

Should legal outcall prostitution services in Queensland be extended to licensed brothels and/or escort agencies?

INTERIM POSITION PAPER

DECEMBER 2005

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

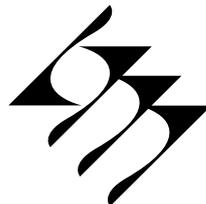
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December 2005

This paper presents the CMC's interim position regarding the way forward for escort or outcall prostitution services in Queensland. It is not the final report of the inquiry. That report will be released in 2006 and will more fully address the issues raised, the submissions provided, the models considered, and the arguments for and against legalising outcall prostitution services. Feedback from key stakeholders and interested parties on the model put forward in this paper will also be incorporated into that report (see 'Invitation to comment', p. iii).

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

CMC vision:

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

CMC mission:

To combat crime and improve public sector integrity.

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Invitation to comment

We invite key stakeholders and interested parties to consider and comment on the model outlined in this paper. This will be the final opportunity to provide comment on the Commission's proposal.

Our position regarding escort services is unlikely to change unless compelling evidence is provided. However, we would appreciate advice on any practical impediments to the implementation of the proposed model, as well as any possible enhancements.

Please send your comments by **31 January 2006** to:

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Abbreviations

CMC	Crime and Misconduct Commission
PLA	Prostitution Licensing Authority
SQWISI	Self-Health for Queensland Workers in the Sex Industry

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Introduction

In Queensland, the only prostitution that is currently legal is that provided by licensed brothels and sole operators. Licensed brothels may provide prostitution on brothel premises only (in-calls). Sole operators may provide prostitution services either at their own premises (in-calls) or at another location, such as a client's home or a motel (outcalls).

The CMC's evaluation of the *Prostitution Act 1999* (Qld), released in December 2004 (*Regulating prostitution*), indicated 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.

However, when key stakeholders were consulted during the evaluation, they recommended 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 most 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 these services. In addition, some groups recommended that escort agencies be legalised, to expand the legal options for workers and provide a regulatory framework for what is currently an illegal activity.

On the information available to the CMC at that time, however, we were unable to recommend that outcall services from licensed brothels be legalised. We expressed two major concerns in the *Regulating prostitution* report:

- Legalising escort services might result in an overall increase in the amount of prostitution in Queensland, both legal and illegal. There are illegal operators who have neither the eligibility nor the desire to operate legally, and they are likely to persist with their criminal endeavours. Sex workers would be unwilling to continue to work illegally if more lucrative legal escort options became available to them, and it is possible that child prostitution and sex trafficking, which are not currently a problem in this state, might increase to make up the shortfall.
- The risks associated with not legalising escort services in this state, on the other hand, could include a significant deterioration in the current legal brothel industry, because of the lack of financial incentives for licensees to remain open. Illegal escort services, which make up about 75 per cent of the current prostitution industry in Queensland, are a damaging source of competition for legal brothels. Given the very positive impressions of the current legal industry gained by the CMC, this is a significant risk. There is also a risk that, if escorts are not legalised in Queensland, legal brothels will fail to attract sex workers to work in the brothels, because the financial rewards associated with illegal escort services are greater than those from either brothel or sole operator work. Illegal escorts also appear to be more vulnerable to health and safety risks, and this problem is likely to persist without legalisation and associated monitoring. The same risks apply to the clients also.

The CMC was also concerned about the current lack of effective monitoring or regulatory processes for legal escort services elsewhere (both nationally and internationally), and some evidence that legalising escort services does not necessarily result in either decreased illegal services or increased health and safety benefits for workers. Moreover, no workable model for the legalisation of outcall services had been provided to the CMC for its 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. (Recommendation 23)

Since publishing the report in December 2004, we have called for written submissions from the public, held public hearings, consulted with a wide range of stakeholders and reviewed the available evidence about escort services in other jurisdictions.

The Commission has now considered the evidence, and has come to the conclusion that legalising outcalls from either licensed brothels or escort agencies is incompatible with the underlying principles of the Prostitution Act,¹ and might even erode its current effectiveness. Also, none of the evidence provided to the inquiry gave the Commission any grounds for believing that its concerns about the possible expansion of the industry and the unacceptable risks associated with sex trafficking and child prostitution were unfounded. Nor does the Commission believe that the legalisation of escort services will overcome the problem of illegal prostitution. We received little evidence that the majority of sex workers who currently work illegally would choose to work for legal brothels or escort agencies, even if legalising escorts would allow them to do so. Some might choose to work for themselves, however, if safety mechanisms were improved.

