospective applicants' (p. 5). Applicants must also disclose the intended source of funds to be used to establish a brothel. SQWISI said that applicants who have been involved in illegal prostitution must take the risk that information disclosed for the application could subsequently be used against them to prosecute past or ongoing prostitution offences or in an action to recover proceeds of crime.

This risk constitutes a substantial deterrent to prospective applicants with sex industry experience. Neither the Act nor the application form indicate how information disclosed will be used to assess suitability ... the uncertainty of the licensing process is a substantial deterrent to prospective applicants. (pp. 5–6)

SQWISI recommended that the licence screening process be simplified.

The PLA also recommended a change in the probity process. They suggested that section 17(1), paragraphs (i), (j) and (k), which require personal information from the associates of the applicant, would be more workable if the PLA were able to collect the information directly from the associates themselves, rather than having to go through the applicant for such information. They claimed that this would facilitate investigation and protect the privacy of associates who will have no involvement in the running of the brothel.

#### **Recommendation 15**

**That efforts be made to streamline probity requirements without compromising their integrity and that, to this end, the associates of brothel applicants be dealt with directly, providing the applicant is made aware of which associates are to be contacted and the privacy of all parties is respected.**

### **Meaning of interest in a brothel**

In its submission to the CMC, the PLA expressed concern about the wording of the section in the Act that refers to the meaning of 'an interest in a brothel'. They suggested that section 7(1), paragraphs (i), (j) and (k), are somewhat ambiguous. It could be argued, for example, that a sex worker is a person having an interest in a brothel because he or she has entered into a business arrangement or relationship with another for the provision of prostitution at the brothel. Subsection (2) excludes a mortgagee from the definition of a person having an interest in a brothel. The PLA suggested that a provision should be included to clarify the position in relation to a sex worker, such as the following: 'However, a prostitute is not to be regarded as being involved in a brothel only because the prostitute is entitled by way of remuneration to a proportion of the payments made for sexual services provided by the prostitute.' The CMC agrees.

#### **Recommendation 16**

**That section 7(1), paragraphs (i), (j) and (k), of the Prostitution Act be amended to ensure that sex workers are not regarded as 'having an interest in' a brothel simply because they receive remuneration for the sexual services they provide.**

## The reapplication process

Currently, a brothel licence is valid for only 12 months and the reapplication process (which is treated as a fresh application) is complex, time-consuming and perceived by some to be 'somewhat punitive'. QABA noted in its submission, for example, that the renewal process requires licensees to typically seek legal opinion before completion. It stated (p. 5) that:

the reapplication process appears to cover ground already covered by the original application and appears to represent overkill to the three key areas, which should be of concern under the Act, that is:

- is the business operating viably?
- have the licensees been convicted of any precluding offences?
- have any new associates become involved in the business?

It was also suggested by many that limiting brothel licences to one year makes it difficult for licensees to obtain the necessary financial support required to establish a legal brothel. Additionally, the coordination of the reapplication process with loan applications, financial institutions and rental agreements (among other matters) was listed as a major source of frustration for many, especially given the delays in processing. The PLA frequently extends licence periods because there is insufficient time to gather and assess all of the information deemed necessary and, according to QABA (p. 5), this creates 'significant problems for affected brothels, as most staff and supply contracts are based around the renewal dates. It also affects the reputations of the licensee and the brothel.'

QABA also asserted that, because of the PLA's extensive audit program and compliance visits, and the random visits by the QPS PETF, any doubt about the legality of the operations should be noted and dealt with well in advance of the reapplication process.

Some respondents also complained that there were problems with communication from the PLA about the reapplication process. For example, the first legal brothel, Purely Blue, was not advised of its first successful reapplication until the day the licence was due (although it had completed its application forms three months before). Similarly, the licence of Scarlet Harem was reapproved eight months after the application was submitted, a temporary extension to the original licence having been granted in the interim. To obtain approval from the Authority, the licensee felt obliged to seek independent legal advice (at a personal cost of \$5000).

QABA recommended that the one-month provision for processing licence renewal (as per the Act) should be mandated and adhered to. According to the PLA, however, the thorough investigation currently required by the Act takes longer than one month because the Act requires the reapplication to be treated 'as if it were an application for a licence' (s. 23). The Act therefore appears to be incapable of practical application in this respect.

QABA also recommended that licences be granted for three years, with fees paid annually. They stated that this will have the effect of reducing workload and costs for the PLA and the PETF and providing a more stable commercial environment for licensees. The PLA agreed, suggesting a three- to five-year period for licences and certificates.

If changes to the licence period are made by providing for a three-year period, changes will also have to be made in the reapplication process. The PLA recommended an annual process to confirm all relevant details, whereas QABA recommended a renewal process based on the relatively simple Victorian model

that requires a certified practising accountant to certify that the business is viable. For example, if multiple-year licences for three or five years are provided for, then more than a one-month period will be required to process the reapplications. The PLA recommended an extension of the period to at least three months.

The CMC believes there are benefits associated with extending the licence period and introducing a more streamlined reapplication process. Benefits to the licensees include reduced administrative burdens and greater predictability, which will have tangible benefits for sustainability of the legal brothel industry. For the PLA, the benefits include reduced administrative demands while allowing it to maintain adequate control over the industry. Brothel licensees are currently subjected to rigorous compliance procedures and, as a consequence, annual assessments and ultimately reapplication procedures should be straightforward.

The CMC has considered the concept of an indefinite licence but believes that a three-year licence period is appropriate, subject to annual confirmation processes. Changes can occur quickly within the sex industry, and a more streamlined reapplication process after a three-year period would provide the needed security to licensees while permitting adequate monitoring by the PLA. Importantly, licensees would still be required to pay an annual licence fee and annually submit re-confirmatory materials to the PLA for routine administrative checking.

***Recommendation 17***

**That sections 19(4) and 23 of the Prostitution Act be amended to enable brothel licences to be granted for a three-year period.**

***Recommendation 18***

**That confirmation of all relevant details about licensees and payment of a licence fee be required on an annual basis and, at the expiration of the three-year licence period, the licensee must reapply for the licence renewal as if it were an application for a licence.**

***Recommendation 19***

**That section 23(4) of the Act be amended so that the time required to process licence applications is extended from one to three months.**

## **Manager certificates**

QABA noted several problems with manager certificates. In particular, they stated that the amount of time taken for certificates to be issued (estimated by QABA to be five to six months from application) is problematic because it requires a pending manager to continue with their current occupation or employment while waiting for a determination.

Other problems mentioned by QABA relate to the current conditions requiring a manager to be sponsored by a licensee. QABA stated that ‘this limits the potential manager’s ability to find work or change employers readily ... and limits employment agencies having qualified and trained brothel managers who can readily engage in temporary employment at different brothels’.

QABA also expressed concern about the difficulties that arise when a manager has either not been appointed or is awaiting approval and the licensee becomes ill or otherwise indisposed. According to the Act, either the licensee or the manager must be on the premises at all times, but without the prompt appointment of a manager the occupational health and safety of licensees can be compromised by the need to work excessive hours. This can also be a problem for brothel managers,

who may be required to work excessive hours if the licensee is sick or otherwise indisposed.

QABA recommended that a two-tiered system be developed to apply to certification of managers. The system would consist of a check of the applicant's criminal history, at which time an interim certificate could be issued, to be followed by a more extensive background check. This would allow licensees to make an appointment of managers that was contingent upon their successful performance and the granting of a full certificate. QABA also recommended that manager certificates should not be contingent upon sponsorship by a licensee. The CMC agrees with these suggestions and observes that manager reapplication processes should mirror the format envisioned for licensees (i.e. it should provide for a three-year period).

***Recommendation 20***

**That approval of manager certificates be subject to a two-tiered system to allow for the approval of an interim certificate prior to the more extensive background check that is required for full certification.**

***Recommendation 21***

**That section 44 of the Prostitution Act be amended so that manager certificates are subject to a three-year reapplication process.**

## **PRACTICAL APPLICATION OF THE ACT**

### **Working conditions and industrial awards**

The former Police Minister, Mr Barton, made it clear that it was always envisaged that sex workers would be employees within the licensed brothels:

We are trying to make it clear that some of the prostitutes interstate are considered to be self-employed workers under contract. In some cases, they are actually under a normal contract of employment. We are saying that owners of brothels are not going to escape their obligations by saying that they are individual contractors who do not have normal employment obligations like any other employer. (*Queensland parliamentary debates*, 2 December 1999, p. 5851)

However, sex workers have been considered by brothel licensees as independent subcontractors rather than employees, and this has become an extraordinarily contentious issue that has resulted in legal action and union involvement in at least one instance.

The employment relationship and the definition of 'employee' and 'employer' are at the heart of the Australian industrial system. The employment relationship forms the basis for participation in the conciliation and arbitration process, entitlement to join a union, and rights and obligations under statute law, such as annual leave, sick leave and long-service leave and industry-based superannuation schemes.

The *Industrial Relations Act 1999* (Qld) provides a framework for industrial relations in Queensland. The Act provides for the rights and responsibilities of all employees and employers and aims to prevent discrimination in employment, ensure equal remuneration for male and female employees, ensure wages and employment conditions and promote the regulation of employment by awards and agreements (see s. 3 of the Industrial Relations Act).

To this end, section 5 of the Industrial Relations Act defines an ‘employee’ as:

- (a) a person employed in a calling on wages or piecework rates; or
- (b) a person whose usual occupation is that of an employee in a calling; or
- (c) a person employed in a calling, even though —
  - (i) the person is working under a contract for labour only, or substantially for labour only; or
  - (ii) the person is a lessee of tools or other implements of production, or of a vehicle used to deliver goods; or
  - (iii) the person owns, wholly or partly, a vehicle used to transport goods or passengers; or
- (d) a person who is a member of a class of persons declared to be employees under section 275; or
- (e) each person, being 1 of 4 or more persons who are, or claim to be, partners working in association in a calling or business; or
- (f) for proceedings for payment or recovery of amounts — a former employee; or
- (g) an outworker; or
- (h) an apprentice or trainee.

The *Workers Compensation and Rehabilitation Act 2003* (Qld) establishes a workers’ compensation scheme for Queensland by:

- (a) providing benefits for workers who sustain injury in their employment, for dependants if a worker’s injury results in the worker’s death, for persons other than workers, and for other benefits; and
- (b) encouraging improved health and safety performance by employers.

For the purposes of the *Workers Compensation and Rehabilitation Act*, a ‘worker’ is an individual who works under a contract of service. The Act further provides that the following people are ‘workers’:

1. A person who works under a contract, or at piecework rates, for labour only or substantially for labour only.
2. A person who works for another person under a contract (regardless of whether the contract is a contract of service) unless —
  - (a) the person performing the work —
    - (i) is paid to achieve a specified result or outcome; and
    - (ii) has to supply the plant and equipment or tools of trade needed to perform the work; and
    - (iii) is, or would be, liable for the cost of rectifying any defect in the work performed; or
  - (b) a personal services business determination is in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cwlth), sections 87–60.
- ...
5. A contractor, other than a contractor mentioned in part 2, section 4 of this schedule, if —
  - (a) the contractor makes a contract with someone else for the performance of work that is not incident to a trade or business regularly carried on by the contractor, individually or by way of a partnership; and
  - (b) the contractor —
    - (i) does not sublet the contract; or
    - (ii) does not employ a worker; or

- (iii) if the contractor employs a worker, performs part of the work personally.
6. A person who is party to a contract of service with another person who lends or lets on hire the person's services to someone else.
- ... [see *Workers Compensation and Rehabilitation Act 2003*, Schedule 2, Part 1 in conjunction with 5.11(i)–(3)]

Some workers in the sex industry in Australia appear to be regarded as employees, whereas others are considered to be independent contractors. The difference is that an employee works for another person, whereas an independent contractor works for themselves and provides specific services to someone operating a sex industry business. Employees and contractors have different rights — for example, independent contractors cannot claim annual leave or long-service leave from the people for whom they provide services. Although a large number of sex workers are independent contractors, the distinction is not important in many circumstances because workers' compensation, occupational health and safety, tax and superannuation laws appear to treat sex workers who are independent contractors as if they are employees (Sex Workers Outreach Project [SWOP] 2004).

The issue of whether a particular sex worker was an employee or an independent contractor was considered by the Industrial Relations Court (Cwlth) in 1996 in relation to a dispute between a sex worker and a brothel madam from Kalgoorlie, Western Australia. In making its decision the court noted that the definition in the *Industrial Relations Act 1988* (Cwlth) was of little help in determining the answer. It was noted that the relationship between sex worker and madam was not one that fitted neatly within the sorts of analyses that have been used in the past by the court (*Phillipa v. Carmel* at <<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases>> viewed 26 May 2004).

The court relied on the test used by the High Court in an earlier industrial dispute:

A prominent factor in determining the nature of the relationship between a person who engages another to perform work, and the person so engaged, is the degree of control which the former can exercise over the latter. It has been held, however, that the importance of control lies not so much in its actual exercise, although clearly that is relevant, as in the right of the employer to exercise it ... The approach of the court has been to regard it merely as one of the indicia which must be considered in the determination of the question. (*Stevens v. Brodribb Sawmilling Co. Pty Ltd* [1986] 160 CLR 16, per Mason, J)

Other matters considered by the High Court were the mode of remuneration, the provision of maintenance of equipment, the obligation to work, the hours of work and provision for holidays, the deduction of income tax and the delegation of work by the putative employer.

In the Western Australian matter, the Industrial Relations Court determined that the sex worker was an employee for the purposes of the Industrial Relations Act (Cwlth). It was noted that, although the parties were free to choose the nature of the contract that they made between them, their own characterisation of that contract was not conclusive. The court listed the following factors as indicia of an employment relationship:

- the sex workers were subject to the 'containment policy', as applied by the brothel madam
- the sex workers' location and role at the brothel
- the rules imposed by the madam on the sex workers, and her disciplining of individual workers who did not comply with those rules

- the madam's role as a mediator of disputes between sex workers and clients
- the interview of the madam on the *7.30 Report*, in which she emphasised the controls that she had over the individual sex workers, due to the 'containment policy'
- the system of determining prices, involving consultation between the sex worker and the madam
- the evidence by another sex worker of the rules of the madam, the reaction of the madam when another sex worker suggested to a client that the madam was not 'the boss' and the evidence of another sex worker of the madam dismissing her and asking her to leave the brothel on occasions
- the printing, content and distribution of the brothel's business cards
- the purported exercise by the madam of the right to ask the sex worker to leave the premises because she was drunk and was oppressive to the other workers
- the sex worker's evidence of the commencement of her relationship with the madam (*Phillipa v. Carmel* at <<http://www.austlii.edu.au>>, viewed 26 May 2004).

