

REGULATING OUTCALL PROSTITUTION

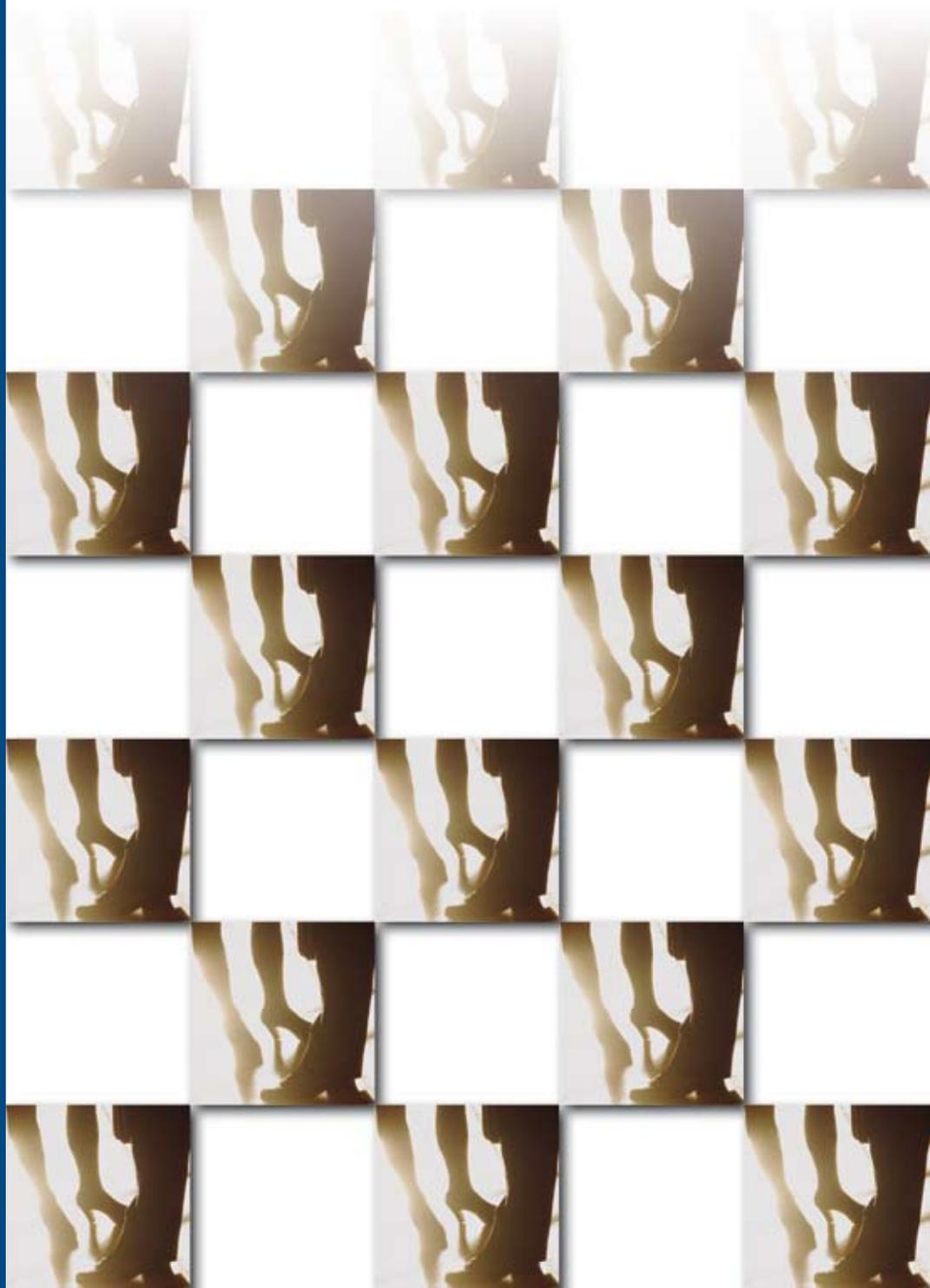
SHOULD LEGAL OUTCALL PROSTITUTION SERVICES BE EXTENDED
TO LICENSED BROTHELS AND INDEPENDENT ESCORT AGENCIES?

OCTOBER 2006

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

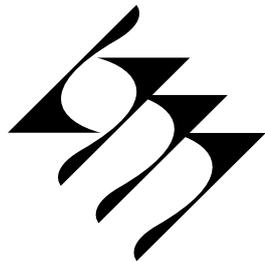


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QUEENSLAND

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 the Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with section 141(4) of the *Prostitution Act 1999*, the Crime and Misconduct Commission hereby furnishes to you its report, *Regulating outcall prostitution: should legal outcall prostitution services be extended to licensed brothels and independent escort agencies?*

The Commission has adopted the report.

Yours sincerely



ROBERT NEEDHAM
Chairperson

FOREWORD

I joined the CMC as Chairperson just after the release of the public report *Regulating prostitution* (CMC 2004a), which examined the effectiveness of the *Prostitution Act 1999* (Qld). Thus I came with a fresh mind to the task of examining whether we should recommend to the government that outcall prostitution services by licensed brothels and escort agencies in Queensland be legalised.

I determined that full stakeholder input into our deliberations was required. To achieve this, we released a discussion paper and called for public submissions. After receiving the submissions, I presided at two days of public hearings with all important stakeholders present.

Having carefully read and considered the *Regulating prostitution* report and the submissions received, I must admit that I embarked on the public hearings with a tentative view leaning towards recommending legalisation.

The hearings were conducted with the minimum of formality, with no-one 'sworn as a witness'. I found them of great value; and, perhaps surprisingly, all that I heard during the hearings caused me to change my earlier view. It was not only the evidence I heard, but also, and more importantly, the evidence that was not able to be produced, that changed my mind. It turned me to the view that we should not recommend changes to legislation that could lead to serious adverse effects, when we were unable to be confident that those adverse effects could be avoided.

After the hearings we continued the processes of the inquiry as set out in this report, which confirmed my view. The report gives the reasoning behind our thinking.

In *Regulating prostitution*, the Commission found that the Prostitution Act had led to a safe and healthy licensed brothel industry in Queensland. The current report details the Commission's views on how the legal prostitution industry can be best continued into the future, and on changes to law that will impede the illegal industry and enable the legal industry to better compete with it.

I am grateful for the support of the following CMC officers who worked with me on the inquiry and subsequent report:

- Dr Margot Legosz was the project manager for the inquiry.
- Allison Riding, Margot Legosz and Susan Johnson (Director, Research and Prevention) were responsible for writing the report.
- Margaret Patane contributed to the early stages of the inquiry.
- The Communications Unit of the CMC prepared the report for publication.

Robert Needham
Chairperson

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ABBREVIATIONS AND DEFINITIONS

Abbreviations

AAEI	Australian Adult Entertainment Industry Inc.
BDSM	bondage, discipline, sadism and masochism
CATWA	Coalition Against Trafficking in Women, Australia
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CJC	Criminal Justice Commission
CMC	Crime and Misconduct Commission
JAG	Department of Justice and Attorney-General
LGAQ	Local Government Association of Queensland
LHMU	Liquor, Hospitality and Miscellaneous Union
PETF	Prostitution Enforcement Task Force
PLA	Prostitution Licensing Authority
QABA	Queensland Adult Business Association
QPS	Queensland Police Service
SQWISI	Self Health for Queensland Workers in the Sex Industry
SSPAN	Sexual Service Providers Advocacy Network
STI	sexually transmitted infection
SWOP	Sex Workers Outreach Project

Definitions

The terms ‘escort services’ and ‘outcall prostitution services’ are used interchangeably in this report. Both refer to prostitution services that are provided by sex workers to their clients in any location other than on the premises of a licensed brothel or an independent escort agency.

We also discuss social escort services. Social escorts are services that provide companionship only — sexual or prostitution services are not provided. When we refer to this kind of escort we always include the term ‘social’.

SUMMARY

In December 2004, the CMC released its review of the effectiveness of the *Prostitution Act 1999* (CMC 2004a). That review was conducted over a four-year period, encompassing the first years of the operation of the Act.

During that time, brothel licensees in Queensland and the Prostitution Licensing Authority (PLA) consistently put forward their view that licensed brothels in Queensland ought to be allowed to provide outcall services. There were several reasons for this:

- The financial viability of the brothels seemed to be a major concern, and it was believed that outcalls would increase the financial benefits for licensed brothels — and consequently their ongoing sustainability.
- Allowing legal outcall services from brothels might better enable the legal industry to compete with the illegal industry in Queensland, as well as encouraging illegal operators and workers to move across to the legal industry.

Our review of the Prostitution Act incorporated discussions with these industry stakeholders and a wide-ranging review of prostitution in other jurisdictions. Most importantly, we considered some of the consequences (often negative) of various approaches to prostitution, including outcall services, both interstate and overseas. We also consulted with the other key stakeholder groups of the industry, such as sex workers and their representatives (including Scarlet Alliance and SQWISI).

Looking at the broader picture, it was our view at the time that there were other issues to consider, in addition to the financial viability of the fledgling legal industry in Queensland, in the debate about the possible legalisation of outcall services from licensed brothels. However, the information available to us at that time was limited, and we decided to embark on a full inquiry into the issue to ensure that we were as fully informed as possible before making any recommendations for change to the current legislation.

It is important to note, however, that we employed a precautionary approach throughout the inquiry. That is, if there was a significant risk of adverse consequences, and no clear evidence that the risk could be avoided, we would not be prepared to recommend change.

In *Regulating prostitution* (CMC 2004a) we reported:

- The guiding principles behind the Prostitution Act had led to a safe and healthy licensed brothel industry in Queensland, albeit much smaller than initially envisioned, which had minimal impact on the community and no involvement of organised crime. We also reported that it had been effectively regulated by the PLA.
- There was evidence of only a relatively small illegal industry in Queensland compared with other states of Australia (especially Victoria and New South Wales) and, most importantly, large-scale organised crime was virtually non-existent in the Queensland prostitution industry, either legal or illegal.

We believed this was good news for this state. Should any changes be recommended, therefore, the possible detrimental consequences to the status quo should be considered carefully — hence our use of the precautionary principle.

The escorts inquiry, which included two days of public hearings, extensive consultations with key stakeholders, a broad-based review of the available research and an assessment of a vast array of anecdotal information, is the most recent of a long line of dispassionate and objective reviews of prostitution in Queensland by the CJC/CMC. It has enabled us to review the potential benefits and possible detriments that might result if outcalls were to be legalised from licensed brothels. It has also offered us the opportunity to examine the potential benefits or detriments of legalising independent escort agencies.*

We were unable to find any evidence — and none was submitted to us — that legalising outcall services from licensed brothels or escort agencies in Queensland would improve the health and safety of sex workers providing these services, or minimise the size of the illegal industry. As a result, we are now firmly of the view that the risks associated with the legalisation of outcalls from either licensed brothels or independent escort agencies (which might include an expansion of the industry overall, and/or an increase in illegal activity either within the industry or more broadly across the state), are simply not worth taking.

However, the illegal industry in Queensland became a key topic for discussion at the public hearings. We have therefore made a number of recommendations in this report that should create a more equitable situation for legal operators (licensed brothels and sole operators) and decrease the attraction of working for illegal operators in Queensland.

We have done this by recommending a model for a multi-pronged approach to attack illegal prostitution in this state. This approach includes changes in four key areas:

- regulating social escort providers
- tightening the existing advertising policies of the PLA
- improving police enforcement measures
- improving the safety of sole operators.

Embedded in these key areas are a range of recommendations that aim to:

- address the way in which illegal operators currently advertise their businesses
- address the strategies used by illegal operators to masquerade as social escort services or sole operators
- formulate new guidelines for advertising approval, rather than requiring that each individual advertisement be approved by the PLA
- create offences that will target illegal escort agencies and disable telephone numbers that have been used to advertise illegal prostitution services
- make significant changes to the safety options for sole operators, which will give them the capacity to employ a receptionist or driver or security guard (providing they are not a current sex worker themselves) if they wish to do so.

We believe, however, that for these recommendations to be effective each component should be implemented simultaneously; otherwise damage may occur to the current legal industry.

A list of the recommendations arising from the inquiry follows. The body of the report demonstrates how we came to these conclusions.

* It was the view of some groups and individuals who made submissions to the inquiry that independent escort agencies also ought to be legalised, to ensure that more legal options and additional safeguards are available for sex workers.

LIST OF RECOMMENDATIONS ARISING FROM THE INQUIRY

Recommendation 1

That outcall prostitution services from licensed brothels in Queensland not be legalised.

Recommendation 2

That outcall prostitution services from independent 'escort agencies' in Queensland not be legalised.

Recommendation 3

That legislation be amended to prohibit advertisements for social escorts larger in size than the maximum size currently prescribed for licensed brothels.

Recommendation 4

That legislation be amended to prohibit any advertisements for social escorts that do not contain the words 'non-sexual' or 'sexual services are not provided', displayed prominently in the advertisement.

Recommendation 5

That the restrictions on social escort advertising be made applicable to any publication that has a circulation in Queensland (whether or not it is published in Queensland) and to any advertisement that offers escort services in Queensland (whether or not the business is based in Queensland).

Recommendation 6

That legislation be amended to provide that, where an advertisement for social escort services has been published for or relating to a business, the person who was carrying on the business at the time the advertisement was published shall be taken to have published the advertisement unless the court is satisfied to the contrary.

Recommendation 7

That the penalty for breaching the restrictions on social escort advertising be tied to the cost of placing the advertisement: for example, a maximum penalty of 10 times the cost of placing the advertisement, or 10 times the commercial cost of establishing the website, as the case may be.

Recommendation 8

That the Queensland Government consider tying the penalty for breach of section 93 of the *Prostitution Act 1999* to the cost of placing the advertisement (e.g. a maximum penalty of 10 times the cost of placing the advertisement, or 10 times the commercial cost of establishing the website, as the case may be) so that there is parity of penalty with the provisions on social escort advertising.

Recommendation 9

That legislation be amended to impose an obligation on social escort providers to clearly inform prospective clients who contact the social escort provider (e.g. by telephone) that prostitution services are not provided.

Recommendation 10

That the regulations to the *Child Employment Act 2006* prohibit the employment of minors as social escorts.

Recommendation 11

That section 93 of the *Prostitution Act 1999* be amended to ensure that it covers all advertisements for prostitution, however prostitution is described in the advertisement.

Recommendation 12

That the Prostitution Licensing Authority make the final decision on whether advertisements by licensed brothels should include the brothel's licence number.

Recommendation 13

That the Prostitution Licensing Authority make the final decision on whether advertisements by licensed brothels should include the word 'legal'.

Recommendation 14

That the guidelines/regulation for advertising by licensed brothels contain detailed rules on what line drawings, pencil renderings and photographs are not likely to offend the general public.

Recommendation 15

That the approved form of advertising by sole operators prohibit the use in any advertisement of any business name implying that more than one sex worker is available.

Recommendation 16

That the approved form of advertising by sole operators require the use of an individual's name (usually a pseudonym), and permit only the description of the sole operator, location, business hours and contact telephone number of the sole operator.

Recommendation 17

That any guidelines or regulation for prostitution advertising set broad parameters to guide advertisers rather than relying on the current specific approach, which uses a list of approved words.

Recommendation 18

That a 'carrying on business' offence (not applicable to licensed brothels) be created to the effect that a person who has an interest in a business that enables prostitution to be provided by two or more prostitutes commits a crime.

Recommendation 19

That an offence be created to the effect that clients and workers of illegal prostitution enterprises also commit an offence, but that they may obtain a certificate of discharge, similar to the certificate of discharge in section 229J of the Criminal Code, in return for evidence that can be used against the person or persons carrying on the business of an illegal prostitution enterprise.

Recommendation 20

That a provision be enacted, similar to the section 229N provision of the Criminal Code, enabling the fact that a business (which enables prostitution to be provided by two or more prostitutes) is being carried on to be inferred from particular evidence such as employment records, business records, telephone records, advertisements and the like.

Recommendation 21

That the 'carrying on business' offence be nominated as a serious crime for the purposes of the *Criminal Proceeds Confiscation Act 2002*, thus enabling the assets of illegal prostitution providers to be confiscated.

Recommendation 22

That the Queensland Police Service develop appropriate protocols with the telecommunications carriers and the Australian Communications and Media Authority to disable telephone numbers advertised by illegal prostitution providers in accordance with section 313 of the *Telecommunications Act 1997* (Cwlth).

Recommendation 23

That section 229H of the Criminal Code be amended to create an exception for:

- » people who engage in actions necessary to ensure the safety of sole operators (e.g. being told where the sole operator is attending an outcall and when he or she will be back, remaining in telephone contact with a sole operator while they are attending an outcall, and disseminating information about dangerous clients), but only if they act for one sole operator, and only if they are not current sex workers themselves
- » people who act as receptionists or drivers for sole operators but only if they act for one sole operator and only if they are not current sex workers themselves.

BACKGROUND TO THE INQUIRY, AND INQUIRY METHODS

This chapter describes why the CMC conducted this inquiry, and the methods used.

BACKGROUND TO THE INQUIRY

The *Prostitution Act 1999* required the CMC to review the effectiveness of the Act as soon as practicable after three years from its commencement. In December 2004 we released our major report of that review, *Regulating prostitution* (CMC 2004a). The report focused on whether the five aims of the Prostitution Act, as nominated by the Queensland Government when the Bill was introduced, had been achieved. Those aims were to:

- ensure quality of life for local communities
- safeguard against corruption and organised crime¹
- address social factors which contribute to involvement in the sex industry
- ensure a healthy society
- promote safety.

Regulating prostitution concluded that the legal brothel industry in Queensland, albeit much smaller than originally envisaged, had developed a good track record for providing a healthy and safe environment for sex workers and their clients, and an industry free of organised crime and corruption. Indeed, we stated that we considered it a better model than most enacted by the other states of Australia.

Although *Regulating prostitution* comprehensively dealt with a wide range of issues concerning the prostitution industry, it left out one key issue — whether outcall or escort prostitution services should be legalised (CMC 2004a). According to current Queensland law, individual sex workers working alone (‘sole operators’) may legally provide outcall services. However, licensed brothels are only permitted to provide services on brothel premises; and, as the law currently stands in Queensland, independent escort agencies providing outcall prostitution services are not permitted.

A number of key stakeholders consulted during the evaluation of the Act advocated that licensed brothels be allowed to provide outcall services. They argued that the financial viability of licensed brothels and the sustainability of the legal industry overall depended on its capacity to compete with the illegal industry (which currently provides at least some of the outcall services in Queensland). They also argued that licensed brothels were well placed to protect the health and safety of the sex workers providing outcall services. In addition, some groups recommended

1 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.

that escort agencies providing outcall prostitution services be legalised, to expand the legal options for sex workers in Queensland and provide a regulatory framework for what is currently an illegal activity.

On the information available to us at that time, however, we were unable to recommend that outcall services from licensed brothels and/or escort agencies be legalised. A major concern was that an overall expansion of prostitution might occur:

Legalised escort agencies would, in all likelihood, be highly profitable ventures. There would be a very strong commercial motive for operators to rapidly increase the number of sex workers in order to capture market share. If escorts were to be generally legalised, many existing illegal operators would not be able to enter the legal industry because of their criminal associations or convictions. No doubt that part of the illegal industry would continue to operate illegally. It is thought that a section of the illegal industry at the moment operates from interstate and it could be assumed that they would also continue to be part of the illegal Queensland market. It seems likely that new operators would seek escort 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. (CMC 2004a, pp. 111–12)

On the other hand, we pointed out in *Regulating prostitution* that the risks associated with not legalising escort services in this state could include a significant deterioration in the current legal brothel industry, because of the lack of financial incentives for licensees to remain open. Illegal escort services are a damaging source of competition for legal brothels. Given the very positive impressions of the current legal industry that we gained, we perceived this to be a significant risk. There is also a risk that, if escorts are not legalised in Queensland, legal brothels will fail to attract sex workers to work in the brothels, because the financial rewards associated with illegal escort services are greater than those from either brothel or sole operator work. Illegal escorts, and their clients, also appear to be more vulnerable to health and safety risks, and this problem is likely to persist without legalisation and its associated monitoring.

Another concern was about the current lack of effective monitoring or regulatory processes for legal escort services elsewhere (both nationally and internationally), and some evidence that legalising escort services does not necessarily result in either decreased illegal activity or increased health and safety benefits for workers. Moreover, no workable model for the legalisation of outcall services had been provided for our consideration.

One of the key recommendations in the *Regulating prostitution* report was, therefore, that the CMC extend its review to examine the question of whether outcalls from licensed brothels should be legalised in Queensland; and, if so, how this could best be done:

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. (CMC 2004a, Recommendation 23)

This report provides information about the CMC's public inquiry into whether outcall services should be legalised from licensed brothels and/or escort agencies. It is concerned solely with this question, and should be viewed as supplementary to the *Regulating prostitution* report. *Regulating prostitution* comprehensively evaluated the prostitution industry in Queensland, and the current report makes the assumption that the reader has knowledge of the information contained in it.

INQUIRY METHODS

The CMC took a staged approach to the escorts inquiry (Table 1.1 shows the key phases). Initially this involved background research and a call for public submissions (March 2005), with the release of a discussion paper (CMC 2005a). This was followed by two days of public hearings in September 2005. Further consultations with key stakeholders, other key individuals and government agencies followed the hearings, to examine more closely the major issues raised at the hearings. In December 2005 we released an interim position paper indicating the Commission's preliminary view that outcall services should not be legalised. As an alternative to legalisation, the paper described a model designed to both sustain the legal prostitution industry in Queensland and attack the illegal industry.

Table 1.1: The CMC's approach to the inquiry, phase by phase

Phase	Activity	Explanation
Phase 1 (January–September 2005)	<p>Review of the research literature and available evidence from other jurisdictions</p> <p>Consultations with key stakeholders</p> <p>Call for submissions</p> <p>Some submissions posted on CMC's website <www.cmc.qld.gov.au></p>	<p>Discussion paper released in hard copy, published on the CMC's website, and emailed to stakeholders and other interested parties.</p> <p>Key stakeholders invited to provide written and oral submissions to the inquiry.</p> <p>Advertisements placed in local and regional newspapers, calling for submissions.</p> <p>Some submissions were published on the CMC's website so that the broad range of views about escort services could be disseminated to inform the current debate. The CMC received many oral and written submissions that were not published on its website because they might have identified the authors. This does not mean that the views expressed in those submissions were overlooked. Rather, the views expressed privately by sex workers and other members of the public were respected and considered in the decision-making process.</p>
Phase 2 (September 2005)	<p>Day 1 of the public hearings</p> <p>A number of speakers from key stakeholder and community groups invited to present their views at the hearings</p>	<p>It was considered important for the vast array of opinions about escort services to be aired at the hearings, to ensure that the Queensland public had access to information about the key issues involved in the debate, and allow the key stakeholders in the industry to examine and discuss the conflicting views about escorts across the industry.</p> <p>Appendix 1 provides a full list of the speakers invited to appear at both days of the public hearings.</p> <p>Transcripts of the public hearings were posted on the CMC's website to enhance discussion: <http://www.cmc.qld.gov.au/data/portal/00000005/content/03894001143008779320.pdf>.</p>

(Continued)

Table 1.1, *continued*

Phase	Activity	Explanation
	<p>Day 2 of the public hearings</p> <p>All presenters offered a right of reply to the issues raised on Day 1 of the hearings.</p> <p>All presenters invited to participate in a forum. Where relevant, some members of the public gallery were also invited to offer their views.</p>	<p>Key issues regarding the practicalities of legalising escort services were examined.</p> <p>Transcripts of the public hearings were posted on the CMC's website: <http://www.cmc.qld.gov.au/data/portal/00000005/content/90309001143008779320.pdf>.</p>
<p>Phase 3 (October–December 2005)</p>	<p>Further consultation with key stakeholders and other government agencies about the issues raised at the public hearing.</p>	<p>Agencies consulted during this phase of the inquiry included:</p> <ul style="list-style-type: none"> » the Australian Taxation Office » the Department of Tourism, Fair Trading and Wine Industry Development (Workplace Health and Safety) » the Liquor, Hospitality and Miscellaneous Union (LHMU) » the Prostitution Enforcement Taskforce of the QPS » the Prostitution Licensing Authority (PLA) » Queensland Adult Business Association (QABA) » two Victorian brothel owners » the Australian Competition and Consumer Commission » print media agencies, including the <i>Courier-Mail</i>, <i>Quest Newspapers</i>, the <i>Gold Coast Bulletin</i> and <i>Sensys</i> (Yellow Pages) » sex workers and their representatives. <p>This phase of the inquiry also included consultation with the Minister for Police and Corrective Services, Ms Judy Spence, as required by section 141 of the <i>Prostitution Act 1999</i>.</p>
<p>Phase 4 (December 2005 – January 2006)</p>	<p>Release of CMC's interim position paper.</p> <p>Further consultation with stakeholders.</p> <p>Telephone survey of social escort services.</p>	<p>The interim position paper:</p> <ul style="list-style-type: none"> » set out the Commission's preliminary view that escort services should not be legalised » outlined a proposed model to both sustain the legal prostitution industry in Queensland and attack the illegal prostitution industry. <p>Stakeholders were invited to comment on the CMC's interim position by 31 January 2006.</p> <p>The paper was distributed via:</p> <ul style="list-style-type: none"> » publication on the CMC website <http://www.cmc.qld.gov.au/data/portal/00000005/content/64568001133483870372.pdf> » email to interested parties and key stakeholders. <p>The paper was then forwarded to other interested parties by the key stakeholders.</p> <p>Further discussions were held with key stakeholders about the CMC's proposed model for reform.</p> <p>All telephone numbers advertising in the electronic yellow pages at December 2005 that appeared to represent social escort agencies were contacted by the CMC and informed about the inquiry and the interim position paper ($n = 71$).[*] Comment from these parties about the CMC's proposed recommendations was sought, documented and contributed to the recommendations of the inquiry.</p>

* See Appendix 2 for more information about the survey.

Phase	Activity	Explanation
Phase 5 (January–September 2006)	Consolidation of information received by the inquiry and preparation and release of public report.	Stakeholders' comments on the CMC's interim position were considered and included in the final report.

SUBMISSIONS RECEIVED

We received more than 40 written and oral submissions in Phase 1 of the inquiry. Table 1.2 lists the names of the key stakeholders and interested parties who provided submissions.

We received more submissions after the hearings and during the post-hearing consultations; these are noted in Table 1.3 (next page).

Table 1.2: Submissions received by the CMC during Phase 1 of the inquiry

Broad group	Submissions received
Regulatory bodies (2)	» Prostitution Licensing Authority » Queensland Police Service (QPS)
Queensland government departments (2)	» Queensland Health » Department of Justice and the Attorney-General (JAG)
Community groups (3)	» Coalition Against the Trafficking of Women Australia (CATWA) » Family Council of Queensland » Australian Family Association
Local council representatives (1)	» Local Government Association of Queensland (LGAQ)
Local councils (5)	» Logan City Council » Toowoomba City Council » Cairns City Council » Burnett Shire Council » McKinlay Shire Council
Licensed industry representatives (2)	» Queensland Adult Business Association (QABA) » Australian Adult Entertainment Industry Inc (AAEI), Victoria
Licensed brothels (4)	» Purely Blue » Scarlet Harem » Pentagon Grand » Oasis at Sumner Park
Sex worker advocacy groups (3)	» Self Health for Queensland Workers in the Sex Industry (SQWISI) » Scarlet Alliance » Sexual Service Providers Advocacy Network (SSPAN)
Independent sex workers (4)	
Individual members of the public (15)	

Table 1.3: Submissions received by the CMC during Phase 4 of the inquiry

Broad group	Submissions received
Regulatory bodies (2)	» Prostitution Licensing Authority » Queensland Police Service
Queensland government departments (3)	» Department of Justice and the Attorney-General » Commission for Children and Young People and Child Guardian » Department of the Premier and Cabinet
Community groups (1)	» Family Council of Queensland
Licensed industry representatives (1)	» Queensland Adult Business Association
Sex worker advocacy groups (2)	» Scarlet Alliance » Sexual Service Providers Advocacy Network
Independent sex workers (3)	
Individual members of the public (2)	

Division of views

The submissions received by the CMC showed a marked division of views on whether licensed brothels and/or escort agencies should be allowed to provide outcall services. As might be expected, the licensed brothels and QABA, which represents some of the brothel licensees, strongly advocated that outcalls be allowed by licensed brothels, but not by independent escort agencies. The sex worker advocacy groups and the sole operators were mixed in their views about allowing outcalls from licensed brothels and independent escort agencies, as were the individual local councils and their representatives. The community groups that contacted the CMC were strongly against allowing outcall services from either licensed brothels or independent escort agencies, as were the majority of individual members of the community who provided submissions.

We recognise that the small number of individuals who provided submissions to the CMC may not be representative of the community at large. However, the views of the community are important to us, and we have kept in mind the public attitudes towards prostitution that have been documented by various community surveys conducted over the years (CMC 2004a, Appendix 4).

Of the various Queensland Government agencies that made submissions to the CMC, the PLA expressed the same view as the licensed brothels, strongly supporting the legalising of outcall services from licensed brothels. Before the Interim Position Paper was released (CMC 2005b), the QPS, Queensland Health, and JAG also expressed a preliminary view in the affirmative, despite some reservations (e.g. see p. 27 of the current report for comments made by the QPS). However, after the release of the interim paper, in which we proposed a model for sustaining the legal industry and attacking the illegal industry, the QPS made useful suggestions for improving this model and made no objection to adopting this course rather than legalising outcalls from licensed brothels. Queensland Health made no submission on the interim position paper; and JAG expressed a number of concerns about the proposed model that we have sought to address in Chapter 3 (see also Appendix 3).