It is the Commission's view, therefore, that the legal industry requires more time to realise its benefits and maintain the standards it has already achieved before any major changes to the Prostitution Act are introduced. This view is endorsed by the increase in the number of licensed brothels now operating in Queensland, from 14 to 20, in the 11 months since the release of the *Regulating prostitution* report in 2004.

1 The principles underlying the *Prostitution Act 1999* (Qld) were to:

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

However, we firmly believe that the current legal industry (licensed brothels and sole operators) requires more support. We believe that the safe, healthy and crime-free environment of licensed brothels, and the capacity for sex workers to work for themselves, ought to be maintained, and that the illegal industry (outcall prostitution services in particular) should be disrupted.

It appears that illegal outcall prostitution agencies, masquerading as either social escort agencies or sole operators in the print media, Yellow Pages and on the Internet, are largely responsible for illegal outcall services in Queensland. Accordingly, we have developed a model to reduce the capacity of these operators to function, and to increase the capacity of the legal industry to continue.

The purpose of this paper is to present the CMC's model and to elicit comment about the model from key stakeholders in the industry.

As stakeholders will be aware, the sex industry is complex, and attacking the illegal aspect of it requires a complex response. Our model has four main components:

- 1 Regulate social escort providers.
- 2 Tighten the existing prostitution advertising policies of the Prostitution Licensing Authority.
- 3 Improve enforcement measures.
- 4 Improve safety for sole operators.

The Minister for Police and Corrective Services, Ms Judy Spence, has endorsed the Commission's final recommendation in the *Regulating prostitution* report:

That a further review be undertaken in three years' time to assess the effectiveness of the Act. (Recommendation 29)

Ultimately, if the reforms we propose in this paper are accepted, their impact could be assessed at the time of that review, and further consideration could be given to the escorts debate in the context of the state of the industry at that time.

In our final report, which will be released in early 2006, we will discuss in detail the submissions made to the inquiry, the models considered, and the arguments for and against legalising outcalls from licensed brothels and escort agencies.

The model

To address the problem of illegal prostitution in Queensland and support the current legal industry, the Commission proposes a suite of reforms. These will make illegal activity less attractive, make the policing of the illegal industry more likely to be effective, and provide a more 'level playing field' for legal operators. There also appears to be a strong need to improve the safety of sole operators, and the CMC endorses a range of measures for consideration. These changes will also help workers to move away from illegal activity and work more safely within the legal environment.

The four components of the CMC's model were listed in the Introduction, and are explained in detail below. We believe that the proposed reforms should be implemented simultaneously, as 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 first restricting the advertising of social escort providers. 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 to damage an industry that is clearly trying to do the right thing.

1 Regulate social escort providers

The public hearings, and further consultations with industry participants, suggested that a large proportion of 'social' escort providers may be providing prostitution. This means that many social escort providers are, in effect, illegal prostitution providers.

Advertising

Advertising provides an important source of clients and income for both legal and illegal operators in the sex industry.

Social escort providers are not regulated anywhere in Australia. This means that they can publish whatever advertisements they like, subject only to restrictions voluntarily imposed by the publishers themselves. We consider that most of the advertisements for 'social escorts' that we have viewed in the Yellow Pages and the print media, and on the Internet, suggest to the reasonable reader that prostitution services and not just social companionship are being offered.² The result is that illegal

² For example, some of the comments offered are: 'enjoy genuine mutual pleasure'; 'engagement of pure passion'; 'a night of passionate, flirtatious mischievous fun'; 'exotic, erotic and sensational'; 'willingly open to the excitement of engaging in an erotic liaison with you'; 'willing and waiting for that feeling of mutual pleasure and ecstasy'; 'a uniquely uninhibited and mutually explosive experience of your life'; 'no inhibitions'; 'a land of pure ecstasy'.

prostitution providers have an enormous advantage over the licensed brothels and sole operators, whose advertising is restricted by the Prostitution Act.