In that matter, the court declared that the brothel madam had terminated the sex worker's employment in contravention of the *Industrial Relations Act 1988* and was required to pay damages and compensation for the contravention.

Sex workers in Queensland have not generally been afforded employee status, and some commentators (e.g. Edler undated, pp. 10–11) have been critical of this approach:

Defining sex workers as contract workers is a means of owners and operators ignoring their obligations to employees. In many workplaces, the reality is that sex workers are employees, with employee rights and obligations, rather than contract workers ... case law has demonstrated that in some instances, even where workers and employers have both described the worker as an independent contractor, the courts have ruled that the worker is in fact an employee.

Sex worker representatives (SQWISI, Scarlet Alliance and the LH&MWU), the PLA and numerous individual sex workers recommended to the CMC that a sex worker in a licensed brothel should be considered an employee, not an independent contractor, and as such should be afforded the basic rights of an employee.

Licenseses, on the other hand, stated that sex workers should be considered independent contractors because they believed that the workers enjoyed and deserved their independence. Indeed, most licenseses have contracts with individual workers which state that the sex worker is an independent service provider, that no relationship of employer/employee is created between the parties and that the sex worker is not subject to any control by the owner. Further, QABA stated that its members believe that 'the independence of operation of sexual service providers is recognised as absolute, as is their right to determine where they provide services, when they provide services, to whom they provide services, what services they provide and what they charge for services'.

Licenseses also asserted that it would be impractical to consider sex workers as employees because the WorkCover charges would be too expensive for their businesses. The CMC explored this issue, however, and discovered that WorkCover has an Industry Premium for workers in prostitution in Queensland at the rate of \$4.08 per \$100 wages, in addition to additional charges of 10 per cent for GST and 5 per cent for stamp duty (WorkCover 2004). Although these charges are high, they

do not appear to be exorbitant. Many other industries are more expensive — for example, sheep/beef cattle/horse farming (\$5.29), logging (\$11.01), underground mining (\$4.80), drilling and boring (\$5.84), meat processing (\$8.22) and demolition (\$12.14). Full employee rights, such as holiday loading, superannuation and sick leave, would no doubt add to the costs of running the business, but, again, no more than for any other business. At the same time, brothels are an unusual case, few other businesses being required to pay such high licensing fees.

Many licensees also told the CMC that the policy of most brothels is to have a set fee for the rental of a room to a client and to allow the client to negotiate a fee for service with a sex worker without any involvement by management. They claimed that, as subcontractors, sex workers have a right to charge whatever they wish for the services provided. Further, many claimed that the fees charged by the sex workers at their brothels were unknown to them. However, information in conflict with that was supplied by sex workers who stated that, in many cases, the receptionist, manager or licensee negotiates an overall fee for the service with the client, including both the room rental and the provision of services, before the sex worker meets the client. The CMC also observed this on several occasions. Although the existence of such a practice may be taken to support the view that sex workers in brothels are being treated as employees, licensees would perhaps claim that they were acting as an ‘agent’ for the sex worker to ensure their safety. If true, this practice illustrates that the sex workers concerned could be said to have lost, at least to some degree, their capacity to negotiate with the client and hence some ‘control’ over their environment.

There is, therefore, some confusion between the employee and subcontractor models. The following statement by a sex worker to the CMC illustrates this confusion:

I feel there needs to be more emphasis on protecting the rights of Service Providers to carry their own business in a licensed brothel. We are supposedly working for ourselves yet management continually place seemingly pointless rules/restrictions which don't seem to fit with this. For example Service Providers must meet all clients until end of shift so if [the] shift ends at 1am — Service Providers must meet clients who come in at 12.59 and then accept whatever booking time the client desires. This is not fair to the girls who have arranged to be home at a particular time or the Service Providers who are about to start their shifts and have to wait.

Quite clearly, determining the appropriate status of sex workers in legal brothels is complex and there are many competing considerations. The CMC acknowledges that it is desirable that there is access to currently available occupational and environmental health-and-safety benefits, as well as to other industrial award benefits for sex workers (e.g. recreation leave, long-service leave). Requiring that sex workers be employees may be the best way to achieve this. But treating sex workers as employees is not without its difficulties. Sex workers must be prepared to act as responsible employees; employee status requires the capacity and willingness to conform to employees’ rules, but licensees complained to the CMC about a number of ongoing problems with sex workers during each year of the evaluation, especially their frequent failure to show up for shifts.

Unless sex workers are willing to act responsibly as employees, and accept employment conditions that require a range of house rules, an employer–employee relationship between a licensee and a sex worker will be difficult to maintain. Further, it is desirable that sex workers are able to refuse to provide sexual services if they so choose and to elect to take time away from work when it is necessary for their wellbeing. This level of flexibility is not consistent with the usual expectations of regular employment. It is important that any move towards sex workers being engaged as employees in the legal industry does not have the effect of making

working in the illegal industry more attractive, which is the least desirable outcome. It was also the view of licensees that, given the current status of the industry, adopting an employee model could threaten the financial viability of their businesses.

Many sex workers currently employed in legal brothels still undertake work in the illegal sector. The surveys of sex workers by both the CMC and Woodward et al. (2004) indicate that sex workers sometimes work either concurrently or serially across different work environments. For example, although most respondents to the survey by Woodward et al. indicated that they currently worked in only one sector of the industry (87%), the rest said they worked in a combination of legal and illegal environments.

The CMC's survey of sex workers in 2004 produced a similar profile. Although the majority of respondents (77%) indicated that they currently worked in one workplace only, the rest said they worked concurrently in up to five different workplaces. Further, although most of the respondents were currently working in the legal industry, about one-quarter (25%) said they engaged in some illegal work, either solely or in parallel with their legal activities. Such a profile makes it difficult to classify workers as employees.

Although the Commission believes that it is desirable for sex workers to have good conditions of employment, it appears that, in their current status as independent contractors, sex workers have considerable autonomy, flexibility and control. It is also highly debatable that sex workers would be subjected to less exploitation if treated as employees. There are few credible reports now of sex workers in the legal brothel industry being exploited by managers or licensees. Ultimately this issue will be resolved by the normal industrial process. A case currently before the courts in Queensland may provide an appropriate vehicle to determine the question.

## **Advertising**

An important requirement for advertising prostitution is that it must not describe the sexual services offered, or induce a person to seek employment as a sex worker, or state, directly or indirectly, that the business supplying the service provides or is connected with massage services (see ss. 93–95 of the Act). Quite some time after the implementation of the Act, the PLA developed policies for advertising for sole operators and licensed brothels.

### ***Current advertising regulations***

Any advertisement that is published, including print and Internet media, must be in an approved form (including size, colour and content: photos, drawings, wording) or submitted to the PLA for approval. It cannot be assumed that the approval of content in one form of advertising is transferable to another form and each new form of advertising must be submitted to the PLA for specific approval. Advertisements must not be published using radio, television, film or video recording, although advertisements in a print publication classified by the Office of Film and Literature Classification may occur, providing the advertisement does not offend the provisions of the Prostitution Act and all such advertisements are individually submitted to the PLA for consideration.

The PLA has developed a list of approved words and phrases that can be used in advertisements by sole operators along with very strict requirements for business cards, flyers, brochures and coasters. Any form of advertising material of this nature, however, must also be submitted to the Authority for specific approval, along with any proposed advertisement of a licensed brothel on the Internet. The PLA will not allow advertising on the Internet which contains advertising for any other business or product or which permits access to or links the advertisement with any other site on the Internet unless the same has

been approved by the PLA. Any changes to the website, whether material or not, must also be approved by the PLA.

The name of the brothel and its logo are permitted for placement on certain merchandise and corporate gifts but, again, all advertising material of this kind must be individually submitted to the PLA for consideration. Other promotional signage, such as on vehicles, must also be individually submitted to the PLA for approval but sponsorship of sporting or other public events or activities is not permitted.

Advertising signage intended for the brothel premises is regulated by the Integrated Development Assessment System (IDAS) Code for Development.

Submissions to the review expressed the importance of advertising in moving sex workers from the illegal industry to licensed brothels. SQWISI stated, for example, that the sex industry is inherently transient and workers move in and out of the industry frequently, and at short notice. Yet licensees are forced to rely on word of mouth to find staff for their businesses, which appears particularly problematic in regional areas.

If the brothel sector is to become more robust, brothels must be able to attract sex workers ... allowing brothels to advertise using the words 'staff wanted' would be uncontroversial and would enable brothels to more effectively manage staffing levels. (SQWISI submission, p. 8)

Sex workers also criticised advertising restrictions. For example, respondents to the CMC's sex worker survey commented that:

not being able to describe our services means that we are subjected to a constant barrage of questions about what we offer — clients want to know what they will be paying for, so this legislation makes it quite difficult to answer these questions. Some people just do not get the subtleties of using softer words and want to know specifics. How do we answer that without breaking the law?

the legislation ... opens up more problems re advertising and leaves more room open for working ladies to break the law for something as simple as stating what they offer.

boutique brothels pay large licensing fees but they cannot advertise for sex workers to staff their business! Why? Any other legal business can.

Licensees also stated that the restrictions appeared to be excessive in comparison with those employed by other industries and have had a significant impact on their ability to encourage business from the illegal industry towards legal establishments.

However, the CMC also received submissions requesting the retention of tight advertising laws. One submission offered the following quotation from the Maxim Institute (2002) in support of its case:

The sex trade uses advertising and marketing in order to normalise the consumption of its offered products and service as an unquestionable part of ordinary life.

Fiona Simpson, MP, was also critical of the enforcement of advertising restrictions and stated that any loosening of the advertising restrictions would:

grow not only the market for people wanting to use sex workers but [also] the workforce ... the argument that somehow by relaxing bans (both for recruitment and of services) in regard to legal operators would shift the illegal workforce into the legal brothels, lacks evidence or substance. I note that this argument ... usually goes hand in hand with those who say it is needed to help legal operators compete with illegals. However, it is premised on the assumption that the illegal industry can at the same time be significantly reduced by law enforcement and that the industry on the whole won't grow.

I believe that such assumptions are naïve and have significant social risk to those recruited to participate. (p. 8)

There was some concern expressed that advertising for sex workers provided a one-sided view of the industry and minimised some of the negative consequences of sex work. A submission by a former sex worker described, with some criticism, the allure of a Sydney-based advertisement for sex work:

The escort agency made it very clear on the phone that the job was prostitution, she would have to have sex and she would get \$10 000 a week with free travel and free accommodation. They made it sound very glamorous.

It is NOT a glamorous lifestyle but that's the way advertising always promotes it. Of course they're not going to tell you about the overdoses, suicide attempts and mental problems and addictions that are part of the package deal.

Enforcing advertising regulations represents a considerable challenge for both the QPS and the PLA. The QPS explained, during several consultations, that the policing of advertising is an extremely onerous and difficult task, as it includes not only the activities of sole operators and licensees but also those of the publishers themselves. If paying by cash, advertisers with the *Courier-Mail*, for example, can go to any newsagent, quote a reference number and pay. It would therefore be easy for illegal or underage sex workers to advertise their services as sole operators.

The police propose changes to the legislation to improve enforcement of illegal advertising activity. These changes include the requirement:

- that all advertisements for prostitution (including those by sole operators) must obtain formal PLA approval before being published, along with an identifiable approved advertising registration number; the police commented that all prostitution advertisements without such a number would be easily identifiable and thus readily prosecuted
- that the PLA maintain a database that the PETF can access to validate advertisements
- that advertisers have photo identification that can be produced for the police and the PLA as required.

Clearly, such changes would require substantial increases in the resources of the PLA. More importantly, there are implications for the registration of sex workers, including sole operators. This requirement could be problematic and drive sex workers further away from the legal prostitution industry. At the same time, there is a clear need for further consultation with the industry about advertising issues. What is required is that all or most stakeholders understand the rationale and importance of advertising restrictions within the sex industry, and share a commitment to those restrictions. This is best achieved by means of a structured communication process between key industry stakeholders.

### **Recommendation 22**

**That the PLA monitor the time taken to process advertising requests and make every effort to expedite the process.**

## **Escort services/outcalls**

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

these services is also a key consideration in any debate about the provision of such services.

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

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

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

If sex industry businesses cannot offer their clients convenience and the wide range of attractive choices that clients are seeking, those businesses will be unable to attract and keep a business base. Without a steady flow of clients, those businesses will be unable to attract and keep sex workers. Without sufficient numbers of sex workers businesses can't develop a thriving client base. The problems are inter-related and circular and compounded by the fact that the licensed brothel sector has failed to become the industry norm.

Naturally, competition from the illegal sector is part of the problem ... the only viable long term solution to illegal prostitution is to provide a range of flexible and commercially attractive legal options ... no-one chooses to work or consume services illegally when there are equivalent or better legal choices. (SQWISI submission, p. 7)

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

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

QABA also noted in its submission that:

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

All informants to the review, including all government representatives, the PLA, all sex workers and all licensees who were interviewed for this review, were therefore

in agreement that the inability of legal brothels to provide an escort or outcall service is the most crucial impediment to the success of the Act.

A number of submissions also pointed out that the legal industry would be better placed to protect the safety of workers during outcalls, which is currently a potentially dangerous situation for sex workers providing these services. While many sex workers operate by a code to protect themselves<sup>17</sup> and some have drivers or security guards to assist them with their safety, many are vulnerable to attack or abuse because they work alone. The murder of a non-street-based sex worker in Queensland in November 2004 illustrates this. On the other hand, we have shown in Chapter 3 that legal brothels have demonstrated their capacity to provide a safe environment for workers. Discussions with licensees during the review also illustrated that they have given considerable thought to how they might extend this protection to workers if they had the capacity to provide escort services from the brothels.