CHANGES CONSIDERED BY THE INQUIRY

Prostitution is legal in Queensland in two ways — licensed brothels can provide legal in-calls, and sole operators can provide legal in-calls and outcalls. The decision to legalise prostitution was a decision made by government. The purpose of this inquiry was not to consider whether Queensland should change this approach (e.g. to alternative approaches such as decriminalisation or prohibition). Rather, the key question considered for Queensland by the CMC was whether to recommend to government that licensed brothels should be allowed to provide legal outcall services, and/or that independent escort agencies (i.e. agencies providing prostitution services, not social companionship), should be legalised.

In considering this question, we have had substantial regard to the impact on sole operators who currently have a monopoly on the legal provision of outcall services.

It was not considered necessary to canvas information about the activities of illegal brothels or street prostitution in this inquiry, as these matters had been examined fully in the *Regulating prostitution* report (CMC 2004a).

Table 1.4 summarises the current situation regarding outcall prostitution services in Queensland and the changes considered by this inquiry.

When we released *Regulating prostitution* it was the view of the Commission that, on the basis of the information received at that stage, there was insufficient evidence to endorse legislative change to legalise outcalls from licensed brothels or escort agencies. On the contrary, there were notable concerns.

At the outset of the inquiry the Commission was also concerned to ensure that any changes to the legislation would not have a detrimental impact on the current effectiveness of the industry, as had been determined by our review. For example, the review indicated that licensed brothels have had little impact on the communities in which they operate and are free of organised crime and corruption.

Table 1.4: Changes to prostitution in Queensland considered by the inquiry

Current situation regarding prostitution in Queensland				Changes considered
Type of prostitution	Constraints	Current legal status of in-calls and outcalls		
		Legal	Illegal	
Sole operators	<ul style="list-style-type: none"> » No regulation » Must work alone » Must use prophylactics (Criminal Code) 	<ul style="list-style-type: none"> » In-calls » Outcalls » Can have a licensed security provider 	Two or more sole operators working together (in-calls or outcalls); sole operators employing driver, receptionist etc.	Can sole operators providing outcalls work more safely?
Licensed brothels	Highly regulated (<i>Prostitution Act 1999</i>)	In-calls	Outcalls	Legal outcalls
Unlicensed brothels	Illegal (Criminal Code)	None	In-calls Outcalls	No change
Outcall prostitution (independent escort services)	Illegal (Criminal Code)	None	In-calls Outcalls	Legal outcalls
Street prostitution	Illegal (Criminal Code)	None	Street prostitution	No change

It also showed that the Queensland Government had resourced an exit and retraining program to assist sex workers who wanted to leave the industry, and that a number of workers had taken advantage of that service. Sex workers providing services in legal brothels were also shown to be relatively healthy and safe compared to sex workers elsewhere in the industry. We recognised, of course, that maintaining these standards would be more difficult if sexual services were to be provided off-site.

It was the Commission's view, therefore, that it would require compelling evidence before it would be prepared to endorse legislative change to allow outcall services from licensed brothels or escort agencies. The inquiry provided a tool for seeking and examining the evidence. Mainly, the Commission needed to be satisfied that legalising escorts would not lead to a substantial increase in prostitution in Queensland or a deterioration of the current legal industry.

Arguments for and against legalising outcalls from legal brothels and stand-alone escort agencies were considered, along with various models for the administration and regulation of escort services.

Possible models

Very broadly, we considered five possible models for the provision of legal escort or outcall prostitution services in Queensland. It would be possible, of course, to combine various aspects of these models to produce further models, but for convenience we have limited our discussion to these five broad models.

Model 1 provides for legal outcall prostitution services by licensed brothels. However, version 1(a) involves a heavily regulated model, while version 1(b) takes a very light and 'hands off' approach to regulation. There are various benefits and impediments to each of these approaches, many of which were argued by the authors of submissions to the CMC and at the public hearings. These arguments are examined in Chapter 3.

Model 2 allows for the provision of legal outcall prostitution services by escort agencies. As with Model 1 for licensed brothels, this could involve either (a) heavy or (b) light regulation.

Model 3 proposes legalisation of outcall prostitution services from both licensed brothels and stand-alone escort agencies. Again, such services could be either (a) heavily or (b) lightly regulated.

Model 4 considers possible changes to enhance the safety of sole operators while maintaining their right to provide outcall services.

Model 5. Given the concerns about escorts raised in the *Regulating prostitution* report (CMC 2004a), a fifth model, involving no change to Queensland's current legislation, was also considered to be an option. Our research has indicated that any change in the sex industry can have unanticipated, and often negative, consequences. These must be taken into account before implementing any change. For example:

- There is some international evidence that both legal and illegal prostitution expand when legalised prostitution becomes a more acceptable social activity. This is more than a simple reflection of how service providers are counted when they change from illegal (and previously unknown) to legal (and therefore known) activity.

- The risks of sex trafficking and child prostitution often increase when the relatively static supply of local sex workers cannot accommodate the increased demand that results from legalising or decriminalising prostitution.
- There appear to be adverse effects on sex workers when policies of prohibition are heavily regulated.

At the outset, the Commission was also mindful of the relatively innocuous situation regarding illegal prostitution in Queensland compared to other states (CMC 2004a) and was unwilling to recommend change if the outcomes were unclear or potentially damaging. The five models of change are summarised in Table 1.5.

Table 1.5: Five models of change considered by the CMC

Model	Regulatory approach	Possible elements of each model
Model 1: Legal prostitution outcall services from licensed brothels	(a) Very structured and heavily regulated	<ul style="list-style-type: none"> » Limited number of escorts providing services at any one time » Local services only (possible maximum distance, such as 200 km) » Provision of drivers and other safety measures for all sex workers » Emphasis on <i>licensee's responsibilities</i> regarding the health and safety of workers » Essentially the same control and assistance for outcall providers as for in-house services, as per the Prostitution Act » Similar compliance processes to those currently provided by the PLA, but monitored closely for adherence to the rigorous structure applied above
	(b) Relatively lightly structured and lightly regulated	<ul style="list-style-type: none"> » No limit to the number of escorts providing services at any one time » No requirement for outcall providers to attend brothels before or after providing services, but some opportunities for induction and training » No limit on the distance from the brothel to the place of service provision (telephone contact between the brothel, the client and the sex worker only) » Emphasis on <i>sex worker's responsibilities</i> for their own business and health and safety » Similar compliance processes currently provided by the PLA, but limited capacity for the PLA and the QPS to monitor activities outside the brothel, given the unstructured approach described above
Model 2: Legal prostitution outcall services from escort agencies	(a) Very structured and heavily regulated	<ul style="list-style-type: none"> » Licence applicants undergo the same probity assessment as brothel licence applicants » Agencies operate out of fixed premises (e.g. in an industrial estate or in the central business district) » Limited number of outcall service providers providing services at any one time » Local services only (possible maximum distance, such as 200 km) » Provision of drivers and other safety measures for all sex workers » Emphasis on <i>licensee's responsibilities</i> regarding the health and safety of workers » Similar compliance processes to those currently provided by the PLA for brothels, but monitored closely for adherence to the rigorous structure applied above

(Continued)

Table 1.5, continued

Model	Regulatory approach	Possible elements of each model
	(b) Relatively lightly structured and lightly regulated	<ul style="list-style-type: none"> » Licence applicants undergo the same probity assessment as brothel licence applicants » Agency businesses not attached to fixed premises » No limit to number of escorts providing services at any one time » No requirement for escorts to attend agency before or after providing services, but some opportunities for induction and training » No limit on distance from agency to place of service provision (telephone contact only) » Emphasis on <i>sex workers' responsibilities</i> for their own business and health and safety » Similar compliance processes currently provided by the PLA, but limited capacity for the PLA and the QPS to monitor activities, given the unstructured approach described above
Model 3: Legal prostitution outcall services from both licensed brothels and licensed escort agencies	(a) Very structured and heavily regulated	Similar to the structure and regulation model for licensed brothels and escort agencies outlined above
	(b) Relatively lightly structured and lightly regulated	Similar to the structure and regulation model for licensed brothels and escort agencies outlined above
Model 4: Improved safety options for sole operators providing legal outcall prostitution services	Sole operators can legally provide outcall prostitution services in Queensland, and the inquiry did not consider changes to the law in this regard. Various options for enhancing the health and safety of workers were considered, however — such as two workers working together, registration of workers, and the capacity for sole operators to employ a receptionist or driver or to tell a friend of their whereabouts when providing services.	
Model 5: No change to the current model of prostitution services implemented in Queensland	<ul style="list-style-type: none"> » The CMC's review of the Prostitution Act found that Queensland's current situation, even though much of it is illegal, is better than in most other states of Australia » Changes to prostitution legislation can have unexpected — and sometimes adverse — consequences, and a precautionary approach should therefore be applied. 	

In considering the practical implications of each of those models, various other aspects were also examined in detail, including:

- workplace health and safety issues
- business and industrial issues, such as whether there ought to be limits to the number of workers allowed to work at any one time
- regulatory issues, such as the roles of the PLA and the QPS, the costs of licences, and regulatory resources.

It was the Commission's view that, unless the majority of these practical issues could be handled in a satisfactory manner once the type of model had been selected, the provision of legal outcall services from brothels or by escort agencies in Queensland was unlikely to be a feasible option.

A REVIEW OF NATIONAL AND INTERNATIONAL OUTCALL PROSTITUTION SERVICES

This chapter reviews the available, but limited and often anecdotal, information about outcall prostitution services in Australia and overseas.

INTRODUCTION

An examination of outcall prostitution services in other jurisdictions, both interstate and overseas, was considered important for the inquiry. Its aim was to provide an understanding of the possible implications for Queensland should these services be legalised for licensed brothels and independent escort agencies. However, given the nature of the industry, which is often shrouded in secrecy, much of the available information is anecdotal at best and often biased by the strong views of those who are either for or against prostitution more generally.

The available scientific evidence about prostitution was reviewed for the *Regulating prostitution* report (CMC 2004a). Additional searches were conducted for this inquiry in relation to outcall prostitution services, but only limited material was found. Nevertheless, it is important to note that various sex worker websites (such as Scarlet Alliance, SQWISI and SWOP in NSW) provide useful, timely and relevant material for workers in the field, including access to relevant research.

Overall, the results of the review indicated that legal outcall prostitution services, either as a business or as a legal activity provided by a sole operator, are more prevalent in Australia than in other countries. However, where outcall prostitution businesses are legal, there have been no limits imposed on the number of sex workers allowed to work for those businesses at any one time; and there is very limited monitoring of either the businesses or the activities of the sex workers by regulatory bodies.

Common arguments put forward for legalising outcall prostitution services in Queensland are that the legalisation of these services elsewhere (nationally or internationally) has either improved the health and safety of the workers or has minimised the size of the illegal industry. We have found no evidence, and none has been submitted to us, to support these arguments. In fact, the available evidence appears to be to the contrary.

AUSTRALIA

Table 2.1 (next page) itemises the current status of outcall prostitution services around Australia. Much of the information in this table has been sourced from the Scarlet Alliance website <<http://www.scarletalliance.org.au/laws>> and from the websites of various government agencies around the country.

Table 2.1: The status of outcall prostitution services in Australia by state

State/territory	Current situation
Northern Territory	<ul style="list-style-type: none"> » Private workers are legal as long as they do not organise the service from the place where the service is provided, and do not work with anyone else or arrange jobs for anyone else, including other sex workers, a driver or a receptionist. » Outcall prostitution services are legal, but a licence is required if workers want to work with or employ other people. » Escort businesses are regulated by the Escort Agency Licensing Board, Racing and Gaming Commission, which places conditions and restrictions on the licences, can suspend or cancel a licence if the conditions are breached, and can ask the police to investigate complaints made against the agency. » A licensee may employ a manager, who also requires a licence. » To be eligible for an operator's or manager's licence, applicants must be over 18, residents of the Northern Territory, have no convictions of 'a disqualifying offence' (mostly violent or drug related crimes), or have a business or domestic partner who has convictions for a disqualifying offence. The Licensing Commission decides whether the person applying for the licence is a 'suitable person to carry on/manage an escort agency business'. » Licences carry conditions and restrictions which can relate to working conditions,* the health and welfare of sex workers and the health and welfare of the general community. » Licences are valid for 12 months but may be renewed on application. » Each staff member has to have a police certificate, and it is an offence to arrange a service for a worker who does not have a certificate. The police may not provide the certificate if the person has been convicted of any 'violent or drug related crime'. If a worker commits a 'violent or drug related offence' before, during or after their application for the police certificate, the Police Commissioner will cancel the certificate. » Police can enter an escort agency business without permission if they think it is necessary. » It is reported anecdotally that there has been an increase in sole operators who do not have to be registered, and a parallel decrease in registered sex workers who provide outcall services for escort businesses, because sex workers are strongly opposed to registration. » Brothels and street prostitution are still illegal.
Australian Capital Territory	<ul style="list-style-type: none"> » Outcall prostitution services are legal from legal brothels and by sole operators. » All sex workers providing outcalls must be registered with the Registrar of Brothels and Escort Agencies (Office of Fair Trading) but there are no probity requirements, the Registrar has no inspectoral powers, restrictions are minimal and regulation limited.
New South Wales	<ul style="list-style-type: none"> » Prostitution is largely decriminalised and unregulated in NSW. » While there are some restrictions on street prostitution, there are no offences that apply to outcall prostitution services, and therefore no police control and no planning approval required (although this is currently under review). » There is no way of assessing the size of the industry.

* See notes on pp. 14–15.

Table 2.1, continued

State/territory	Current situation
Victoria	<ul style="list-style-type: none"> » Escort agencies and brothels can provide legal outcall prostitution services, but the businesses must be licensed. » Escort agencies and brothels are monitored by local councils and the Business Licensing Authority (BLA), with the main aim of minimising harm. » Sex workers providing outcall services receive bookings by telephone, and might only visit the agency office once a week or so to hand over the agency's share of the weekly takings. When a client contacts the agency, the receptionist must accurately describe the sex worker who will provide the outcall service; but it is up to the worker (not the agency or the receptionist) to negotiate with the client what sexual services will be provided. The licensee must make sure that workers are supplied with a one- or two-way electronic device, such as a mobile phone, radio intercom or buzzer, so that they can contact the licensee or approved manager at any time while working (Prostitution Control Regulations 1995, r. 19). Workers have the right to refuse a booking if the situation is unsafe or the client is violent. The agency should not force the worker to do the booking, or fine or punish the worker for not doing a booking (Prostitution Control Regulation 1995). » Sole operators may provide outcall or escort services, or they may operate a private outcall business with one other sex worker. A small owner-operator escort service does not need a licence, but does need to register with the BLA as an Exempt Escort. There is no fee for registering. The worker must provide their real name (any and all names) and address, telephone numbers to be used in any advertising, a passport size photo and a photocopy of a true form of identification signed by a witness. The information on the register is not available to the public. Once the worker is registered, the BLA provides a licence number which can be used to advertise the business. Workers can employ a driver, a receptionist or security person but cannot advertise for staff. Anyone taking a cut of the worker's booking fee for finding clients risks penalties unless they have a licence as an escort agency. » The BLA advised that at 1 August 2006 a total of 154 people were licensed to carry on business as prostitution service providers of the following kinds: <ul style="list-style-type: none"> > brothel (49) > escort agency (21) > brothel and escort agency (84)[†] » The BLA's records indicate that 90 brothels operate (under licensees) in Victoria. This figure is arrived at by taking into account the following factors: <ul style="list-style-type: none"> > In some situations, more than one licensee operates a single brothel (e.g. some of the 133 licensees above are operating a business in partnership with each other at the same address). > Some people are not currently trading. > Some brothels are operated by people who are 'exempt' from holding a licence under the Act (see below). » Escort agents (both licensed and exempt) may only provide a visiting service; they may not provide premises.

(Continued)

[†] See notes on pp. 14–15.

Table 2.1, continued

State/territory	Current situation
Victoria, <i>continued</i>	<ul style="list-style-type: none"> » 'Exempt' prostitution service providers do not require a licence to operate, but have to notify the BLA of their intention to commence business. To operate as an 'exempt' the person must be listed on the register maintained by the BLA and may only work with a maximum of one other person. » An exempt prostitution service provider may operate a brothel with a current planning permit that allows the premises to be used for the purposes of prostitution (and may only work with a maximum of one other person). » The BLA's records indicate that there are 2094 people currently notified to the BLA as exempt from holding a licence to carry on business as a prostitution service provider in the following categories: <ul style="list-style-type: none"> > escort agency (2088) > brothel (3) > brothel and escort agency (3). » Anecdotally, it is reported that the number of exempt brothels has far exceeded the number anticipated.
Western Australia	<ul style="list-style-type: none"> » Individual sex workers may legally provide in- or outcall prostitution services. However, they must work alone and may not employ drivers, receptionists or security guards (and vice officers can enter private premises known to be occupied by a sex worker without a warrant, and demand to view and record personal details). » All other prostitution is illegal. » The containment policy (an informal police policy that allowed a limited number of brothels and escort agencies to operate) has recently been abandoned, and penalties for prostitution have increased (see <i>Regulating prostitution</i> [CMC 2004a], p. 38 for more information). » Enforcement of the legislation by police is complaints-driven. » As in Queensland, outcall prostitution agencies often masquerade as social escort agencies, alleging they provide companionship only and therefore eluding law enforcement efforts. Sex workers providing outcall prostitution services also avoid police attention because they are not on the premises when police visit the agencies.
South Australia	<ul style="list-style-type: none"> » Individual sex workers can elude prostitution laws if prostitution is provided in a different place and with a different client every time; all other prostitution illegal. » It is reported anecdotally that, as in Queensland, illegal outcall prostitution services have flourished because they often claim to provide company for clients rather than sexual services, and brothels are banned. » Enforcement by police is complaints-driven, but it is reported anecdotally that there are few arrests.
Tasmania	<ul style="list-style-type: none"> » Individual sex workers act legally if they provide services in a different place and with a different client every time; all other prostitution illegal. » Proposed legislation for legal outcall services from brothels and by independent workers was recently abandoned. However, new legislation recently passed by parliament will enable two 'sole operators' to work together.

Notes to Table 2.1:

* (Northern Territory: conditions on licences) For example, one of the conditions is that an escort agency operator must give each worker a contract which outlines the terms and conditions of how the agency will arrange services and how the worker will provide the services.

(Continued on facing page)

QUEENSLAND

In Queensland, sole operators provide legal in- and outcalls, licensed brothels provide legal in-calls only, and all other outcall prostitution services (e.g. escort agencies) and street-based prostitution are illegal. Enforcement of the legislation by police is largely complaints-driven.

The inquiry provided valuable information about the current provision of outcall prostitution services in Queensland. At the date of release of this report there are 22 licensed brothels in Queensland. According to the current law, they may provide sexual services on brothel premises only.

However, during the public inquiry, one licensed brothel (Purely Blue) estimated that approximately 30 per cent of incoming telephone calls are requests for outcall services. Another licensed brothel (Pentagon Grand) estimated that 40 per cent are for outcall services, and the PLA put the figure at 'at least 50 per cent'. Some sex workers working in the brothels suggested that these figures were somewhat exaggerated, with some reporting that they overheard fewer than one or two calls requesting outcalls per day at the most. As licensed brothels may not legally provide outcall services, it is likely that outcall services are provided either legally by sole operators or illegally by illegal prostitution providers such as (non-social) escort agencies.

It is not known how many sole operators are currently working in Queensland. There is no requirement for sole operators to be registered or licensed, and therefore no means of determining the number of participants in this way. Sex workers often choose to work as sole operators so that they can maintain their anonymity and a flexible work environment. It is also a population that is transitory, with workers moving in and out of the industry. Some commentators have tried to estimate numbers by counting newspaper and internet advertisements. However, this method is not reliable, because one sole operator may advertise more than once using different names and telephone numbers. There are also some illegal escort services that masquerade as sole operators. All that can be said is that sole operators are a sizeable part of the Queensland prostitution industry. Unfortunately, any meaningful attempt to estimate precise numbers is not possible.

Information about the number of illegal operators in Queensland is even more elusive. In *Regulating prostitution* it was reported:

Anecdotal evidence suggests that, despite significant police activity since the inception of the Act, illegal brothels and escort agencies continue unabated in Queensland ... 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. (CMC 2004a, p. xii)

Notes to Table 2.1, continued:

These include (but are not limited to) how the worker will be paid, information services, a statement that the operator, when arranging the services, will tell all clients that all services incorporate safe sex practices, whether the agency will provide prophylactics and whether there is a cost involved, that the worker has the right to refuse a client, that the worker must tell the operator if they cannot do a shift, what to do if the worker finds themselves in danger, if there is any dress requirement, hours and days required to work, any terms and conditions where the worker is obliged to pay for extras offered by the operator (accommodation, meals etc.), whether the worker needs to have regular medical check-ups, and what, if any, transport is provided by the agency.

- † (Victoria: BLA register of licensed providers) The BLA's public register of approved managers and licensed prostitution service providers is available for inspection at the BLA's premises by appointment. The register is not available online.

This quote has often been misinterpreted, and said to mean that the illegal prostitution industry in Queensland represents 75 per cent of the industry. This fails to take into account, however, that some of the 75 per cent of outcall services referred to are in fact provided legally by sole operators. It should also be noted that the illegal prostitution industry encompasses illegal operators such as large escort agencies and others breaching the current prostitution laws, such as sole operators breaking the law. Ms Matthews, State Manager of SQWISI, made this point at the public hearing:

I don't think the illegal sector's as big as everyone makes it out to be. I think it's quite large but when I say it's quite large I think that's two solo operators working together ... or one girl doing day shift and one girl doing night shift or a married couple ... working from the same premises. That's all illegal. I think the humungous industry that people are talking about are the escort agencies which run ... from the Tweed border ... or from Melbourne. (Day 1 transcript, p. 44)

Both the Australian Adult Entertainment Industry Inc. (AAEI) and QABA attempted to assess the size of the illegal industry in Queensland, and provided information about their methods and results to the CMC:

AAEI have undertaken some survey work of the more than 100 classified adult advertisements in the Gold Coast Bulletin. Amongst our findings are one or two women, responding to as many as four different listed telephone numbers. Masquerading as sole traders, most, in our experience, provide sexual services in apartment complexes up and down the Gold Coast, typically evading taxation obligations. We have found the women are engaged in these terms: that they are only on the Gold Coast for a short period of time, usually claiming that the 'boss' has flown in a group of them. (AAEI submission on discussion paper, p. 3)

QABA also undertook a survey of classified advertisements, which it explained at the public hearing:

One hundred and three advertisements ... [were] phoned ... the person described themselves at the other end. No matter what they said, the person taking the survey would indicate their interest in something different, so if they said they were blonde, they would say I was after a brunette. In half of the cases an option was offered, meaning that in fact they were not sole traders, they were people operating from call centres or with illegal escort agencies. (Day 2 transcript, p. 128)

The conclusions drawn by the AAEI and QABA from these exercises may not be the only conclusions available, however. For example, as the law currently stands, there is no prohibition on sole operators listing different telephone numbers — the circumstance that appears to have led AAEI to conclude that the advertisements were by illegal operators. In relation to QABA's survey, the CMC does not consider that the 'offer of an option' necessarily leads to the conclusion that the person is not a sole operator.

Nevertheless, it is clear that the illegal industry does exist in Queensland and, even if the stakeholders cannot agree on its size, they do agree that measures should be taken against it.

OVERSEAS

Internationally, few countries have legalised outcall prostitution services and those that have (e.g. the Netherlands and Germany) now appear to be recognising the difficulties associated with monitoring and policing such services. There also appear to have been some increases in sex trafficking and child prostitution.²

Taking a broader overview, however, sex workers providing outcall services are not usually a prime target for police in most parts of the world because the activity is largely hidden, driven mostly by complaints (which are usually few) and police have other, possibly more important, operational priorities. Some examples of the international situation regarding outcall prostitution services are shown in Table 2.2 below.

Table 2.2: Outcall prostitution services around the world

Country	Current situation
Netherlands	Outcall prostitution services are legal, but individual sex workers providing outcalls must be licensed and there is some regulation. It has been reported, however, that from a regulatory perspective sex workers providing outcalls are difficult to trace and inspect. There have also been concerns about sex trafficking.
Germany	Outcall prostitution services are legal and there is some regulation, but, as in the Netherlands, it has been reported that it is difficult, from a regulatory perspective, to trace and inspect individual sex workers providing outcall services. It is also important to note that Germany required the registration of sex workers some time ago, but that the initiative failed. It is reported anecdotally that, when registration was required, many workers went underground and were alleged to have consequently suffered more abuse. There are also concerns about sex trafficking in Germany.
USA	All prostitution is illegal, except in Nevada where legal brothels are allowed in counties with a population of less than 400 000. Legal brothels are heavily regulated and do not provide outcalls. Thus all escorts are illegal in the USA. However, it is reported anecdotally that the illegal industry flourishes, with little intervention from law enforcement agencies.
Canada	Outcall prostitution services are legal, but all activities associated with prostitution (such as living off the earnings, or providing reception duties) are illegal. However, this position is currently under parliamentary review.
United Kingdom	Outcall prostitution services by individual sex workers are legal but most activities linked to prostitution are illegal. Running an escort agency or brothel is illegal because the activity is classified as 'controlling prostitutes'. However, prosecutions only occur if businesses are large-scale and/or involve illegal immigrants, and police largely turn a blind eye to escort services if there are no drugs or underage people involved and nobody has complained.
Sweden	The Swedish Government considers all prostitution to be an abuse of women and provides additional resources to help sex workers get out of the industry and educate clients. The impact, to date, seems to be fewer visible workers (e.g. on the streets), but many sex workers have reportedly gone underground and now face greater challenges to their health and safety.

(Continued)

² We reviewed hundreds of policy documents, sex work websites and chat rooms, international newspaper articles, and international journals and research reports (although there were very few of these that related to outcall prostitution services), and we contacted key people working in the industry in various countries who sent us material which we had translated into English. To quote just a few references here would over-emphasise the importance placed on any one document (given that such a seminal piece of work does not exist).

Table 2.2, continued

Country	Current situation
New Zealand	<p>Prostitution has recently been decriminalised. The NZ Prostitution Law Reform Committee (2005) released a report about the number and nature of sex workers in NZ in 2003 (just before the new legislation was enacted).*</p> <p>The report gives estimates of the proportion of sex workers providing different services in NZ in 2003. Although the police estimate ($n = 5932$) was much larger than the Prostitutes Collective estimate ($n = 3400$) overall, both sources estimated the proportion of escort service providers to be around 20 per cent of the industry.</p> <p>When asked to estimate the number of under-age workers in each sector, the police suggested that, of all under-aged people in the sex industry, most young people were on the street; but about a quarter of the under-aged workers were thought to have been providing escort services. When asked about the links between the sex industry and organised crime, the police consistently reported links between organised crime and both operators and workers in most sectors of the industry, including escort agencies.†</p>

Notes:

- * The report serves two purposes: to provide baseline information to assess the impact of the new legislation and to provide comparative data to earlier research conducted in 2001. The information, which was gleaned from surveys of police and sex workers, provides a rare opportunity to look at research about escorts, including the prevalence of under-aged prostitution and organised crime.
- † The police also noted strong links between sex workers and drugs and about a quarter of the survey respondents reported knowledge of exploitation of the workers themselves.

SUMMARY OF CHAPTER 2

It is clear that outcall prostitution, either legal or illegal, is a feature of every state of Australia and most countries around the globe. Due to the elusive nature of the industry, however, accurate information about the size of the industry and its impact on the participants and the broader community is difficult to ascertain.

However, some consistent themes came through our review of the available material. Policies of prohibition or complete liberalisation do not appear to achieve the outcomes desired by those who implement them. Acceptance of the inevitability of outcall prostitution appears to be warranted, to some degree, but it is important to make efforts to:

- contain supply and demand
- ensure that the health and safety of the workers is as good as possible
- ensure that efforts are made by law to exclude under-age workers and organised crime.

Unfortunately, our search for an ideal, or at least workable and effective, model for the legalisation and regulation of outcall prostitution services failed. This left us with little evidence to guide the implementation of a new regime in Queensland. Worse, it left us with increased fears about the potential for expansion of the industry overall.

KEY ISSUES ARISING FROM THE INQUIRY

This chapter considers the implications of legalising outcall services from licensed brothels and escort agencies. It gives the arguments for and against, and presents the Commission's views.

INTRODUCTION

Debates about prostitution are often emotive, and characterised by strong views among a few relatively small sections of the community. The aim of the escorts inquiry was to provide a forum for all stakeholders in the industry and for interested members of the community, and to separate the key issues in the current Queensland debate from the extreme views that often fail to lead to a workable solution. We believe the inquiry was successful in achieving this aim.

The issues raised by the inquiry and examined in this chapter are:

- 1 the potential impact of legalising outcall prostitution services from licensed brothels and/or independent escort agencies on the guiding principles of the *Prostitution Act 1999*
- 2 the availability of an appropriate regulatory model for the legalisation of outcall services from licensed brothels and/or independent escort agencies
- 3 the viability of the existing legal prostitution industry (i.e. licensed brothels and sole operators).

At the outset it is important to note that there was considerable support, from both government and non-government sectors, for legalising outcalls from licensed brothels in Queensland; but there were very few submissions in support of legalising independent escort agencies (see Table 3.1). For this reason, this chapter largely concentrates on the issues surrounding the potential legalisation of outcalls from licensed brothels. However, we believe the issues raised are relevant to both licensed brothels and independent escort agencies.