All advertisements for prostitution currently require approval by the Prostitution Licensing Authority (PLA) or, at the very least, they must accord with the PLA's approved format. We were told that the PLA currently processes approximately 1000 advertisement applications per month, and this number is increasing, requiring the full resources of at least one-and-a-half PLA staff members. However, inappropriate advertisements (e.g. oversized, incorrect terminology, or explicit photos) still appear in newspapers, the Yellow Pages and on the Internet. It is assumed that the majority of these advertisements are for illegal prostitution providers that masquerade as either sole operators or social escort agencies. Because the illegal industry can advertise widely with few restrictions and few challenges, it provides serious competition for legal operators (sole operators and licensed brothels), consequently increasing the potential risks for sex workers and damaging the financial viability of legal operators.

Media outlets are very cautious about their advertisements because they may be liable for committing advertising offences under the Prostitution Act. Checking advertisements against the requirements of the Act takes considerable time and resources, and increases the costs to advertisers. We interviewed a number of Queensland newspapers (e.g. *Courier-Mail*, *Quest Newspapers*, *Gold Coast Bulletin*) about their practices and were impressed with the limitations they currently impose (which are frequently tighter than those imposed by the PLA), as well as their willingness to consider further restrictions. Sensis, the producers of the Yellow Pages directory, have also informed us that they would continue to conform with any legal requirements, which may consequently help to eradicate the illegal industry.

To 'level the playing field', we propose that the feasibility of legislating to regulate advertising by social escort providers be explored. We consider that any legislation should address the following:

- The definition of a social escort service (e.g. companionship that does not include prostitution services).
- A requirement that all advertisements for social escort services contain the words 'non-sexual' or 'sexual services are not provided' in a prominent position in the advertisement. For example:

A person must not publish or cause to be published an advertisement for social escort services that does not include the words 'non-sexual' or 'sexual services are not provided' in a prominent position in the advertisement.

The recommendation is that **each** individual advertisement contain at least the words 'non-sexual' in the advertisement. In the context of print media advertising (i.e. newspapers), our consultations with the newspapers revealed that any required wording would mean additional advertising costs passed on to the social escort provider. In view of this, we considered the option of just requiring that the disclaimer in a classifieds column use the words 'non-sexual' (e.g. the *Gold Coast Bulletin* has a disclaimer in its classified column 'Social Companions' that states: 'Advertisers in this Classification

have signed a legal disclaimer stating that no sexual services are on offer'). However, our view is that the responsibility of specifying that the services are 'non-sexual' should lie with the social escort provider itself, not the publishers, and the extra cost of the two words 'non-sexual' is not unduly onerous.

- Restriction on the images used (e.g. head and shoulders only) — for example:

A person must not publish or cause to be published an advertisement for social escort services that contains photographic or other pictorial representation of a person (whether real or symbolic) unless the photograph or picture is restricted to the head and shoulders of the person.

Currently, advertisements for social escort providers (especially those in the Yellow Pages) include full-length body shots of scantily-clad women in provocative poses. A reasonable person would believe that such images advertised prostitution services. The Commission considers that images in advertisements for social escort services should depict no more than head and shoulders.

- Restriction on reference to race etc. — for example:

A person must not publish or cause to be published an advertisement for social escort services that refers to the race, colour or ethnic origin of the person providing social escort services or refers to any of those matters, directly or indirectly, in the name of the escort services provider.

This prohibition already exists in relation to prostitution services in Victoria and the Northern Territory. It is designed to specifically attack the illegal prostitution providers who may be involved in sex trafficking. Social escort agencies could no longer advertise the name 'Asian Babes', for example. It is recommended that the same prohibition also be introduced in relation to legal prostitution providers.

- Size restriction — for example:

A person must not publish or cause to be published an advertisement for social escort services in a print publication (newspaper, magazine, Yellow Pages, etc.) that exceeds 5 cm x 7.2 cm. (Size should be consistent with the licensed brothel policy.)

- Applicability to any publication that has a circulation in Queensland (whether or not it is published in Queensland).
- Applicability to any escort service offered in Queensland (whether or not the business itself is located in Queensland).
- Provision making the person carrying on the business liable for the publication of the advertisement — for example:

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 for the purposes of this section to have published the advertisement unless the court is satisfied to the contrary.