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

Regarding regulation, as discussed above, many informants to the review suggested that legalising escorts would not only provide for a healthy and safe environment for the workers, but would also increase the viability of the legal sector and reduce the illegal sector. One regulatory model would involve legalising escort agencies generally. This model would be particularly directed at encouraging some of the present illegal operators to seek licensing so that they could operate legally in Queensland. An alternative model would be to allow existing legal brothels to provide legal outcalls. This model has the attraction of being able to utilise the regulatory scheme that currently exists in Queensland, as well as providing an opportunity to make existing brothels more commercially viable. The models are not mutually exclusive.

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

In the absence of objective data to the contrary, the CMC considers that there is a significant risk that an overall expansion of prostitution would occur. Legalised escort agencies would, in all likelihood, be highly profitable ventures. There would be a very strong commercial motive for operators to rapidly increase the number of sex workers in order to capture market share. If escorts were to be generally legalised, many existing illegal operators would not be able to enter the legal industry because of their criminal associations or convictions. No doubt that

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17 See, for example, Edler (undated), which provides a guide for escorts on how best to protect themselves when taking bookings, getting to the job and doing the job. The guide also itemises employers' responsibilities for the provision of safe escort services.

part of the illegal industry would continue to operate illegally. It is thought that a section of the illegal industry at the moment operates from interstate and it could be assumed that they would also continue to be part of the illegal Queensland market. It seems likely that new operators would seek escort licences. Certainly all the existing legal brothels would be likely to do so. Even if many of the sex workers who are presently working in the illegal industry were to be absorbed into the new legal escort industry, it is likely that continuing illegal operators would vigorously recruit to fill those vacancies. The CMC sees a risk emerging in this area if those illegal operators become more desperate for workers. These risks could include the importation of prostitutes from interstate, the use of illegal immigrants as prostitutes and the recruitment of underage girls.

Should escorts be legalised in Queensland, an expansion of the overall number of workers seems likely, and the CMC is not satisfied, on the information presently available to it, that this risk can be effectively negated.

The CMC continues to identify the illegal escort industry as a potential concern and would welcome a model that provides for the effective regulation of a size limited and controlled legal escort industry of a kind that would not precipitate a substantial growth in the overall prostitution market in Queensland. The CMC has not, in the course of this review, been able to satisfy itself that such a model currently exists.

However, the CMC recognises that the provision of escort services is at present the most crucial topic for the prostitution industry in Queensland, both legal and illegal. Further investigation of possible options for the introduction of legalised escort services is necessary. This can best occur through the CMC extending its present review to conduct a specific inquiry into the feasibility of legalised escort services in Queensland. The CMC will call for submissions on the suitability of extending legalisation to escorts and on the practical models that may be adopted to achieve this. The CMC will report publicly on the outcome of this further aspect of the review.

As presently informed the CMC is not persuaded that legalisation can be safely extended to escort services, and further review may confirm that. However, the extent of the illegal escort industry is a continuing concern which justifies further consideration of the issues involved.

### ***Recommendation 23***

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

## **Compliance audits and complaints handling**

During the first few years of the implementation of the Act, there was considerable confusion and debate about which body should investigate complaints about brothels and who would provide the ongoing monitoring of health and safety factors. The legislation had not provided adequately for either function.<sup>18</sup> Queensland Health argued that brothels should be viewed as local businesses

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<sup>18</sup> Note that the CJC (1991) had recommended the creation of an inspectorate to ensure compliance of all sectors of the industry with the requirements of the registration board.

and should, therefore, fall under the jurisdiction of local government. Queensland Health supported an approach in which licensed brothels paid a prescribed fee to a local council for monitoring compliance and responding to complaints. LGAQ, however, rejected this notion because of the costs involved and the likelihood that a number of councils would refuse to undertake the task.

Ultimately, the PLA took on this role, even though it had not been initially resourced or tasked to do so. In the first few years the PLA did this by conducting health, safety, administrative and financial compliance audits with the assistance of a microbiologist, a researcher and a financial investigator. At the same time the PETF actively monitored the brothels. The PLA also took over the development of the *Health and safety guidelines for brothels*, which had previously been a task for the PAC. Given the lack of resources to do so, this meant that the guidelines were not released until October 2002, which was some time after several licensed brothels had opened.

The guidelines state (p. 13) that checking compliance with the conditions of a brothel licence will be conducted by the following agencies:

- The PLA will inspect brothels to ensure that licensees and approved managers are complying with the conditions of their licence or certificate.
- A member of the QPS, of at least the rank of inspector, or a police officer authorised by an officer of at least the rank of inspector, may at any time enter the brothel when it is open for business. Authorised police officers, with the written authority of the PLA, have the right to:
  - inspect, photograph or copy anything required to be kept under the Prostitution Act
  - take possession of documents or things
  - require the licensee or approved manager to produce a document or thing for inspection
  - require the licensee or approved manager to provide police with reasonable help.
- The local authority has the power to ensure compliance with conditions of the development approval and to investigate development offences. The local authority is also responsible for regulating health standards and can inspect brothels to ensure compliance with health regulations.
- Under the Health Act, an officer of Queensland Health or of the local government has the power to enter premises to examine whether any of the provisions of the Health Act have been contravened. This could include investigation of an outbreak of a notifiable disease.
- Under the Workplace Health and Safety Act, an inspector may enter a workplace to enforce compliance with the Act. Inspectors also have the power to stop work when a situation is immediately hazardous.
- Under the WorkCover Queensland Act, WorkCover may require a person to give information or produce for inspection any documents that are relevant to any matters governed by the Act.
- Under the Prostitution Act, the PLA, acting on its own initiative or on the application of the Police Commissioner or an officer of the local authority, has the power to commence disciplinary action against a licensee if:
  - the licensee has been charged with or convicted of an offence in Queensland or elsewhere
  - a person with an interest in the licensee's brothel has been charged with or convicted of an offence against the Prostitution Act or a corresponding law

- a person with an interest in a licensee's brothel has been charged with or convicted of an offence in Queensland or elsewhere for which the penalty may be a term of imprisonment
- the provision of prostitution contravenes a condition or restriction of a brothel licence or manager certificate
- the licensed brothel is or has been managed in a way that makes it desirable that action should be taken against the licensee.

The guidelines also note that disciplinary action taken by the PLA may result in:

- a reprimand
- an additional condition or restriction being attached to the brothel licence or certificate
- an undertaking to perform, or not to perform, particular tasks
- a requirement to be complied with by the licensee or approved manager within or for a specified time
- a fine
- suspension of the licence or certificate for a period no longer than a year
- cancellation of the licence or certificate
- an order that the licensee or approved manager is ineligible to apply for a licence or certificate either permanently or for a specified period.

There have been no reports to the CMC of entry to the brothels by representatives of other agencies, such as Queensland Health, WorkCover or Workplace Health and Safety. However, in January 2003, the PLA employed two compliance officers (both with environmental health backgrounds) to conduct the audits of the licensed brothels for the PLA. According to its submission to the CMC, the PLA believes that:

Licensed brothels are very well regulated, with a dedicated compliance unit in place staffed with two officers and a formal audit and inspection program established to ensure brothels are regularly monitored. To date, audits have generally been conducted by notifying brothel licensees of the audit and planned date for the audit, although several unannounced audits have been conducted in response to specific complaints. It is the opinion of the PLA that the Act has resulted in close scrutiny of licensed brothels in all aspects of their operation. Recommendations by compliance officers have largely been implemented by licensees. (p. 1)

However, the PLA also noted that according to Subdivision 2 of the Act (licence cancellation and disciplinary action) compliance officers actually have no rights of entry, search or seizure and no authority to give directions. They suggested that the Act should be amended by inserting a new section 61A to create a statutory basis for compliance officers with associated rights of entry, search and seizure and power to give directions (similar to Environmental Health Officers or Industrial Relations Officers).

The CMC has carefully considered the PLA's submission in light of its understanding of how compliance action is operating in practice. The absence of entry, search and seizure powers is not seen to be a significant problem. The PLA has the ability to enforce its inspection regime through the imposition of licence conditions. Accordingly, the CMC does not consider legislative change to be necessary.

### ***The compliance function***

A risk review of the PLA compliance function by the CMC in October 2003 (CMC 2003a), at the request of the PLA, identified a number of risks. The CMC noted that there was a need to develop and implement procedures to ensure that the compliance function could operate effectively; for example, the CMC advised that publications were required for licensing requirements, compliance practices and best-practice management approaches to ensure openness and accountability. The CMC also advised that advice by PLA staff should be seen to be helpful but must not lead to misunderstandings and must not compromise formal policy and developing practices. It was also recommended that suitable guidance should be provided to staff on the preferred nature of responses to requests for advice or comment or, at the very least, all inquiries of this nature should simply be directed to the Registrar. The CMC also advised that, to enable suitable rebuttal and provide clear defence against false allegations, the policies and procedures and other documentation produced by the PLA should carry clear indications of their origin, authorisation and date of application. The CMC noted that these documentation standards were being progressively introduced, but at that time not all procedures had been implemented.

The CMC also commented on the high level of trust implicit in the work of compliance officers and, therefore, the importance of individual integrity, appropriate recruitment and training of officers and the provision of clear guidelines for their behaviour. The CMC noted that officers in this situation are required to use discretion and that such discretion must be accompanied by accountability, stating that:

while discretion may be a necessary part of performance and risk based regulatory processes, limits still need to be imposed on discretionary matters to ensure overall consistency within an established envelope of accepted regulatory performance ... recognised prevention measures to demonstrate the objectivity of decisions based on any exercise of judgement include the maintenance of exceptionally detailed hard copy documentation, provision of independent review (duality), process deconstruction and functional separation, independent checking and verification and adequate supervision. (CMC 2003a, p. 19)

Consequently, the CMC risk review recommended a number of initiatives, some of which are relevant to this review:

- To the extent feasible, work allocations between compliance staff should provide some measure of independent treatment of clients at different stages of licence assessment and compliance review. For example, the lead assessor role may be rotated at different times; the relevant compliance questionnaires could be split or restructured to enable more persons to undertake the role or job sharing could be introduced to increase the number of personnel involved and enable judicious rotation of roles.
- The conduct of unannounced visits to brothel premises at any time may form one component of a robust compliance program. In view of the likely impact on the industry participants and the potential for intimidatory practices leading to the risk of bribery and corruption, it is recommended that such visits be invoked sparingly and for specific purposes, with particular approval and programming by the PLA.
- That the PLA consider the implementation of random supervisory onsite checks by senior staff in association with other mechanisms to provide greater variety in the staff engaged in onsite inspections.

- The frequency of compliance visits is a matter for the PLA to determine based on its assessment of the relative risks and the nature of the particular visit or activity being examined. Apart from these considerations it appears that an initial three-monthly visit followed by continuing six-monthly visits would represent a feasible and sufficient program of compliance visits for an annual licensing renewal period.<sup>19</sup>

The CMC (2003a) suggested that ‘... an absence of clear and well documented procedures could provide opportunities for higher risk practices to develop such as excessive discretionary powers during compliance inspections or the adoption of non-standard procedures which could generate opportunities for selective enforcement and official misconduct’. The following suggestion for improved practice was made:

- That consideration be given to the adoption and promulgation of a suitable client service charter or performance pledge providing clear guidelines on the expectations for due process, client notifications and timelines associated with licensing applications and compliance matters. This should incorporate suitable feedback mechanisms to cater for the event of non-compliance with the desired timeline(s).

In response to the CMC’s report, the PLA noted that the restriction of compliance staff employment to three years was a key strategy for preventing industry capture, that in their opinion unannounced visits have been used appropriately by compliance officers and that, as long as they continue to be conducted with the explicit approval of the Registrar, the current schedule should continue. They also agreed to undertake random supervisory checks and have, since the CMC’s risk review, introduced a client service charter.

Many licensees and managers spoke to the CMC about the compliance program. There were some concerns about how the program had impacted on their capacity to maintain the safety of their clients and sex workers while attending to administrative matters with compliance officers at the same time. They were not concerned about random audits per se; rather they suggested that some leeway be provided for staff to ensure that there were enough managers/licensees on the premises to attend to the needs of both the PLA and their clients and sex workers. They also called for greater information and guidance about the actual requirements of the licence conditions and compliance visits to enhance their compliance with the matters being assessed. In other words, an increased capacity development and informative approach was seen as a desirable approach in the first instance. This issue is discussed further in Chapter 6.

### ***Handling complaints***

The PLA is responsible for receiving complaints about prostitution. To accord with this requirement the PLA has implemented a complaints handling process for concerns about the operation of legal brothels, and PLA staff have received externally provided training in dealing with inquiries and taking complaints. This means that anyone can make a complaint about any aspect of prostitution (such as safety and health problems in licensed brothels and unfair work practices) to the PLA. The PLA refers all complaints about illegal prostitution or illegal advertising to the QPS.

A concern raised by licensees was that there does not appear to be a robust complaints handling process for concerns about the PLA itself, most especially

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<sup>19</sup> The CMC suggested that unannounced visits or inspections ‘should be invoked sparingly’ (p. 33) because patterns of unannounced visitation and inquiry have been used in the past by corrupt police officers as a means of harassment and intimidation (see Wood 1997).

for client service matters such as licensee issues relating to compliance visits or administrative issues (some of these issues are examined in Chapter 6 of this report). Many informants to the review submitted that they would like to have the capacity to raise their concerns in a constructive manner with the PLA itself, but to date it has been their perception that mechanisms to do so have been unavailable to them.

The PLA's *Financial and administration manual* (Chapter 18) states that the PLA will establish and maintain an effective complaints management system to receive, investigate and resolve both complaints about prostitution and complaints about the operation of the PLA. Further, according to the PLA (personal communication, 1 December 2004), very few complaints about PLA staff or administrative practices had been raised directly with them and only a few complaints had been referred to them by the CMC and the Ombudsman.