Table 3.1: Written submissions to the inquiry indicating their position for or against legalising outcall prostitution services from licensed brothels and/or escort agencies

Submission	For or against outcalls from licensed brothels	For or against outcalls from independent escort agencies
Queensland Government		
Prostitution Licensing Authority	For	Against
Queensland Police Service	For	Against
Queensland Health	For	Against
Department of Justice & Attorney-General	For	Against
Local Government Association of Queensland	Mixed opinions	Against

(Continued)

Table 3.1, continued

Submission	For or against outcalls from licensed brothels	For or against outcalls from independent escort agencies
Local councils		
Logan City Council	Unclear	Unclear
Toowoomba City Council	For	For, as long as not situated on ground level in CBD
Cairns City Council	For	For
Burnett Shire Council	For	Against
McKinlay Shire Council	Against	Against
Industry representatives		
Queensland Adult Business Association (QABA)	For	Against
Licensed brothel (a)	For	Against
Licensed brothel (b)	For	Against
Licensed brothel (c)	For	Against
Licensed brothel (d)	For	Against
Australian Adult Entertainment Industry Inc.	For	Against
Sex worker advocacy groups		
SQWISI	For	For
Scarlet Alliance	For, if sex work is decriminalised; against, if current legislation remains	For, if sex work is decriminalised; against, if current legislation remains
SSPAN	Against within current Qld legislation	Against within current Qld legislation
Independent sex workers		
Sex worker (1)	For	Against
Sex worker (2) (sole operator)	Against	Against
Sex worker (3) (sole operator)	For	For
Other groups		
The Family Council of Queensland (FCQ)	Against	Against
CATWA	Against	Against
Members of the public		
Member of public (1)	Against	Against
Member of public (2)	Unclear	Unclear
Member of public (3)	Against	Against
Member of public (4)	For	For
Member of public (5)	Unclear	Unclear
Member of public (6)	Against	Against
Member of public (7)	Unclear	Unclear
Member of public (8)	For	For
Member of public (9)	Against	Against

Despite support from a large number of agencies and individuals providing submissions to the CMC, we have considered the key issues, weighed the arguments for and against, and come to the conclusion that outcall services should not be legalised from either licensed brothels or independent escort agencies in Queensland. Rather, we believe that steps should be taken to sustain the existing legal prostitution industry in Queensland in other ways, and at the same time provide additional resources to attack the illegal industry. A model to achieve these two objectives is described in Chapter 4.

The principle employed by the Commission, in arriving at its final view that outcall services should not be extended beyond the services currently provided by sole operators, can be described as the 'precautionary principle'. We have taken the view that, where there is a substantive risk of adverse consequences, such as the expansion of the prostitution industry or damage to what is at present a reasonably well functioning legal prostitution industry (i.e. with regard to the aims of the Prostitution Act), and there is no clear evidence that the risk can be avoided, we are not prepared to recommend change.

The remainder of this chapter examines the three major issues raised during the inquiry, and explains our decisions.

KEY ISSUE 1: Potential impact on the guiding principles of the Prostitution Act

In *Regulating prostitution* (CMC 2004a), we examined the extent to which licensed brothels operating under the Prostitution Act in Queensland had upheld the guiding principles of the Act. After a four-year review, we were confident that it had done so. The five guiding principles are:

- 1 Ensure quality of life for communities.
- 2 Safeguard against corruption and organised crime.
- 3 Address the social factors that contribute to involvement in the sex industry.
- 4 Ensure a healthy society.
- 5 Promote safety.

We took a similar approach for this inquiry, by examining the likely impact that the legalisation of outcall services from either licensed brothels or independent outcall prostitution agencies might have on the capacity of these services to uphold the principles of the Act. Especially, we were concerned to discover whether any of these principles might be compromised. An examination of the potential impact on each principle follows.

Principles 1 and 3:

- 1 Ensure quality of life for communities.**
- 3 Address the social factors that contribute to involvement in the sex industry.**

We combine the first and third guiding principles in the following discussion about the possible expansion of the industry.

Expansion of the industry

We are confident that the legalisation of outcall prostitution services would not affect community amenity (e.g. by creating excessive noise or increasing traffic), because these activities already occur either legally (by sole operators) or illegally (by illegal escort agencies) and cause little disruption. We were more concerned, however, about the potentially greater impact on society should the industry expand.

In *Regulating prostitution*, we made it clear that a major risk of legalising outcall services was that it might lead to an overall expansion of the prostitution industry in Queensland. The fear was that those who currently operate illegal escort agencies would be unwilling or unable to move over to the legal industry, and there would consequently be no reduction of the illegal segment of the market. Nevertheless, the legal segment of the market would probably grow, as current brothel licensees commenced providing outcall services, and new entrants (brothel or escort agency licensees) were attracted to the market because of the capacity to provide outcall services. We feared that an expansion of the industry could subsequently increase the risk of organised crime and sex trafficking, as the industry attempted to meet the increased demand for sex workers and the illegal industry competed with the legal industry (see discussion on organised crime which follows).

In our discussion paper (CMC 2005a), we deliberately drew attention to this risk and were particularly interested in receiving submissions on this point. We were concerned that Queensland could follow the example of Victoria which, by many accounts, has experienced a huge expansion of the industry since the introduction of the *Prostitution Control Act 1994* (see CMC 2004a, p. 37). Although QABA urged that Queensland and Victoria were not comparable (QABA submission on discussion paper, p. 3), the figures referred to by CATWA at the public hearing were disturbing:

In 1994 [Victoria] had 40 brothels, [in] 2004, 92 brothels ... [in] 2004 ...
34 escort agencies and 101 brothels and escort agency licences on issue.
This equates to 60 000 clients per week using women's bodies in prostitution.
(Day 1 transcript, p. 97)

In considering the evidence provided to us by both the submissions and the public hearing, we have not had these fears assuaged. As the following discussion demonstrates, there is simply no evidence that an expansion of the industry would not occur.

Increase in demand

A number of submissions argued that legalising outcall services from licensed brothels or escort agencies would increase the demand for prostitution services. This was certainly the position of the Family Council of Queensland, who argued that the law is an educator and 'people mistakenly believe that whatever is legal is also moral'. Their concern was that legalising escort services would encourage more people to engage in the activity (Family Council of Qld submission on discussion paper, p. 4). CATWA made a similar point at the public hearing, with the argument that legalisation of an industry 'normalises' it in the public mind and this leads to an increase in demand (Day 1 transcript, p. 98).

The licensed brothels, in their submissions and throughout the public hearing, did not disguise their hope that legalising outcall services would increase the demand for their services. Indeed, any other position would be incompatible with their argument that legalising outcall services was required to improve their financial viability (see Key issue 3). One licensee, in an email submission, argued that legalising outcalls would provide 'extra income for all licensees and also the ladies'. Another argued that the brothel licensees 'need to be able to expand their business in order to remain viable'. At the public hearing, a representative of Gold Coast brothel licensees conceded that the only circumstances in which allowing brothels to provide escort services would not lead to an overall rise in prostitution would be if 'strict regulation of advertising' was implemented and enforced (Day 2 transcript, p. 140). It was their view, however, that this would occur only at the expense of the illegal market and would not lead to an increase in demand overall.

Because of the Commission's stated position that it did not wish to see an expansion of the prostitution industry, QABA mounted the following argument:

The concern [regarding an increase in the amount of prostitution in Queensland] is without basis. There is no evidence that demand for services is anything but static. QABA contends that most customers of illegal escort services would not be aware that such services are illegal and that few would be discouraged from seeking services even if they were aware. (QABA submission on discussion paper, p. 1)

However, QABA recognised that demand can vary according to seasonal and other variations, and according to the effectiveness of marketing:

The adult service market is demand driven and demand varies across the week, seasonably [sic], and in relation to major events ... The number of service providers operating in licensed brothels across a typical week can vary from 2 to 50 depending on the effectiveness of the brothel's marketing. Anecdotal evidence from interstate suggests that some escort agencies operate in excess of a hundred escorts. (QABA submission on discussion paper, pp. 6–7)

The PLA sought to deal with an apparent contradiction — that the licensed brothels wished to increase demand, yet there would be no impact on the overall size of the industry. They maintained that the sex industry is a static 'pie', and that legalising outcall services from licensed brothels would just increase the 'slice of the pie' for the legal industry while reducing the share for the illegal industry. However, they provided no evidence about how these assertions could be upheld:

The sex industry may be compared to a pie. The licensed brothels presently have a slice amounting to about 10 per cent of the pie. If licensed brothels are allowed to supply escorts, they will have a larger slice of the pie. It is wrong to argue that the size of the pie will increase if licensed brothels are given a larger slice of the pie. No doubt we shall be told that we are not dealing with pies but with human beings. The analogy is still valid ... Human nature does not change. In any given society it is unlikely that there will be any significant change in the supply of prostitutes or demand for prostitutes, except for some major upheaval such as wartime. There is no evidence to suggest that allowing licensed brothels to supply escorts would increase in any way the amount of prostitution in Queensland. (Day 1 transcript, p. 16)

There was only one mechanism that the PLA suggested as having the potential to increase the slice of the pie for the licensed brothels and decrease the slice for the illegal industry. This was that 'sex workers presently working in the illegal industry may find it far more convenient to operate from licensed brothels' (Day 1 transcript, p. 16). However, as demonstrated in the next section of this report, the weight of the evidence provided to the inquiry did not uphold this assertion.

At the public hearing we heard evidence that legalising prostitution in Victoria had led to an expansion of the prostitution industry in that state. The evidence was that legalisation created a 'massive revenue injection' into the industry, which enabled the industry to expand. Not only did the number of legal establishments increase; there was also, according to the evidence, diversification into different services, such as BDSM (bondage, discipline, sadism and masochism) and adult entertainment, which created complex regulatory problems that the legislature has found difficult to solve.

IBIS World, an international business forecaster, conducted a survey in 1998 and predicted that the Australian sex industry would expand, and convincingly presented the mechanisms by which this expansion might occur:

Over the next five years there will be a strong growth in demand in the Australian sex industry due to factors that include further legalisation and decriminalisation of prostitution services across Australia, improved

occupational health outcomes which will affect customer perception of STI health risks and an improvement in the industry's image. (Day 1 transcript, p. 97)

Unfortunately, there has been no research in Queensland about the changing attitudes of clients towards sex with sex workers. In 2003, The University of Queensland and the Queensland University of Technology, funded by the PLA, conducted a survey of 200 male clients of female sex workers. That survey included questions about their history of using the services of sex workers and their reasons for visiting them (Woodward et al. 2003). However, there was no previous research, and there has been no follow-up that would enable a comparison of attitudes over time.

However, a recent survey published in the journal *Sexually Transmitted Infections* showed that, over a 10-year period, the number of men who said they had paid for sex had doubled. Of the 11 000 men surveyed in 2000, one in ten said he had used prostitutes, compared with one in twenty in 1990.³ The authors summarised their results as follows:

The proportion of men who reported paying women for sex in the previous 10 years increased from 2.0 per cent (95% CI 1.6 to 2.5) in 1990 to 4.2 per cent in 2000 (95% CI 3.6 to 4.9). In both surveys, paying for sex was more frequent in men aged between 25 years and 34 years, who were never or previously married, and who lived in London. There was no association with ethnicity, social class, homosexual contact, or injecting drug use. (Ward et al. 2005, p. 467)

There is no way of predicting whether the legalisation of outcall services from licensed brothels and/or independent escort agencies in Queensland would contribute to an increase in demand in Queensland. However, there is also no evidence on which to assert that this will not occur; nor that any such increase in demand could be controlled in some way. Applying the precautionary principle, therefore, we are not prepared to make recommendations that could force that risk on Queensland.

Moving the illegal industry into the legal industry

As indicated above, a number of stakeholders argued that legalising outcall services from licensed brothels and/or independent escort agencies would not expand the prostitution industry overall because the prostitution industry was static, and that legalising outcall services would increase the size of the legal industry only at the expense of the illegal industry. This was the argument put forward by both the PLA and the QPS. For example, the PLA stated:

Presently, the regulatory framework for licensed brothels does not provide any incentive for illegal operators to become licensed. Should outcalls be allowed to be serviced by licensed brothels the PLA considers that those operators who are operating illegally are more likely to become part of the licensed industry (due to increased competition from the licensed brothels). (PLA submission on discussion paper, p. 2)

The PLA did not explain how this transition would be likely to occur, or how 'increased competition from the licensed brothels' would encourage the illegal operators to become part of the legal industry. There is a contrary argument, however — that increased competition from licensed brothels would encourage illegal operators to stay in the illegal industry, where they could avoid licence and other compliance costs, and thereby better compete with the legal industry. Eligibility for transition to the legal industry might also be doubtful.

³ Of course, there is no way of telling whether this increase is a true increase in the number of men using sex workers over time or simply an increase in the number of men willing to report their use of sex workers. Either way, however, these results suggest an increase in the acceptance of prostitution during a relatively short period of time.

At the public hearing the QPS recognised the difficulties of transitioning illegal operators into the legal industry. They surmised that legalising outcall services from licensed brothels would reduce the size of the illegal industry because more people would be encouraged to work within the legal framework, although they also believed that the illegal industry would still continue to exist. On the other hand, they recognised that the inherent difficulties of prosecuting illegal operators would encourage the illegal operators to remain illegal (Day 1 transcript, p. 26). See Chapter 4 of this report for our recommendations for improved police enforcement practices.

No other stakeholder was of the opinion that legalising outcall services from brothels would encourage illegal operators to move into the legal framework. CATWA suggested that this process, if it were to occur, would require two steps: (a) moving the workers across; and (b) moving the businesses across (Day 1 transcript, p. 100).

CATWA's opinion in relation to businesses was as follows:

In the case of the businesses there will be no incentive because of the low overheads that they already have and the admission by the QPS that there's little that they can do to police them anyway. The overheads, the licensing fees that they'll encounter in moving across to the industry, will be a disincentive and the competition provided by the legal industry just by legalisation alone will [not encourage the illegal industry to move over]. (Day 1 transcript, p. 100)

We find these arguments cogent, particularly because:

- the annual fee for a Queensland brothel licence is more than \$20 000 per annum for a five-bed brothel
- by the admission of the QPS, enforcement of the law in relation to illegal operators is already problematic
- moving to the legal industry would expose the illegal operator to tax and other compliance obligations that they had previously been avoiding
- the licensing system would exclude many illegal operators from holding a licence (e.g. because of past criminal convictions).

In view of these facts, we fail to see that legalising outcall services from licensed brothels or independent escort agencies would encourage many illegal operators to move across into the legal industry. Illegal operators have chosen to operate illegally because of the many benefits they can derive from operating that way. We do not consider that they would find simply being legally allowed to provide outcall services sufficient incentive to eschew those benefits.

As for whether the sex workers would move from the illegal industry into the legal industry, CATWA believed they would not. This was a view confirmed by all of the sex worker organisations and individual sex workers who gave evidence at the hearing. For example, SSPAN stated:

The extension of legal escort service provision to the legal brothel sector and legalisation of independent escort agencies will not address the systemic reasons why most workers are still illegal or in a legal grey area ... Confidentiality, privacy and disclosure of sex work status deter private workers from applying for brothel licences to work in collectives. The costs involved are also a huge barrier to participation. (SSPAN submission on discussion paper, p. 7).

SSPAN confirmed and expanded on this view at the public hearing:

We believe that some sex workers who are currently working and doing illegal escorts might transfer to the legal escort sector if they think that more work will be obtained there. However, those workers who reject the legal

industry because they do not wish to risk the exposure that comes with working in the legal sector will not move across — only a decriminalised or low-regulation legal system which guarantees that identifying information will not be available to the authorities — that is the police, the PLA, the tax department and so on — will tempt workers into a changeover. (Day 1 transcript, p. 53)

Scarlet Alliance argued that a majority of sex workers in Queensland were operating outside the legal framework. This was not because ‘sex workers choose illegality over legality’, but because Queensland legislation provides too few options. In particular, many sex workers choose to work illegally in pairs because they can provide each other with peer support, increased safety and greater autonomy over services and the sharing of costs. There is no reason to think that the sex workers currently working illegally in pairs would move across to the legal industry just because outcall services from brothels or escort agencies were legalised.

An individual who worked as a sex worker for a 12-month period, and gave evidence at the public hearing, explained why she thought illegal workers would not move across:

With regards to the illegal girls going to the legal industry, and this is purely from a personal perspective when I was an illegal girl ... my percentage of income was mine ... I was used to earning anything up to 1000 ... dollars a night, at no stage would I have thought ... yes, if I could give half of my money ... to somebody else ... If I do 100 per cent of the work, I want to keep 100 per cent of the money. And I know a lot of girls in the illegal trade now who stand by me ... you’re [also] going to lose your choice. So you can’t choose your clients, you can’t choose the location and you can’t choose your work time ... (Day 1 transcript, pp. 109–10)

A sole operator was of the opinion that many of the ‘illegal girls’ were on illicit drugs. If this is the case, and the licensed brothels maintain their workplace practices in relation to drug issues as indeed they must, these workers could not move across to the legal industry. The licensed brothels (and independent escort agencies, if they too fell under the Prostitution Act) would not be able to allow them to operate on or from their premises.

Principle 2: Safeguard against corruption and organised crime

In *Regulating prostitution*, we concluded that there was little or no organised crime in the legal brothel industry in Queensland. The only contact with organised crime reported by licensees were threats of physical violence towards two licensees by illegal operators, which were reported to the QPS. However, 40 per cent of respondents to the CMC’s sex worker survey conducted for the review said that they had been involved with organised crime groups at some point during their working life, including before and since the implementation of the Prostitution Act in June 2000 (CMC 2004a, pp. 47–51).

The PLA and licensed brothels maintained, throughout the course of the escorts inquiry, that there was still no organised crime in the legal brothel industry. They accorded with our conclusion in *Regulating prostitution* that ‘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’ (pp. 47–8). SQWISI, which has worked closely with sex workers in the licensed brothels, agreed (Day 1 transcript, p. 46).

On the other hand, none of the stakeholders, including the QPS, could give any definite indication of the extent to which organised crime features in the illegal prostitution industry in Queensland. The QPS pointed out certain features of the

prostitution market that make organised crime an inherent risk. As the Police Commissioner said in his submission on the discussion paper:

I would have strong concerns about any move to decriminalise outcall prostitution given the well documented links with organised crime, and the potential for exploitation of vulnerable people. The provision of outcall services remains a high-profit, low-margin activity and as a result, will attract criminal interest. (Queensland Police Commissioner's submission on discussion paper, p. 2)

The Commissioner's concerns are validated by the recent experiences of two jurisdictions that have decriminalised prostitution. For example, New Zealand has largely decriminalised prostitution in recent times. In 2003, before decriminalisation, the New Zealand Prostitution Reform Committee released a report about the number and nature of sex workers in New Zealand. The information was gleaned from surveys of police and sex workers. When asked about the links between the sex industry and organised crime, the police consistently reported links between either operators or workers and organised crime, although the sex workers themselves believed that there was little involvement of gangs or organised crime. As yet there has been no follow-up report since 2003, but anecdotal evidence suggests that organised crime increasingly features in the decriminalised industry. (Day 1 transcript, pp. 1, 8–9).

The other jurisdiction closer to home is Victoria. CATWA argued strongly at the public hearing that legalisation of brothels in Victoria has entrenched organised crime in the state's prostitution industry. In its Shadow Report for the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) committee (Jeffreys, Chambers & Spencer n.d.) CATWA claims:

Australian states that have legalised brothel prostitution say that they aim to control the size and shape of the industry and contain organised crime. This aim has not been fulfilled ... Even the legal brothels may be connected with organised crime. Victoria, ACT and Queensland require police checks on prospective brothel owners to make sure that they do not have criminal offences on their records. But such checks are not necessarily effective ... men with convictions can effectively run legal brothels whilst not being the official owners through front people or organisations (Raymond Hoser, *Victoria Police corruption*, Kotabi Publishing, Doncaster, Vic., 1999).

Another link between legalised prostitution and organised crime was demonstrated in July 2004 when the Victorian Business Licensing Authority [BLA] rejected an application to continue business from Top of the Town brothel owner Chailai Richardson. Ms Richardson is married to convicted child prostitution offender (convicted in 1992) Peter Richardson, and was identified by the BLA as merely a front for Peter Richardson's successful brothel business ... (3 December 2004, 'Madam's links to alleged drug boss: brothel owner fights for licence,' *Herald Sun*, p. 9).

There have been 18 linked organised crime killings in Melbourne since 1998. In addition, in the second half of 2003, there were at least four unsolved murders linked to Melbourne's sex industry. On October 30, 2003, two brothel operators were executed in their suburban home. On August 19, the naked body of a prostituted woman in St Kilda was found next to a highway north of Melbourne. On June 4, 2003 a male prostitute was murdered as he left his home to defend rape charges at a County Court (26 July 2003, 'All's crook down south', *Daily Telegraph*, p. 29).

Regulating prostitution found that the rigorous probity checks set out in the Prostitution Act in Queensland have so far discouraged the establishment of organised crime in the prostitution industry in Queensland. The risk of upsetting this state of affairs should not be taken lightly.

The ability to legally provide outcall services from licensed brothels and/or independent escort agencies may present an attractive option for new entrants

to the industry intent on involvement in organised crime. As pointed out by the Queensland Crime Commission and the QPS in their strategic assessment of organised crime in Queensland:

Illicit drug trafficking and fraud, two 'high risk' commodities, are also two of the most significant generators of 'dirty' money. The ability to convert 'dirty' money is a critical factor that underpins the success of most organised crime ... In order to enjoy the profits, criminals must find a method for legitimising their illicit proceeds. This is often done by investing the proceeds in real estate, making cash purchases of vehicles and other items of significant value, or investing in legitimate business activities. (QCC & QPS 1999, p. x)

We believe that a licensed brothel providing outcall services might easily constitute the 'legitimate business activity' by which 'dirty' money is laundered. The PLA explained the payment procedures that it thought would apply to outcall services from licensed brothels in its (second) written submission to the inquiry:

All agencies would take cash payment, and a lesser amount taking cash and credit card ... It should be a business decision for the brothel how they determine payment methods ... Cash payments may be greater for outcalls which may provide for the non-declaration of earnings. This is a risk in any business that deals with cash payments ... A computerised accounting system should be implemented as financial fraud is more difficult if a computerised system is in operation and the transactions are auditable ... Licensed brothels currently utilise a computerised front of house system which electronically records transactions with details of the worker, time and date as well as details of earnings. This should be extended for the management of outcall transactions (PLA second submission on the discussion paper, pp. 9–10).

We agree there is little chance that money laundering will occur in the regulated industry as it currently stands, because of the probity requirements and the heavily regulated approach of the PLA. The books of a licensed brothel in which five workers operate can easily be checked, and video surveillance in the foyer means that the number of clients attending the premises can be verified. But we believe there is a risk that the situation could change if outcall services were permitted.

An examination of advertisements for 'social escorts' in Queensland (widely agreed to be a front for the illegal prostitution industry) shows that some 'escorts' are advertised for \$5000 per hour. We believe this fact alone belies the submission of the PLA that outcall services are just like any other business receiving cash payments. There is nothing to prevent an organised crime syndicate earning \$5000 through the sale of illicit drugs and then recording outcall services to the value of \$5000 on its computerised system. It is unlikely that either the client or the sex worker, who often uses a pseudonym, could be traced to verify the transaction. Contrary to the PLA's concern that transactions would not be entered on the computerised system, it is our concern that (false) transactions could be entered on the system.

Sex trafficking

The other major risk that comes with an overall expansion of the prostitution industry is the risk of sex trafficking, or 'trafficking in persons', defined by the United Nations in the following way:

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 ... (United Nations 2000, <www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf>).

There is no agreement about the amount of sex trafficking that occurs in Australia. An article published in the September 2005 issue of the *Australian Law Journal* summarised the recent research. Estimates of the number of trafficked women in Australia ranged from below 100 to a thousand or even thousands:

Within Australia, estimates of women trafficked into sexual servitude vary widely. A Project Respect study suggests up to 1000 women under 'contract' at any given time; while the Australian Government's Action Plan to Eradicate Trafficking in Persons states the number is 'well below' 100. The New South Wales Police on the other hand have reported that thousands of Chinese and Thai women are being sold to brothel owners and have to work off the debt by having sex with up to 800 men. In early July a report in the Sun Herald noted that up to 44 people in New South Wales, including brothel and karaoke employees, sex industry figures, suspect migration agents and women believed to have been trafficked, have been summonsed in an Australian Crime Commission (ACC) investigation into trafficking of women into sexual servitude. While the ACC is yet to produce a report of its findings, anecdotal reports suggest that there have been an increase of women trafficked from South Korea in recent times. (Piotrowicz 2005, pp. 543–4)

The CMC concluded in *Regulating prostitution* that, fortunately, there was little evidence of sex trafficking in Queensland. SQWISI informed the CMC at the time that they had not found any women working in sexual servitude in Queensland, or who seemed to have been trafficked into Australia. It recognised that there were some illegal brothels in Queensland that exclusively employed Asian sex workers, but it understood these workers to be either Australian residents or foreign sex workers on tourist or student visas.

There was general agreement at the public hearing that any sex trafficking occurring in Australia currently takes place mostly in New South Wales and Victoria. CATWA alleged that in Victoria traffickers sell women to legal and illegal brothels in Victoria for \$15 000 each. They said police estimate that these women are forced to have sex with 800 men to pay off debts to the traffickers before they receive any money. It is estimated that \$1 million is earned from trafficked women weekly (Jeffreys, Chambers & Spencer n.d., p. 10).

The question of concern to the Commission is whether legalising outcalls from licensed brothels and/or escort agencies would attract sex trafficking to Queensland. Our fear relates to the operation of the laws of supply and demand. As explained in the discussion paper, should legalising escort services result in an overall increase in the amount of prostitution in Queensland, there might be illegal operators who had neither the eligibility nor the desire to operate legally, and they would be likely to persist with their criminal endeavours. If some sex workers were to opt for more lucrative legal options and cease to work illegally (even if many did not), it is possible that child prostitution and sex trafficking, which are not currently problems in this state, might increase to make up the shortfall in sex workers (CMC 2005a, p. 1)

CATWA agreed that it is the supply and demand dynamic that provides the impetus for sex trafficking. They argued that it is legalisation that creates the demand for trafficking, as brothels seek sufficient women who are prepared to perform particularly painful activities and work without condoms. They hold that sex entrepreneurs find it hard to source women locally to supply an expanding industry and that trafficked women are more vulnerable and more profitable (Jeffreys, Chambers & Spencer n.d., p. 10).

The public hearing did not succeed in eliciting further evidence about the potential risk of sex trafficking in Queensland if outcall services were to be legalised. The parties who argued strongly in the affirmative for the legalisation of outcall services, namely the PLA and QABA, simply said it would not happen. However, the PLA's arguments were without supporting evidence, and did not refute the supply-and-demand dynamic suggested above:

Mention by the CMC of its concerns about sex trafficking and child prostitution is certain to attract favourable media commendation for the CMC but there was no evidence produced to the CMC at the public inquiry that sex trafficking and child prostitution were currently a problem in Queensland ...

So far as licensed brothels are concerned, the reference to concerns about sex trafficking and child prostitution is nothing more than 'window dressing' both in 'Regulating Prostitution' and the Interim Position Paper. Emotive language is a poor substitute for serious research. (PLA submission on CMC Interim Position Paper, p. 3)

The PLA did identify one reason why licensed brothels would not become involved in sex trafficking:

Licensed brothels are subject to unannounced inspections by compliance officers from the PLA. Licensees have a very substantial investment in their businesses. It is improbable that licensees will risk the cancellation of a licence by having trafficked women or child prostitutes on their premises or operating as escorts [if the legislation is amended]. (PLA submission on CMC Interim Position Paper, p. 3)

It should be pointed out, however, that this argument is based on the way the law currently stands. If the law were to be changed, and outcall services permitted, unannounced inspections of brothel premises by compliance officers would not be able to detect trafficked workers whose names had never been entered on the books and who were now providing outcall services. The current licensees may have made substantial investments that they risk losing if they engage in sex trafficking, but new licensees might set up modestly equipped two-room brothels because their main intention is to run an escort agency. Further, the PLA has stated that it currently does not have the resources to effectively regulate 20 licensed brothels with in-calls only (CMC 2004a, pp.134–5).⁴ Effective regulation of brothels engaged in outcall services would require far greater resources.

We are fortunate that, until very recently, there has been no evidence that Queensland has attracted sex trafficking. However, the recent conviction of Keith Dobie on the Gold Coast on three counts of trafficking in persons, one count of dealing in the proceeds of crime, and two counts of presenting false information to a Department of Immigration official, is concerning ('Man on sex slave charge', *Courier-Mail*, 2 August 2006, p. 20).

There is some evidence that sex trafficking occurs in other parts of Australia. For example, there was a recent conviction in Victoria and 10-year sentence of a Ms Wei Tang for 'possessing and owning sex slaves' under the servitude provisions introduced into the Commonwealth *Criminal Code Act 1995* (Attorney-General's Department, Australian Government 2006). The CMC considers that legalising outcalls from licensed brothels, in the absence of a capacity to regulate outcalls

4 *Regulating prostitution* (CMC 2004a, pp. 134–5) notes the following:

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 ...' 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.

These comments were followed by a recommendation (number 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.

in the same way that on-premises activity can be regulated, would give rise to an unacceptable risk that sex traffickers could consider Queensland as a possible location for their activities. Until it is shown that sex trafficking in Australia has been controlled, we do not wish to make any recommendations that might compound the current problem.

Adding to our reluctance to recommend change to Queensland's existing prohibition on outcall services from licensed brothels is the fact that other jurisdictions have recently made changes to sex industry regulation which may have repercussions for Queensland.

Late last year, the Tasmanian Parliament passed the *Sex Industry Offences Act 2005*, which permits two sex workers to work together but outlaws commercial brothels. Under the new laws, brothel owners face fines of \$50 000 and five years in jail. Clients of commercial brothels risk fines of \$10 000 and one year's imprisonment. The Tasmanian Government indicated, in parliamentary debates on the Bill, that it would carry out police enforcement against illegal brothels in Tasmania within six months of enactment of the legislation.

In July 2003, the Australian Government introduced the National Action Plan to Combat Trafficking in Women. In July 2004, this was followed by the Commonwealth Action Plan to Eradicate Trafficking in Persons. Part of this plan included the creation of an Australian Federal Police Transnational Sexual Exploitation and Trafficking Team to investigate sex trafficking. We understand that this team's activities will be largely in New South Wales and Victoria.