- Making it an offence for newspapers and other publishers to publish an advertisement. Our consultations with various newspapers have led us to the view that the new restrictions will not be too onerous for publishers. They relate to four matters only: (i) the words ‘non-sexual’ or ‘sexual services are not provided’ must be included; (ii) images must depict no more than head and shoulders; (iii) there can be no reference to race; and (iv) the advertisement must not exceed a certain size. These restrictions are unambiguous and easy to apply. They do not require a separate body, such as the PLA, to approve every advertisement. Applying these new restrictions would be no more onerous than applying the existing PLA advertising policies. The PLA may be able to take a monitoring role and liaise with the newspapers or other publishers to help them apply the restrictions.
- Imposing the same requirements (apart from the size restriction) on Internet advertising. That is, Internet advertising that offers social escorts in Queensland should: (i) contain the words ‘non-sexual’ or ‘sexual services are not provided’; (ii) include head-and-shoulders images at most; (iii) include no reference to race. Given that there are no jurisdictional limits on the Internet, enforcing the policy may be difficult. However, it would be no more difficult than enforcing the current Internet advertising policies for prostitution.
- Penalties for the offences that are sufficiently high to have a deterrent effect.
- An overseeing role for the PLA in relation to advertising (i.e. liaising with the publishers to help them apply the rules).

Obligation to clearly inform

As well as advertising restrictions, a further option is to consider placing an obligation on social escort service providers to inform prospective clients and prospective employees that prostitution services are not provided. For example:

A social escort service must clearly indicate to prospective clients and prospective employees or subcontractors that prostitution services are not provided.

However, we note that imposing such an obligation would be onerous, and is not usual legislative practice. Usual practice is to impose a negative rather than a positive obligation. For example, section 52 of the *Trade Practices Act 1974* (Cwlth) states that a corporation must not engage in false or misleading conduct.

Introducing a positive obligation would facilitate police enforcement against illegal prostitution providers. For example, if an escort agency is contacted and asked whether sex can be provided, any ambiguity in their response (e.g. ‘It’s up to you and the girl’, or ‘I’m sure you’ll find our girls very entertaining’) will be a breach of the provision, because the social escort service provider has not clearly informed the prospective client that prostitution services are not provided. The provision would place an obligation on the social escort service provider to explain to every prospective client and every prospective employee or subcontractor that under no circumstances are prostitution services provided.

We seek the views of stakeholders as to whether the imposition of a positive obligation is considered necessary to combat illegal prostitution providers.

If it is decided that a positive obligation is too onerous, a second option is to impose a negative obligation such as the following:

A social escort service must not represent, directly or indirectly, to any person, that prostitution services may be provided.

Such a provision would facilitate police enforcement to some extent. For example, the provision would cover a statement by a social escort provider that whether it provided prostitution services was 'up to you and the girl'. However, a statement such as 'I'm sure you'll find our girls very entertaining' may not be a representation that prostitution services may be provided (even though such a statement may be effective in conveying to a potential client that prostitution services are in fact provided).

The disadvantage of the negative provision is that the illegal prostitution providers may quickly find a way of circumventing it.

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. The Commission considers that minors should not be providing companionship for a fee. Even if there is a genuine intention to provide companionship only, we consider that the risk of exposing minors to prostitution is too great.

The Commission considers that legislation should be passed to address this issue. Any legislation should:

- prohibit anyone under the age of 18 years from providing social escort services
- prohibit a person from employing or contracting a person under the age of 18 years for the purpose of providing social escort services.

Deceptive employment

The CMC recommends general legislation (that applies to any person, but is particularly important in the case of social escort providers) dealing with deceptive recruiting for commercial sexual services. Western Australia has legislation to this effect; the penalty in Western Australia is 7 years where a victim is an ordinary person, and 20 years where victim is a child or incapable person. It is designed to cover advertisements such as 'hostesses wanted' where hostesses are expected to provide prostitution services.

For example:

- A person who —*
- (a) offers a person employment or some other form of engagement to provide personal services; and*
 - (b) at the time of making the offer knows —*

- (i) *that the victim will in the course of or in connection with the employment or engagement be asked or expected to provide prostitution services; and*
- (ii) *that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide prostitution services; and*
- (c) *does not disclose that knowledge to the victim at the time of making the offer,*
- is guilty of a crime.*

2 Tighten existing PLA prostitution advertising policies

The second component of the CMC's package to combat illegal prostitution providers is to refine the existing PLA advertising policies. The PLA currently enforces advertising policies for licensed brothels and sole operators; and, as indicated above, the way in which these policies are currently implemented is very time-consuming for the PLA. Essentially, the PLA individually approves every print media advertisement, Internet site, promotion material and even SMS text message.