There are other mechanisms available to PLA clients for serious allegations of corruption or official misconduct (such as the CMC, the Ombudsman<sup>20</sup> and Judicial Review by the Supreme Court), but the capacity to respond to client service or management-related issues before they escalate is important. The CMC recommends that the PLA should enhance its current complaints handling process for client-service issues in accordance with the guidelines released by the Queensland Ombudsman in 2003 and explicitly advertise its capacity to respond to complaints in this way.<sup>21</sup> This process should result in benefits for both the clients of the PLA and the PLA itself. As noted by the Ombudsman:

Good complaints management is an integral part of quality customer service. It also provides benefits for the agency. Effective systems enable poor decisions to be quickly and efficiently rectified and deliver information identifying areas for improvement. Additionally, effective systems reduce staff stress by providing training and support to help them deal with unhappy customers.

#### **Recommendation 24**

**That the PLA develop its complaints handling process for dealing with concerns about its own client service in accordance with established guidelines such as those published by the Queensland Ombudsman (2003).**

## **REGULATION OF SOLE OPERATORS**

According to the PLA, 'sex workers in licensed brothels and sole operators are regulated entirely differently'. Sole operators are not required to obtain an operating licence or pay fees, there is no security assessment and there is no legal requirement for them to have health checks. The requirement for the use of condoms while providing sexual services only became compulsory when the Prostitution Act was amended in December 2003. Currently, the only restriction on sole operators applies to advertising (ss. 93–95 of the Act). Consequently, 'sole operators ... remain largely an anonymous group' and, as one sole operator said to the CMC, '... the Prostitution Act is really a Brothel Act, not a Prostitution Act'.

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20 The CMC was informed that five matters were raised with the Office in relation to the PLA in the 2002–03 financial year and that some were subject to investigation (personal communication, 25 May 2004).

21 The Ombudsman's recommendations are based on previous work by Standards Australia (1995, 1998).

Logan City Council agreed, stating that:

the Act has made no difference at all to the types of prostitution that councils control (i.e. the single operator). The single operator was lawful under the Criminal Code and continues to be lawful under the Prostitution Act; the government and the police are not interested in this issue. (Logan City Council submission, p. 2)

It was suggested by many, however, that sole operators should be regulated in some way — perhaps by registration or licensing. The perceived benefits of this were:

- health-related, in that the regulation of sole operators could also be linked to regular and compulsory health checks
- a reduction in the potential for fraudulent health certificates
- the provision of a systematic way of regulating advertising
- the provision of a process for sole operators to seek approval from bodies corporate and/or owners of the premises in which they are operating
- a process by which aggrieved customers could raise fair-trading issues.

However, discussions with sex worker representatives, along with a review of the current literature, indicate that efforts to register or regulate sole operators may result in low compliance. It has been posited that, if such a requirement were enacted, many sole operators would not only fail to register but would also move into the illegal arena. Indeed, sex workers do not believe that they should be registered. Scarlet Alliance suggests reasons for this in its document *Principles for model sex industry legislation* (undated, p. 5):

Registration, when it occurs within other industries, tends to apply to professional associations with the purpose of ensuring that the people practising in that field have the necessary skills. For example, doctors, hairdressers, dentists, etc. are not controlled by specific government legislation, but are members of their own professional bodies. When registration is applied to sex industry businesses or individual sex workers the intention is usually as a form of government surveillance. Registration should never apply to individual sex workers as it is an invasion of basic human rights and perpetuates stigmatisation ... sex industry laws should assist sex workers to exercise greater control over their work environment by articulating sex industry industrial responsibilities.

Unlike current sex worker representative groups, however, professional associations can de-register members if they breach a professional ethic or commit a crime. As a result, such individuals are less able to continue to operate in their chosen profession than sex workers who, in theory, can maintain an income in their chosen profession by operating illegally.

Scarlet Alliance also points out that ‘privacy concerns arise for sex workers such as who has access to the information, how it is protected and maintained, what types of information are required and for how long it is kept’ (p. 7). This was certainly an important issue that sex workers raised with the CMC in discussions about their registration. Privacy concerns were also apparent in the difficulties encountered by Hospitality Training Courses (HTC) and Southern Edge when offering retraining/exit programs to sex workers (see Chapter 3).

Although the concept of sex worker registration has some attraction, there are also major risks. Experiences in other States and other countries suggest that this option has not been effective and may induce sex workers to return to the illegal industry.

## OVERVIEW OF CHAPTER 5

The information provided in this chapter indicates that the regulation of the legal prostitution industry got off to a shaky start. Fairly extreme levels of dissatisfaction were expressed to the CMC about the PAC, the Ministerial Committee and the failure to create an inter-agency oversight body until mid-2004. Nevertheless, four years after commencement, there is clearly a 'working' licensed brothel industry that, as shown in Chapter 3, appears to be abiding by the guiding principles set out in the Act. However, some of the processes involved in achieving this have been heavily criticised by licensees and sex-worker representatives.

Despite the concerns documented, the last 12 months have seen some acknowledgment of the gains made and a general consensus that, despite their limited number, the legal brothels operating in Queensland are performing their function well. There is now increased confidence in the capacity of licensees to run legal brothels in a safe, healthy and crime-free environment. Although further adjustments to the Act are clearly required to ensure that the legal industry becomes the most feasible option for those wishing to work in the sex industry (and the CMC recommends a number of changes to the Act accordingly), the CMC has been left with the impression that the legal industry has quietly 'come of age', confident in its capacity to provide a safe and viable alternative to the dangerous illegal industry.

The CMC acknowledges that the legalisation of escort services in Queensland is the most crucial topic for industry at present. Although not persuaded, on the evidence available, that the legal industry can be extended to incorporate these services without the risk of expansion, the CMC has extended its review to allow it to examine various models for and against the regulation of escort services in Queensland. The CMC will call for submissions and report publicly on the outcomes of this further aspect of the review in 2005.

## REGULATORY EFFECTIVENESS

The CMC's statutory function under section 141 of the Prostitution Act was to conduct and report on a review of the effectiveness of the Act to identify whether the provisions of the Act, as presently drafted, have been effective in achieving its primary goal of regulating prostitution. Weaknesses in the Act have been identified in the previous chapter and recommendations have been made to address them.

However, the effectiveness of any regulation depends not only on the provisions of the legislation but also on the effectiveness of the regulatory body that oversees its implementation. It is the CMC's belief that the creation of a viable alternative to the illegal prostitution industry requires attention to both the effectiveness of the Act and the performance of its regulatory function.

All key stakeholders, including the PLA, expressed some dissatisfaction with the regulatory functions of the Act. In the previous chapter, the dissatisfaction with the oversight of the Act by the PAC and the Ministerial Committee, and the failure to create an interagency oversight body until mid-2004, was highlighted. Without the support of these bodies, the effectiveness of the PLA's regulatory functions may have been diminished. It was certainly the perception of many informants to the review that the PLA was constantly required to 'fight fires' and respond to problems without adequate resources. This section of the report explores the evidence for regulatory best practice and highlights some areas where improvements in the regulatory function of the Act could occur.

### BUILDING PARTNERSHIPS: A WHOLE-OF-GOVERNMENT APPROACH

Government bodies such as Queensland Health, the Local Government Association of Queensland (LGAQ) and the Queensland Police Service (QPS), and non-government organisations such as SQWISI, have considerable expertise and understanding of prostitution and how it impacts on the community and on service providers (sex workers). However, in the initial phases of the evaluation, these agencies were of the view that neither the PAC nor the PLA had consulted with them sufficiently regarding the development of guidelines and protocols required to implement the Act. Initial relationships between the PLA and some of the key government agencies were reported to be strained, and many government representatives voiced their concerns about this to the CMC in the initial rounds of consultation. On the contrary, the PLA reported that it had worked very closely with the QPS (although it did acknowledge that tensions did arise in the initial stages), had fruitful liaison and consultation with the LGAQ, and had met with councils, SQWISI, other government agencies and the community around the state in the early stages of the operation of the Act. Initially the PLA had a principally licensing role, with the PAC providing the forum for interdepartmental interaction through its representative membership. It was only with the abolition of the PAC in 2003 that the PLA's statutory role was extended. It is the PLA chairperson's view that he is 'totally unaware of the strained relationship with key government agencies reported to the CMC'.

Nevertheless, a whole-of-government participatory approach to the regulation of prostitution was recommended unreservedly by all interviewed. In addition, strong support was given for the creation of a mechanism whereby representatives from all government agencies relevant to the legislation could provide input at an operational level into the ongoing decisions being made about the regulation of the industry, especially where their expertise was particularly relevant. Many interviewees expressed the need for a more effective whole-of-government approach to the issues.

The latest round of interviews with government informants indicated that liaison with the PLA had improved over time and that they were now generally satisfied with the documents developed to regulate the industry. Nevertheless, this report has illustrated that further amendments to the Act are required. It is the CMC's view that the implementation of these amendments will require a whole-of-government approach utilising the expertise of all relevant agencies. Given the volatility of the sex industry, the government also needs to be in a position to respond to emerging issues, and it is likely that a whole-of-government response will be the most effective in this regard.

An example of an emerging issue that could be addressed by a whole-of-government approach relates to allegations that some taxis are charging brothel licensees to deliver clients, although many call this practice 'tipping'. This was alleged to have occurred routinely in the days prior to the Fitzgerald Inquiry and seems to have now re-emerged. The CMC was informed of this practice in the first round of interviews in 2000. At that time, the PETF conducted a number of interviews with relevant parties but was unable to curb the practice. The issue was raised with the CMC again in 2004, indicating that the practice has escalated.

The CMC spoke to the Australian Taxation Office about this problem and they indicated that they were aware of it and described it as 'a huge problem', with implications for their office for hidden income or secondary employment for taxi drivers and operators. The CMC also spoke to officers of the Office of Fair Trading, the Australian Competition and Consumer Commission (ACCC) and the Queensland Department of Transport, but in each case the officers felt it did not come within the ambit of their agency.

The concern arises in situations where a customer asks a taxi driver to be taken to a brothel without nominating a particular business. It is said that some drivers are demanding payment from licensees when they deliver customers to the brothels. It is said that the fees expected by drivers have been increasing in some areas. Some licensees feel that their business may suffer if they fail to provide payment to taxi drivers. This practice is clearly an undesirable development.

The issue is complicated by the participation of some legal brothels in the practice, even though they do so to compete with the illegal market. According to a *Courier-Mail* article (21 January 2004), a spokesman for one legal brothel estimated that about 80 per cent of their business was brought by taxi drivers.

Although aware of it, neither the PLA nor the PETF have been able to take substantial action about this problem, even though the PLA attempted to address the issue with the Taxi Council, without success (the CMC also spoke with the Taxi Council). However, in late 2004, shortly before the release of this report, the CMC was informed that the practice had escalated and both the PETF and the PLA have now obtained legal advice, and are giving a high priority to responding to the practice. It may be some time, however, before the success of enforcement action can be assessed.

This is an example of a problem that could benefit from the resources and expertise of a range of government agencies, and of how a whole-of-government approach may be the most effective way forward.

Shortly before the release of this report, the CMC was informed that an inter-agency committee meeting had been held — with the approval of the minister, the Honourable Judy Spence MP — to discuss operational issues. Members of the committee were the PLA, the QPS, Queensland Health and the Department of Industrial Relations. There was consensus that the opportunity to discuss current and emerging issues with all the agencies involved was effective, and that formalisation of this structure would be beneficial, especially for the implementation of any future amendments to the Act.

The CMC is therefore of the view that, while the PLA must maintain its role as lead agency and decision maker, it is imperative that there be input from key government agencies. It is important to maintain a consultative culture between agencies and introduce mechanisms for ongoing consultation between key stakeholders.

#### **Recommendation 25**

**That a whole-of-government approach for addressing prostitution-related operational, inter-agency and emerging issues be formalised, and that the inter-agency committee receive continuing support from all of the government agencies involved, to ensure that there is effective cooperation and open communication between them. The operations of the inter-agency committee should also be monitored with a view to maintaining its effectiveness.**

## **WORKING WITH LICENSEES: ENHANCING COMPLIANCE**

An important aspect of the regulatory function is the role played by licensees. The Act has provided for legal brothels. If run as economic businesses, legal brothels will provide a viable alternative to the illegal industry. Therefore, it is important that the regulatory body not only controls legal brothels but also recognises that they must be viable and attract responsible and respectable operators. This requires a delicate balancing act: on the one hand, there is a need to ensure that standards are set and maintained, and that there is adequate oversight. On the other hand, it is important that regulation supports the guiding principles and purpose of the Act. For these reasons, it is necessary to strike a balance to ensure that licensees do not perceive that they are either being over-regulated or that the licensing body is too soft.

A key document produced by the Organisation for Economic Co-operation and Development (OECD 2000, p. 7) notes that government actions to promote regulatory compliance must consider each of the following issues:

- the degree to which the target group knows of and comprehends the rules
- the degree to which the target group is willing to comply — because of economic incentives, positive attitudes, acceptance of policy goals or pressure from enforcement activities
- the degree to which the target group is able to comply with the rules.

The OECD (pp. 7–8) also states that:

New rules may need to be accompanied by information campaigns to ensure that they are brought to the notice of and made comprehensible to the target group ... For small businesses in particular, the burden of assimilating and complying with many complex and technical rules can be unreasonable

and undermine confidence in the regulators and the regulatory structure ... enforcement cannot substitute for low levels of voluntary compliance.

To achieve compliance, the OECD recommends that governments employ a mix of activities to ensure that their policies take effect, including communication with the target group to inform it about its rights and duties and to explain the rules, and the use of many kinds of policy instruments to influence the behaviour of the target group, backed up with a variety of enforcement activities (such as inspections and sanctions) and adequate implementation to make the policy workable in practice (p. 12). A rule will not ensure compliance, unless it first addresses capacity building. Therefore, to increase compliance, regulators need to nurture organisational capacity to comply through offering education, assistance and consultation, and encouraging the growth of compliance professionals with special expertise in the area.

By their very nature, regulatory bodies can be subject to criticism by those whom they regulate, and the PLA is no exception. This section of the report illustrates some of the concerns raised by licensees about working with the PLA in the new and tightly regulated licensed brothel industry.

Licensees told reviewers, for example, that for its size (estimated to be about 10% of the prostitution industry in Queensland) it was their perception that the legal industry was excessively regulated and that this has had a detrimental effect on both current licensees and on potential applicants. They felt that the PLA needed to provide greater motivation for people to consider operating legally and that a sense of over-regulation may prevent this from happening.