Allowing outcalls from licensed brothels in Queensland might attract business owners and sex workers displaced by the Tasmanian and Australian Government measures, and lead to an overall expansion of the industry in Queensland, as well as making Queensland a more attractive option for sex traffickers. We were not presented with any evidence, throughout the escort inquiry, which would justify making a recommendation that would engender such a risk.

Principle 4: Ensure a healthy society

All those who participated in the escort inquiry agreed that a primary consideration in deciding whether to legalise outcall services from licensed brothels and/or escort agencies was whether the health and safety of the sex workers providing those services could be assured. This has been the motivating factor in most prostitution law reform, including the introduction of the *Prostitution Act 1999*.

It is our view that legalising outcall prostitution services from licensed brothels might represent an increased risk to the health of sex workers working from those brothels.

Licensed brothels currently comply with strict guidelines about the condition of the brothel environment. For example, each room must have a clinical waste bin in which to dispose of used condoms, dams, gloves and tissues. The PLA Handbook for Approved Managers of Licensed Brothels states that, in order to prevent double handling and risk of acquiring infection from the waste, approved managers, staff and sex workers must not handle clinical waste after it has been disposed. Only the clinical waste disposal contractor must exchange and service the clinical waste bins within the rooms.

In the outcall context, it is highly unlikely that the same facilities for the disposal of clinical waste will be available. In its draft Escort Code of Practice, QABA merely says that clients would normally accept responsibility regarding the disposal of used condoms and the like, and that anyone who handles such material should

wash their hands with soap and water after their disposal. It also suggests that the sex worker carry a toolkit containing such items as clip seal plastic bags (for disposal of waste), alcohol wipes, and hand sanitisers. However, there is no suggestion that the licensed brothel should take responsibility for providing these items to the sex worker, or employ any other means of ensuring that the sex worker actually follows appropriate waste disposal procedures.

The brothel environment also ensures the supply of hygienic linen, towels and bedcovers. The PLA's *Handbook for approved managers of licensed brothels* (undated) advises that any linen or towels that come in contact with clients or workers must be replaced with clean linen and towels immediately after each client. Once removed, the soiled towelling and bedding must be laundered so as to achieve disinfection acceptable to the applicable Australian Standard. Soiled towelling and linen must be stored separately from clean towelling and linen.

Submissions to the inquiry by independent sex workers included complaints about the condition of linen in clients' private residences and even in motels and hotels. QABA's draft Escort Code of Practice merely provides that service providers should refuse to provide services where the linen appears to be soiled or where they have concerns regarding the cleanliness of the linen. We are concerned, however, that this advice does not take account of the realities of providing outcall services. If the sex worker does not provide the services, she will not be paid. She will have wasted the travel time in arriving at the residence and may not have another booking to go to. She may also feel that the licensed brothel will disapprove of her failure to meet the client's needs and that she risks losing future work. She will not see the condition of the linen until she is inside the client's premises, and will be subject to the pressure of the client to continue with the provision of the service. It is our view that all these factors would pose risks to the health of sex workers currently working in licensed brothels if they were to provide outcall services as well.

Another procedure that is routine for licensed brothels is the cleaning of sex toys. In its draft Code of Practice, QABA describes three progressively more onerous methods of cleaning sex toys: (a) cleaning, (b) disinfection and (c) sterilisation. The method adopted depends on whether the equipment has penetrated the skin or come into contact with blood or bodily fluids. Even level (a) cleaning requires hot water, detergent and disposable paper towels. Sterilisation is substantially more onerous. Again, it is doubtful whether these procedures could be carried out successfully on a client's premises. If the sex worker does not return to the licensed brothel premises between clients (see proposed regulatory model below), we consider there would be too great a risk that the items would not be cleaned to an appropriate standard, thereby creating health risks for sex workers and clients.

Another serious health matter concerns the checking of clients for sexually transmitted infections (STIs). A licensed brothel is set up so that these examinations are routinely and effectively conducted. QABA's draft code of practice states that the examinations should be conducted in a well-lit area, or using an appropriate form of illumination such as a multi-positional 100-watt lamp or torch. More importantly, a sex worker conducting a check in a licensed brothel may call upon another sex worker or the approved manager to give a second opinion as to whether a client has symptoms of an STI. The sex worker can also rely on other sex workers or the approved manager to emphasise the necessity of carrying out the check to the client, or to prevent conflict if the sex worker decides not to provide the service.

In an outcall situation, as pointed out by SSPAN in its submission on the discussion paper, there is no other worker available to do a second check or to back up

a decision to refuse a client. SSPAN suggested three possible solutions to this problem:

- Train the driver to conduct STI checks and to back up any decision of the sex worker to refuse a client.
- Bring another sex worker to conduct a second check.
- Allow sex workers to work in pairs.

However, we consider all of these proposed solutions to be problematic. As recognised by SSPAN itself, the utility of the driver will be limited if he is male. Bringing another sex worker to conduct the check will incur time and cost, which the licensed brothels have not offered to bear. Allowing sex workers to work in pairs would require significant amendment of Queensland's prostitution laws (see discussion below). In the absence of an effective means of conducting STI examinations in an outcall situation as routinely and effectively as they are conducted in licensed brothels, the CMC considers that allowing outcall services would significantly increase the risk to sex workers' health, and erode the current standards of the Prostitution Act.

At any time a licensed brothel is in operation, there must be a staff member present who has a Senior First Aid Certificate. Both approved managers and licensees are required to maintain Senior First Aid Certificates, which must be updated annually. The health benefits to both sex workers and clients of having an appropriately trained first aid officer on the brothel premises are obvious, and would not be available to sex workers providing outcall services.

We acknowledge that the working environment of sex workers providing services in licensed brothels is far more regulated than that of sole operators. This is because of the legislative framework and various guidelines under which licensed brothels are required to operate. Sole operators who operate legally under the Criminal Code are not required to comply with any of the above health guidelines, apart from the requirement to use prophylactics. The only time they are subject to external policing is when breaches of the Criminal Code are suspected.

Sole operators have worked legally in Queensland, without regulation, for many years. The decision to legalise brothels under the Prostitution Act in 1999 was tied very strongly to the health and safety of the workers providing services in an environment that is owned and managed by licensees, regulated by an oversight body (the PLA) and policed by the QPS. The legislation and guidelines exist to ensure that all three levels of control are clear, and that the health of sex workers in licensed brothels is protected to the greatest degree possible.

Despite the fact that sole operators are not required to operate under strict regulations, it is our understanding that they take significant precautions to ensure their own health (and consequently the viability of their own businesses). They also have more freedom of choice than sex workers in licensed brothels, and a greater degree of control over the services they provide, and to whom. In this part of the chapter we have restricted our assessment to the potential health impacts on sex workers providing services for licensed brothels should outcalls be legalised. Issues relating to sole operators are discussed in Chapter 4.

Principle 5: Promote safety

The research undertaken for the public inquiry, and the submissions received, convinced us that there are features of providing outcall services that make it inherently more dangerous than providing services in a brothel room. In a brothel room, the sex worker can be sure that the only people present will be herself and the client. In a client's house, there may be other people hiding. A client's house

may also conceal cameras. At a brothel, clients are routinely prevented from taking large bags into a room; in a client's house, on the other hand, weapons may be easily concealed. At a brothel, it is routine to 'ID' the client (i.e. look at the client without the client knowing) or meet the client, before agreeing to perform the service. Attending an outcall, the sex worker may see the client for the first time when they open the door. Alcohol and drugs are banned in brothels, but there are no such bans in outcall locations. Brothel rooms have panic buttons that can be immediately responded to, whereas mobile telephones and other communications facilities used in outcall scenarios have an inbuilt delay time.

The PLA's report *Selling sex in Queensland 2003* indicated that just over half of the sex workers working in legal brothels in Queensland (55.4%) had started their career in the sex industry in a legal brothel (Woodward et al. 2004, p. 29). The limited knowledge of the risks associated with outcall services, and the capacity of workers who had only previously worked in-house to handle those risks, are further key issues that have increased our disquiet about the possible legalisation of outcall services from brothels.

During the escort inquiry we explored whether, in the event that outcall prostitution services were legalised, sex workers could still be guaranteed a choice of providing only in-call services. A major justification for legalising brothels in Queensland was that working within a brothel was perceived as being much safer than working on the streets. A sex worker would still be able to make a living, but within the safety of four walls. We are concerned that, if outcall services from licensed brothels were legalised, this option might be lost to a large number of sex workers. If licensed brothels received a greater demand for outcall services than in-call services, it might be that those sex workers who would like to do in-call work exclusively will no longer have that option available to them.

Certainly, the PLA was not prepared to guarantee that those sex workers who wanted to do in-call work exclusively would have that option:

Workers engaged at the brothel will not be segregated into those who work in-house and those who service outcalls. Workers will be assigned in accordance with protocols agreed between the worker and management. (PLA submission on discussion paper, p. 9)

SSPAN's opinion was that leaving the question to brothel management would not preserve the sex worker's choice:

Currently licensed brothels have rules pertaining to shifts available, and workers having to do shifts during quiet periods if they want more than a certain number of shifts per week. The same 'rules' could lead to workers being pressured to do outcalls, at the expense of their privacy and safety. (SSPAN submission on discussion paper, p. 12)

KEY ISSUE 2: Availability of an appropriate regulatory model

Throughout the escort inquiry, it was made clear that the CMC would not recommend the legalisation of outcall services from either licensed brothels or independent escort agencies unless there was an appropriate regulatory model for overseeing the management of those services.

We would have given serious consideration to recommending a model that incorporated the features of the 'heavily regulated' model described in Chapter 1, but most supporters of legalising outcalls from licensed brothels — including the PLA, licensees and various government departments — endorsed a lightly regulated approach to legal outcalls from licensed brothels. We were told by these agencies and licensees that a heavily regulated approach simply would not work,

because it would be too hard to implement, would not entice either sex workers or illegal operators into the industry, and could not be adequately monitored. Despite its initial view that escort services from licensed brothels should be heavily regulated, the PLA changed its view after consultation with licensees. While we applaud the PLA's consultative approach — a serious issue raised in the *Regulating prostitution* report — we cannot accept the risks that might be associated with a lightly regulated approach.

The Commission is very concerned that the 'hands off' approach to regulation advocated by the licensees and the PLA would not maintain the aims of the Prostitution Act. We explored a range of issues during the public inquiry to determine how they would be dealt with under a lightly regulated model, but neither the PLA nor QABA could offer definite or appropriate solutions. Three of these issues are discussed here:

- the distance travelled from a licensed brothel to an outcall service
- mandatory signing on and off by sex workers providing outcalls from a brothel
- BDSM.

Distance

The licensees and the PLA argued that, if outcall services from licensed brothels were to be legalised, there should be no restriction on the distance from the brothel where services could be provided. That is, a brothel in Brisbane could choose to provide outcall services throughout Queensland. The PLA argued at the public hearing that imposing a restriction on the locations in which escorts could provide services from the brothels would limit the opportunities for brothels in suburban and regional areas of the state, and would also limit access for clients with special needs, such as people with a disability (Day 1 transcript, p. 19). The QPS was of the opinion that it would be able to police unlimited distances, but adequate resources would be required (Day 1 transcript, p. 31).

However, when we delved deeper into the practicalities of providing outcall services in a distant location, none of the stakeholders could suggest adequate regulatory controls. For example, when offered the following scenario, the licensees, PLA representatives, and QPS personnel consulted after the public hearing admitted that it would be impossible for them to either be aware of the situation or able to respond appropriately:

Scenario

A Brisbane-based legal brothel receives a request for an outcall from a client in Mount Isa. The brothel has a sex worker in Mount Isa on its books and makes arrangements with him or her to provide the service. In addition to providing escort services for the brothel, the sex worker works for her/himself as a sole operator. He or she has several bookings for the night but also wants to retain his or her ongoing relationship with the brothel to ensure that future bookings continue to come their way. The sex worker therefore takes the booking but passes it on to a friend (a sex worker unknown to the brothel). The friend is only 17 years old. The client does not make a complaint to the brothel, the PLA or the QPS.

We believe that the potential for compromise to the effectiveness of the Act in such a situation, and the increased risks posed to under-age workers and the livelihood of legal brothels, should such risks multiply, are unacceptable.

Mandatory signing on and off

There was considerable debate at the public hearing about whether sex workers providing outcall services should be required to sign in and out of a licensed brothel or independent escort agency, either at the beginning and end of every outcall, or at least at the beginning and end of every shift. The regulatory benefits of such a requirement are quite obvious. For example, the location and wellbeing of the worker can be constantly monitored, and payments can be processed. However, at the public hearing the PLA and the licensees made it clear that they did not support a mandatory sign on/sign off requirement. The PLA stated:

The majority of licensees have indicated that they do not wish to have a mandatory sign on sign off model as it inhibits the distances workers can travel to bookings and the cost for service provision. This issue is important for those brothels that are not located close to a city centre or for those in more regional areas where travel times and distances are greater. Additionally, the time of service provision may be affected by traffic peaks and a policy of return to the brothel at these times would cause delay to service provision ... Further [sex workers] do not presently sign on sign off and would find this very restrictive (Day 1 transcript, p. 17).

The QPS stated that it had no firm view on mandatory signing on and off.

The CMC is concerned that, without strict protocols for regular contact with the brothels (or independent escort agencies, for that matter), there would be detrimental consequences for regulation. Licensed brothels and/or independent escort agencies would not be able to adequately monitor whether it is the sex worker on their books who is providing the service, or someone else such as an under-age worker or someone who has not had the requisite health checks. It would also be more difficult for sex workers to access peer education, which is so necessary for their health and safety. Another potential problem is the return of money to the brothel.

The licensees and the PLA did not convince us that there were adequate solutions to the problems that would arise if signing in and signing out was not mandatory.

BDSM

A lightly regulated model does not deal with the issue of BDSM (bondage, discipline, sadism and masochism). Many stakeholders pointed out that BDSM carries specific health and safety risks and requires extensive training in the field. At the public hearing, the CMC canvassed whether BDSM could simply be excluded, should outcall services be legalised. However, as Scarlet Alliance explained, this would be difficult to achieve:

There is no simple definition of what [BDSM] includes and lot of the regular services that individual sex workers provide when they take their kit or their bag out on escort includes use of tools and small aspects of B&D, so I would be very concerned if we tried to simplify this issue and just make a blanket ruling that BDSM cannot happen on escort. That is not workable for the industry. (Day 1 transcript, pp. 82–3)

The stakeholders agreed that BDSM could be more safely provided on brothel premises than at outcall locations. The brothel would need to have a properly equipped 'dungeon' and properly trained sex workers, and other people would have to be readily available on the premises if any health and safety problems arose.

The 'hands-off' approach of the PLA and the licensees to an issue with potentially serious health and safety repercussions further increased our unwillingness to recommend the legalisation of outcall services from either licensed brothels or independent escort agencies.

Possible outcome of a lightly regulated approach without restrictions

We fear that a lightly regulated approach to outcall services, which involves a combination of no distance restrictions and no signing on or off requirements, could pose serious problems. It could lead to the setting up of modest two-bedroom licensed brothels which would, effectively, operate as call centres for the provision of unregulated and unmonitored outcall services throughout the state (i.e. brothels would quite probably become 'fronts' for large outcall agencies, with relatively little investment). We are firmly of the view that such an approach, combined with no restrictions on the provision of potentially dangerous practices such as BDSM, would have detrimental consequences for the regulation of the licensed industry.

Balancing the activities of the legal industry (licensed brothels and sole operators)

The preceding discussion demonstrates how difficult it would be to regulate for the provision of outcall services in such a way that the aims of the Prostitution Act were retained, especially those aims that relate to the health and safety of the sex workers. The Victorian experience shows that legalising outcall services often causes diversification in the industry which requires new and further regulation. The legislature constantly has to play 'catch-up', and in the meantime major aspects of the industry remain unregulated.

QABA and the PLA strongly argued that they were best placed to develop an appropriate model for the provision of outcall services, because neither those in the illegal industry nor sole operators had the will or the capacity to do so. QABA said in its submission on the discussion paper (p. 6) that 'lack of interest in the welfare of service providers appears to be endemic in the illegal industry' and the PLA said at the public hearing that 'escorts working for a licensed brothel would have greater safety than sole operators' (Day 1 transcript, p. 18).

However, as we indicated earlier, the CMC also heard from numerous sole operators who had many ideas about how to protect their safety. When a sole operator attends a client's home, it is their life that is at risk. A licensee does not personally attend the client's premises and is driven largely by a profit motive. Given these characteristics, sole operators may be better placed than brothel or escort agency licensees to develop and implement safe and effective models for providing outcall services. For example, a sole operator who said that she was representative of approximately 20 other sole operators whose views she had sought, stated:

As sole operators, we take responsibility for our own safety in several ways: We can have a friend wait for us, we ... phone a contact person to let them know our whereabouts and how long we will be; have a contact person phone us at the end of the service time to make sure we are okay; have a security officer working for us or use back-to-base alarms ... The safety risk is in fact higher for sex workers doing outcalls from a brothel because the service provider may be left at a premises by the brothel's driver if he or she is running late to pick her up ... This is especially so if the driver is running around, dropping off and picking up multiple outcall sex workers. We fear that if outcalls are legalised, the brothels would be given a means of making big profits and that will eventually stretch the boundaries and put profit before the sex worker's health and safety. (Sole operator no. 1, Day 1 transcript, p. 66).

Sole operators frequently rely on the assistance of friends or family who make no charge for the services. For example, a sex worker's friend may be happy to drive the sex worker to the outcall location and wait outside until the

booking is complete. The problem is that, according to the current law, many of these practices are illegal. We have recognised this difficulty and make recommendations for change in Chapter 4.

We do not wish to upset the current balance between licensed brothels and sole operators in Queensland. Sole operators have some capacity to implement systems for the safe provision of outcall services that take account of their individual strengths and weaknesses, and their individual circumstances. It is not our view that the only appropriate model for the provision of outcall services is one developed and implemented by brothel licensees.

KEY ISSUE 3: Viability of the existing legal prostitution industry

When it came to considering whether licensed brothels should be allowed to provide outcall services, a primary argument by QABA and the licensed brothels was that outcalls were necessary to ensure the financial viability of the licensed brothels. They argued that, if outcalls were not permitted, the viability of the existing licensed brothels would be threatened, and they would not be able to continue to meet the aims of the Prostitution Act:

QABA agrees that the fledgling regulated industry is under commercial pressure from the illegal operators who operate without the compliance and other costs of a legitimate enterprise. We agree that illegal escorts 'are a damaging source of competition'. Escorts need to be legalised in Queensland and brought under the regulatory framework of the legal brothels. (QABA submission on discussion paper, p. 4)

The PLA supported the views of QABA and the licensed brothels in its submission:

As the licensed industry is denied access to the [outcall] market, these requests [for outcalls] are generally serviced by the illegal industry which is thriving in Queensland. Licensed brothels are placed at a significant commercial disadvantage. (PLA submission on discussion paper, p. 2)

We were not privy to any evidence of earnings or turnover of the brothels to support this argument. However, the PLA said:

Whilst a few licensed brothels, well located, are trading successfully several others are at best borderline commercial operations. Some have been sold and one has gone out of business. The PLA is concerned to note that one recently established brothel is struggling and the owner/licensee on the occasion of a recent audit revealed the prospect of bankruptcy. (PLA submission on discussion paper, p. 4)

There may be other reasons for the threatened financial viability of some of the existing licensed brothels, however, irrespective of the impact of the illegal industry. For example, the considerable financial investment of many licensees in expensive premises and fittings may have contributed to their financial problems. The PLA stated in its submission on the discussion paper that an investment of between \$500 000 and \$1 million was not unusual (p. 4). It may be that poor business judgment has been exercised by individual licensees who have invested in brothels that are the equivalent of five-star quality hotels, far exceeding their potential financial return.

Other concerns with the regulatory system, which were raised in *Regulating prostitution*, may also have contributed. For example:

- The legislative requirement that brothels only be allowed to operate in industrial areas may have had an adverse impact on the financial viability of brothels. In *Regulating prostitution*, we recommended 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'. Treasury is currently reviewing this recommendation.

- The limitation of a legal brothel to no more than five service provision rooms may have suppressed the capacity of brothels to recoup an adequate income and take advantage of key demand peaks (such as Friday and Saturday nights). The CMC therefore encourages licensees and their representatives to consider formal approaches to government for a modest increase in room size. (For the health of sex workers, and to make it possible for licensees to ensure that enough workers are available, should a worker call in sick, the *Prostitution Amendment Act 2006* now allows for an increase in the maximum number of sex workers permitted on a brothel premises at any one time [e.g. from 5 to 8 for a five-room brothel]).
- Recommendation 14 of *Regulating prostitution* was that the Queensland Government undertake a review of the fee structure for legal brothels with a view to assessing the impact of licence fees on the development of legal brothels in Queensland.

However, a number of those who made submissions and attended the public hearing questioned the legitimacy of considering the financial viability of the licensed brothels in the first instance. For example, Sole operator no. 1 questioned the importance of brothels' profit margins:

The legislation should not be changed to improve the profit margins of the brothels and their power hold within the industry. It is common knowledge in the sex industry that most brothel licensees went into the business hoping to make a lot of money and bet on outcall services eventually being legalised. (Day 1 transcript, p. 66)

Ms Patty Smith of the Family Council of Queensland emphatically rejected the notion that the financial viability of the brothels was relevant:

I was unaware that, when the legislation was introduced, it was meant to meet the financial expectations of brothel operators as a good business opportunity. The stated aims were to ensure the health and safety of prostitutes, to get rid of illegal establishments and street prostitution, and to outlaw official corruption, not as far as I am aware to grow the industry. (Day 1 transcript, pp. 86–7)

A major issue considered by the inquiry was the potential for allowing outcalls from licensed brothels to reduce the financial viability of the existing licensed brothels. The stakeholders agreed at the public hearing that, should outcall services be permitted from licensed brothels, there was nothing to prevent small (e.g. two-bedroom), modestly outfitted brothels from setting up as fronts for large escort agencies. Given the much lower set-up costs of such establishments, it is likely that they would severely damage the viability of existing brothels whose owners have invested a large amount of money in their premises. Purely Blue made a similar point about independent escort agencies:

An escort agency operating independently of a brothel has very low barriers to market entry and therefore requires little real business substance to commence operation. This usually means that business competencies are also lacking. We believe that to license escort agencies independently of licensed brothels would result in a proliferation of escort agencies and general over saturation of the marketplace. In time this would result in lower viability, and a gradual diminution of standards driven by a need to survive economically. Clearly this would also negatively impact on established licensed brothels that have conversely made significant capital investments. (Purely Blue, submission on discussion paper, p. 2)

No workable solution to this problem was put forward in the submissions or at the public hearing. Purely Blue suggested that licensed brothels be permitted to provide outcall services only after the licensee has successfully operated the brothel for a one-year period. However, we consider this strategy would probably be a relatively ineffective barrier, and unlikely to provide the 'level of assurance and confidence regarding the competency of the licensee' that Purely Blue hoped

for. For example, how would the 'successful operation' of a two-room brothel that intends to metamorphose into what would be largely an escort agency be defined? The licensee might not use the one-year waiting period to develop the high standards advocated by some of the existing licensed brothels, but might simply accept low returns for a one-year period as part of the entry costs to the market.

Licensed brothels are just one aspect of Queensland's prostitution industry. The other, more sizeable, component consists of sole operators. Legalising outcalls from licensed brothels would, undoubtedly, also have a significant impact on sole operators, given that sole operators currently have the monopoly on providing outcall services.

There is no doubt that licensed brothels and sole operators are competitors in Queensland's prostitution industry. In submissions to the inquiry and at the public hearing, sole operators alleged that licensed brothels have at times deliberately attempted to damage the business of sole operators. As one sole operator stated:

Many of my clients have commented that they were informed by brothel staff that they 'wouldn't want to see a private operator because they aren't registered and don't have mandatory health checks'. They try to frighten the clients, saying things such as 'You don't know what you might catch!' (name withheld)

The PLA acknowledged this concern in its newsletter:

The PLA has continued to receive numerous calls about whether sole operators can provide outcalls/escort services in Queensland. Apparently some clients are being advised by brothel staff that escort services are unlawful in Queensland. This is confusing and concerning to some clients who have previously accessed escort services from sole operators. (PLA 2005, p. 6)

Sole operators from Queensland also argued at the public hearing that there is limited demand for sexual services in Queensland, and that the licensing of brothels in Queensland had reduced the demand for in-house private work by sole operators. To maintain their income, sole operators have been forced to do more outcall work, which they consider exposes them to increased risks. Sole operator no. 1 explained that she had offered only in-calls for three of the past four years of her working life in Queensland. She had started providing outcall services in the past year because her income had been affected by an increase in the number of legal brothels offering in-call services (Day 1 transcript, p. 67). She concluded that the sole operators she was representing did not want outcall services from licensed brothels to be legalised in Queensland, because:

- (1) it will over-saturate the outcall market
- (2) there will be no great benefits to sex worker safety
- (3) it will allow the potential monopolisation of the sex industry by brothels.

(Day 1 transcript, p. 65)

QABA, on the other hand, contended in its submission that high standards had been established in licensed brothels and licensed brothels would therefore be best placed to provide outcall services:

QABA contends that adequate standards have already been established in licensed brothels. It should be noted that QABA's efforts with the Division of Workplace Health and Safety as well as QABA's development in 2002–2003 of a comprehensive draft Code of Practice specifically for escort services operating from licensed brothels ... illustrates that regulation of escorts as an extension of scope of brothel licences would offer the best prospect for development of a workable regulatory and operational model for outcall services. (QABA submission on discussion paper, p. 6)

QABA also stated at the public hearing that it had surveyed 107 sex workers currently working in brothels and that almost all respondents had been in favour of legal brothels providing escort services (Day 2 transcript, pp. 127–8). However, the survey dealt only with the attitudes of sex workers who had chosen to work in brothels. It did not capture the attitudes of independent sex workers or those working in the illegal industry.

The inquiry was told, in fact, that many sex workers would not choose to work for legal brothels even if legalising escorts would allow them to do so. Many sex workers expressed concerns about the fees and working conditions of brothels.

SSPAN clearly stated why many sex workers prefer to work for themselves rather than for licensed brothels:

Private workers charge approximately the same prices as the legal brothels, however a private worker keeps the entire amount, effectively twice that paid to brothel workers. Thus private workers see half the number of clients to earn the same income. Private workers also have total control over their work hours, and it is this flexibility that draws workers to regular or intermittent private sex work. (SSPAN submission on discussion paper, p. 2)

Sole operator no. 1 made the following comment:

The fact is that the majority of sole operators don't want to work in brothels for various reasons such as privacy, autonomy, flexibility in work times, the convenience of working from home and a right to choose which clients to see. (Day 1 transcript, pp. 66–7)

SUMMARY OF CHAPTER 3

This chapter has provided information about three key issues that were raised during the inquiry in relation to the potential legalisation of outcall services from licensed brothels and/or independent escort agencies. These were:

- 1 the potential impact of legalising outcall prostitution services from licensed brothels and/or independent escort agencies on the guiding principles of the *Prostitution Act 1999*
- 2 the availability of an appropriate regulatory model for the legalisation of outcall services from licensed brothels and/or independent escort agencies
- 3 the viability of the existing legal prostitution industry (i.e. licensed brothels and sole operators).

Table 3.2 (next page) summarises the main points covered.

Discussion of each issue revealed that there was potential for numerous adverse consequences for Queensland if outcall services from licensed brothels or independent escort agencies were to be legalised, including the significant likelihood that parts of the current legal industry (including both licensed brothels and sole operators) might be damaged. The reader is encouraged to read the full transcripts of the public hearing, as other issues were also raised that have not been covered here.

Applying the precautionary principle, we take the view that, where there is a substantive risk of an adverse consequence, such as the expansion of the prostitution industry or damage to the legal prostitution industry in Queensland, and no clear evidence that the risk can be avoided, we are not prepared to recommend change.

Table 3.2: Potential risks of proposed changes to the effectiveness of the Prostitution Act, an appropriate regulatory model, and the viability of the legal industry

Key issues	Current status of licensed brothels (CMC 2004a)	Proposed changes to licensed industry	
		Allow outcall services from licensed brothels	License escort agencies
Impact on the objectives of the <i>Prostitution Act 1999</i>			
1 Ensure quality of life for communities	Minimal to no impact of licensed brothels on the broader community; no evidence of expansion of the industry overall	Minimal to no direct impact on the community (e.g. noise/amenity); possible overall expansion of prostitution	Minimal to no direct impact on the community (e.g. noise/amenity); possible overall expansion of prostitution
2 Safeguard against corruption and organised crime (including drugs, money laundering, sex trafficking, child prostitution)	No evidence of any organised crime or corruption in the licensed brothel industry	Increased risks for corruption and organised crime within the licensed industry	Significant risks for corruption and organised crime within the licensed industry
3 Address the social factors that contribute to involvement in the sex industry	Government has implemented an exit program; current size of the legal industry quite contained	No change to government program; possible overall expansion of prostitution in Queensland	Possible overall expansion of prostitution in Queensland
4 Ensure a healthy society	Sex workers in brothels are healthy	Increased risks for sex workers providing outcalls (inability to comply with the code of practice)	Limited capacity to provide adequate health induction or training for sex workers providing outcalls only; inability to comply with current PLA code of practice
5 Promote safety	Sex workers in brothels are safe	Significant increase in risks for sex workers providing outcalls	Significant risks for sex workers providing outcalls
An appropriate regulatory model			
Licensed brothels	Licensed brothels are currently well regulated	Monitoring activities outside brothels will be extremely difficult and may markedly decrease the standards of the current industry	Monitoring activities from an independent agency would be extremely difficult and would markedly increase the risks associated with the current legal industry
The viability of the current legal industry			
Licensed brothels	Currently at risk	No evidence that viability would change if outcalls were allowed (e.g. many sex workers are still unwilling to work in brothels; the illegal industry and sole operators will remain their major competitors)	Licensing escort agencies would increase the financial risks of licensed brothels by providing major competition within the current industry.

In the light of the issues discussed and the concerns raised in this chapter, we make the following two recommendations:

Recommendation 1

That outcall prostitution services from licensed brothels in Queensland not be legalised.

Recommendation 2

That outcall prostitution services from independent 'escort agencies' in Queensland not be legalised.

A MODEL TO SUSTAIN LEGAL OPERATORS AND REDUCE ILLEGAL PROSTITUTION

This chapter proposes a model to sustain legal prostitution in Queensland (licensed brothels and sole operators) and address the problem of illegal prostitution.

INTRODUCTION

Throughout the escort inquiry, all stakeholders repeatedly emphasised the need to address illegal prostitution in Queensland. For example, QABA stated:

Just regulating any industry without attention to illegal activity is a recipe for failure of the regulated industry. This is a situation that is already apparent in Queensland with the almost unfettered activity of illegal escort agencies having an impact on the viability of the regulated industry. (QABA submission on discussion paper, p. 3)

As explained in Chapter 1, it is not possible to know how many illegal prostitution providers exist in Queensland. However, the stakeholders did provide information about how they operate. Essentially, escort agencies are set up with a number of sex workers on the books who only provide outcall services. This way there are no established premises which could expose the business owners to liability for running an illegal brothel. They advertise their services in one of two ways.

Firstly, they advertise as escorts but, when questioned, claim to provide only 'social escorts' (i.e. sexual services are not provided). Currently, there is legislation that restricts the advertising of prostitution and adult entertainment in Queensland (limiting both the size and content of the advertisements), but there are no restrictions on the advertising of 'social' escorts. This means that someone purporting to provide 'social' escorts only can place advertisements that are much larger than the permissible advertisements for prostitution and adult entertainment and are unlimited in their content and images. The result is that advertisements for 'social' escorts with provocative images end up looking more like advertisements for prostitution than the legal prostitution advertisements. The competitive edge this gives the illegal prostitution providers is precisely what the legal prostitution industry complains about.

Secondly, there is anecdotal evidence that illegal prostitution providers also advertise as sole operators. They place small advertisements in the same format as that allowed for sole operators, but, when contacted by the advertised telephone number, often make it evident that more than one sex worker is available to provide services.

The second day of the CMC's public hearing was dominated by efforts to find a way to attack the illegal operators through advertising. For example, QABA stated:

In looking at the unregulated areas, the key problem seems to be advertising ... the illegals are allowed to advertise almost with impunity. (Day 2 transcript, p. 128)

A representative of the Gold Coast brothels agreed:

We would like to see greater regulation and police monitoring of advertisements in the [local newspaper], regional newspapers and the [telephone books] ... In the escort services section of the [telephone book], any licensed brothel advertisement limited by size will be lost among the big one-page advertisement for the most part unashamedly displayed illegally by escort agencies. (Day 2 transcript, pp. 140, 141–2)

After publishing the interim position paper, we called all the telephone numbers listed under ‘escorts’ in the Queensland Yellow Pages, and all the telephone numbers advertising escorts on an ‘Adults Only’ website. We explained the purpose of the interim position paper, and sent it to those who wanted one. In response, we were contacted by only one legitimate social escort provider, which provides male social escorts for women. That organisation sent us its publicity material and we confirmed that it conforms exactly with our recommendations for advertising by social escort providers, stating ‘This is strictly a non-sexual service’ (see Recommendation 4 below).

We agree that an essential component of attacking the illegal industry is to close the advertising loophole of ‘social’ escorts. Initially, we were concerned that taking steps in this direction would impose too great a burden on the legitimate social escort industry. But we have since been convinced, by discussions with a social escort operator and relevant government agencies, that any such legitimate industries are already complying with the recommendations we intend to make, and our recommendations would signify no burden for them.

Although we believe that it is essential to close the loophole that allows misleading advertising of ‘social’ escorts, we also believe that any serious attempt to attack the illegal industry cannot stop there. It became clear during the course of the public hearing that one of the reasons it has been so difficult to regulate prostitution advertising is that the illegal prostitution industry is adept at metamorphosing. As soon as one means of advertising illegal prostitution is stamped out, another means is encountered. A historical demonstration of this is the concept of ‘massage’. Before brothels were legalised in Queensland, illegal prostitution was advertised as ‘massage’, available in ‘massage parlours’. The Prostitution Act prohibited advertising prostitution as massage; so illegal prostitution in Queensland is now advertised as ‘escort’ services.

The lengths to which illegal prostitution providers will go to advertise their services can be illustrated by a recent example from Korea. There, a crackdown on prostitution led to illegal prostitution providers advertising their services as ‘men’s skin shops’ (Cheong-won 2005). The PLA suggested in its response to the interim position paper that prostitution could even be advertised as ‘honey’.

We believe that any attempt to regulate prostitution will fail unless a means to regulate the advertising of all prostitution, whatever name is put to it, is found. For this reason, we recommend amendments to the Prostitution Act to achieve this purpose (see Recommendation 11 below).

Essentially, this chapter describes a multi-pronged approach to attacking the illegal prostitution industry while at the same time sustaining the current status of the legal prostitution industry in Queensland. The four main components of this approach are:

- regulating social escort providers
- tightening the existing PLA prostitution advertising policies
- improving police enforcement measures
- improving the safety of sole operators.

We would like to acknowledge the contributions made to this chapter by those who made submissions on the interim position paper. Our analysis of the 13 submissions is presented in table form in Appendix 3. The table includes one column for positive comments made by stakeholders and another column for criticisms. The final column shows our responses to these comments. Not all of the proposals made in the interim position paper have been carried through to this final report, and not all of the proposals that have been rejected are discussed in detail here.

We believe that all four components of the model described in this chapter should be implemented simultaneously, because each supports and enhances the others. Without implementation of the full package, the desired changes for the sex industry in Queensland would be unlikely to occur. Worse, the legal industry might be damaged. For example, the existing controls on prostitution advertising should not be tightened without the advertising of social escort providers (including supposed social escort providers) first being restricted. Introduced in isolation, a tightening of the existing advertising protocols would undoubtedly damage the legal industry (licensed brothels and sole operators) by subjecting it to even greater advertising controls, while the advertising of their illegal competitors would continue uncontrolled. The aim is to create a more equitable situation for legal operators, who are currently impeded by the Prostitution Act and illegal competitors — and not damage an industry that is clearly trying to do the right thing.

REGULATING SOCIAL ESCORT PROVIDERS

We believe that, as well as attempting to close off the loophole that allows illegal prostitution providers to advertise as ‘social’ escorts, it is necessary to regulate two other matters relating to social escorts. The first matter was raised at the public hearing; the other two came to light afterwards. The three matters described in this section, therefore, are:

- advertising
- obligation to clearly inform
- employing or contracting minors.

The recommendations in this section are not made because we believe there are a large number of true social escorts who need to be regulated. On the contrary, our research suggests that the small number of legitimate social escorts are already complying with the requirements recommended. The reason for the recommendations is to target illegal prostitution providers. If there is a set of regulations defining the advertising and other activities of ‘social escorts’, illegal prostitution providers will no longer be able to masquerade as ‘social’ escorts and thereby obtain a competitive advantage over the legal prostitution industry.

Advertising

Size of advertisement

We believe that the first restriction that needs to be placed on social escort advertisements is on size. The licensed brothel and sole operator advertising policies (issued by the PLA) impose the size restrictions shown in the Table 4.1 (next page).

Table 4.1: PLA advertising policies

Publication	Licensed brothel	Sole operator
General print publications (newspapers, magazines, etc.)	54 cm ²	5 cm high by 7.2 cm wide
Yellow Pages	215 mm by 253 mm	215 mm by 253 mm
Business cards	9 cm by 5.5 cm	9 cm by 5.5 cm

Currently, there are no size restrictions on social escort advertisements. Illegal prostitution providers have exploited this loophole by placing much larger advertisements for escorts than are permitted for licensed brothels and sole operators.

In response to the interim position paper, only the PLA and the sole operators commented on the proposed size restriction. The PLA misunderstood our proposal, thinking it applied to licensed brothels. The sole operators agreed with the size restriction. Sole operator no. 1 pointed out that those running illegal organised prostitution have much more money to spend on advertising than sole operators do. This fact alone shows why a legislated size restriction is required. Unless the illegal operators are prevented by legislation from placing oversized advertisements, their frequently greater resources will allow them to out-compete the licensed brothels and sole operators.

We discussed the implications of imposing a size restriction on advertisements for social escort agencies in the Yellow Pages or general print publications, with a legitimate social escort provider. He could not foresee any problems with such an imposition.

Recommendation 3

That legislation be amended to prohibit advertisements for social escorts larger in size than the maximum size currently prescribed for licensed brothels.

Words 'non-sexual'

The second restriction on social escort advertising that we recommend relates to the wording. The current problem is that advertisements for escorts are represented to publishers as 'social' escorts, but potential clients of the sex industry clearly understand them to be for sexual services. We believe that organisations or individuals who claim to provide social companionship only, and thereby avoid the requirements applicable to prostitution advertisements, have an obligation to make the nature of their service clear to the readership. To this end, we recommend that these advertisements display prominently the words 'non-sexual' or 'sexual services are not provided'.

Recommendation 4

That legislation be amended to prohibit any advertisements for social escorts that do not contain the words 'non-sexual' or 'sexual services are not provided', displayed prominently in the advertisement.

Applicability to Queensland

Any regulation of social escort advertising must be applicable throughout Queensland. Accordingly, we consider that any restrictions must apply to any publication that has a circulation in Queensland (whether or not it is published in

Queensland) and to any advertisement that offers escort services in Queensland (whether or not the business is based in Queensland).

Recommendation 5

That the restrictions on social escort advertising be made applicable to any publication that has a circulation in Queensland (whether or not it is published in Queensland) and to any advertisement that offers escort services in Queensland (whether or not the business is based in Queensland).

Person carrying on business liable

During the escort inquiry, the QPS emphasised the difficulty of linking individual sex workers to the owners or organisers of an illegal prostitution business. In view of this, we consider it necessary to enact a provision that makes the person carrying on the illegal prostitution business liable for the publication of any advertisement that infringes the restrictions we propose. In its response to the interim position paper, the QPS agreed that such a provision would make prosecution for unlawful advertisements easier.

Recommendation 6

That legislation be amended to provide that, where an advertisement for social escort services has been published for or relating to a business, the person who was carrying on the business at the time the advertisement was published shall be taken to have published the advertisement unless the court is satisfied to the contrary.

Internet

Under section 92 of the Prostitution Act, 'publish' an advertisement means 'publish, or cause to be published, in any way including by newspaper, periodical, notice, sign or circular or through radio or television or by film or video recording'. If the restrictions on social escort advertising are adopted, the legislation will need to ensure that a similar definition of 'publish' applies, so that restrictions apply also to publishing on the internet (e.g. websites advertising escorts). While the CMC recognises that there are no jurisdictional limits on the internet, enforcement of the policy would be no more difficult than enforcing the current internet policies for prostitution.

Penalty

We consider that any penalty for breaching the restrictions on social escort advertising needs to be sufficiently high to deter illegal prostitution providers. Accordingly, we consider it appropriate to impose a penalty that is tied to the cost of placing the offending advertisement — for example, a maximum penalty of ten times the cost of placing the advertisement. This means that an illegal prostitution provider who places a \$40 000 advertisement in the Yellow Pages could be liable for a fine of up to \$400 000. In this way, the cost of the fine would not be seen as a 'business expense' that the illegal prostitution provider simply pays, and then continues running the business. On the other hand, an individual placing an advertisement for \$40 would be liable for a maximum fine of only \$400. In the case of offending websites, the penalty could be tied to the commercial cost of establishing the website.

Section 93 of the Prostitution Act contains offences relating to advertising for prostitution. We believe there should be parity of penalty between the social escort advertising offence and section 93 of the Prostitution Act. The *Prostitution Amendment Act 2006* amends section 93 of the Prostitution Act to increase the

maximum penalty from 40 penalty units (\$3000) to 70 penalty units (\$5250). We believe the Queensland Government should consider amending section 93 so that the penalty is tied to the cost of placing the offending advertisement.

Recommendation 7

That the penalty for breaching the restrictions on social escort advertising be tied to the cost of placing the advertisement: for example, a maximum penalty of 10 times the cost of placing the advertisement, or 10 times the commercial cost of establishing the website, as the case may be.

Recommendation 8

That the Queensland Government consider tying the penalty for breach of section 93 of the *Prostitution Act 1999* to the cost of placing the advertisement (e.g. a maximum penalty of 10 times the cost of placing the advertisement, or 10 times the commercial cost of establishing the website, as the case may be) so that there is parity of penalty with the provisions on social escort advertising.

Obligation to clearly inform

To complement the provisions regulating advertising of social escorts, we also recommend a legislative provision requiring social escort providers to clearly inform prospective clients that sexual services are not provided. The provision should ensure that social escort providers are placed under an obligation to explain to prospective (and existing) clients who contact the social escort provider (e.g. by telephone) that sexual services are not provided.

The majority of stakeholders who responded to the interim position paper were in favour of imposing this obligation. For example, Sole operator no.1, another sole operator and the Family Council of Queensland all strongly supported it in their responses to the interim position paper.

JAG did not support the proposal. However, that appeared to be because the interim position paper did not adequately explain what impact the proposed obligation would have on illegal prostitution:

With respect to the option to place a positive obligation on social escort providers to inform prospective clients that prostitution services are not provided, it is noted that the Commission states that such an obligation would facilitate police enforcement on illegal prostitution providers. Given that the failure to make such a statement is not evidence that the person is providing prostitution, it is unclear how this will assist in the detection of unlawful prostitution. My Department therefore does not support imposing a positive obligation as suggested. (JAG submission on interim position paper, p. 1)

We believe that requiring social escort providers to identify themselves as such, by informing prospective clients that sexual services are not provided, will assist in police enforcement on illegal prostitution providers. The police will be able to identify those who are presenting themselves as legitimate social escort providers by complying with the rules, and those who are not. This may assist the police in deciding at whom to direct further investigation. The QPS, in our discussions with them, agreed this would be a useful strategy.

Another major reason for the proposal, not identified by JAG, is to reduce the attractiveness of advertising illegal prostitution as 'social' escort services. If the only way of running an 'escorts' business is to place small, non-provocative advertisements, and to inform all prospective clients that sexual services are not provided, it is hoped that prospective prostitution clients will not be attracted to the

illegal prostitution providers but will instead be attracted to legal licensed brothels and sole operators.

If illegal prostitution providers cannot attract clientele by advertising 'escorts', they will have to find another way to advertise their illegal prostitution. As explained below, the next step is then to find a mechanism that will prevent them from finding a new way. Our aim is to ensure, to the best extent possible, that the only advertisements for prostitution in Queensland are by licensed brothels or sole operators.

The obligation to clearly inform will have no impact on the activities of legitimate social escort providers. As far as we understand, legitimate social escort providers habitually inform prospective clients that sexual services are not provided. In fact, they are forced to do so because of a wide understanding among those who participate in the sex industry that 'escort' may equate to sexual services.

As the imposition of the positive obligation is complementary to the advertising restrictions, we believe that a legislative provision imposing the obligation could also be inserted in Part 5, Division 4 of the Prostitution Act. Any penalty should have parity with the penalty for breach of section 93 of the Prostitution Act (i.e. advertising for prostitution).

Recommendation 9

That legislation be amended to impose an obligation on social escort providers to clearly inform prospective clients who contact the social escort provider (e.g. by telephone) that prostitution services are not provided.

Employing or contracting minors

Currently, there is no law in any jurisdiction of Australia to prevent people under the age of 18 years from providing social escort services. We believe there should be a prohibition on employing or contracting a person under the age of 18 years for the purpose of providing social escort services.

The *Child Employment Act 2006*, which came into operation on 1 July 2006, prohibits an employer from requiring a child to perform work prescribed under a regulation under the Act. We strongly recommend that social escort services be prescribed under a regulation under the Act. Social companionship may operate as a precursor to participation in the sex industry, and we consider that the Child Employment Act should be used to guard against this possibility. The only legitimate social escort provider with whom we had contact throughout the escorts inquiry strongly agreed with this recommendation.

Recommendation 10

That the regulations to the *Child Employment Act 2006* prohibit the employment of minors as social escorts.

Where legislative changes could occur

The legislation we recommend in this section of the report to regulate the advertising of social escort providers could clearly be inserted into the Prostitution Act. As its main purpose is to differentiate such advertising from advertising of prostitution services, there would be some logic in including it in that Act. Effectively, it would be policed by the Prostitution Enforcement Task Force (PETF).

However, legitimate social escort providers could well object to having any regulation of their activities included in the Prostitution Act. Normally, such

regulation would come under the administration of the Department of Tourism, Fair Trading and Wine Industry Development.

It will be a matter for government to decide on an appropriate vehicle for our suggested changes.

TIGHTENING THE EXISTING PLA PROSTITUTION ADVERTISING POLICIES

The PLA is currently responsible for the regulation of prostitution advertising. Section 93 of the Prostitution Act specifies the requirements for prostitution advertising. An advertisement for prostitution must not:

- describe the services offered
- be published if it is not in the approved form
- be published through radio or television or by film or video recording.

The 'approved form' is the form consented to by the PLA. Currently, the PLA has a licensed brothel advertising policy and a sole operator advertising policy, which set out the general requirements for prostitution advertising. However, every advertisement for prostitution must be individually approved by the PLA.

The government has recognised the PLA's difficulties in having to respond to every advertising request, as well as the delays experienced by licensees and sole operators in this process, and has sought to introduce a new system via the *Prostitution Amendment Act 2006*, which received assent on 11 August 2006. This Act gives the PLA authority to issue guidelines about the approved forms for advertisements, and enables the Governor in Council to make regulations about advertising by individual prostitutes. The government proposes that the guidelines and regulation be detailed enough to make it unnecessary for prostitution providers to seek PLA approval for each individual advertisement.

The government's aim of removing the need to seek PLA approval for every advertisement accords with the Commission's suggestion in this regard in the interim position paper (CMC 2005b). As the interim position paper pointed out, however, it must be reiterated why the PLA currently requires individual approval of every advertisement. Essentially, the PLA is unwilling to set down strict guidelines for all advertisements of prostitution because it believes that licensed brothels and sole operators need flexibility and creativity in order to compete with the illegal prostitution providers, whose advertising is not regulated in any way. Our recommendations in this report for controlling the illegal industry should decrease competition from the illegal industry and remove much of the rationale for devoting so many resources to the advertising approval process.

To operate in tandem with the government's proposed new guidelines and regulation, we recommend two other key reforms aimed at regulating prostitution advertising in a more efficient way:

- amendments to the Prostitution Act to cover all advertisements for prostitution, however described
- certain matters to be included in the guidelines and regulation for advertising.

Amendments to Prostitution Act

As pointed out in the introduction to this chapter, the illegal prostitution industry is adept at finding new ways of advertising prostitution. It can be advertised as almost anything, as long as participants in the prostitution industry (including potential clients) understand its intended meaning.

We have considered a number of different options for addressing the changing nature of prostitution advertising. Our aim is to ensure that the only advertisements for prostitution in Queensland are by licensed brothels and sole operators. The interim position paper proposed a deeming provision, which attempted to label any advertisement to see someone face-to-face as an advertisement for prostitution, if this was how it was understood by the reader. However, this proposal was not popular with stakeholders, who feared that it could catch people engaged in lawful activity.

We now consider that the aim of the deeming provision could be achieved by amendments to section 93 of the Prostitution Act. Section 93(2) provides:

A person must not publish an advertisement for prostitution that is not in the approved form.

To ensure that this section catches all advertisements for prostitution, whatever the term currently being employed in advertisements to describe it, we suggest an amendment to the following effect:

A person must not publish an advertisement for prostitution, however described, that is not in the approved form.

It will then be up to the prosecution to prove that a particular advertisement is an 'advertisement for prostitution'.

We suggest that section 93 be further amended to direct the court to relevant evidence of whether an advertisement is for prostitution. For example, the PLA's proposed new power to issue guidelines under clause 33 of the Prostitution Amendment Act could be extended to enable the PLA to issue guidelines about what is considered to be an 'advertisement for prostitution'. If the illegal industry ceases to advertise prostitution as 'escorts' and starts to advertise prostitution as 'skin shops', for example, the PLA could issue a guideline that advertisements in this format are considered to be advertisements for prostitution.

Section 93 could then provide that, in determining whether an advertisement is an 'advertisement for prostitution' for the purpose of prosecuting an offence against section 93(2), the court should take into account a number of factors, for example:

- any guidelines on the matter issued by the PLA
- any knowledge of the guidelines by the person being prosecuted
- the reasonable understanding of participants in the sex industry.

The PLA and the police could use the guidelines issued by the PLA to support policing and prosecution. For example, they might choose to provide the guidelines to people advertising in a particular way, and give them a chance to cease advertising, before commencing a prosecution for breach of section 93.

In any case, we recommend that the government consider amending section 93 to address the nature of prostitution advertising, which is characterised by metamorphosis of the term used to describe it. To abolish advertisements for 'escorts', or any other term that is thought up in the future to mean prostitution, there must be amendments to the Prostitution Act to make this happen.

Recommendation 11

That section 93 of the *Prostitution Act 1999* be amended to ensure that it covers all advertisements for prostitution, however prostitution is described in the advertisement.

Content of guidelines/regulation

The Queensland Government has indicated its intention to set out the 'approved form' for prostitution advertising in guidelines and a regulation. These guidelines and regulation are to be sufficiently detailed to make it unnecessary for licensed brothels and sole operators to seek PLA approval of each individual advertisement.

We make recommendations about the contents of the 'approved form' for both licensed brothels and sole operators below.

Advertising by licensed brothels

In the interim position paper (CMC 2005b), we made four suggestions for the approved form of advertising by licensed brothels:

- Consider requiring the inclusion of a licence number in the advertisement.
- Consider requiring the word 'legal' to be used.
- Prohibit any reference to race or ethnic origin.
- Develop clear guidelines on what line drawings, pencil renderings and photographs are not likely to offend the general public.

Licence number

We believe that the PLA should make the final decision on whether advertisements by licensed brothels should include the licence number of the brothel. The (currently) small number of licensed brothels may make such a requirement unnecessary; the PLA may be able to monitor the advertisements effectively without referring to a licence number. Also, newspaper publishers informed us during consultations that checking licence numbers on advertisements would result in higher advertising costs for licensed brothels.

Recommendation 12

That the Prostitution Licensing Authority make the final decision on whether advertisements by licensed brothels should include the brothel's licence number.

The word 'legal'

We also believe that the PLA should make the final decision on whether advertisements by licensed brothels should include the word 'legal'. The advantage of such a requirement is that it may assist in informing the public of what forms of prostitution are legal in Queensland.

Recommendation 13

That the Prostitution Licensing Authority make the final decision on whether advertisements by licensed brothels should include the word 'legal'.

Reference to race or ethnic origin

We no longer consider it necessary to prohibit any reference to race or ethnic origin in advertisements by licensed brothels. Sole operators argued strongly against such a requirement for sole operator advertisements (see below) and we believe the same arguments apply to licensed brothels. We therefore make no recommendation in this regard.

Line drawings, photographs etc.

We continue to recommend that any guidelines or regulation concerning advertising for licensed brothels contain detailed rules on what line drawings, pencil renderings and photographs are not likely to offend the general public. Licensed brothels need to be able to apply these rules without seeking PLA approval for each individual advertisement. Consultations with the PLA during the escort inquiry indicated that the PLA, after examining thousands of advertisements, has the requisite experience to develop such rules.

Recommendation 14

That the guidelines/regulation for advertising by licensed brothels contain detailed rules on what line drawings, pencil renderings and photographs are not likely to offend the general public.

Advertising by sole operators

In the interim position paper (CMC 2005b), we made the following suggestions for the approved form of advertising by sole operators:

- Prohibit any reference to race or ethnic origin.
- Do not allow the use of a business name that may imply more than one worker is available.
- Consider requiring every advertisement for a sole operator to use an individual's name (usually a pseudonym).
- Consider a requirement that the PLA approve only one name per sole operator.
- Consider restricting the size of sole operator advertisements to two lines.
- Consider requiring sole operators to have a registration number for display advertisements (but not for smaller, 2–4 line advertisements).
- Do not keep a list of PLA 'approved words'.

Race or ethnic origin

In the interim position paper (CMC 2005b), we suggested that sole operators be prohibited from referring to race or ethnic origin in their advertisements. It was recognised that at least some illegal prostitution providers were advertising sex workers of a particular race or ethnic origin, and that some illegal prostitution providers were masquerading as sole operators. It was hoped that prohibiting any reference to race or ethnic origin in advertisements by sole operators would inhibit the activities of these illegal prostitution providers.

However, in response to the interim position paper, SSPAN and a sole operator mounted strong arguments against the proposed prohibition, arguing that the negative impact on sole operators would be too great. SSPAN argued that clients want to be able to locate a 'type' without ringing dozens of advertisements, and that if sole operators cannot advertise their race or ethnic origin they will have to field onerous telephone calls to 'explain whether they are white/black/multi-coloured or orange'. Further, if sole operators could not inform potential clients of their skin colour they might be exposed to potentially dangerous situations by racist clients.

The sole operator explained the importance of race or ethnicity in the ability of sole operators to market themselves effectively:

Clients have a right to their own tastes and being able to find a matching operator, and operators should have the right to describe themselves such that their time isn't spent fruitlessly trying to engage clients (and perhaps copping verbal abuse) with specific tastes. What is the difference between describing

breast or body size, to your cultural background? Operators should be given the opportunity to market themselves accurately and effectively. (Sole operator no. 1, submission on interim position paper, p. 1)

SSPAN also emphasised how easily the proposed measure could be circumvented by the use of foreign-sounding names that connote ethnicity:

e.g. 'Suki' (read Japanese), 'Natascha' (read Russian), 'Ling' (read Chinese), 'Bella' (read Italian), etc. (SSPAN submission on interim position paper, p. 6)

For these reasons, we no longer recommend that sole operators be prohibited from advertising their race or ethnic origin.

Business name implying more than one worker

We consider it essential that the approved form for advertising by sole operators prohibit the use of a business name implying that more than one sex worker is available. The idea is to limit the extent to which illegal prostitution providers can benefit by masquerading as sole operators. Advertisements for sole operators should not, for example, be able to advertise a business name such as 'Charlie's Angels' or 'Brisbane's Best Ladies'.

Recommendation 15

That the approved form of advertising by sole operators prohibit the use in any advertisement of any business name implying that more than one sex worker is available.

Individual name

We believe it is fundamental that advertisements by sole operators are clearly identifiable as such by those who read them. To achieve this aim, we propose that any advertisement by a sole operator be restricted to a format that includes an individual's name, description of the sole operator, location, business hours and contact telephone number of the sole operator only. An example of a typical sole operator advertisement would be as follows:

Adorable Cute Britney size 8 sexy blonde Spring Hill after 5pm
0415 XXX XXX

If sole operator advertisements are restricted to this format, it is much more difficult for illegal prostitution providers to masquerade as sole operators. An illegal prostitution provider may place many separate advertisements for individual sex workers, but there will be nothing in the nature of these advertisements that indicates to the reader that they have been placed by an agency, and that more than one sex worker may be available by contacting the telephone number advertised. An illegal agency would not be able to place the types of advertisements that they are currently placing, such as 'Asian Babes', which clearly indicate to the reader that more than one sex worker is available. In this way, the competitive advantage currently held by the illegal prostitution providers will be diminished.

Recommendation 16

That the approved form of advertising by sole operators require the use of an individual's name (usually a pseudonym), and permit only the description of the sole operator, location, business hours and contact telephone number of the sole operator.

One name per sole operator

In the interim position paper (CMC 2005b), and before the introduction of the Prostitution Amendment Act, we raised the possibility that the PLA might approve only one advertising name for each sole operator. The PLA currently approves multiple advertisements for sole operators, using different pseudonyms and multiple telephone numbers, to allow broader exposure for workers. It was suggested at the public hearing that this made it more difficult for police to differentiate between legitimate sole operators and illegal escort agencies.

With the introduction of the Prostitution Amendment Act, and removal of the requirement to have every individual advertisement approved by the PLA, it is now difficult to make a recommendation to this effect.

In any case, given the other restrictions on sole operator advertising that we propose, we no longer believe it is necessary to restrict sole operators to one advertising name. SSPAN neatly summarised the arguments for rejecting this restriction:

The recommendation that the: 'PLA only approve one name for each sole operator' was originally proposed by QABA (Transcript, p. 180) and reflects their desire to squash all competition through increased restrictions which impact on sole operators. This offers an unfair advantage to licensed brothels and their workers who may have fluid identities which can be changed at will ... Again, this proposal does not take into account the realities of the business. Some sole operators have two or more different target groups and advertise accordingly. Why should legal workers have their trade potential blocked in this way? Identity change is also a safety mechanism. You often need to reinvent yourself: sometimes it is essential for safety. If something bad happens and a worker needs to 'disappear', perhaps a regular client becomes aggressive/stalking then the turnaround time is prohibitive. The delay in having the new name 'processed' would cost sole operators income in the meantime. SSPAN also believes that this measure would not aid in the policing of illegal escort agencies. At the CMC hearing into escorts (September 14, 2005) the QPS representative, Detective Superintendent Gayle Hogan, highlighted that it would be unlikely that a restriction on plural names would enable them to more effectively pursue illegal operators, saying 'it would still be a challenge to do it whether there's one or six' (Transcript, p. 181). Essentially it is impossible to differentiate between sole providers and agencies without a phone tap. (SSPAN submission on Interim position paper, p. 6)

Essentially, it will be a business decision for the sole operator whether to use one advertising name or six. As long as sole operator advertisements are restricted to the format described in the previous recommendation, illegal prostitution providers will not be able to gain a competitive advantage over licensed brothels and legitimate sole operators by masquerading as sole operators.