The licensees also stated that they are not informed about changes to the licence conditions, other than them being posted on the PLA's website, which they claim 'makes it difficult to run a business when the boundaries are constantly changing and those so affected are not informed'. It is worth noting here that the PLA reported that the development of a standard set of brothel conditions has been one of its major problems. With the appointment of compliance officers the PLA felt better informed about the industry and was required to address issues as they arose. Under the Act, the PLA has the capacity to do this, and the CMC endorses the continuation of this practice. The PLA also told the CMC that 'licensees were kept fully informed' of the changes via registered mail, and that brothel licence and managers' certificates are reprinted as soon as practicable. They also stated that 'over the four years not one person has raised the issue of amended conditions, or indeed any other matter'.

It was also the perception of licensees that they had not been able to contribute their knowledge and expertise about the industry to the PLA because there had been a lack of consultative opportunities. It was their view that they are:

... not consulted in any changes to regulations or government decisions that affect them. Often licensees have to comply with imposed decisions that are either unworkable or expensive when better solutions could be found if the PLA consulted licensees or QABA. If licensees do not comply with the requirements imposed by the PLA they believe that they will lose their licence. (QABA p. 15)

Further, QABA stated that its members and the PLA 'tend to become entrenched in conflict and QABA members are forced to resort to alternative avenues such as threats of legal action or informing the Office of the Police Minister and the media, in order to get problems addressed' (p. 7).

It was the PLA's view, on the other hand, that it had attempted to maintain ongoing communication with all licensees and certified managers as required and had met with QABA representatives as requested. It believes that its meetings with QABA

had been cordial and fruitful, and that there was a clear understanding that any QABA request to raise matters with the PLA at a monthly meeting would be met, providing sufficient notice was given and the agenda items were identified before the meeting. They said, however, that no request for a meeting with the PLA by QABA has been received since that agreement, although they had met with QABA early in 2004 at the request of the minister.

Concerns were also raised about the experiences of licensees and managers presenting to the PLA board. Attendees perceived this process to be an adversarial one that they did not understand. Consequently, some licensees now take along legal representation, or at least seek legal advice before attending, to help them through the process.

Again, the PLA rejected this notion, suggesting on the contrary that all personal contact occurs in a cordial atmosphere in which mutual concerns are courteously addressed, and noting a number of documents available to inform applicants about the process.<sup>22</sup>

The PLA categorically rejected the notion of any conflict between it and QABA. Nevertheless, QABA believes that many of the issues which have caused problems for licensees could have been avoided by better and more open communication. QABA reported that it had 'approached the PLA in an attempt to open communication lines [but] was informed that ... as a regulator, it should not have any discussion or communication with the regulated (licensees)'. QABA felt that '... disbanding the PAC removed a mechanism for communication on bigger picture issues for the industry and removed a process of communication to government and other agencies' (p. 7). QABA recommended that regular meetings be held between the board of the PLA and the Executive of QABA to facilitate timely and open communication. As noted above, however, the PLA has said that it is willing to have the QABA raise matters at its monthly meetings, but it has not yet been approached by QABA to do so.

The OECD notes that effective consultation with the target group allows them to have input into the proposed regulation so that they can understand why it is necessary and how their concerns have been addressed. This can build in the target group a sense of ownership or understanding that will increase commitment to the objectives of the regulation. In addition, input to the regulator that is based on real-life experience in the activity being regulated can help the regulator find better solutions. Substantive dialogue between regulators and the target group contributes to a win-win strategy, since dialogue can increase the quality of regulation and ease compliance concerns, which is good for both sides (OECD 2000, p. 19).

Given the perceptions of licensees, it is recommended that the PLA develop and promote a process for communication to occur with licensees on a regular basis.

#### **Recommendation 26**

**That the PLA implement and promote a mechanism whereby licensees and their representatives can participate in regular and constructive consultation with the PLA.**

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22 These documents include a client service charter, numerous fact sheets about prostitution laws, making a complaint, advertising and lodging appeals about local government decisions, the health and safety guidelines for brothels, and a letter detailing the processes involved in dealing with the PLA.

## ADMINISTRATIVE ISSUES

It has been postulated by many, including the PLA, that the Authority had not been adequately resourced to administer the Act effectively. To provide an example, in its recent review of the PLA's compliance and monitoring activities the CMC (2003a) noted that there was a need for an effective registration and tracking system for the PLA's regulatory and compliance activities and that the PLA's procedures required refinement (p. 21). The CMC is still of that view, noting inadequacies in both the quality and the quantity of information recorded by the PLA about licensee and manager applications and their progression through the system (although the PLA rejects this). This is clearly an area that needs to be improved significantly, but resources and expertise are required to do so. The PLA reports that it has sought additional funding for the development of a suitable database, but these requests have not been approved.

Concerns about the provision of conflicting advice by PLA staff and other administrative problems were also raised with the CMC. The CMC was told of several examples of incorrectly addressed mail, lost letters and misplaced applications, along with numerous accounts of the PLA requesting information after it had already been provided (i.e. photocopies of documents etc). Some licensees also complained about inconsistencies in the timelines for processing licence applications and many concerns were aired about advertising, including the initial lack of advertising policies and guidelines (clearly a resourcing issue for the PLA), inconsistencies in the advice provided and delays in advertising approval.<sup>23</sup>

There was also concern about the ambiguous nature of some of the PLA's responses to queries, which often 'fail[ed] to answer the original question, leaving licensees in a state of uncertainty regarding their business or practices' (QABA submission, p. 7). An example provided relates to the provision of toilets in brothels. Some time after the establishment of the first few brothels, Queensland Health recommended to the PLA that all brothels should provide toilets in each room used for sexual services. The PLA subsequently created a licence condition to match this recommendation.<sup>24</sup> All but two of the brothels comply with this recommendation; the two which do not comply were built before the condition was imposed on the licences. Although Queensland Health has recently advised the CMC that it is their opinion that toilets in every room should not be mandatory (personal communication 13 July 2004), the affected licensees say they remain confused as to whether the PLA still requires them to comply. They reported that they have not been advised otherwise. The PLA, on the other hand, is confident that it has advised the affected licensees that the matter will remain under review in case circumstances may arise when the matter may be more conveniently addressed, and has provided correspondence to support these claims.

The perceptions of joint visits to brothels by SQWISI and the PLA compounded licensees' concerns about confidentiality. The CMC was told, for example, that SQWISI and the PLA had visited some brothels jointly on some regional visits when compliance audits were being conducted. This was perceived to be inappropriate in the light of the different roles played by each organisation. Again, the PLA asserted categorically that this has never happened. They stated that there was only one occasion when, quite by chance, the arrival of PLA compliance

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23 The PLA reports that all advertising requests are handled by the Registrar, and that close to 1500 advertising submissions have been made — the majority being dealt with within 36 hours of receipt.

24 Brothel licence condition number three states that the licensee must ensure each working room has a shower, toilet and hand basin within the room or as an en-suite to that room, whether shared or otherwise.

officers to inspect a brothel had coincided with the arrival of a SQWISI worker in the company of a police officer.

It is important to note, in relation to these concerns raised by licensees, that during the last four years the PLA has conducted several surveys of licensees, managers and applicants in an effort to better understand their concerns. Unfortunately, the PLA has been disappointed with the response rates, from licensees in particular.

The PLA is not subject to the *Freedom of Information Act 1992*. Licensees were concerned that this means that they cannot access meeting notes and reasons for decisions etc. and that this has compounded their concerns about communication and consultation with the PLA. This issue was raised in Parliament when the Bill was debated in 1999 and Premier Beattie noted that:

The bottom line is that the regulatory authority will have to consider all sorts of circumstances and all sorts of information when it makes decisions. Because we are dealing with a very tough edge of human behaviour, it is important that the regulatory authority is able to take advice which will influence its decision, but that there be some protection. There should be some protection for the source of the information which is provided, otherwise people may be less likely to come forward with information in these particular circumstances. (*Queensland parliamentary debates*, 3 December 1999, p. 5884)

It is important to acknowledge that a significant amount of information in the possession of the PLA would be of a highly confidential nature. Should the PLA be made subject to the Act, it is likely that there would be a higher level of concern about the potential release of highly sensitive information, which may be a further disincentive for brothel applications. It is the CMC's view that improved lines of communication will be more likely to overcome the concerns raised than any change in the FOI protection currently afforded to the PLA.

In brief, a number of administrative concerns about the PLA have been raised with the CMC. It is the CMC's view that enhanced communication and consultation processes would be beneficial in addressing such perceptions.

## INFORMING SEX WORKERS: INCREASING LEGAL ACTIVITY

To be effective, it is important that the regulatory scheme considers sex workers as key stakeholders in the industry and ensures that they are fully conversant with their obligations as well as the benefits that can accrue by working within the legal industry. It can be quite difficult, however, for sex workers and others interested in working in the industry to determine which laws are relevant and to determine their obligations under the legislation. The sex industry is currently controlled by the Criminal Code, the Prostitution Act, the *Liquor Act 1992* and the Liquor (Approval of Adult Entertainment Code) Regulation 2002. The CMC was told that sex workers and adult entertainers<sup>25</sup> alike are confused about the legislation and are unsure about what is and is not allowed by law.

The CMC has also been told that efforts to access information are often thwarted. For example, the CMC was informed that neither the police nor the PLA have the capacity or authority to provide information or to take an educative approach about prostitution laws in Queensland. Unfortunately, this has left sex workers and many people considering work in this area without adequate information to make informed choices, and worse, has increased the likelihood that some may inadvertently break the law.

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<sup>25</sup> A similar picture emerged during the CMC's review of the adult entertainment industry (see CMC 2004).

The CMC sought information about the understanding of the legislation by sex workers themselves in its 2004 survey. While the majority of respondents indicated that they had either a good (49%) or complete (17%) understanding of the Prostitution Act and a good (51%) or complete (11%) understanding of the Criminal Code, a substantial minority had either a limited understanding (22%) or no understanding (11%) of the Act and a limited understanding (19%) or no understanding (17%) of the code. The PLA's own survey of sex workers attending Sexpo indicated an even lower degree of understanding of the prostitution law (42%), the PLA (48%) and the role of the PLA (20%).

With regard to the CMC's survey, all of those who indicated that they had no understanding of the Act, and the majority of those who indicated that they had no understanding of the code, were currently working in licensed brothels. These findings indicate the need for further education of sex workers to ensure greater understanding of their working environment and to enhance, in the longer term, greater compliance with the legislative framework and the importance of an educative role for the PLA.

According to section 101(j)(iv) of the Act, the PLA has a function to advise the Minister about ways of promoting and coordinating programs that raise awareness in prostitutes. However, the CMC considers that it would be beneficial for the PLA to have the capacity to provide education material in order to increase the awareness of sex workers and other stakeholders about the Prostitution Act and industry issues. The PLA currently does this in a limited way through the publication of an occasional newsletter, *In-Touch*; the provision of posters, palm cards, fact sheets and a STI handbook; the production of articles for magazines; attendance at Sexpo; and statewide consultation. However, the Act does not make it clear to what extent the PLA is entitled to provide educative information to sex workers and the community. The CMC supports a legislative amendment to clarify the PLA's powers in this regard. The PLA could, for example, provide a web portal for sex workers which includes information of relevance such as legislative or other requirements, open an information line or provide trained personnel to respond to queries via the telephone. Additional resources to undertake these strategies will be necessary.

#### ***Recommendation 27***

**That the Prostitution Act be amended to make it clear that the PLA is entitled to provide information to sex workers, other stakeholders and the community about issues relating to prostitution. This could include the establishment of communication strategies such as an information website or an information line, as well as other opportunities for direct consultation.**

It is also important that SQWISI maintains independent contact with workers in both the legal and the illegal industries, to ensure that the health and safety of workers in both arenas are not compromised. Without an external body monitoring these aspects, whether it be the PLA, SQWISI, another sex worker agency, a union or other government departments such as WorkCover or environmental health agencies, there is the risk that inequities may occur.

QABA submitted to the review that it too would like to take an increased role in auspicing the provision of services for service providers. The CMC supports any efforts by the licensees to enhance the health status of the sex workers in the licensed brothels, but reiterates its view that additional independent advice to workers should always be available.

## OVERVIEW OF CHAPTER 6

The OECD (2000, p. 59) states:

Too often, governments act upon the false assumption that passing a law is sufficient by itself to create acceptance of, and compliance with, its policy. Poor quality regulation, regulatory procedures and enforcement can cause serious compliance problems. A sophisticated compliance analysis of the regulation implies a sophisticated understanding of the target population:

- What will make compliance difficult for them?
- What will motivate them to comply?
- What technical changes will compliance mean for their business or manufacturing processes?
- What financial impacts will compliance have?

This level of understanding of the target population is unlikely to be achieved without significant consultation with, listening to, and research of, members of the target populations. Similarly, compliance-oriented implementation and enforcement requires regulators to spend a lot of time negotiating with and educating target populations, understanding why non-compliance occurs, and looking for practical ways to improve compliance. This too requires significant communication between regulator and target population so that each understands the other's goals and constraints (sometimes, of course, it also requires coercive action on the part of the regulator).

Most importantly, the OECD states that monitoring compliance should also be used to modify ineffective policies and make enforcement more effective. People lose confidence in regulators if they are required to comply with technical rules that do not appear to relate to any substantive purpose. The value of the CMC's report is to highlight where modifications may best be made.

The CMC's recommendations in this chapter urge the implementation of mechanisms to facilitate greater consultation and communication with other government agencies, licensees and sex workers. It is considered that these initiatives will minimise misconceptions and avoidable tensions in the prostitution industry.

## MAJOR ISSUES, KEY FINDINGS AND FUTURE DIRECTIONS

The passage of Queensland's Prostitution Act in 1999 was an important step towards providing sexual services within legal brothels. Although sole operators have operated legally in Queensland for some time, the development of a legal brothel industry was an ambitious social-policy initiative for Queensland. The Prostitution Act is based on a series of laudable legislative principles, which seek to develop a legalised brothel industry free from many of the negatives, such as crime, corruption, exploitation and undesirable health effects, that are associated with prostitution in many other parts of the world.