As Detective Superintendent Gayle Hogan admitted at the public hearing, whether a legitimate sole operator has advertised by one name or six names will not make a difference to the detection of illegal prostitution providers. This view was affirmed by Sole operator no. 1:

We don't believe it would be difficult to monitor a Lady with several different names as being a Sole Operator – she would have nothing to hide. When Law Enforcement or the PLA are making inquiries into a Lady — simply ask her if she advertises any other names and numbers. If she hesitates — look further into her. If she is upfront — less legwork for Authorities. (Sole operator no. 1, submission on interim position paper, p. 3)

It is now our view that the approved form of advertising by sole operators should not restrict sole operators to the use of one advertising name only.

Restricting size to two lines

In the interim position paper (CMC 2005b), and before the introduction of the Prostitution Amendment Act, we suggested that restricting sole operator advertisements to two lines might be one option for consideration. (This suggestion arose during the public hearing.) The rationale was to inhibit illegal prostitution providers who were masquerading as sole operators. At the very least, if illegal agencies advertised as sole operators they would only be able to place two-line advertisements and not large pictorial advertisements.

SSPAN and another sole operator were against the suggestion. For example, SSPAN said:

To restrict sole operators to two-line advertisements is placing an unfair restriction on their ability to trade. Sole operators will suffer whilst brothels get larger advertisements. It makes it very difficult for 'touring' workers and may discriminate between out-of-state residents. There is no real link between size of advertisement and illegal status and even if there were the provision would ultimately prove ineffective; clients will continue to call the two-line ads and sometimes find themselves chatting with an agency. (SSPAN submission on interim position paper, p. 7)

Sole operator no. 1 conceded that four lines would be sufficient to describe self, location, business hours and contact telephone number. However, another sole operator argued that limiting sole operators to two-line advertisements would seriously hinder their ability to make an adequate income, because clients naturally phone the numbers in the large advertisements first.

An examination of various print publications shows that most advertisements by sole operators are from two to four lines in size, though there are some larger advertisements by sole operators who are well established in the business. Sole operator no. 1 explained that the cost of the larger advertisements was usually not worth the while of the sole operator; she personally tended to attract just as much business through the smaller advertisements.

Given the financial restrictions for most legitimate sole operators, we now believe that it is not necessary to restrict the size of sole operator advertisements to two lines. Even though it appears that most legitimate sole operators already use advertising of this size, there are some sole operators who have built up their businesses over a long period of time and can afford to place larger advertisements. They should not be prevented from continuing to do so. It is our view that the size restrictions applicable to sole operator advertising should be the same as those applicable to licensed brothel advertising.

Registration number for display advertisements

In the interim position paper (CMC 2005b), and before the introduction of the Prostitution Amendment Act, we suggested the possibility of requiring sole operators to have a registration number for placing larger display advertisements but not for shorter (2–4 lines) advertisements. This issue was discussed at the public hearing. It would give sole operators a choice: register with the PLA and be entitled to place display advertisements, or choose not to register and still be able to place two-line advertisements.

This was the proposal in the interim position paper that drew the most vehement response from the stakeholders. SSPAN, Scarlet Alliance, all of the sole operators, and the PLA strongly opposed the suggestion. QABA was the only stakeholder in support of the suggestion.

Given our earlier recommendations for restricting the content of sole operator advertisements, we no longer consider it necessary to introduce a registration system to allow sole operators to place larger-scale display advertisements. As long as sole operator advertisements are restricted in the way described, we believe that advertising by illegal prostitution providers will be inhibited to the extent possible.

We have also previously made it very clear that we do not support the registration of sex workers per se (see CMC 2004a, pp. 51, 66, 109 and 118).

No 'approved words'

The current sole operator advertising policy issued by the PLA contains a list of 'approved words' that sole operators are permitted to use in their advertisements. The PLA currently spends a great deal of time updating the list of approved words, and individually checks every advertisement sought to be placed by a sole operator to make sure that it does not offend against the list of approved words or any other aspect of the current PLA sole operator advertising policy.

The requirement of individual approval of every advertisement creates a tremendous workload for the PLA. The Chairperson of the PLA explained at the public hearing that the PLA has close to 7000 advertising files in its office, and the registrar spends about 50 per cent of her time on advertising approval (Day 2 transcript, p.172). The registrar said that in August alone the PLA received over 1000 advertisements for advertising approval (Day 2 transcript, p. 173).

The requirement of individual approval of every advertisement also creates difficulties for the licensed brothels and sole operators. As explained by a member of SSPAN at the public hearing, this is especially the case when sole operators want to change only minor aspects of their standard advertisement:

Our members have a lot of problems with advertising when they have to change their ad for any reason. For example, if people are moving about, they're going to a particular area, they might only be staying for a week, and they might need to just change the date, for example, that their services will be available for, and every time they change some part of their ad ... they have to seek PLA approval again to change small parts of the ad that aren't really relevant to whether or not they're describing sexual services. (Day 2 transcript, p. 178)

Similarly, Sole operator no. 1 highlighted that the need to seek approval of every advertisement can damage the business of a sole operator:

Over December 2005 and January 2006, [advertisements] went unapproved due to multiple staff members of the PLA taking a holiday break. There was a gap of approx. three weeks where ads went unapproved and this in turn inhibited trade of sole operators who had ads waiting for approval. Some ladies were new to the internet and did not begin trade until their ad was approved in January. This resulted in a loss of income for these business owners. (Sole operator no. 1, submission on interim position paper, p. 2)

As stated previously, the *Prostitution Amendment Act 2006* seeks to make it unnecessary for prostitution providers to seek PLA approval for each individual advertisement. Instead, they must simply comply with the guidelines or regulation. If they do not, the Prostitution Amendment Act raises the penalty for noncompliance from 40 penalty units (\$3000) to 70 penalty units (\$5500).

We were told by newspaper publishers, during consultations, that the editorial guidelines voluntarily imposed by the newspapers are stricter than the PLA list of approved words. They explained that their readership demands a certain standard, and when the adult services column appears in close proximity to other columns

such as ‘births’ or ‘pets’ — which may be read by children, or by adults not interested in adult services — complaints from the readership are not uncommon. Perusal of the adult services classifieds in most general print publications, such as newspapers, shows that the wording used in the advertisements is relatively tame. The wording used in adult publications is more extreme, but this is to be expected, in view of the different audience.

Given the ability of the publishers to self-regulate the wording of prostitution advertising, we believe that any new guidelines or regulation concerning prostitution advertising should not contain a list of approved words that the PLA has to administer. The work of the PLA has set appropriate standards for the wording of the advertisements and, as long as the form of the advertisements is regulated in the way recommended above, we are confident that publishers can be relied on to permit wording that is acceptable to their particular readership. We believe this recommendation alone has the potential to substantially reduce the PLA’s advertising workload, and thus allow this body to play a greater role in monitoring advertising.

Recommendation 17

That any guidelines or regulation for prostitution advertising set broad parameters to guide advertisers rather than relying on the current specific approach, which uses a list of approved words.

IMPROVING ENFORCEMENT MEASURES

As indicated in Chapter 3, effective regulation of the prostitution industry requires an improvement in enforcement measures. The QPS was quite candid throughout the escorts inquiry about its limited ability to effectively address illegal prostitution. At the same time, the licensed brothels and sole operators were critical of a regulatory system that apparently allows the illegal industry to operate with impunity. Suggestions were made throughout the inquiry as to ways in which enforcement measures could be improved. In this section, we recommend two important measures:

- create ‘carrying on business’ offences
- enable the disabling of telephone numbers.

‘Carrying on business’ offences

The prostitution offences currently included in the Criminal Code focus on illegal brothels, i.e. actual places or premises. The offences are:

- found in a place reasonably suspected of being used for prostitution by two or more prostitutes (s. 229I)
- having an interest in premises used for the purposes of prostitution by two or more prostitutes (s. 229K).

These offences are not, of course, applicable to licensed brothels.

The Criminal Code also has provisions that enable these offences to be more easily prosecuted:

- Section 229J enables a person charged with the section 229I (found in place) offence to obtain a certificate of discharge in return for giving evidence about the commission by any other person of an offence against the code in relation to the premises.

- Section 229N enables the fact that a place is being used for the purposes of prostitution to be inferred from ‘evidence of the condition of the place, material found at the place and other relevant factors and circumstances’.

The problem is that these offences may not cover illegal escort agencies that provide prostitution services, because there may not be a place or premises being used for the purposes of prostitution by two or more prostitutes. Accordingly, we recommend that new offences be created that use the ‘illegal premises’ model described above, but apply to ‘carrying on a business’.

The primary offence would be constituted by a person carrying on a business, such as an ‘escort agency’, that enabled prostitution to be provided by two or more prostitutes. Offences would also be committed by clients and workers of illegal prostitution enterprises, but they would be able to obtain certificates of discharge in return for evidence that could be used against the person running the illegal prostitution enterprise. Again, the proposed offences would not be applicable to licensed brothels.

In its response to the interim position paper (CMC 2005b), the QPS strongly supported the creation of ‘carrying on business’ offences. The QPS explained that illegal outcall service providers often rent premises that are used as both an office and a call centre. However, these premises are not used by clients to engage in sexual intercourse, therefore it is almost impossible to prosecute these illegal providers under section 229K of the Criminal Code. Further, while the QPS acknowledges that offences under sections 229G (procuring prostitution) and 229H (knowingly participating in provision of prostitution) are easier to prove than the section 229K offence, it is extremely resource-intensive to gather evidence to prove these offences because sexual intercourse is not taking place at the premises. The QPS agreed that creating a new offence of carrying on the business of providing unlawful prostitution is an option. As the QPS argues:

Similar offences exist under the *Weapons Act 1990* for trafficking in weapons, and the *Drugs Misuse Act 1986* for trafficking in dangerous drugs. Such an offence would allow police to gather evidence over a period of time, and lay a single charge, as opposed to multiple charges, for example, under s. 229K [Criminal Code]. Evidence of a multitude of matters, such as employment of persons, business records, phone records, advertisements, and the like would be admissible in proving such a crime. Should a carrying on business offence be created, it is likely to act as a disincentive to persons considering providing illegal outcall services or operating illegal brothels. (QPS submission on interim position paper, pp. 2–3)

JAG, on the other hand, was not convinced that the ‘carrying on business’ offence was necessary:

It is not clear why other existing offences cannot be used to prosecute illegal escort agencies, for example, s. 229H covers participating in the provision of prostitution by another person, franchising a network of prostitutes as if they were operating independently, and receiving or directing telephone calls or taking bookings. (JAG submission on interim position paper, p. 3)

We would like to reiterate the arguments already made as to why the section 229H offence is not adequate. Section 229H requires the police to gather evidence that prostitution is actually occurring. This means that police officers must have contact with individual sex workers to gather evidence that sexual services rather than social companionship are being offered. Even if this aspect of the offence is proven, the police must then obtain evidence of who is ‘participating’ in the

provision of prostitution. The QPS must bring a separate charge for each separate incident of ‘participating’. Section 229H carries a relatively low penalty and is equally applicable to the defendant who knowingly drives her sex worker friend to her next appointment as to the defendant who is carrying on a lucrative illegal escort agency.

On the other hand, as argued by the QPS, the ‘carrying on business’ offence would be easier to prove, would enable the QPS to gather evidence over a period of time, and would enable the QPS to lay a single charge to specifically target an individual or individuals carrying on a large illegal operation.

Any new ‘carrying on business’ offence would need to be nominated a serious crime for the purposes of the *Criminal Proceeds Confiscation Act 2002* in order for it to be covered by that Act. This would be consistent with the nomination of the current prostitution offences as serious crimes.

Recommendation 18

That a ‘carrying on business’ offence (not applicable to licensed brothels) be created to the effect that a person who has an interest in a business that enables prostitution to be provided by two or more prostitutes commits a crime.

Recommendation 19

That an offence be created to the effect that clients and workers of illegal prostitution enterprises also commit an offence, but that they may obtain a certificate of discharge, similar to the certificate of discharge in section 229J of the Criminal Code, in return for evidence that can be used against the person or persons carrying on the business of an illegal prostitution enterprise.

Recommendation 20

That a provision be enacted, similar to the section 229N provision of the Criminal Code, enabling the fact that a business (which enables prostitution to be provided by two or more prostitutes) is being carried on to be inferred from particular evidence such as employment records, business records, telephone records, advertisements and the like.

Recommendation 21

That the ‘carrying on business’ offence be nominated as a serious crime for the purposes of the *Criminal Proceeds Confiscation Act 2002*, thus enabling the assets of illegal prostitution providers to be confiscated.

Disabling telephone numbers

We believe that an effective means of attacking illegal prostitution providers might be to disable any telephone number they have advertised for their illegal business. We have been told of illegal prostitution providers who have placed full-page advertisements in the Yellow Pages and have been convicted of prostitution offences, but then simply pay the fine and continue running their business, using the same advertised telephone number. Disabling the telephone number appearing in the advertisements would deal a significant blow to the illegal prostitution provider.

In response to the interim position paper (CMC 2005b), most of the stakeholders agreed that disabling the telephone number advertised by an illegal prostitution

provider who had invested considerable amounts in advertising would have a significant impact on the illegal business. The QPS was confident that the *Telecommunications Act 1997* could be used to effect the disabling:

Section 313 of the *Telecommunications Act 1997* (Cwlth) provides that a carrier, or carriage service provider, must do its best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of Commonwealth and State offences. The disabling of telephone numbers would affect illegal operators financially due to the cost of the original advertisement, the need to re-advertise and the expected loss of business. Yearly advertisements in the 'Yellow Pages', depending on their size and content, can cost many thousands of dollars and provide a long term platform for illegal services.

The decision to disable a telephone number is an administrative one. The standard of proof is much less than the criminal standard. For example, the release of police intelligence information, in affidavit format, to the telecommunications service provider, detailing the reasons police believe a number is being used for a criminal purpose, would be sufficient grounds for the number to be disabled. There is no need for a conviction to be entered against an individual for such an application to be made. Where a telephone number is disabled under s. 313, the person or corporation affected, may apply to the Australian Communications and Media Authority (ACMA) to investigate the carrier's decision. A further application can be made in the form of an administrative review regarding any decision of ACMA. (QPS submission on interim position paper, p. 3)

It appeared to us that the QPS's view of the Telecommunications Act was correct. So we contacted four major telecommunications carriers and were told that it might be possible to develop protocols to facilitate the disabling of telephone numbers to prevent the commission of offences. However, there are some legalities involved that require further consideration. In addition, in developing the protocols, the carriers may require an indemnity for any potential liability they may incur.

Two stakeholders, SSPAN and JAG, were concerned that telephone numbers should only be disabled after a person had been convicted of an offence.

We believe the QPS should pursue the use of section 313 of the Telecommunications Act to disable telephone numbers in appropriate circumstances.

Recommendation 22

That the Queensland Police Service develop appropriate protocols with the telecommunications carriers and the Australian Communications and Media Authority to disable telephone numbers advertised by illegal prostitution providers in accordance with section 313 of the *Telecommunications Act 1997* (Cwlth).

IMPROVING THE SAFETY OF SOLE OPERATORS

The escort inquiry highlighted the necessity of taking steps to improve the safety of sole operators. In Queensland, sole operators are not permitted to work together and, according to the Criminal Code, the only person who may accompany them on outcalls is a licensed security provider. Sole operators argue that there is uncertainty about whether telling another person where they are attending an outcall, and when they will be back, means that the other person commits the offence of knowingly participating in the provision of prostitution.

In the interim position paper (CMC 2005b), we put forward two options for improving the safety of sole operators:

- Allow actions necessary to ensure the safety of the sole operator.
- Allow the sole operator to have one employee who acts as a receptionist and/or a driver.

The first option was designed to cover only limited actions with the aim of protecting the safety of the sole operator, which could include:

- telling someone where they were going and when they would be back
- remaining in telephone contact with someone while they were providing the services (so that help may be called if the safety of the worker was threatened)
- disseminating information about dangerous clients.

The second option was to allow sole operators to employ one person who could act as a receptionist and/or a driver. No special qualifications such as a security provider's licence were to be required of the receptionist or driver.

We suggested that neither the 'safety contact' allowed by the first option nor the receptionist/driver allowed by the second option be permitted to be a sex worker themselves. We also suggested that the receptionist/driver be permitted to work for one sole operator only. The objective of these limitations was to inhibit illegal prostitution providers from conducting their business by posing as sole operators.

In response to the interim position paper, the stakeholders were in agreement that the safety of sole operators was an issue that required attention. For example, SSPAN said:

SSPAN is delighted that the Chairman of the CMC has recognised that necessary changes must be made to allow for the safety of sole operators. This finally recognises the basic civil right of sole operators to a safe working environment. These changes would also encourage more sex workers, who for safety reasons currently work in co-operation with others, to become more compliant. (SSPAN submission on interim position paper, p. 9)

These sentiments were reiterated by the QPS:

The explanatory notes to the Prostitution Bill 1999 (Qld), clearly recognise 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. (QPS submission on interim position paper, p. 3)

As to whether the first or second option was preferable, all stakeholders agreed that sole operators should be permitted to have a 'safety contact'. Indeed, the QPS asserted that already 'there is no legislation preventing a sole operator from telling someone where they are going and when they will be back'. However, the complexities of the legislation, the broad range of activities that it could potentially cover, and the need to clarify the law in this regard, are revealed by the submission of a sole operator:

The report suggests that sole operators could tell someone where they are going, what time they will be back and remain in telephone contact. This is nothing new; it is already possible and many contractors adopt this practice. I have been advised by Queensland Police that it is lawful and acceptable as a safety precaution, as long as the contact person is not paid for the service ... There has been a lot of scare mongering in the last year or so regarding Police busting girls for this practice. I ... looked into the cases to find that the contact persons were suspected of receiving payment for their services. Even when they were not receiving payment ... rather than fight the case which would have cost them financially and emotionally and threatened to expose them, they accepted the charges and paid the fine to make the problem go away. (Sole operator no. 1, submission on interim position paper, p. 7)

The stakeholders were more divided on the second option of whether sole operators should be permitted to have a receptionist or driver. As might be expected, SSPAN and Sole operator no. 1 were in favour of the option. Sole operator no. 1 said:

The ... safer option is to be able to employ a receptionist and/or driver ... in-call sole operators find having a receptionist a very attractive proposition — it will help to alleviate the isolation factor of being a sole operator. It is quite daunting to work alone in a house or apartment. Having an employee on the premises would also be a deterrent for any clients with any planned ill-intent towards the sex worker and in the case of unplanned physical violence — a person is readily available to render assistance to the sex worker and to call the police. (Sole operator no. 1, submission on interim position paper, p. 5)

QABA, the QPS and the PLA all objected to the proposal, but on different grounds. QABA argued that allowing sole operators to employ receptionists or drivers would assist the illegal industry:

The CMC seems to fail to recognise how the illegal industry masquerades as sole traders. The sanctioned use of receptionists by sole traders provides another level of protection for illegal operators to hide behind while making the policing of the illegal industry more difficult than it currently is. (QABA submission on interim position paper, p. 7)

We recognise the risks of making it easier for illegal operators to hide behind the 'sole operator' façade. However, we have tried to minimise these risks. The restrictions on advertising social escorts will prevent illegal prostitution providers from placing the full-page, provocative advertisements for 'escorts' that they are currently placing. The tightening of the sole operator advertising policy so that sole operator advertisements are restricted to a particular format will mean that illegal prostitution providers masquerading as sole operators will have no competitive edge over legitimate sole operators or licensed brothels. The 'carrying on business' offence will mean that the QPS will find it easier to prove offences against the illegal prostitution providers.

Given this package of recommendations, we believe that inhibition of the illegal industry is no longer a reason to deny sole operators the capacity to have one employee who acts as receptionist and/or driver. We believe illegal prostitution providers can be inhibited in other ways that are not damaging to legitimate sole operators.

The QPS argued that allowing a driver would in effect remove the requirement for a trained security provider:

There may be difficulties where a sole operator is allowed to use a driver, unless the driver is a licensed security provider. Section 229H(5) [Criminal Code] allows a sole operator to engage a security provider for protection purposes. It is possible a person working as a driver would be expected to provide protection for a sole operator in circumstances where it was required. As such, the hiring of a driver could be a means of avoiding the use of a trained security provider. (QPS submission on interim position paper, p. 4)

We agree that allowing sole operators to have a receptionist or driver would give sole operators a choice of whether they employed a receptionist, a driver or a trained security provider. However, we believe that it is the sole operator who is best placed to decide what is required for their particular business. If they perceive that the risks they encounter warrant it, they may decide to employ a trained security provider. Alternatively, the type of client they see, or their level of experience in the business, may lead them to employ only a receptionist or only a driver.

The PLA objected to sole operators being permitted to employ drivers, on the ground that ‘there is always the risk that the driver may direct “stand-over” tactics either at the sex worker or the client’. We recognise this is a possibility, but believe the risk is no greater than the current possibility that a licensed security provider might use the same tactics. Further, we believe that legalising the employment of drivers by sole operators will enable this problem to be more effectively dealt with. We have been told that some sole operators currently employ drivers, despite its illegality, because they believe it is necessary for their safety. However, if sole operators thus breaching the law then encounter ‘stand-over tactics’ or other violent behaviour from the driver, they feel unable to seek the assistance of the QPS because they are operating illegally. Allowing sole operators to employ drivers would give sole operators access to the full protection of the law if the fears of the PLA are realised.

Many of the stakeholders rejected our suggestion that the ‘safety contact’ and receptionist/driver should not be permitted to be a current sex worker themselves. One sole operator explained that it is natural for people to feel more comfortable and socialise with others in the same line of work. This is especially the case for sex workers ‘who are a pariah in our society and therefore extremely private about their job’ (Sole operator no. 1, submission on interim position paper).

SSPAN pointed out that sex workers sometimes have members of their family who are also sex workers, and it would be unreasonable to expect these sex workers not to use their family members for various safety functions or as a receptionist or driver. Both JAG and a sole operator were concerned that the prohibition would prevent ‘retired’ sex workers from seeking employment that might be particularly suited to them, and thereby close off a potential exit strategy for sex workers. Another sole operator pointed out that such a prohibition would lead to police scrutiny of the employees of sole operators, and this would constitute an invasion of privacy, as well as being a deterrent to employment.

We continue to believe that the receptionist/driver should not be a current sex worker. We have accepted, however, that a safety contact can be a former sex worker. Any other approach would too closely resemble an illegal brothel or escort agency. We are not proposing a ‘two sex workers’ model. As we said in *Regulating prostitution* (CMC 2004a), the current model of sole operators and licensed brothels is working well, and two sole operators can currently apply for a two-bed brothel licence if they wish to work together.

The changes recommended by us in this section can be simply implemented by amending section 229H of the Criminal Code. Section 229H(5) already allows an exception for licensed security providers. Similar exceptions should be created for ‘safety contacts’ and receptionists or drivers. Those who act beyond these exceptions may still be liable for prostitution offences.

Recommendation 23

That section 229H of the Criminal Code be amended to create an exception for:

- » **people who engage in actions necessary to ensure the safety of sole operators (e.g. being told where the sole operator is attending an outcall and when he or she will be back, remaining in telephone contact with a sole operator while they are attending an outcall, and disseminating information about dangerous clients), but only if they act for one sole operator, and only if they are not current sex workers themselves**
- » **people who act as receptionists or drivers for sole operators, but only if they act for one sole operator and only if they are not current sex workers themselves.**

SUMMARY OF CHAPTER 4

One of the most important issues raised throughout the inquiry by all stakeholders was the need to implement strategies against illegal outcall prostitution services in Queensland. These agencies appear to use various guises to attract clients, and this gives them a competitive edge over licensed brothels and negatively affects the businesses of sole operators.

In this chapter we have made a number of recommendations for a multi-pronged approach against illegal operators. We hope that, in turn, these recommendations will go some way towards overcoming some of the business and financial concerns currently being experienced by the legal industry.

We firmly believe that, to be effective, each component of this approach must be implemented simultaneously. Without implementation of the full package, it is unlikely that the desired changes will occur. Worse, damage may occur to the legal industry (licensed brothels and sole operators). Our aim is to create a more equitable situation for legal operators and decrease the attraction of working in Queensland for illegal operators.

The suite of recommendations made in this chapter falls into four sections:

Regulating escort providers to make it clear that they provide social and not sexual services

- The first strategy for regulating social escort providers involves a range of advertising limitations for social escort providers (such as the size of the ad, a requirement to use the term 'non-sexual' in the ad, the need for the regulation to be applicable throughout Queensland and to the internet), and an increase in penalties for advertising by illegal businesses.
- The second strategy requires social escort providers to clearly inform prospective clients that prostitution services are not provided.
- The third strategy ensures that minors are prohibited from employment as social escorts.

Tightening the existing advertising policies of the PLA

- To operate in tandem with the Queensland Government's proposed new guidelines and regulation of advertising for prostitution, we propose several amendments to legislation to enhance the likelihood that the only advertisements for prostitution in Queensland will be those submitted by licensed brothels and sole operators.

Improving police enforcement measures

- Two strategies are recommended for improving enforcement measures:
 - > the creation of a 'carrying on business' offence (as well as a certificate of discharge in return for evidence that can be used against the person running an illegal prostitution enterprise)
 - > the capacity to disable telephone numbers that have been used to advertise illegal prostitution businesses.

Improving the safety of sole operators

- The inquiry clearly demonstrated the need to improve safety for sole operators, and we have recommended that the Criminal Code be amended to:
 - > make it possible for sole operators to include safety contacts as exceptions for prosecution (in the same way as licensed security providers are currently exempt)
 - > enable sole operators to employ a receptionist or driver or security guard (providing this person does not work for another sole operator and is not a current sex worker).

In the previous chapter we highlighted the likely impact of our recommendations on the effectiveness of the Prostitution Act, specifically in relation to licensed brothels (see Table 3.2). For comparative purposes, Table 4.2 (facing page) summarises the likely impact of our recommendations on sole operators and illegal escort workers using the same framework (i.e. the guiding principles of the Prostitution Act). Even though such a framework is not defined by the Criminal Code, these principles clearly guided the government's decision to legalise some prostitution in this state, and can be a useful way of determining the effectiveness of current legislation (including the Criminal Code where it applies to prostitution) in a more holistic sense.

Although there will not be apparent benefits associated with all of the principles, potentially significant reductions in the risks currently posed to the safety of sole operators and illegal escort workers, and the impact more generally on organised crime, provide convincing arguments for implementation of the recommendations we have made in this chapter.

CONCLUSION

In conclusion, we are of the view that legalising outcall prostitution services from either licensed brothels or independent escort agencies would pose too many risks to the legal prostitution industry in Queensland and have a potentially detrimental impact on the Queensland community. In considering the issues raised in this report, we encourage the government to be guided by the same precautionary principle that we have adopted.

The escorts inquiry has, however, provided us with significant insight into ways in which the illegal industry might be damaged or, at the very least, discouraged from operating in our state. If these approaches are successful, additional benefits should flow on for the legal industry.

Table 4.2: Likely impact of the CMC’s recommendations (if implemented) on sole operators and illegal escort agency workers

Key issue*	Current status	Likely impact of proposed changes
Sole operators		
1 Ensure quality of life for communities	Operate in city-suburbs but negligible impact on community amenity.	No change
2 Safeguard against corruption and organised crime (including drugs, money laundering, sex trafficking, child prostitution)	<ul style="list-style-type: none"> » Two or more sole operators working together is illegal. » Illegal escort agencies masquerade as sole operators (or social escorts). 	<ul style="list-style-type: none"> » Additional safety contacts (and the capacity to employ a receptionist or driver) should go some way towards discouraging sole operators from working together illegally. » Advertising restrictions will reduce the capacity of illegal operators to masquerade as sole operators.
3 Address the social factors that contribute to involvement in the sex industry	Sole operators can access exit programs if they wish.	No change
4 Ensure a healthy society	Sole operators currently have a high level of sexual health.	No change
5 Promote safety	Sole operators face substantial risks when they provide either in-calls or outcalls.	Reduced risks to the safety of sole operators while providing both in-calls and outcalls
Illegal escort agencies		
1 Ensure quality of life for communities	Operate in city/suburbs but negligible impact on community amenity.	Minimal change
2 Safeguard against corruption and organised crime (including drugs, money laundering, sex trafficking, child prostitution)	High risk — all (non-social) escort agency work in Queensland is illegal.	Significant reduction in risks
3 Address the social factors that contribute to involvement in the sex industry	High risk — illegal operators rarely discourage workers from entering the industry, and do not reject workers with drug addictions or other problems.	Significant reduction in risks
4 Ensure a healthy society	High risk — illegal operators do not have sexual health requirements or provide personal protective equipment to workers.	Significant reduction in risks
5 Promote safety	High risk — illegal operators do not consistently provide adequate safety measures for workers.	Significant reduction in risks

* The guiding principles of the *Prostitution Act 1999* have been re-created here for some consistency with the findings on licensed brothels in the previous chapter (see Table 3.2).

APPENDIX 1: Schedule for the escort inquiry public hearing

DAY 1: TUESDAY 13 SEPTEMBER 2005

Introduction (10.00–10.45)

Chairperson's opening address

Robert Needham

Overview of the inquiry, research findings and key issues

Dr Margot Legosz

Presentations by the regulatory authorities (10.45–12.00)

Prostitution Licensing Authority

The Honourable Manus Boyce QC, Chair

Queensland Police Service

Detective Superintendent Gayle Hogan

Detective Senior Sergeant Trevor Kidd

Local Government Association of Queensland⁵

Bryce Hines, Environment and Health Policy Adviser

Janet Frost, Planning and Development Policy Adviser

Lunch break (12.00–13.00)

Presentations by sex worker representatives (13.00–14.20)

Self-help for Queensland Workers in the Sex Industry (SQWISI)

Cheryl Matthews, State Manager

SSPAN

Presentation read by Dr Margot Legosz (CMC)

Scarlet Alliance, Australian Sex Workers Association Inc.

Janelle Fawkes, Manager

Sole operator

Nikki

Break (14.20–14.50)

Presentation by Queensland Health (14.50–15.10)

Mark Counter, Acting Manager, HIV/AIDS, Hepatitis C and Sexual Health
Communicable Diseases Unit

(continued)

⁵ The LGAQ did not appear at the hearings, despite confirming attendance several days beforehand.

Presentations by community groups (15.10–16.10)

Family Council of Queensland

Patty Smith

Coalition Against the Trafficking of Women Australia

Caroline Spencer

Australian Family Association

Mark Holzworth

Bronwyn Healy

DAY 2: WEDNESDAY 14 SEPTEMBER 2005

Presentations by brothel licensees (10.00–11.00)

Queensland Adult Business Association

Yvette Skinner, President

Nick Inskip

Dr Gayre Christie

Gold Coast brothel licensees

Neil Gilmour

Session in reply and forum for key issues (11.00–13.00)

All presenters from days 1 and 2

Lunch break (13.00–14.00)

Forum continued (14.00–15.45)

Closing address (15.45–16.00)

Robert Needham

APPENDIX 2: Telephone survey of 'social escort agencies' advertised in the Yellow Pages (December 2005)

METHODS

All 'social escort agencies' advertising in the Yellow Pages in December 2005 ($n = 71$) were contacted by the CMC and informed about the inquiry and the interim position paper. Comments from these parties about our proposed recommendations were sought and documented.

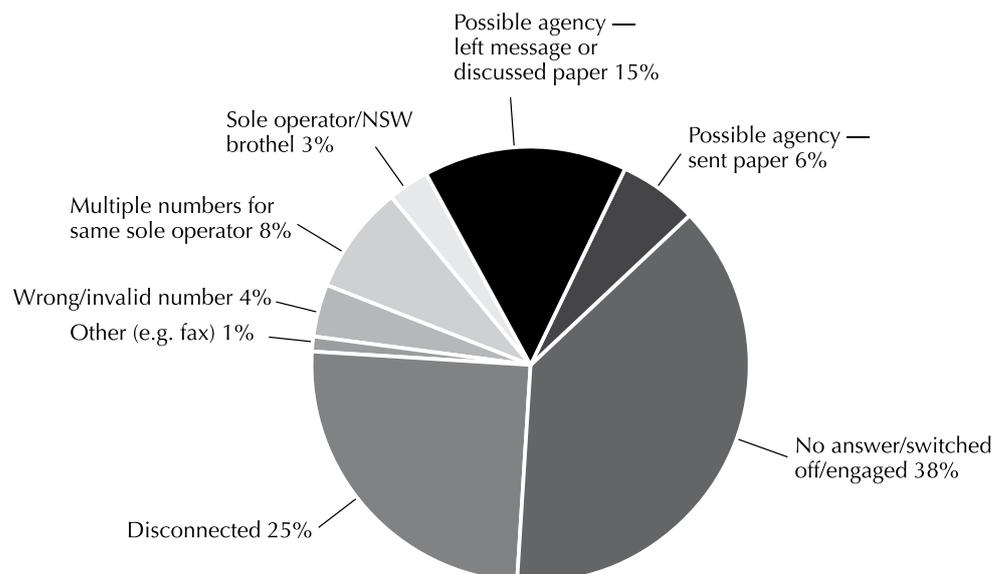
RESULTS

When called, about 30 per cent of the telephone numbers advertising social escort services in the electronic Yellow Pages were found to be either disconnected or wrong numbers (see Figure A1 below). Given the costs associated with such advertising, this finding is extraordinary, although it may reflect the recent efforts of the Australian Taxation Office to clamp down on agencies operating either illegally or without appropriate taxation disclosures.

About 20 per cent of those called may have been illegal outcall prostitution agencies (but were reluctant to disclose this status), and another 38 per cent could have been illegal outcall prostitution agencies, legal social escort agencies or legal sole operators, but we were unable to tell because the telephones were either switched off or did not answer.

Only one agency telephoned readily identified as a genuine social escort agency.

Figure A1: Results of a telephone survey of social escort agencies by the CMC (December 2005)



APPENDIX 3: Analysis of submissions on the CMC's interim position paper

Submission author	Positive comments	Criticisms	CMC response
1 Regulate social escort providers			
(a) Advertising			
(i) General			
PLA		... elaborate proposals put forward by the CMC in the interim position paper will prove a waste of time for the Queensland Police Service and the PLA and achieve very little in curbing illegal activity in Queensland.	No argument of substance to which we can respond. We disagree with the sentiment of this comment.
PLA		It is foolish to imagine that the illegal industry will be eradicated in Queensland.	Neither do we believe the illegal industry can be eradicated, but we do believe that a significant reduction in the size and scope of the industry is possible and, for the sake of the legal industry, a worthwhile goal.
QABA		The call by the CMC to regulate social escort providers continues the myth promulgated by the illegal escort industry that social escort providers exist.	On the contrary, our proposals recognise that there are very few legitimate social escort providers. Our proposals allow legitimate social escort providers to advertise themselves in an appropriate fashion. Illegal prostitution providers who masquerade as social escort providers will not be able to place the type of large, unregulated advertisements they are currently placing which unfairly disadvantage the licensed brothels/ sole operators.
QABA		The CMC has failed to recognise that the bulk of illegal escort services provided are not advertised as 'escort agencies' but instead masquerade as sole traders.	Throughout the course of the public hearing, the licensed brothel owners repeatedly complained of the full-page, explicit advertisements being placed by illegal prostitution providers masquerading as social escort agencies. Our proposals will prohibit this type of advertisement. Even if illegal prostitution providers choose to masquerade as sole operators they will still only be able to place small-sized advertisements that will not look any different from small sized advertisements placed by legitimate sole operators. This means that the illegal prostitution providers will not have the competitive advantage that they have now as the only operators who can place full-page, sexually explicit advertisements.

Submission author	Positive comments	Criticisms	CMC response
Scarlet Alliance		The proposal for increased regulation ... in order to combat an 'illegal' escort sector will potentially damage the business and legality of private sex workers ... Scarlet Alliance is concerned that, as with current police practice, any future focus on so-called 'illegal' operators will only result in an increase in police involvement with private sex workers, thus increasing harassment, lack of access to protection and justice for sex workers, and increase the potential for police corruption.	We believe that by focusing attention on the advertising of social escort providers and attempting to damage the illegal prostitution providers in this way, there should be less need for police enforcement via individual sex workers.
JAG		My department notes that providing a social escort service is not unlawful. In making its recommendations, the Commission assumes that the majority of these services are in fact prostitution services masquerading as lawful services. If so, my department considers that the investigation and prosecution of unlawful activity should be done through the existing offences in the <i>Criminal Code</i> and <i>Prostitution Act 1999</i> . Regulating otherwise lawful businesses is a separate issue, which requires consideration of issues such as who would be the appropriate enforcement agency and resourcing.	The evidence received by the CMC indicates that most social escort agencies provide illegal prostitution services. As explained in the report, the existing offences are not adequate to prosecute these agencies when they do so. The only aspect of social escort providers being regulated is advertising. We do not consider it necessary to regulate the entire industry. The resource implications of this are therefore low.
(ii) Words 'non-sexual'			
PLA		... clients will take very little time to realise that these words [non-sexual] are there 'just to fool the cops' and accordingly treat the words as a joke ... the agency may also say 'but honey is available', 'honey' being the new word for sexual services.	This is precisely why we have recommended legislative amendments. An advertisement for 'honey' may still amount to an advertisement for prostitution and attract penalties.
SSPAN		Certainly we agree that if social escort agencies had to declare that the services they offer are non-sexual this would deter clients seeking only a sexual service. However, it is true that the transaction can change after the booking has commenced.	We recognise that the transaction may change after the booking has commenced. However, by restricting the way in which social escort agencies advertise, it is hoped that clients seeking sexual services are more likely to be drawn to the advertisements by licensed brothels and sole operators. Currently, clients seeking sexual services are more likely to be drawn to the sexually explicit, large advertisements of the 'social' escort providers.

Submission author	Positive comments	Criticisms	CMC response
Sole operator sex workers	There is a definite need here to put into place workable legislation that differentiates between a social escort and a prostitute. We agree that the words 'non-sexual' become mandatory for advertising purposes.		
Sole operator 1	I agree with the proposal to require all advertisements for social escort services to contain the words 'non-sexual' or 'sexual services not provided' in a prominent position in the advertisement.		
<i>(iii) Clear advertising policies</i>			
PLA		It is impossible to legislate so that publishers, the PLA and the QPS can detect which advertisement is legitimate and which is not. The reality is that one cannot detect illegitimate advertisements other than by time-consuming investigation of individual advertisements.	Our proposals are designed to reduce the PLA's time-consuming practice of examining individual advertisements. Clear advertising policies will mean that the PLA will not have to examine every advertisement and that it will be a simple exercise of determining whether an advertisement complies with the policy or not.
PLA		It is probable that illegal operators will arrange for individual sex workers to place advertisements.	Even if illegal operators do arrange for individual sex workers to place advertisements for them, the type of advertisement that the individual will be able to place, according to our proposals, will be limited to a small sized advertisement that refers to an individual. Illegal operators will not be able to use individual sex workers to place the type of advertisement which currently gives them the competitive advantage over licensed brothels and sole operators, e.g. full page adds of near-naked women advertising 'Asian Babes'.
<i>(iv) Restrictions on social escort advertising: head and shoulder images only</i>			
PLA		Licensed brothels currently use whole body images in their advertising. Allowing for 'head and shoulders' only will further restrict the advertising efforts of licensed brothels and no good reason for the restriction is put forward.	The PLA has misunderstood the CMC's proposal. Our proposal in relation to 'head and shoulders' images was for social escort providers only. It has nothing to do with licensed brothels.
Sole operator sex workers		We also believe that photographs used in a Social Escorts advertising [do not mislead people] into believing that they are offering more than simply company. For this [reason] though, we believe, that restriction to head and shoulder shots only may not be the best option as some ladies still may want to keep their identity private from the general public.	The proposal was not to make it mandatory for a social escort provider to use a head and shoulders image of themselves in their advertisements, i.e. they would not be required to disclose their identity to the public.

Submission author	Positive comments	Criticisms	CMC response
Sole operator sex workers		We think that perhaps the scantily clad photos be not allowed in ads but still allowing full body, corporate dressed or evening dresses would be suitable and acceptable.	We have decided against the head and shoulders image restriction.
Sole operator 1	I agree with the restriction on the images used.		
(v) Restrictions on social escort advertising: size			
PLA		Licensed brothels currently advertise larger advertisements than the size proposed by the CMC ... The proposal will restrict legitimate advertising of licensed brothels and achieve nothing.	The PLA has misunderstood the CMC's proposal. Our proposal relates to the size of advertisement permitted for social escort providers. It has nothing to do with the size of advertisements by licensed brothels. The proposal was designed to ensure that advertisements by social escort providers (including illegal prostitution operators) cannot be larger than advertisements by licensed brothels. Contrary to the PLA's assertion we believe these restrictions will assist licensed brothels.
Sole operator sex workers	We feel that this [size restriction] should be implemented across the board to keep people honest ... Obviously people running organized Prostitution in the guise of Social Escorts have much more money to use on advertising than say Sole Operators.		We agree that the size of advertisement that social escort providers be permitted to place should be no larger than those permitted for licensed brothels/sole operators.
Sole operator 1	I agree with the restriction on size.		
(vi) Restrictions on social escort advertising: prohibition on reference to race			
PLA		[The PLA does not oppose] restrictions on reference to race [for social escorts]. The PLA believes however that restrictions on reference to race will achieve little.	We considered the feedback we received to the interim position paper about this issue and, to be consistent with our recommendations for sole operator advertising regarding references to race, we agree with the PLA and have not persisted with this recommendation.
Sole operator 1	I agree with the restriction on ... references to race.		

Submission author	Positive comments	Criticisms	CMC response
<i>(vii) Regulation of classified headings</i>			
Sole operator 1		<p>I propose the following:</p> <p>Require that all advertisers delete the advertising category, Escort Services — Social and Agency.</p> <p>‘Escort services, social’ is a pseudonym for illegal prostitution providers and no genuine introduction agencies advertise under this heading; escort agencies are illegal. So there is no need for this category ... The current advertising category, Adult Products and Services could be split into Adult Products, for sex shops etc. and Adult Services for brothels, sole operators, strippers and telephone sex fantasy lines.</p>	<p>While we see the merit of this suggestion, its implementation for national publications such as the Yellow Pages would require agreement between all states and territories. For this reason, we prefer to place the responsibility on the individual or business who is advertising to ensure that the nature of the services being offered is clear from the individual advertisement.</p>
<i>(viii) Provision making person carrying on business liable for advertisement</i>			
QPS	<p>The use of a provision deeming the operator of a service identified in an advertisement as being the person who placed the advertisement would make prosecution for unlawful advertisements easier.</p>		
<i>(ix) PLA’s monitoring role</i>			
PLA		<p>The CMC proposes ... that the PLA should work in close conjunction with publishers to apply the above ‘deeming’ provisions. This is likely to result in the PLA being involved in continual disputes with publishers. The proposal is a waste of time and a waste of PLA resources.</p>	<p>Again, the PLA has misunderstood our proposal. The liaison with the publishers proposed by the CMC would form part of the PLA’s monitoring role. The publishers are interested in not breaching the law. To use the PLA’s example, if the PLA informs the publishers that certain advertisements containing the word ‘honey’ in a certain context should be construed as advertisements for prostitution, and the restrictions on prostitution advertising applied to them, our consultations with the publishers for the purposes of this inquiry indicate that the publishers would have no objection to following this course. We suggest that the PLA consult with the publishers themselves on this issue.</p>
<i>(b) Obligation to clearly inform</i>			
Sole operator sex workers	<p>We believe that any misleading information given to a client in regards to services provided by a social escorts — to use the CMC’s wording here — (e.g. ‘It’s up to you and the girl’, or ‘I’m sure you’ll find our girls very entertaining’) should be considered a breach. It is simply a round-about way of saying ‘Yes, I might offer you sex’.</p>		

Submission author	Positive comments	Criticisms	CMC response
Sole operator 1	I believe that the imposition of a positive obligation is necessary.		
Family Council of Queensland	We are firmly of the view that the law should impose a positive obligation on providers to inform prospective clients and employees that prostitution services are not provided. The law needs to give the police every assistance in their enforcement task.		
JAG		With respect to the option to place a positive obligation on social escort providers to inform prospective clients that prostitution clients are not provided, it is noted that the Commission states that such an obligation would facilitate police enforcement on illegal prostitution providers. Given that the failure to make such a statement is not evidence that the person is providing prostitution, it is unclear how this will assist in the detection of unlawful prostitution. My department therefore does not support imposing a positive obligation as suggested.	This issue is explained in more detail in the report.
(c) Employing or contracting minors			
Sole operator sex workers	A big definite yes yes yes that Social Escorts should be a minimum age of 18 years old. Companionship sought out by people to be with a minor is on the outer edge of child sex issues. A minor is not fully aware of the effects this industry can have on them and to put an under 18 into a situation with an older person who is very good at coercion is dangerous territory.		
Sole operator 1	I agree that legislation should be passed to prohibit under 18 year olds from providing social escort services.		
QABA		QABA would like to see the evidence that the CMC has that leads them to believe that minors are providing 'companionship for a fee' in Queensland'. It is already against the law for minors to be involved or even present in a premises whilst prostitution occurs.	QABA has failed to see the purpose of the CMC's proposed prohibition on the employment of minors as social escorts. Currently, if an illegal prostitution provider masquerading as a social escort provider employs a person under the age of 18 years, they may simply say to law enforcement authorities 'but sexual services are not being provided, only social companionship — there's no law against 16 years old providing social companionship'. Proving that the 16-year-old is providing sexual services is notoriously difficult. Our proposal would remove this loophole.

Submission author	Positive comments	Criticisms	CMC response
QPS		... the <i>Child Employment Act 2006</i> will prevent children from performing work that may be harmful to their health or safety or the physical, mental, moral or social development.	We recommend that employment of a minor as a social escort be specifically prohibited under the Child Employment Act.
Commission for Children and Young People and Child Guardian	<p>... the Commission strongly supports the introduction/ strengthening of legislative provisions designed to:</p> <ul style="list-style-type: none"> » prohibit anyone under the age of 18 years from providing social escort services; and » prohibit a person from employing or contracting a person under the age of 18 years for the purpose of providing social escort services 		
JAG		With respect to the involvement of people under 18 in social escort services, my Department again notes that providing a social escort service is not unlawful. Accordingly, my Department's view is that any restriction on the employment of people under 18 should be through the regulation of the industry as a whole or through the new <i>Child Employment Act 2006</i> .	We believe that even if people under the age of 18 years are contracted to provide legitimate social escort services, the risk of the young person being solicited for prostitution is too high to be acceptable.
(d) Deceptive employment			
QPS		The offence of deceptive employment is addressed in the <i>Trade Practices Act 1974</i> (Cwlth) (s. 53B)	The Trade Practices Act only applies to corporations. It does not apply to individuals or businesses which are not incorporated.
Commission for Children and Young People and Child Guardian	The introduction of legislation similar to that in Western Australia, which addresses deceptive recruiting for commercial sexual services and provides for higher penalties when the victim is a child or young person, has the Commission's strong support.		
JAG		The Commission also recommends that legislation be enacted dealing with deceptive recruiting for commercial sexual services. The Commission does not indicate how such an offence adds to existing offences in relation to procuring for prostitution.	The deceptive recruiting offence is wider than the procurement offence.

Submission author	Positive comments	Criticisms	CMC response
2 Tighten existing PLA prostitution advertising policies			
(a) Deeming provision			
Sole operator 1	I agree with the deeming provision but think that the phrase 'face to face' needs to be deleted to catch advertisements for strippers, otherwise the illegal industry will use this loophole to advertise prostitutes. As the paper indicates, the illegal industry has tried advertising under massage and then escorts ... Strippers are the next logical place for organised illegal activity to be based.		We agree that advertisements for strippers also require regulation to prevent illegal prostitution providers from advertising as strippers. Advertising for adult entertainment in liquor licensed venues is already regulated by the <i>Liquor Act 1992</i> . The CMC recommended that adult entertainment in all venues be regulated in its report <i>Regulating adult entertainment</i> (CMC 2004b). In any case, in this report we have recommended other legislative amendments.
JAG		Of concern to my department is the proposal to include a deeming provision. My department does not consider it reasonable to require a person who is not actually providing prostitution services to comply with the advertising restrictions in the <i>Prostitution Act 1999</i> ... This proposal may leave someone liable to sanction under the <i>Prostitution Act 1999</i> or for serious Criminal Code offences even though they are undertaking a legitimate business activity. My department regards this proposal as a breach of fundamental legislative principles which cannot be supported.	We now recommend other legislative amendments instead of the deeming provision.
(i) PLA to develop new approved form for print media advertising			
PLA		The CMC proposes that the PLA develop an approved form for all print media advertising. The PLA is opposed to this proposal and considers it serves no useful purpose. The PLA considers there is likely to be great difficulty in reaching any agreement with publishers and key stakeholders. Individual publishers have their own requirements. These may vary considerably between publishers.	We believe that broad parameters can guide advertisers, and that the PLA has the expertise to develop those parameters.
(ii) Licensed brothel advertisements: require inclusion of licence number			
Family Council of Queensland	It should be a requirement that licensed brothels include their licence number in any printed or internet ad.		We now recommend that the PLA consider whether this is necessary.

Submission author	Positive comments	Criticisms	CMC response
(iii) Sole operator advertisements: prohibit reference to race			
SSPAN		To deny a legal sole operator the opportunity to distinguish themselves by describing what is actually a part of their physical description and social attribution, seems to be discriminatory and un-necessary ... Clients want to be able to locate a 'type' without ringing dozens of advertisements ... [Sole operators] having to field further telephone calls to explain whether they are white/black/multi-coloured/orange would be onerous. Even if subject to the same advertising restriction in print, brothel operators can use their websites to actively market their workers under ethnic identities — this gives them a competitive edge and monopoly. Additionally, if sole operators can't inform potential clients of their skin colour they will potentially be exposed to violent situations — racist people exist everywhere and some of them pay for sex. ... this measure has been easily circumvented by the use of 'foreign sounding' names which connote ethnicity, e.g. 'Suki' (read Japanese), 'Natascha' (read Russian), 'Ling' (read Chinese), 'Bella' (read Italian), etc.	As discussed in the main body of the report, we have abandoned our original proposal about race.
Sole operator sex workers	We strongly agree with reference to race in advertisements for sole operators. Far too many organised Asian prostitution hide behind a sole operator ad.		As above.
Sole operator 1	I agree with the suggestion that there is no reference to race.		As above.
Sole operator 2		I disagree that one should not refer to ones ethnic background if one chooses in description of themselves. Clients have a right to their own tastes and being able to find a matching operator, and operators should have the right to describe themselves such that their time isn't spent fruitlessly trying to engage clients (and perhaps coping verbal abuse) with specific tastes. What is the difference between describing breast or body size, to your cultural background? Operators should be given the opportunity to market themselves accurately and effectively.	As above.
(iv) Sole operator advertisements: prohibit business name that refers to more than one worker			
Sole operator 1	I agree with the suggestions that ... the name doesn't imply more than one worker.		

Submission author	Positive comments	Criticisms	CMC response
<i>(v) Sole operator advertisements: require use of individual's name</i>			
PLA		The CMC proposes that every advertisement for a sole operator should use an individual's name (usually a pseudonym) and that the PLA should approve only one name per sole operator ... The PLA considers these proposals are pointless and will achieve nothing.	No argument of substance to which we can respond.
<i>(vi) Allow one name per sole operator only</i>			
SSPAN		The recommendation that the: 'PLA only approve one name for each sole operator' was originally proposed by QABA (Skinner, in State Government Reporting Bureau 2005, p. 180) and reflects their desire to squash all competition through increased restrictions which impact on sole operators. This offers an unfair advantage to licensed brothels and their workers who may have fluid identities which can be changed at will. ... Again, this proposal does not take into account the realities of the business. Some sole operators have two or more different target groups and advertise accordingly. Why should legal workers have their trade potential blocked in this way? Identity change is also a safety mechanism. You often need to reinvent yourself: sometimes it is essential for safety. If something bad happens and a worker needs to 'disappear', perhaps a regular client becomes aggressive/stalking then the turnaround time is prohibitive. The delay in having the new name 'processed' would cost sole operators income in the meantime. SSPAN also believes that this measure would not aid in the policing of illegal escort agencies. At the CMC hearing into escorts (September 14, 2005) hearing the QPS representative, Detective Superintendent Gayle Hogan, highlighted that it would be unlikely that a restriction on plural names would enable them to more effectively pursue illegal operators, saying 'it would still be a challenge to do it whether there's one or six' (State Government Reporting Bureau 2005, p. 181). Essentially it is impossible to differentiate between sole providers and agencies without a telephone tap.	We now propose that sole operator advertisements be restricted to small-sized advertisements and must use an individual's name (usually a pseudonym) to clearly indicate that the advertisement is by a sole operator. We believe these restrictions are sufficient to prevent illegal prostitution providers masquerading as sole operators from gaining a competitive advantage. We agree that there should be no restriction on the number of advertisements a sole operator chooses to place or the name which they choose to use in each of them.

Submission author	Positive comments	Criticisms	CMC response
Sole operator sex workers		We don't agree with the one name — one Sole Operator proposed policy as some Ladies rotate names in the newspaper to keep clients interested in new ads. The male mentally [<i>sic</i>] is that they see a new name — it's a new Lady — so they call that ad over one that has run for many weeks. We don't believe it would be difficult to monitor a Lady with several different names as being a Sole Operator — she would have nothing to hide. When Law Enforcement or the PLA are making inquiries into a Lady — simply ask her if she advertises any other names and numbers. If she hesitates — look further into her. If she is upfront — less legwork for Authorities.	As above.
Sole operator 1	I agree with the suggestions that ... only one name is approved per worker.		As above.
(vii) Restrict size of sole operator advertisement to two lines			
PLA		The CMC proposes ... [the PLA] should consider restricting the size of sole operator advertisements to two lines. The PLA considers these proposals are pointless and will achieve nothing.	We have abandoned the proposal about two-line advertisements.
SSPAN		To restrict sole operators to two-line advertisements is placing an unfair restriction on their ability to trade. Sole operators will suffer whilst brothels get larger advertisements. It makes it very difficult for 'touring' workers and may discriminate between out-of-state residents. There is no real link between size of advertisement and illegal status and even if there were the provision would ultimately prove ineffective; clients will continue to call the two-line ads and sometimes find themselves chatting with an agency.	As above.
Sole operator sex workers		We disagree with restricting Sole Operator advertising to 2 lines as this would be discriminating against us as small business owners. We do concede that 4 lines is sufficient to describe self, location, business hours and contact telephone number. 2 lines would not fit this information and inhibit our advertising freedom too much.	As above.
Sole operator 1		If a sole operator was limited to a two line ad due to her unwillingness to register, her ability to make an adequate income would be seriously hindered ... clients naturally phone the large ads first.	As above.

Submission author	Positive comments	Criticisms	CMC response
<i>(viii) Require registration number for larger advertisements</i>			
PLA		The CMC proposes that sole operators should have a registration number based on photo identification and pseudonym ... The PLA has already placed on record that it is strongly opposed to registration of sex workers.	Requiring a registration number for large advertisements for sole operators was raised as an option at the public hearings. We have not adopted that option. We have previously made it clear that we do not support the registration of sex workers (see CMC 2004b, pp. 51, 66, 109 and 118).
SSPAN		... SSPAN argues that a registration number simply isn't going to be a realistic option for most sex workers and places a discriminatory burden on a group which is already marginalized and stigmatised ... There are inherent privacy issues associated with any form of registration and a record impedes a clean exit from the industry for those who desire to do so ... In the United States, a government imposed registration system for the pornographic film industry has proved devastating for porn actors recently when the database of names was posted on the internet.	As above.
Sole operator sex workers		We adamantly do not agree with registration based on photo ID. Ladies who comply with the Tax Office and other business regulations do so not necessarily as a Sex Worker — which is ok with the Tax Office as long as taxes are being paid in one form or another. Ladies do this to protect their identity as a Sex Worker from social judgment and out-casting. Also some spouses and family members do not know that their loved one is a sex worker.	As above.
Sole operator 1		I am vehemently opposed to restricting the size of sole operator advertisements to two lines unless she is registered with photo id ... No matter how much the PLA waxes lyrical about privacy and confidentiality, the majority of workers won't register with genuine id because they value their privacy in such a taboo industry. They don't know who works in the PLA – perhaps a neighbour or a relative. They would worry that information might get into the wrong hands.	As above.

Submission author	Positive comments	Criticisms	CMC response
QABA		The most ready way of preventing illegal advertising is to register all sole traders and issue a number that must appear in all advertising. All other sexual service related advertising could then be deemed to be illegal. Whilst this will not completely rid the industry of illegal operators, it will significantly reduce the number.	As above.
Sole operator 2		The idea that there be a registration number and photo ID for sole operators with the PLA is very disturbing. Most sole operators probably conduct their business for a short period of time, but they're on your system for anyone clever or connected enough to see is a record. This invades the privacy of sole operators. Sole operators are people, not legal brothels, and deserve respect and privacy. The risk of being 'caught out' by someone who happens to get hold of your PLA record will push legal operators to go illegal, or, the operator may take up their little 2 line ad, and again be penalised.	As above.
Scarlet Alliance		The CMC proposals will result in private sex workers (who are working within the law) being over-regulated to such an extent that they will choose to work outside the law in order to be able to operate without police and CMC interference. Thus increased regulation will result in a higher number of illegal sex workers, who choose to maintain control over disclosure of their work status by avoiding registration with the PLA and thus potentially working illegally. Scarlet Alliance vehemently opposes proposals by the CMC to introduce private sex worker registration.	As above.

Submission author	Positive comments	Criticisms	CMC response
<i>(ix) Licensed brothel and sole operator advertisements: develop clear guidelines for images that do not offend public</i>			
PLA		<p>The general position is the PLA will not approve advertising that is likely to be thought offensive by the general community. The general requirement is easily understood. It then requires an assessment of the particular advertisement. The proposal for the PLA to develop 'clean, clear, guidelines' is unnecessary, a wasteful use of the limited resources of the PLA, and unlikely to achieve any useful purpose.</p>	<p>The PLA has misunderstood the CMC's proposal. As stated by the PLA, the PLA's current advertising policy requires the PLA to assess every single advertisement. It is this procedure which is a waste of the limited resources of the PLA. Our proposal is to develop clear guidelines about images that the licensed brothels/sole operators can apply themselves, so that the PLA does not have to assess every advertisement. Given the experience and expertise of the PLA, we believe that developing such guidelines would be well within the PLA's resources, and would save the PLA an enormous amount of work into the future.</p>
PLA		<p>... it is likely that a significant portion of the sex industry will continue to seek PLA approval in respect of all advertising so there is absolutely no doubt in their minds that their advertisements meet the relevant criteria ...</p>	<p>Under the current advertising policies, the licensed brothels/sole operators are required by the PLA to seek approval for every advertisement. If the PLA changes its policies so that it is clearly stated what is and what is not allowed, the licensed brothels/sole operators would not have to submit every advertisement for approval and would be relieved of a burden of which they frequently complain.</p>
<i>(x) Licensed brothel and sole operator advertisements: size</i>			
Sole operator 1		<p>According to the PLA policy, there are no size restrictions for advertising in the Yellow Pages. Brothels may be able to afford \$40 000 for a full page ad or \$28 000 for a half page, but it's out of reach for sole operators, so they are relegated to the back of the book, with a definite impact on their advertising effectiveness ... If the CMC wishes to bring reforms to increase the capacity of legal operators to function and provide a more level playing field, then sole operators need to be able to compete in advertising. I suggest ... restricting Yellow Pages advertisements for social agencies, brothels and sole operators to a maximum of 2 units, i.e. 61 x 84.5 mm, to allow sole operators to compete fairly. Another argument for restricting the size of Yellow Pages ads is ... that some readers would be offended by ads for adult services.</p>	

Submission author	Positive comments	Criticisms	CMC response
<i>(xi) Leave words contained in advertisements to be regulated by publishers</i>			
Scarlet Alliance	Scarlet Alliance notes that the PLA tried to introduce registration of private sex workers by stealth in mid 2005 when they changed their advertising policies, leading to broad scale police harassment and criminal prosecutions of private sex workers on the basis of having an 'unapproved' word in their advertisement. The unapproved word in question was (at that time) 'service'... In response, other private sex workers called the PLA for advice and guidelines about advertising. It was reported in writing to SSPAN (Queensland member of Scarlet Alliance) and verbally to Scarlet Alliance, that the PLA responded by saying 'Well if you want to be kept up to date about PLA advertising regulations, you will have to register with us in order for us to release that information.' Given the situations that have arisen due to the PLA, Queensland Police and Queensland Judiciary regulation of individual words in advertisements, Scarlet Alliance support the withdrawal of such a practice.		
Sole operator sex workers		We believe the current advertising guidelines are fine — but there are communication breakdowns between the publications and the PLA as to approved wording. There needs to be a focus on this. Some ads that the PLA approve — the newspaper won't print because they take the phrasing section of the wording as literal. All approved words should be individual words on the list and an acceptable ad can be formed from these words by the advertiser.	Allowing the publishers to regulate the wording of the advertisements according to the demands of their readership would avoid these problems.
<i>(xii) PLA should not approve every advertisement</i>			
PLA	The CMC observes ... 'The Government will create a regulation stating that where advertising for licensed brothels and sole operators meets the requirements outlined by the regulation the approval of the PLA is not required'. The PLA strongly supports an amendment of the legislation along these lines.		