The key findings described in the earlier chapters of this report are based on four years of research and analysis. The review comprised comprehensive assessments of relevant literature and legislation, systematic analysis of administrative data, intensive interviews and consultations with key stakeholders within the industry, surveys of sex workers, assessments of submissions and reviews of community surveys measuring attitudes toward prostitution.

The key findings of the review are discussed in this chapter. The chapter returns to the major evaluation questions considered, describes the key results emerging from the review, and suggests the way forward for the legal prostitution industry in Queensland.

### OVERVIEW OF MAJOR ISSUES AND KEY FINDINGS

The review has revealed that Queensland now has a small, though promising, legal prostitution industry. Further, it is the CMC's view that Queensland's current response to prostitution, although still in its early stages, has the potential to be more effective than the approaches taken by other Australian states to date. Although findings from the review indicated that several matters require attention, the recommended changes have the potential to further promote the integrity and viability of the industry. Although the review finds that a gap still remains between the illegal and legal industries, this gap should diminish over time with attention paid to the procedural and administrative issues identified.

In general, the review revealed that:

- organised crime and corruption are not of significant concern for the legal prostitution industry in Queensland
- health and safety issues for sex workers remain a concern (especially for street-based workers and sole operators), but legal brothels appear well placed to provide safe and healthy environments for workers and their clients
- legal prostitution is having minimal impact on community amenity
- police attempts at controlling street-level prostitution have shown promise, but the effectiveness of their enforcement efforts against illegal brothels and escort agencies is hard to assess

- efforts at regulating legal prostitution appear to be effective, although several issues of concern were identified, rectification of which may improve the industry and ensure its viability by continuing to shift demand from the illegal toward the legal sector.

Further evolution of the legal industry would provide more attractive options for sex workers and encourage more illegal workers to ‘cross the line’ to the legal industry. The results of the review suggest that a viable and well-regulated legal prostitution industry provides the best options for sex workers, for clients and for the community. This approach gives consistency and security for customers and sex workers, options for promoting healthy practices and educated choices for sex workers, and opportunities for sex workers to leave the industry through structured exit and retraining programs. The review finds that strengthening the legal industry will be optimal for the health and safety of sex workers and for reducing the negative impacts on the community at large.

The key evaluation questions that guided the review and brief summaries of conclusions are listed in Table 7.1.

**Table 7.1: Key evaluation questions**

CMC evaluation questions	Overview of achievement to date
<b>Regulation</b>	
Have procedures been implemented according to the Act to enable the issuing of brothel licences?	Procedures have been implemented to enable the issuing of brothel licences and 14 brothels are currently operational in Queensland.
How large a regulated industry has been created by the Act?	This number of brothels is significantly lower, however, than had been projected and concerns were raised about the regulatory approach and government oversight of the legal industry.
Have procedures been implemented according to the Act to reduce illegal prostitution (e.g. prohibited brothels)?	Although two police units have been enabled to enforce laws against illegal prostitution (and the number of prostitution-related offences since the implementation of the Act certainly reflects increased police activity), there appears to have been minimal impact on the illegal brothel and escort industries. Some success appears to have been achieved with street-based prostitution.
Has there been any reduction in levels of illicit prostitution, particularly in areas where some impact might be expected (such as illegal or prohibited brothels and escort agencies)?	
Has there been a change in the number of sole operators?	As sex workers are not registered and many illegal escort agencies and illegal brothels falsely advertise as sole operators, there are no data available to determine the actual number of sole operators, or changes in the number of sole operators over time.

**Table 7.1 continued**

<b>Health and safety factors</b>	
Has the Code of Practice for brothel management been developed and implemented?	<p>The PLA has developed and implemented both <i>Health and safety guidelines</i> and an inspection/compliance regime for legal brothels. During the review, however, some concerns were raised about both.</p> <p>Findings suggest that legal brothels provide the safest and healthiest work environments for sex workers. Sole operators and street-based sex workers, however, remain at risk in relation to their personal safety, and street-based sex workers show high levels of poor health and health-compromising behaviours.</p>
Have health-and-safety control and inspection regimes been implemented and maintained?	
Have there been any positive or negative health-and-safety effects on sex workers who participate in illicit prostitution?	
Have there been any health-and-safety effects on sole operators?	
<b>Social factors</b>	
Have there been opportunities for legal sex workers, sex workers in illicit prostitution and sole operators to retrain to other careers through the processes established by the Act?	Queensland Health has implemented a sex worker exit program, and a number of individuals have taken advantage of the scheme. However, financial rewards and flexibility remain key features for sex workers to remain in the industry.
<b>Community impacts</b>	
What have been the effects of licensed brothels on local communities and industries?	<p>Research indicates community support for licensed brothels, indecisive attitudes towards sole operators and continued opposition to street-based sex workers. All licensed brothels have also made significant efforts to inform their local communities about their activities and have had minimal impact on their local neighbourhoods. Only one brothel has received significant community opposition.</p> <p>Recent police activities appear to have reduced the number of street-based sex workers in the Fortitude Valley and New Farm areas without any evidence of displacement to other areas (and some anecdotal evidence suggests that some of the workers have begun working for licensed brothels).</p>
Is there any anecdotal evidence of a change (reduction or increase) in the impact of illegal brothels and street sex workers on local communities and industries?	

**Table 7.1 continued**

<b>Organised crime and corruption</b>	
Is there any evidence of organised crime or corruption within the legal prostitution industry?	The <i>Crime and Misconduct Act 2001</i> defines 'organised crime' as criminal activity that involves:
Has there been a change in levels of organised crime or corruption within the illegal prostitution industry?	(a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and (b) 2 or more persons; and (c) substantial planning and organisation or systematic and continuing activity; and (d) a purpose to obtain profit, gain power or influence.
	Illegal prostitution involving two or more people working together in a systematic way for the purpose of profit is, therefore, organised crime and exists in Queensland. However, unlike activity in some other states of Australia, the CMC was told that there is little evidence that the illegal prostitution industry in Queensland is involved in any organised way in other forms of criminal activity, such as drug offences, money laundering or personal violence.

## **FUTURE DIRECTIONS FOR REGULATING SEXUAL SERVICES IN QUEENSLAND**

This report identifies both the major and the minor concerns associated with the Prostitution Act and the legal brothel industry in Queensland. A number of issues that emerged from the review have significant implications for the industry and recommendations have been developed to further reform the industry and safeguard its viability in line with its legislative principles.

The CMC believes that implementing the recommendations will provide further safeguards to ensure that Queensland continues to enjoy a clean and well-regulated legal sex industry that gives certainty and security for workers and clients alike, with minimal impact on the community. It is the view of the CMC that further modification of the Prostitution Act and the regulatory approach along the lines suggested will improve the sustainability of the legal industry and provide further scope for shifting the market from illegal to legal prostitution without expanding the overall demand for prostitution services.

### **Locating and resourcing the PLA**

In its recent review of the compliance and monitoring functions of the PLA, the CMC (2003a) noted that the PLA had

... limited resources and time to develop the infrastructure required for implementation of the Act ... Among the ramifications of this development process may have been a considerable delay in initial licensing in some cases ... [and] initial confusion about the responsibility for different aspects of the onsite compliance role. (CMC 2003a, p. 17)

This review also has clearly demonstrated the impact of the PLA's limited resources on its capacity to develop the necessary infrastructure to implement the Act in a timely fashion.

During the Prostitution Act review, the PLA also submitted that its location within the Police portfolio has presented some risks to the organisation. While acknowledging the practical aspects of this arrangement, particularly considering the close working relationship required between the PLA and the QPS for processing licence and certificate applications, the PLA identified a number of problems. For example, the PLA computer systems were established by the QPS with considerable difficulty and, to date, an adequate licensing database has not been provided. Additionally, the close relationship between the two organisations may have created an impression within the sex industry of collusion. The PLA suggested that a more appropriate location within another government portfolio might be found.

***Recommendation 28***

**That the government undertake a review of the resources and administrative location of the PLA to ensure that it has the capacity to meet its legislative requirements.**

**Assessing progress**

There is little empirical evidence for the successful regulation of prostitution anywhere in the world; unintended consequences and unexpected outcomes have occurred in all models implemented to date. Given the volatility of the sex industry worldwide, the CMC is of the view that the industry requires ongoing monitoring to ensure that the government can be responsive to problems as they arise. It is the CMC's view, therefore, that a further review of the situation in Queensland should be undertaken in three years' time to again review the effectiveness of the Act.

***Recommendation 29***

**That a further review be undertaken in three years' time to assess the effectiveness of the Act.**

**CLOSING THOUGHTS**

This report has examined the overall effectiveness of the Prostitution Act in Queensland. Several issues emerged that require attention, and recommendations have been provided that seek to improve the industry and its overall regulatory framework.

The CMC has made 29 key recommendations, which are expected to enhance the success of the current Prostitution Act in Queensland; they are presented in the Summary at the beginning of this report as a continuous list. These recommendations are made in the context of a discussion of other important issues, which must be considered holistically for the sake of the future viability of the industry.

# APPENDIX 1

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## RECOMMENDATIONS FOR REFORM OF PROSTITUTION-RELATED ACTIVITIES IN QUEENSLAND BY THE CRIMINAL JUSTICE COMMISSION (1991)

The Commission recommended 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 organisation which offers sexual services
- the self-employed individual sex worker be permitted to operate from his/her home, subject to local planning provisions
- organisations involving 2–10 people be permitted to operate from premises either as a brothel, escort agency, cooperative or any other form of organisation offering sexual services, subject to approval by the Local Authority and a Registration Board
- a statewide 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, 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 2–10 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 comprise a representative from Queensland Health, the Queensland Police Service, the Local Authority (and 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, and have the following functions:
  - to investigate the suitability of persons involved in the industry and approve an ‘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
- 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
  - 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 of any indictable offences
  - whether the person has an association with known criminals
  - whether the person has previously breached any provisions of the regulatory legislation
  - any other matter 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
  - a worker to work knowingly from or at an unregistered premises
  - a client to use services provided from unregistered premises
  - 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.

## APPENDIX 2

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### BROTHEL LICENCE CONDITIONS AND CONDITIONS OF AN APPROVED MANAGER CERTIFICATE

#### **Brothel licence conditions**

##### ***Access by the PLA into the brothel***

The licensee must:

- 1 allow the PLA, or an officer appointed by the PLA, to inspect the brothel premises or any part herein and all operational aspects of the brothel business (including private interviews with sex workers or employees engaged on the premises) to ensure that the business is being conducted in compliance with the Act and the conditions of the brothel licence
- 2 provide, upon request by the PLA or any officer of the PLA, any report, document or thing which relates to the operations of the licensed brothel.

##### ***Brothel facilities***

The licensee must:

- 3 ensure each working room has a shower, toilet and hand basin within the room or as an en-suite to that room, whether shared or otherwise
- 4 provide staff showers, toilets and change facilities that are separate from those used by clients.

##### ***Record-keeping***

The licensee must:

- 5 record and keep the following particulars of all entries onto licensed brothel premises by police officers. This will include:
  - (a) date and time of the entry
  - (b) the name of the approved manager, if an approved manager was at the brothel at the time of the entry
  - (c) whether the licensee was at the brothel at the time of the entry
  - (d) the name, rank and station of each police officer who entered the brothel
  - (e) purpose of the entry
  - (f) a description of a possession or thing, if a possession or thing was taken during the entry
  - (g) the name and rank of the police officer, if that officer authorised the entry.
- 6 Record and keep the following particulars of all entries onto licensed brothel premises by officers of the PLA, Health Department, Local Authority or any other agency of government on official business:
  - (a) date and time of the entry

- (b) the name of the approved manager, if an approved manager was at the brothel at the time of the entry
  - (c) whether the licensee was at the brothel at the time of the entry
  - (d) the name and official position of each officer who entered the brothel
  - (e) purpose of the entry
  - (f) a description of a possession or thing, if a possession or thing was taken during the entry.
- 7 Conduct an annual health and safety risk assessment of the operation of the brothel, to be submitted to the PLA as part of the brothel licence renewal process.
  - 8 Ensure complaints about brothel operation are recorded and responded to in a timely manner, and ensure the PLA pamphlet entitled 'Making a complaint to the PLA: Information for licensed brothel clients' is stocked and displayed in the public waiting area of the brothel.
  - 9 Where electronic surveillance of the brothel is undertaken, retain all footage from surveillance tapes for a minimum period of 21 days.
  - 10 Demonstrate a sufficient evidentiary process to establish for the licensee themselves that sex workers are over the age of 18. Evidence of this process is to be provided to officers of the PLA on request.

### ***Financial operations***

The licensee must:

- 11 keep and maintain an appropriate computerised accounting system and, on request, provide an officer of the PLA with access to the system, records and reports at all reasonable times.
- 12 notify details of any change in financial circumstances which may adversely affect the financial viability or operation of the licensed brothel business to the PLA in writing within seven days of becoming aware of the change.
- 13 not enter into, or be a party to, any contract, agreement or arrangement, written or unwritten, with any other person to provide any thing, or to furnish any service in return for any direct or indirect interest in or percentage or share of revenue, profits or earnings from or of the brothel, unless the person is also licensed in respect of that brothel.

### ***Brothel operational plan***

The licensee must:

- 14 have and adhere to an operational plan. The operational plan must include, but is not limited to:
  - roles and responsibility of management, employees and workers
  - advertising material
  - sexual health education for sex workers, their clients and management
  - sexual health assessment for sex workers
  - personal protective equipment management (e.g. storage, handling of PPE, sex toys and other equipment; disinfecting equipment, storage and handling of waste)
  - reproductive health (e.g. pregnant workers)
  - how other occupational health and safety issues will be approached
  - security and safety from violence, including arrangements that are in place to ensure the safety of persons directly involved in providing prostitution
  - accident reporting

- rehabilitation
- worker's compensation (if applicable)
- cleanliness
- the extent of the licensee's involvement in the day-to-day operation of the brothel
- staffing structure of the brothel and duties of staff
- recruitment strategies.