Submission author	Positive comments	Criticisms	CMC response
Sole operator sex workers	<p>We agree that the PLA should use its resources to assume a monitoring role rather than to continue in an approval role within the Adult Industry. An example here if we may — over December 2005 and January 2006 — approvals for advertising went unapproved due to multiple staff members of the PLA taking a holiday break. There was a gap of approx 3 weeks where ads went unapproved and this in turn inhibited trade of Sole Operators who had ads waiting for approval. Some Ladies were new to the internet and did not begin trade until their ad was approved in January. This resulted in a loss of income for these business owners.</p>		
Sole operator sex workers		<p>However — we believe that Yellow Pages advertising still continue to be approved as illegal escort agencies tend to advertise in this form and that perhaps the approval number for the ad be displayed in all Yellow Pages ads.</p>	<p>Given the longevity of Yellow Page advertisements, the fact that they are only placed once a year, and the relatively small number of advertisements placed in the Yellow Pages, the PLA may give thought to requiring Yellow Pages advertisements (e.g. larger than four lines) to be submitted for approval.</p>
Sole operator sex workers	<p>We agree that the PLA should assume a monitoring role in regards to the internet as changes are needed to be made weekly in some Ladies' cases and the PLA does not have the resources or time to approve ads from the same person week after week in a timely manner. Most Ladies need to change their working hours on their websites and internet ads but currently are not allowed to because of the approval restrictions. This is not convenient to almost all Sex Workers as things happen and we need to take a day off but cannot change our hours. This is a very minor item to want to alter on a website and we believe that we should be able to make alterations at our discretion as long as they fall within the guidelines set by the PLA.</p>		
Sole operator 1	<p>I agree with the suggestion that the PLA develop guidelines for advertising and adopt a monitoring role.</p>		

Submission author	Positive comments	Criticisms	CMC response
(xiii) Penalties for advertising offences			
SSPAN		We have serious concerns regarding the proposed increases in penalties for advertising infringements. Sole operators are already subject to charges for minor advertising infractions which create a permanent record of their sex worker status. Specifically, we strongly suggest that these increased penalties be well-publicised, raising the need for increased outreach. We believe that any new penalty system should be introduced with amnesty periods, and a first-infringement warning system.	We now suggest a penalty based on the cost of placing the advertisement.
Sole operator sex workers	We also believe that the penalties for non-compliance with the guidelines set should be high as a deterrent to repeatedly abuse the system put in place... However, consideration for new Sex Workers who have not been informed about the set of guidelines put together by the PLA — should be warned first before a fine is enforced.		See above.
Sole operator 1	I believe that the new penalties for not meeting advertisement requirements are too low to be an adequate deterrent. I suggest that the fine should be in the vicinity of \$50 000.		See above.
(xiv) Participation offence			
PLA		The CMC proposes a ‘participation offence’ and considers that the CMC advertising proposals will make it easier to prosecute illegal operators who masquerade as sole operators. The PLA considers that these proposals may make it easier to convict some individual sex workers but considers it highly unlikely that the proprietors of illegal operations will be apprehended.	We have not proposed a participation offence. The participation offence already exists (s.229H Criminal Code).
Sole operator sex workers	We agree with the CMC’s recommendations here.		
Sole operator 1	The suggestion to amend section 229H of the Act to specifically refer to advertising in the ‘examples of crime’ is, I believe, a great step forward in enabling the police to prosecute.		

Submission author	Positive comments	Criticisms	CMC response
Scarlet Alliance		Scarlet Alliance notes that the ... example proposed by the CMC of police 'enforcement' is actually deceptive practice and a form of police harassment. It is unacceptable to expect the regulation of a sex industry to rely upon police officers calling every private sex worker in the newspaper, pretending to be a client, and then harassing the sex worker to consent to an illegal act ... This practice would simply not be effective as the current high number of 'no show' clients who book services with private sex workers results in a number of private sex workers double booking to ensure increased likelihood that they will not have a wasted booking time by a booked client not showing up. So a sex worker agreeing that they will do two bookings at the same time will not be particularly unusual and should not be considered evidence that more than one sex worker is available at the same time.	The aim of our proposal is to remove the necessity of 'harassing the sex worker to consent to an illegal act'. The recommendations relating to advertising and the 'carrying on business' offences should see a change in policing tactics.
3 Improve enforcement measures (a) Education <i>(i) Education of sex workers/public</i>			
PLA		The CMC proposes ... that resources should be devoted to education. The assertion that 'education itself has potential to disrupt the illegal prostitution providers' is extraordinarily naïve. Human nature does not change. Prostitution is a matter of supply and demand. The illegal industry understands the publication laws very well. This allows them to successfully advertise their illegal operations ... The PLA considers that most sex workers are well aware that street prostitution is illegal and that the only lawful activity is in a licensed brothel or the provision of services as a sole operator. There is little need for any education of sex workers as to what activities are illegal.	As the law currently stands, there are no publication laws that apply to the illegal industry. Our proposals address this deficiency. Regarding education, we continue to support the recommendations we made in <i>Regulating prostitution</i> (CMC 2004a), that (a) the policy and research functions of the PLA be adequately resourced (Recommendation 4), and that (b) 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 27).

Submission author	Positive comments	Criticisms	CMC response
SSPAN	We believe that one of the best means to eliminate illegal escort agencies would be through educating the public. At present many clients are unaware that escort agencies are illegal in Queensland as the legal situation is unclear. This confusion is not helped by brothel operators misinforming potential clients that escorts by sole operators are illegal in Queensland (see PLA 2005, p. 4).		
Sole operator sex workers	We agree with the CMC's recommendations in regards to education.		
Sole operator 1	Many of my clients have commented that they were informed by brothel staff that they 'wouldn't want to see a private operator because they aren't registered and don't have mandatory health checks'. They try to frighten the clients saying things such as 'You don't know what you might catch!'		We believe that education of the public would prevent allegations such as these.
Sole operator 1	I agree ... that an important aspect of law enforcement is education.		
<i>(ii) Role of PLA in education</i>			
SSPAN		SSPAN are very happy that the CMC recognise that SQWISI have had their activities diverted to the legal brothel sector since legalisation, leaving the sole operators and illegal sex workers neglected ... Nonetheless, the recommendation that the PLA undertake the important function of outreach to workers in licensed brothels while SQWISI focuses on sole operators and illegal workers is extremely problematic. This approach would exacerbate the undesirable 2-tier system which has developed since legalisation. Queensland needs a single inclusive outreach program with a strong emphasis on peer-education to ALL sex workers.	We agree that peer education for all sex workers is essential.

Submission author	Positive comments	Criticisms	CMC response
Sole operator 1		I agree that SQWISI has lost touch with sole operators and illegal workers since they have had to divert their time to licensed brothels. However, I disagree with the suggestion that the PLA provide an educative role to brothel workers and allow SQWISI to focus its services on sole operators and illegal workers. SQWISI used to do an excellent job of assisting and educating sole operators and illegal workers ... Their only impediment is funding. The PLA staff doesn't have experience as sex workers, so workers, whether illegal or not, are not going to feel as comfortable ... with them as ... with SQWISI. In addition to this unease, is the feeling among workers that the PLA is on the side of the brothels. Already the brothel workers are reticent to follow through with a formal complaint to the PLA for fear of retribution from the brothel owners. To remove SQWISI's influence in the brothels would be a grave mistake and could open the way for the brothels to impose even greater power over the service providers.	We agree that these issues need to be addressed.
(b) 'Carrying on business' offence			
PLA		... the CMC provides that clients and workers of illegal escort agencies may apply for a certificate of discharge in return for evidence against the person running the illegal escort agency. The PLA is very sceptical that individual workers will in fact offer to give evidence against the operators of any illegal escort agency. In any event their true identity may not be known to individual sex workers.	We acknowledge the difficulties inherent in law enforcement in this area. That is why we propose that the 'certificate of discharge' mechanism (already available for the illegal brothel offences) be made available for the 'carrying on business' offences.
SSPAN		We recognize the problems that currently exist for the QPS in policing escort agencies with the framing of the legislation as focused on 'premises'. However, we have serious issues with the section 229N offence provision, as it is currently and as proposed, because there is no actual examples given of what sort of evidence may infer prostitution. Given that safe-sex materials are exempt, what exactly might be used to infer that prostitution is occurring?	The type of evidence from which it could be inferred that a person is 'carrying on the business' of illegal prostitution should be developed in conjunction with the QPS. However, it might include, for example, the fact that advertisements for prostitution have been placed that have led to the provision of more than one worker.
Sole operator sex workers	We agree with the CMC's recommendations in regards to these offences.		

Submission author	Positive comments	Criticisms	CMC response
Sole operator 1	I agree with the CMC's suggestions to introduce new offences applying to 'carrying on a business' and that the assets of illegal prostitution should be confiscated.		
QPS	<p>Established illegal outcall service providers often rent premises which are used both as an office and a call centre. Clients of these providers do not engage in sexual intercourse on the premises. This makes it extremely difficult to prosecute the service providers under s. 229K of the Criminal Code (CC), as it is almost impossible to prove the premises were used for the purpose of prostitution.</p> <p>Offences under s. 229G (Procuring prostitution), s. 229H (Knowingly participating in provision of prostitution) and s. 7 (Principal offenders) of the Criminal Code apply to these service providers. Whilst these offences are easier to prove than the s. 229K offence, difficulty in gathering evidence to prove the offences is experienced for the same reasons. The investigation of procurement offences (s. 229G), for example, can be conducted through police officers calling the centres and arranging the offer of prostitution services. Such police operations are extremely resource intensive.</p> <p>Alternatively, the creation of a new offence of Carrying on the business of unlawful prostitution is an option. Similar offences exist under the <i>Weapons Act 1990</i> for trafficking in weapons, and the <i>Drugs Misuse Act 1986</i> for trafficking in dangerous drugs. Such an offence would allow police to gather evidence over a period of time, and lay a single charge, as opposed to multiple charges, for example, under s. 229G Criminal Code. Evidence of a multitude of matters, such as employment of persons, business records, telephone records, advertisements, and the like would be admissible in proving such a crime. Should a carrying on the business offence be created, it is likely to act as a disincentive to persons considering providing illegal outcall services or operating illegal brothels.</p>		

Submission author	Positive comments	Criticisms	CMC response
JAG		It is not clear why other existing offences cannot be used to prosecute illegal escort agencies, for example, s. 229H covers participating in the provision of prostitution by another person, franchising a network of prostitutes as if they were operating independently, and receiving or directing telephone calls or taking bookings.	Offences under s. 229H are resource-intensive for the QPS and difficult to prosecute. Frequently it is not possible to obtain sufficient evidence to prosecute the organisers of illegal prostitution. The 'carrying on business' offences would enable the QPS to target the organisers and be easier to prove.
(i) Disabling telephone numbers			
PLA		The PLA suspects that in practice it is likely to take some significant time to obtain the evidence necessary to enable a particular telephone number to be disabled. It is possible it may even require a conviction ... An illegal operator may find that it takes three to six months to disable a particular telephone number. He will simply obtain another telephone number and start another illegal operation ...	We acknowledge that it may take time to secure a conviction. Even so, it is our view that disabling the telephone number would effectively undermine the goodwill of the business.
SSPAN		We agree that it is logical to assume that a sex worker who has paid for a long-term advertisement (such as in Yellow Pages; set up a website) linked to a particular telephone number would suffer devastating business collapse if the number was disabled by the QPS. For this reason we would hope that this could not occur in any case until after the charge of 'carrying on business' was proved in court and not be conducted in a punitive and unjust way such as occurs at present with persons charged on drugs offences who have their property confiscated under 'proceeds of crime' laws even before they face court.	
SSPAN	We also urge the CMC to clarify at present whether sole operators can on-sell the equity which exists in their advertising/telephone investments.		The CMC is not in a position to provide legal advice on this point.
Sole operator sex workers	We strongly agree with this approach to disrupt an illegal agency's ability to continue business. Especially with Yellow Pages advertising — it disables their trade for the rest of the advertising year.		

Submission author	Positive comments	Criticisms	CMC response
Sole operator 1	<p>I strongly agree with the suggestions of disabling telephone numbers used for illegal prostitution. This one act could possibly have the most significant impact on the illegal operators – without a telephone number, or the ability to divert telephone numbers, their advertising effectiveness is greatly diminished. Most of their custom is procured through Yellow Pages advertising. If their telephone number is confiscated, they will have to resort to a new telephone number and newspaper or internet ads.</p>		
QPS	<p>The CMC has identified an effective means of attacking illegal prostitution providers by applying to disable the telephone number used to advertise their business.</p> <p>Section 313 of the <i>Telecommunications Act 1997</i> (Cwlth) provides that a carrier, or carriage service provider, must do its best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of Commonwealth and State offences. The disabling of telephone numbers would affect illegal operators financially due to the cost of the original advertisement, the need to re-advertise and the expected loss of business. Yearly advertisements in the 'Yellow Pages', depending on their size and content, can cost many thousands of dollars and provide a long term platform for illegal services.</p> <p>The decision to disable a telephone number is an administrative one. The standard of proof is much less than the criminal standard. For example, the release of police intelligence information, in affidavit format, to the telecommunications service provider, detailing the reasons police believe a number is being used for a criminal purpose, would be sufficient grounds for the number to be disabled. There is no need for a conviction to be entered against an individual for such an application to be made.</p>		

Submission author	Positive comments	Criticisms	CMC response
QPS, cont.	Where a telephone number is disabled under s. 313, the person or corporation affected, may apply to the Australian Communications and Media Authority (ACMA) to investigate the carrier's decision. A further application can be made in the form of an administrative review regarding any decision of ACMA.		
JAG		The Commission also suggests creating a mechanism to disable telephone numbers, but acknowledged that further work is required to develop this suggestion. My Department would not support such a proposal in the absence of a finding of guilt for a prostitution offence.	We now recommend the disabling of telephone numbers only when permitted by s. 313 of the Telecommunications Act.
4 Improve safety for sole operators			
(a) General			
SSPAN	SSPAN is delighted that the Chairman of the CMC has recognised that necessary changes must be made to allow for the safety of sole operators. This finally recognises the basic civil right of sole operators to a safe working environment. These changes would also encourage more sex workers, who for safety reasons currently work in co-operation with others, to become more compliant.		
SSPAN		These safety provisions are something of a Clayton's gift for sole operators. Whilst on one hand beneficial, they would also contribute to the current situation of over-policing and confusion for those subject to what is already a difficult, complicated legislative framework.	We hope that the improvements in police enforcement measures will lead to less policing of legitimate sole operators.
QPS	The explanatory notes to the Prostitution Bill 1999 (Qld), clearly recognise that 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.		
JAG	My Department agrees that these suggestions should be considered ...		

Submission author	Positive comments	Criticisms	CMC response
(b) Permitting sole operators to have safety contact			
PLA	The PLA supports any recommendations that will improve the safety of sole operators. Nevertheless, it must be noted that, as an occupation, prostitution has inherent risks. The PLA supports legislation which would permit the sole operator to: 1. Tell someone else where they are going and when they will be back; 2. Remain in telephone contact with someone whilst they are providing sexual services.		
SSPAN	We agree with changes to legislation that would allow sole operators to notify persons of their movements – this is a necessary and basic precaution.		
Sole operator sex workers		We are again divided on this next issue. Some Sex Workers would be happy with being able to legally call someone and tell them where they are and for how long and to check in when the booking is complete. Remaining in telephone contact during the service is not an attractive option to most Sole Operator Sex Workers as it would be 'weird' to have your parents or friend listening in while you perform your service!!!	By 'remaining in phone contact' we did not mean that the safety contact should be listening in, but only that the safety contact should be available to respond to a telephone call from the worker.
Sole operator 1	The report suggests that sole operators could tell someone where they are going, what time they will be back and remain in telephone contact. This is nothing new; it is already possible and many contractors adopt this practice. I have been advised by Queensland Police that it is lawful and acceptable as a safety precaution, as long as the contact person is not paid for the service ... There has been a lot of scare mongering in the last year or so regarding Police busting girls for this practice. I ... looked into the cases to find that the contact persons were suspected of receiving payment for their services. Even when they were not receiving payment ... rather than fight the case which would have cost them financially and emotionally and threatened to expose them, they accepted the charges and paid the fine to make the problem go away.		We recommend the introduction of legislation that clarifies that a sex worker may have a safety contact, whether the safety contact is paid or not.
Family Council of Queensland	The first option on safety, which would allow sole operators to tell someone else their schedule, is the one that should be chosen.		The CMC recommends safety contacts and receptionist/drivers.

Submission author	Positive comments	Criticisms	CMC response
QABA		<p>While QABA is in favour of the highest level of safety for all Service Providers, it is unaware of any uptake by sole traders of the opportunity to utilise security guards to improve their safety and we can only conclude that the risks do not justify the expenditure. Expenditure on these services is not expensive: Installation of an alarm system can be from \$200, monitoring of the system can be provided from \$1.00 per day and attendance fees on triggering the alarms usually range from \$30 to \$60 ... We find it amazing that the CMC would make recommendations where sole traders clearly see little risk.</p>	<p>Sole operators have provided contrary information to that provided by QABA on this point.</p>
BDSM industry stakeholder	<p>Amend current legislation to give sole operators working from home every opportunity to include a third party on their premises to implement safety initiatives/first aid for both the worker and client. BDSM is not prostitution, however this piece of recommended legislation is considered as a significant step forward in particular to BDSM professionals, and will enhance the safety of both the client and the service provider in the event of strenuous activities. The BDSM industry would appreciate the consideration of amending this sentence so as to incorporate our requirements in an effort to negate any further confusion about legalities and avoid any future 'complexities'. (i.e.) The participant participates in the 'service provision' to no more than the extent necessary to ensure the safety of the 'service provider and client'.</p>		
QPS		<p>There is no legislation preventing a sole operator from telling someone where they are going and when they will be back. Section 229H(5) allows a sole operator to utilise a crowd controller licensed under the Security Providers Act to provide a level of personal security to the sole operator. With respect to the options provided to improve the safety for the sole operator, it is likely that the development of such legislation would adversely impact prosecutions under s. 229H (Knowingly participating in provision of prostitution) of the CC.</p>	<p>We believe that the arguments for permitting sole operators to have receptionist/drivers outweigh the arguments against.</p>

Submission author	Positive comments	Criticisms	CMC response
(i) Safety contact cannot be past/current sex worker			
PLA		... the legislation ... should not deny employment opportunities for those who have previously been sex workers. The PLA has issued manager's certificates to persons who have previously been sex workers. The PLA expects that sole operators would be likely to want people who have previously been involved in sex work to provide a support role.	We have accepted that the safety contact can be an ex-sex worker, but not a current sex worker.
SSPAN		We do have problems with the proposed restrictions around sex worker status of that person. Many sex workers are in situations where the only people who know of their sex work are other sex workers. Sex workers are sometimes married to or in de-facto relationships with other sex workers or former sex workers. Sex workers sometimes have members of their family who are also sex workers (see Bailey 2002:47, 167, 101). SSPAN members know of many colleagues in these familial situations. One member has worked with a woman who was a sex worker and both of her adult daughters were sex workers. Given these types of scenarios we do not support this restriction and see it as impossible to enforce with clarity.	See above.
Sole operator 1		I believe that the suggestion that the 'safety contact', receptionist and/or driver 'has not provided prostitution at the time of the participation or any other time' is too limiting and unworkable. It is natural for people ... to feel more comfortable and socialise with others in the same line of work. This is more so for sex workers who are a pariah in our society and therefore extremely private about their job ... Further, denying sex workers or ex-workers jobs as receptionists/drivers would be inconsistent with the Queensland Government's exit strategies for sex workers. I see it as a natural progression for sex workers wanting to 'leave the bed' to work as a receptionist/driver ... Another consideration is that police scrutiny of the employees of sole operators, to confirm that they haven't been sex workers would constitute a gross invasion of their human rights and privacy and is likely to be a major deterrent to employment.	See above.

Submission author	Positive comments	Criticisms	CMC response
Sole operator 2		I do not think the [CMC] is in touch with what escorts are like. That an escort can only call a non escort for safety is proof of this. It would take a very open operator, and a very understanding person to act as a safety person in this line of work!! You are also ignoring that sex workers, like workers in any job, can form friendships with others who know what it's like, to provide support by way of friendship. ... Why are you penalising us, when it is natural to reach out to other sex workers, and have someone like minded act a safety person?	See above.
Scarlet Alliance		Many sex workers lead incredibly private lives and do not disclose to non-sex workers about their sex working status. If a sex worker will ONLY tell other sex workers, and the law makes it criminal to share information (such as booking times, client details for safety etc), then these provisions would criminalise the practices of most, if not all, private sex workers in Queensland. The proposal will not make sex workers safer, it will criminalise them ... Discrimination against current and former sex workers by barring them from working as a receptionist is against Equal Opportunity law in Queensland and cannot be implemented without amending and ignoring the rights of sex workers in Queensland.	See above.
JAG		... the Commission's draft provisions may be overly restrictive (for example, they prohibit the involvement of a person who has at any time provided prostitution themselves, which would exclude a 'retired' prostitute from acting as a receptionist or driver).	See above.
<i>(ii) Requirement that person hold crowd controllers licence</i>			
PLA		Existing legislation provides that a person accompanying the sex worker must hold a crowd controller's licence. The PLA considers it important that this requirement should be retained.	We believe that sole operators should also be permitted to have receptionists/drivers who do not have a crowd controller's licence.

Submission author	Positive comments	Criticisms	CMC response
(c) Receptionist/driver			
(i) Permitting sole operators to have receptionist/driver			
PLA		... where drivers are concerned there is always the risk that the driver may direct 'stand over' tactics either at the sex worker or the client.	If sole operators are permitted by law to use drivers, they will be more able to report the use of stand over tactics to police. If drivers are illegal, sole operators will be reluctant to report this type of behaviour to police.
SSPAN	... SSPAN agrees with changes to legislation that would allow sole operators to have a receptionist/driver ...		
Sole operator sex workers	The more attractive option and, we feel, more safe option is to be able to employ a receptionist and/or driver ... In-call sole operators find having a receptionist a very attractive proposition — it will help to alleviate the isolation factor of being a Sole Operator. It is quite daunting to work alone in a house or apartment. Having an employee on the premises would also be a deterrent for any clients with any planned ill-intent towards the Sex Worker and in the case of unplanned physical violence — a person is readily available to render assistance to the Sex Worker and to call the police.		
Family Council of Queensland		There is a word for a receptionist/driver who provides security for a sole operator doing outcalls. That word is 'pimp'.	We believe that permitting sole operators to employ a receptionist/driver would significantly improve their safety.
QABA		... the CMC seems to fail to recognize how the illegal sex industry masquerades as sole traders. The sanctioned use of receptionists by sole traders provides another level of protection for illegal operators to hide behind while making the policing of the illegal industry even more difficult than it currently is.	A receptionist/driver would be permitted to work for one sole operator only. We believe that the detection of a receptionist/driver working for more than one sex worker would be straightforward.
BDSM Industry stakeholder		... if drivers [are permitted], there are no licensing requirements to carry a passenger, nor any mandatory driving evaluations/testing and no ... legislation to ensure the medical fitness of a potential driver ... this 'loophole' will allow a non professional driver to obtain a 'commercial' gain whether or not they are a risk to public safety, themselves and their passenger.	We recognise this concern. However, the resource implications of a licensing system for drivers are prohibitive. It will be the responsibility of sole operators to select an appropriate driver.

Submission author	Positive comments	Criticisms	CMC response
QPS		<p>There are potential issues with allowing sole operators to have a receptionist. The use of a receptionist begins to move a sole operator out of the realms of sole operator. Licensed Brothels use receptionists and similar services.</p> <p>There may be difficulties where a sole operator is allowed to use a driver, unless the driver is a licensed security provider. Section 229H(5) Criminal Code allows a sole operator to engage a security provider for protection purposes. It is possible a person working as a driver would be expected to provide protection for a sole operator in circumstances where it was required. As such, the hiring of a driver could be a means of avoiding the use of a trained security provider.</p>	<p>We believe that it is appropriate to allow a sole operator to decide whether she requires a receptionist, driver or security provider.</p>
<i>(ii) Receptionist/driver cannot be past/current sex worker</i>			
SSPAN		<p>[SSPAN has] the same concerns with restrictions around status of that person/s. Given the stigma surrounding sex work, we feel there would be definite difficulties associated with finding a receptionist to work for a sole operator when they could make the same money working in a more socially acceptable industry (which would transfer better to their resumes!). It would also be impractical to have a receptionist with no sex work experience. We also see reception work as a possible exit strategy for sex workers and alternate employment for former sex workers. More pressing is the need to prevent unjust and invasive policing of law-abiding sole operators. How would this provision operate in policing practice and in law? What would the standard of proof be for inferring knowledge on a person suspected of contravening this provision – actual or constructive knowledge? Unless a receptionist had previously been charged with a prostitution offence how would the police ascertain their ‘sex worker status’?</p>	<p>We accept that the receptionist/driver can be an ex sex worker.</p>
Sole operator sex workers	<p>We concede that it would be necessary that the employed person would not be another Sex Worker.</p>		<p>See above.</p>

Submission author	Positive comments	Criticisms	CMC response
Sole operator 2		Ditto for working as a receptionist or driver. How ridiculous to expect someone who's never had anything to do with the industry to be open minded enough to want to take up such a position, let alone go under police scrutiny! I no longer work in the industry, I'm now married and have a baby. What a perfect job it would be for someone like myself, with limited skills, to get flexible employment and experience with someone I can understand and in return give someone in the industry a non judgmental employee they can trust?	See above.
<i>(iii) Receptionist/driver can only work for one sex worker</i>			
Sole operator sex workers	We agree that the employed person should only work for one Sole Operator. The security of knowing someone is right near by is better peace of mind than knowing that it will take a person on the end of the telephone much longer to get help and for that help to arrive. By then the Sex Worker could be seriously hurt or deceased.		
<i>(iv) Sharing information about dangerous clients</i>			
Sole operator 1	The suggestion that sole operators advise a central agency such as SQWISI about dangerous clients is nothing new either. SQWISI have always provided this service. In the first few years of my work as an escort, they had regular contact with workers, encouraged them to report dangerous clients, offered advice and counseling, maintained the dangerous clients data base Ugly Mugs and distributed it regularly. The problem in recent years is that due to funding cuts these services have been drastically reduced and the publication is not updated regularly or distributed widely.		

Submission author	Positive comments	Criticisms	CMC response
(v) Referring clients to other sole operators			
Sole operator sex workers		We are divided on whether to agree or not about referring clients to other Sole Operators. We can see the illegality of this — however sometimes a Lady is simply not able to service a ‘special needs’ client and some other Ladies are able to. What we mean by a ‘special needs’ client is someone in a wheelchair, someone who has physical deformities that one Lady is not capable of providing a service to but another Lady is experienced with. Perhaps, we could simply have the ability to refer wheelchair Clients to legal brothels who have wheelchair facilities. We agree straight out and out referring just any client to another Lady should still be kept in place but consideration for certain provisions should be taken under advisement.	We perceive the risks of allowing two sex workers to work together, or refer clients to other sole operators, to be too great.
(vi) Attending bookings together			
SSPAN		It is a fact of the sex industry that escort bookings are often made by one client who wishes to see more than one sex worker and groups of clients who wish to see a sex worker each. In a trade environment where a sole operator cannot attend a booking with another sole operator these bookings could only be carried out by illegal escort agencies. Are we to assume that the CMC would argue that it should only be legal for a client to see two sex workers together in a licensed brothel setting?	As above.
Sole operator sex workers		Attending calls ‘with’ other Sex Workers is illegal. We understand that organising another Lady for such a service is illegal to do and most abide by this law. However to get around this — the client books the Ladies individually to fulfil his fantasy of a ‘threesome.’ We don’t believe the client should be prohibited from doing this or be penalised for doing this. We don’t think there is any reasonable model that would be acceptable to the CMC or the Government to allow Ladies to participate in a threesome fantasy. We shall continue with the current way we offer these activities.	As above.

Submission author	Positive comments	Criticisms	CMC response
Scarlet Alliance		<p>The CMC proposal will effectively disallow communication, sharing of clients, networking, doubles, and industry best practice of working together to avoid potential danger. This proposal, and the current law, places private sex workers in the vulnerable situation operating illegally [instead of] putting in place the best safety mechanism ... to work together with another private sex worker.</p>	As above.

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