### ***Workplace arrangements***

The licensee must:

- 15 ensure that all brothel managers have a current manager's certificate.
- 16 ensure conditions of employment of staff or engagement of sub-contractors are clearly defined, stated in writing and a copy provided to all signatories.
- 17 provide appropriate workplace induction for sex workers and staff new to the brothel, and maintain a record of the training provided.
- 18 provide sex workers who are identified as being new to the sex industry with information about: sexual health, detection of sexually transmissible infections, dealing with difficult or violent clients or situations, the right to refuse clients and the right to refuse to provide particular services, and maintain a record of the training provided.
- 19 not unfairly penalise any sex worker, by whatever means.
- 20 not, either directly or indirectly, compel a sex worker to service a client or compel a sex worker to provide a particular service.

### ***Workplace health and safety***

The licensee must:

- 21 ensure that, at all times while the brothel is in operation, there is a staff member present who holds a current first-aid certificate.
- 22 take all steps necessary to ensure the health and safety of all sex workers and other staff engaged at the brothel, not only while such persons are at the brothel, but when arriving at or leaving the premises, whether during daylight hours or during hours of darkness.

### ***Awareness and prevention of the transmission of infections***

The licensee must:

- 23 provide written information about sexually transmitted infections (STIs) in the client waiting area and ensure written information about STIs is available to all staff and sex workers.
- 24 ensure that sex workers hold a current sexual health certificate. A licensee or manager is required to sight each original sexual health certificate and to retain, for a period of one year, a photocopy of the original sexual health certificates endorsed by the licensee or manager who sighted the original for all sex workers working at the brothel.
- 25 where body piercing is performed, comply with provisions relating to skin penetration contained in the Health Regulation 1996.
- 26 provide non-reusable sharps containers which comply with AS4031 in each room provided for prostitution and in the staff bathroom facilities.
- 27 provide in each room used for prostitution, disinfectants, gloves and associated cleaning products to assist in the immediate cleaning of body fluid incidents within a working room, or for other cleaning as required.

- 28 provide and make available, at no charge, a variety of Personal Protective Equipment (PPE) in sufficient quantities to meet the needs of sex workers providing prostitution at the brothel. This supply may be controlled through an immediate supply within each room provided for prostitution, or by provision of a fully equipped PPE kit allocated to a sex worker at the commencement of a shift. PPE includes condoms, dental dams, lubricants and disposable gloves.
- 29 ensure that all personal protective equipment is stored in accordance with manufacturers' specifications.
- 30 provide clinical waste bins for the disposal of PPE within rooms used for prostitution. Clinical waste bins are to be exchanged by an appropriate contractor at least once a week or sooner, as required, to prevent any nuisance created by odour.

### ***Cleanliness***

The licensee must:

- 31 ensure that all towelling and bedding is laundered using sufficient chemical or thermal treatment to satisfy the Australian/New Zealand Standard for Laundry Practice AS 4146:2000. This may include use of commercial contractors or appropriate on-site facilities that achieve the requirements of the standard.
- 32 ensure that spa baths are drained and cleaned with appropriate sanitising agents after each use.
- 33 ensure that all linen and towels that come into contact with clients or workers are replaced with clean linen and towels immediately after each client.

### ***Alteration to business operations***

The licensee must:

- 34 on commencing operation of the brothel, give the PLA a schedule of operating times, indicating the days and hours on and during which the licensed brothel will operate. Ensure any revisions of the schedule of operating hours are notified in writing to the PLA.
- 35 not apply for a licence or permit under the *Liquor Act 1992*.
- 36 advise the PLA of all proposed variation or renovation to the approved brothel premises, accompanied by plans or diagrams, at least 90 days prior to commencement of the proposed variation or renovation.
- 37 advise the PLA of any change to the telephone number or business name used for the brothel.
- 38 not use the premises referred to in the licence or make available for its use, whether for payment or otherwise, for the purpose other than as a licensed brothel as defined in schedule 4 of the *Prostitution Act 1999*, without the approval of the PLA.

### **Conditions of an Approved Manager Certificate**

The holder of an Approved Manager Certificate must:

- 1 provide, upon request by the PLA, or any officer of the PLA, any report, document or thing which relates to the operations of the licensed brothel.
- 2 not apply for a licence or permit under the *Liquor Act 1992*.

- 3 allow the PLA, or an officer appointed by the PLA, to inspect the brothel premises or any part therein and all operational aspects of the brothel business (including private interviews with sex workers or employees engaged on the premises) to ensure that the business is being conducted in compliance with the *Prostitution Act 1999* and the conditions of the brothel licence.
- 4 after becoming aware of a change in the information given in the application for the certificate, advise the Authority in writing within 10 days of becoming aware of the change.
- 5 not work at a licensed brothel that is not stated in the certificate.

Managers must not:

- 6 unfairly penalise any sex workers, by whatever means.
- 7 either directly or indirectly, compel a sex worker to service a client or compel a sex worker to provide a particular service.

## APPENDIX 3

### KEY INFORMANTS TO THE EVALUATION

Agency	Individuals
Prostitution Licensing Authority (PLA): staff	Ms Anne Edwards (2001, 2002, 2003) Ms Margaret Isaacs (2001, 2002, 2003)
Prostitution Licensing Authority (PLA): Board	The Honourable Bill Carter (2001, 2002, 2003) Mr John Callanan (2002, 2003 only) Counsellor Anne Bennison (2003 only) Assistant Commissioner John MacDonnell (2003 only) Mr Lance Pollard (2003 only) Dr Ian Wilkey (2003 only)
Prostitution Advisory Council (PAC)	Ms Judith Robson (2001, 2002 only) All Council members (2001, 2002 only)
Queensland Crime Commission (QCC)	Mr Tim Carmody (2001 only)
Queensland Police Service Prostitution Enforcement Task Force (QPS PETF)	Inspector Geoff Murphy (2001 only) Inspector John Hartwell (2002 only) Sergeant Lisa Scruton (2002 only) Inspector Owen Ellroy (2003 only) Inspector John Lewis (2003 only) Inspector Trevor Kidd (2004 only) Inspector Paul Scanlan (2004 only)
Queensland Police Service Legal Services Branch	Steve Tregarthen (2001 only) Senior Sergeant Neil White (2003 only)
Queensland Police Service Tactical Crime Squad, Prostitution Unit	Sergeant Corey Allen (2004)
Queensland Police Service, Mackay	Senior Sergeant Mick Bianchi (2003) Senior Sergeant Matt Sheridan (2003) Senior Sergeant Roger Lowe (2003)
Self-Help for Queensland Workers in the Sex Industry (SQWISI)	Ms Cheryl Matthews (2001, 2002, 2003, 2004) Ms Jo Lewis (2001, 2002 only)
Queensland Health	Mr Greg Dorricott (2001, 2002, 2003) Mr Mark Counter (2001, 2002, 2003, 2004)
Local Government Association of Queensland (LGAQ)	Mr Greg Hallam (2001, 2002, 2003) Ms Deb Miles (2001 only)
Office of Fair Trading	Ms Clare Maconachie (2001 only)
Liquor Licensing Authority	Ms Kay Pulsford (2002 only)
Australian Taxation Office	Mr Ian Fargher (2004 only) Ms Allison Gamer (2004 only)
Queensland Adult Business Association (QABA)	June 2002 and April 2003

Agency	Individuals
Brothel licensees	<p>Licensees from the following brothels were interviewed:</p> <ul style="list-style-type: none"> <li>• Purely Blue (2001, 2002, 2003, 2004)</li> <li>• Truly Elegance (2001, 2002, 2003, 2004)</li> <li>• Essential Pleasures (2001, 2002)</li> <li>• 88 on Logan (2003, 2004)</li> <li>• Silks on Upton (2001, 2002, 2003)</li> <li>• Black Orchid (2002, 2003)</li> <li>• Viper Room (2002, 2003, 2004)</li> <li>• Australian Maid (2003, 2004)</li> <li>• Club 7 on Enterprise (2003, 2004)</li> <li>• Scarlet Harem (2003, 2004)</li> <li>• Intimate Encounters (2003, 2004)</li> <li>• Intrigue of Marcoola (2003, 2004)</li> <li>• Pentagon Grand (2002)</li> <li>• Bluebirds on Carmel (2003, 2004)</li> </ul> <p>Despite several attempts, the licensee of Marilyn's Gentlemen's Retreat was not interviewed.</p>
Brothel managers	<p>Purely Blue (2002) Club 7 on Enterprise (2003)</p>
Sex workers	<p>Various sex workers during CMC visits to licensed premises Various sole operators by telephone</p>
<p>Crime and Misconduct Commission Strategic Intelligence Unit (CMC SIU)</p>	
Liquor, Hospitality and Miscellaneous Workers Union (LH&MWU)	Ms Adele Munro (2004)
Ministers/Members of Parliament	<p>Ms Judy Spence (2004) Mr Tony McGrady (2004) Ms Fiona Simpson (2003)</p>
National sex worker representatives	Scarlet Alliance (2004)
Interstate brothel licensees/operators	<p>The Site, a 15-room legal brothel, NSW (2001) Langtrees, WA (2002)</p>
Sex worker rehabilitation service	Linda Watson (Linda's House of Hope), WA (2003)

## APPENDIX 4

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### QUEENSLAND-BASED PROSTITUTION RESEARCH (METHODOLOGICAL APPROACHES)

#### 1991: Surveys conducted by the CJC

##### *Public attitudes*

The CJC contracted Reark Research Pty Ltd to conduct a survey in 1991 to measure the public's attitude toward prostitution and sought information on:

- the public's belief in the existence of prostitution
- what aspects related to prostitution should be illegal
- what agency should be responsible for enforcing regulations relating to prostitution
- the public's attitudes and concerns about prostitution-related activities
- health-related matters and prostitution
- the public's attitudes toward potential regulation related to prostitution
- the public's response to other issues related to prostitution.

There were 1833 successful interviews with participants throughout Queensland. For comparative purposes, a small number of residents living in Melbourne (300) were also included in the survey, because at that time prostitution had been legalised in Melbourne for more than five years. This survey was one of the most comprehensive overviews of public attitudes towards prostitution ever conducted in Australia.

##### *Sex workers*

In the process of reviewing prostitution-related laws, the CJC decided that it was important to ensure a balance between the community's concerns and the interests and safety of the sex workers. The CJC, through arrangement with the coordinator of SQWISI and through word of mouth, approached sex workers to participate in an interview so that their views could be heard. In Brisbane, the Gold Coast, Cairns and Townsville, 73 sex workers — 66 women, 5 men and 2 transsexuals — participated in semi-structured interviews. Information was gathered on demographics, the types of work undertaken, clients, money earned, how clients found out about services, reasons for entering prostitution, age of entry and age left home, health, experiences of rape and violence, and preferences for changes in the industry.

#### 1997: Community survey by QStats for the Office of the Queensland Minister for Police

In 1997 the Queensland Police Minister contracted the Queensland Government Statistician's Office to conduct a survey of Queensland households to determine public attitudes to prostitution. That survey was an updated version of the 1991 survey, undertaken for the CJC to reflect the changes to legislation since that time.

A random sample of 1567 residents aged 18 years or older across five regions of Queensland (Brisbane, South East Queensland, Western Queensland, Central Queensland and Far North Queensland) responded to the survey.

### **1997: University survey of sex workers in Queensland (Boyle et al.)**

In 1991–92 in Brisbane, Cairns, Townsville, the Sunshine Coast and the Gold Coast, 230 sex workers were surveyed (although the monograph was not published until 1997). A range of topics were explored, including general demographics, knowledge and attitudes about safe sex practices, sexual and reproductive health, training and support needs, non-work risk practices and contact with the police and legal system. Unlike previous surveys, information was also sought from male sex workers.

### **2003: Surveys conducted by The University of Queensland and Queensland University of Technology for the PLA**

In June 2002 the PLA invited tenders to evaluate the sex industry in Queensland. The successful research team from The University of Queensland and Queensland University of Technology — Professor Jake Najman, Dr Michael Dunne, Ms Charlotte Woodward and Ms Jane Fischer — were employed to explore the sex industry in four ways:

- a survey of female sex workers
- disease surveillance of female sex workers
- a survey of male clients of female sex workers
- a survey of the general community.

#### ***Survey of female sex workers***

One of the main aims of the research was to examine whether there had been any changes in the sex industry over two points of time. A previous survey conducted by the authors in 1991 provided the basis for the 2003 survey. The domains explored, in relation to the respondents, included:

- demographic information
- history of employment both inside and outside the sex industry
- sexual health information
- condom use
- experiences of physical and sexual violence both in childhood and as an adult
- relationships with the police
- knowledge of, and use of, relevant services
- substance use.

A snowballing sampling technique was used and recruitment strategies included advertisements in RESPECT (the sex worker magazine published by SQWISI); phone calls and emails to sex workers who had advertised in local papers and on websites; contact with workers at licensed brothels; and word of mouth — respondents were asked to recruit friends for an interview. A total of 216 respondents throughout Queensland participated in the survey, 58 per cent of whom came from Brisbane, 17 per cent from the Gold Coast and the remaining 25 per cent from regional areas such as Cairns, Townsville, the Sunshine Coast and elsewhere. Most of the respondents were, at the time of the survey, working in a legal brothel ( $n = 101$ ) or as a sole operator ( $n=82$ ). The remainder were street workers ( $n = 33$ ).

### ***Survey of male clients***

To gain information, 200 male clients of female sex workers were surveyed about:

- their history of sex worker utilisation
- their reasons for visiting sex workers
- important characteristics when choosing a service
- the sexual services paid for and the service the client would like to pay for
- sexual health information
- mental health
- personal relationships and relationship satisfaction
- condom use, both with sex workers and with other partners
- substance use
- sample demographics.

Clients were recruited from several locations by word of mouth and by flyers, including licensed brothels in south-east Queensland, private workers and other locations such as the Brisbane Sexual Health Clinic. Most of the respondents were aged 25–44 years, although respondents attending legal brothels were younger than the others. Regarding their current relationship status, more than half were single; about one-quarter were married or in a de-facto relationship, and another quarter were divorced. Further, about three-quarters of those who were married or in a de-facto relationship were satisfied or very satisfied with their current relationship.

### ***Survey of the general community***

The purpose of the Community Attitudes Survey was to sample businesses and residents in three areas where licensed brothels were located, and to compare these with areas where there were no licensed brothels. A postal survey was initiated and 1207 surveys were sent out with a reply-paid envelope. Of these, 369 surveys were completed and returned (a response rate of 39.6%). The survey instrument was based on the 1991 CJC survey and sought information on:

- demographic characteristics of the respondents
- belief in the existence of prostitution
- beliefs in which components of prostitution should be illegal
- attitudes and concerns about prostitution-related activities
- health-related matters and prostitution
- attitudes towards regulations and potential regulations relating to prostitution.

Considering the 1999 legislative changes, additional information was also sought on:

- awareness of a brothel located in the area
- noise or nuisance concerns attributed to the presence of a brothel
- disturbance of business or personal activities.

## APPENDIX 5

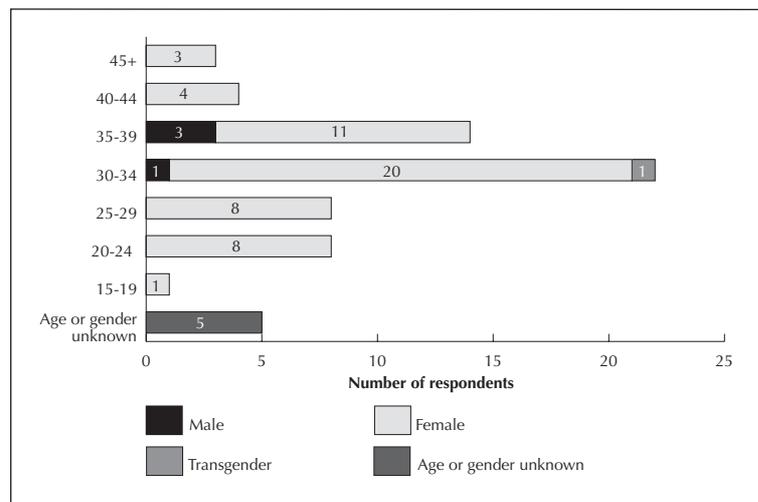
### CMC 2004 SURVEY OF SEX WORKERS

This appendix provides a profile of the respondents to the CMC's sex worker survey and describes some of their work experiences. Many of the findings of this survey, especially those relating to the five guiding principles of the Prostitution Act, have been incorporated into the body of the report and are not repeated here. However, some information provided by the respondents about the social factors that have contributed to their involvement in the sex industry, which has not been incorporated into the body of the report, is examined here.

#### Respondent profile

Sixty-five surveys were returned to the CMC. While the majority of respondents were female (86%), some male (8%) and transgendered sex workers (2%) also responded to the survey (5% did not identify their gender). The current age of the respondents ranged from 18 to 50 years (see Figure A5.1).

Figure A5.1: Age and gender of respondents to the CMC sex worker survey



About one-quarter of the respondents were either married (12%) or in a de-facto relationship (12%). Less than half (38.5%) had never married, 20 per cent were divorced or separated, 11 per cent described their current status as 'other' and 6 per cent declined to answer this question. About half of the respondents had children (51%), most of whom were financially dependent on them.

About one-third (39%) said that they currently worked and lived in the same suburb, while the rest (62%) said that they did not. However, more sole operators reported that they lived and worked in the same suburb (60%) than other respondents because of the co-location of their home and business. Respondents working in only one location (42%) were also more likely to work and live in the same suburb than those working in more than one location, again reflecting the work undertaken by sole operators.

The majority of respondents (75%) were born in Australia. Only one respondent indicated that he or she identified as an Aboriginal or Torres Strait Islander. Those not born in Australia came from a range of countries and all had been in Australia for more than 8 years (and up to 33 years).

On the whole, the respondents were very well educated with almost one-quarter (23%) indicating that their highest achievement was to university degree or postgraduate level. About one-third (31%) had achieved an education at trade, certificate or diploma level, another third (29%) had completed secondary school and 12 per cent had been educated to junior secondary level.

Regarding their current health status, most reported that their general health was either excellent (51%), very good (26%) or good (18%). Only 5% indicated that their health was either fair or poor. There were no differences in the self-reported health of the respondents by their current work location. Similarly, almost a third (32%) believed that their health was actually better or much better than it had been 12 months previously, and about a half (54%) thought it was about the same. A small proportion (12%) thought that their health had deteriorated during the previous 12 months.

## Work experience

### *Length of time in industry*

Overall, the respondents had been working in the sex industry for an average of 6.7 years, and this ranged from less than 1 year to 21 years. Respondents currently working in licensed brothels had worked in the industry for significantly less time (an average of 5.5 years [ $p = .028$ ]) than all other respondents (an average of 9.1 years).<sup>26</sup> Almost one-third of the respondents (31%) had not worked in the sex industry before the implementation of the Prostitution Act.

**Table A5.1: Respondents' workplaces**

Work environment	Ever worked (%)	Worked since 2000 (%)	Currently working (%)
Massage parlour	26	12	5
Licensed/legal brothel <sup>a</sup>	34	71	68
Illegal brothel	20	11	5
Escort agency	20	19	9
Sole operator	29	48	42
Bar/hotel work	11	9	5
Streets	6	5	2
Adult entertainment	9	9	0
Private in cooperation with others	22	19	0
Other (pornography)	3	2	0

a These include legal/licensed brothels in both Queensland and other states.

Note: Multiple responses were possible and figures will add to more than 100 per cent (i.e. sex workers concurrently worked in different environments).

<sup>26</sup> Scarlet Alliance (undated, p. 14) note that sex workers who have chosen private work as their preferred work option have often been workers with experience in other sectors of the industry (e.g. brothels, escorts) and have therefore acquired the skills to 'go out on their own'. In a sense they have been through an apprenticeship in the more supportive sectors of the industry. This explanation seems feasible for the differences in experience noted above.

It was the perception of many that the amount of both legal prostitution (57%) and illegal prostitution (26%) had increased since the implementation of the Prostitution Act, while about one-third indicated that the amount of legal (29%) and illegal (37%) prostitution had stayed the same. A small proportion thought that the legal industry had decreased (2%), and about one-quarter (25%) believed that the illegal industry had decreased.

### ***Preferred workplaces***

Most respondents expressed a preference for working either in a licensed brothel (65%) or as a sole operator (32%), probably reflecting the nature of the sample. About one-fifth also indicated a preference for private work in cooperation with others (22%), currently an illegal activity in Queensland.

**Table A5.2: Respondents' preferred workplaces**

Type of workplace	Proportion of respondents indicating as a preferred option
Licensed/legal brothel	65
Sole operator	32
Private in cooperation with others	22
Escort agency	19
Massage parlour	8
Illegal brothel	8
Bar/hotel work	2
Streets	0
Adult entertainment	0

Note: Multiple responses were possible. The percentages noted will therefore add up to more than 100 per cent.

Flexibility (68%) and income (62%) were the primary reasons for the preferences noted. Safety and security were also noted by those preferring licensed brothels and private work in cooperation with others (specifically two or more sex workers working together). The supporting comments also indicated that, in some cases, awareness of their activities by the police and PLA personnel, and the suspicion that the Act benefited licensees and management rather than sex workers, were strong reasons for not choosing to work in the legal industry.

## **Social factors contributing to involvement in the sex industry**

### ***Reasons for working in the sex industry***

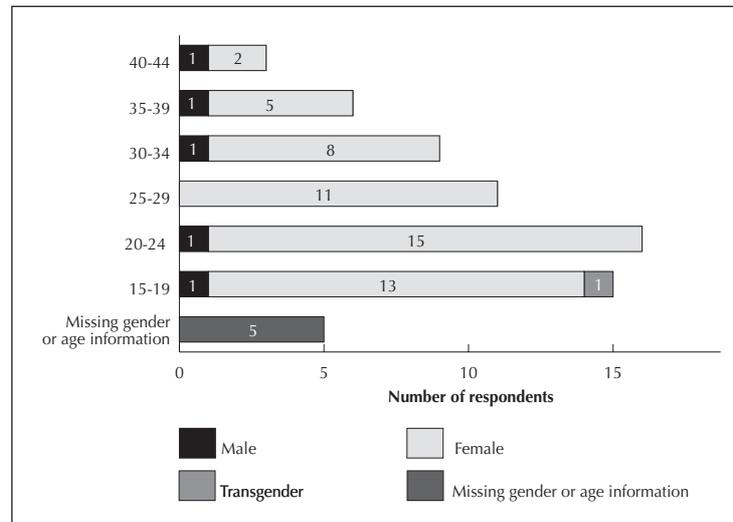
Money (85%) was reported as the primary reason for entering the sex industry. Flexibility (18%) of the work environment and enjoyment of sex (22%) were other important considerations. Other comments included 'autonomy', 'enjoy the work', 'days off whenever I chose', 'it eliminates the need for a man in my life', 'wanted to be very successful in study, lifestyle, income, choice of clientele', 'no boss or co-workers', 'self-employment', 'fun job', 'early retirement', 'provides a service to the community and prevents violent acts of assault', 'because I am proficient in all areas of my industry', 'I thought it would be good to be paid for something that I love doing' and 'love it!'. One respondent also noted that 'men have exploited me sexually all my life. I now use this to my favour and get paid for their deviances'.

### ***Age when started working in the sex industry***

The average age of respondents was 32.2 years; licensed brothel workers did not differ significantly in age from the other respondents. At least half of the

respondents had begun their career in the sex industry by the age of 24 years (see Figure A5.2).

**Figure A5.2: Age when respondents first started working in the industry**



While the sample size was inadequate to detect significant differences, there were indications that those currently working in unlicensed brothels, escort agencies, massage parlours, hotels and bars had started work in the industry at a younger age than those currently working in licensed brothels or as sole operators (see Table A5.3).

**Table A5.3: Average age of starting in the sex industry by current employment type**

Current employment type	Average age of starting working in the sex industry
Unlicensed brothel	16.3 years
Escort agency	17.8 years
Hotel work	18.7 years
Massage parlour	19.6 years
Private work in cooperation with others	22.4 years
Streets	23.0 years
Licensed brothel	24.5 years
Private work	26.8 years

### ***Income from sex work***

Changes in income since the implementation of the Act varied considerably. Overall, about one-third indicated that their income from sex work had decreased either slightly (15%) or a lot (15%) since the implementation of the Act in 2000. Fewer respondents indicated that it had increased slightly (11%) or a lot (9%) or had stayed roughly the same (17%). About one-third (31%) could not make the comparison as they had not been employed in the sex industry before the implementation of the Act.

More specifically, in regard to licensed brothel workers, about one-third (32%) indicated that they had not worked in the sex industry before the introduction of the Act. Of those who had been in the industry before the Act was introduced, almost half (41%) said that their income had decreased, either slightly or a lot, about one-third (28%) said that it had increased, either slightly or a lot, and about one-third (31%) said that it had stayed the same.

The profile for sole operators was very similar: about one-third (30%) had not worked in the industry before the introduction of the Act and almost half (42%) thought that their income had decreased. Slightly more sole operators than licensed brothel workers thought that their income had increased (37%), and slightly fewer (21%) thought that it had stayed the same.

**Future plans for working in the sex industry**

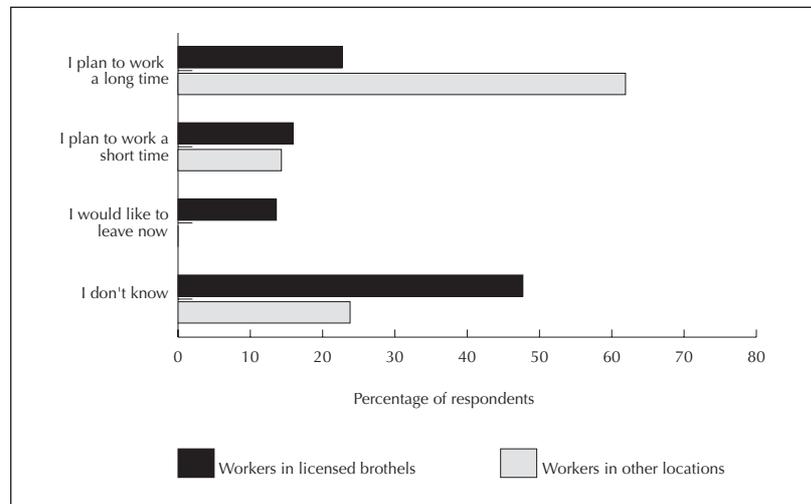
Although many respondents were not sure of their future plans (40%), 15 per cent indicated that they only planned to work in the industry for a ‘short while’ and about one-tenth (9%) indicated that they would like to leave the industry now. Slightly more than half (57%) also indicated that they would like an opportunity to retrain for another career. On the other hand, about one-third (35%) said that they intended to stay in the industry for a long time.

A closer look at the future plans of the respondents by their current location revealed that licensed brothel workers were significantly more likely ( $p = .011$ ) than workers in other locations to say that:

- they didn’t know what their future plans were (48%, compared with 24% of workers in other locations)
- they only wanted to work in the industry for a short time (23%, compared with 62% of workers in other locations)
- they wanted to leave the industry right now (14%, compared with no workers in other locations).

These findings have implications for the capacity of licensees to plan their future staffing arrangements.

**Figure A5.3: Future plans of respondents by current work location**



The reasons for short-term plans were provided in the open-ended sections of these questions. Responses suggested that age was a primary reason (‘wouldn’t get much work after 40’; ‘can’t do this forever’; ‘getting too old’; ‘you’re not young forever’), although difficulties with relationships and children, moral beliefs, lack of intellectual stimulation and the need to seek other career opportunities were also mentioned. One respondent also noted that ‘people don’t respect sex workers’.

On the other hand, it is important to note that those who believed they were in the industry for the ‘long haul’ indicated that sex work was a career choice and that they were happy with the work that they do. Most noted, for example, that they have other skills, formal training and options to work in other arenas, but that they

had made a conscious choice to work in the sex industry and were very happy with that choice.

Almost half (40%) of the respondents across all workplaces, including licensed brothels, had heard of retraining courses for sex workers but few (8%) had participated in them. (Of course, those who had been successful in such training would no longer be in the industry and would not have completed one of the surveys.) Approximately equal numbers of licensed brothel workers and other respondents indicated that they would like to retrain into another career.

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