The reason the PLA has engaged in such a resource-intensive exercise is that it believes licensed brothels and sole operators (i.e. the legal part of the prostitution industry) need flexibility and creativity in their advertising to compete with illegal prostitution providers, who are not regulated in any way. However, it appears to us that regulating advertising in such a way that it inhibits illegal prostitution providers would remove the rationale for devoting so much time to approving the advertising of legal operators.

The Commission believes that three key measures will refine the existing advertising policies and, at the same time, inhibit illegal prostitution providers from masquerading as legal ones (i.e. as sole operators). These are:

- a deeming provision
- an 'approved form' for print media advertising
- an 'approved form' for Internet advertising.

As explained below, this range of measures will also make it possible to prosecute illegal prostitution providers for the 'knowingly participating' offence.

Deeming provision

First, the Commission considers it necessary to ensure that all advertising of prostitution is treated as such, and bound by the 'approved form' for prostitution advertising. The sex industry has a tendency to metamorphose. For example, prostitution used to be advertised as massage services. This was controlled, and prostitution was then advertised as something else, such as social escorts. In order to ensure that all prostitution advertising is bound by the 'approved form' for

prostitution advertising, the Commission suggests the following deeming provision in legislation:

An advertisement that offers the opportunity to meet or see a person face-to-face shall be treated as an advertisement for prostitution services unless it is clear to a reasonable person reading the advertisement that the services to which it relates do not involve prostitution services (as defined in s. 229E of the Criminal Code).

Any advertisement for prostitution services unnecessarily offers the opportunity to meet a person face-to-face; there is no way for prostitution providers to circumvent this, no matter how innovative they are in describing their services. Under the new provision it would be treated as advertising prostitution unless it was clear from the advertisement that it was for something else.

The provision would not catch an advertisement for services such as those of a dentist or a physiotherapist. Even though the advertisement offers the opportunity to meet someone face-to-face, it is clear to any reasonable person that the services to which it relates do not include prostitution services.

The provision *would* catch an advertisement for a social escort service if the words 'non-sexual' were not included in the advertisement (and the advertisement did not comply with the other restrictions on social escort advertising described above). It would catch 'exotic massage' unless it was made clear in the advertisement that exotic massage did not include prostitution services. (Note also that if the reasonable person understands 'exotic massage' to include masturbation this would be an advertisement for prostitution, and any such advertisement must comply with the 'approved form' for prostitution advertising.) The provision would catch adult phone services and adult chat lines if the advertisement offered the opportunity to meet and it was not made clear in the advertisement (e.g. by including the words 'non-sexual') that the purpose of meeting would not include the provision of prostitution services.

The deeming provision would not catch an advertisement for strippers (because, in normal circumstances, the audience expects to watch strippers, not to touch them, and the definition of prostitution requires some activity that involves physical touching). However, if the advertisement for strippers implies that touching can occur, or the strippers also provide, for example, an 'escort service', the advertisement would be caught and would be bound by the requirements of prostitution advertising. It should be noted here that the advertising of adult entertainment in liquor licensed premises is already regulated (i.e. restricted in size etc.). The Queensland Government has accepted most of the recommendations of the CMC's 2004 report *Regulating adult entertainment: a review of the live adult entertainment industry in Queensland*; this means that in future all adult entertainment will be regulated, and advertising of all adult entertainment will be governed by that regime.

Because the sex industry changes so rapidly, the PLA, rather than approving every single advertisement, should use its resources to

perform a monitoring role. For example, it should work in close conjunction with publishers to apply the above deeming provision, helping the newspapers to ascertain which advertisements are to be treated as being for prostitution and therefore have to comply with the approved form of a prostitution advertisement. Our consultations with the newspapers indicated that they are strongly in favour of doing this, and have already been very successful in voluntarily regulating many aspects of adult services advertising, as demanded by their readership. The PLA could provide some additional assistance in identifying trends in a changing industry — which would be possible if the PLA were no longer engaged in the resource-intensive exercise of approving individual advertisements.

Current ‘approved form’

The consequence of an advertisement being ‘treated as an advertisement for prostitution services’ under the terms of the above deeming provision is that section 93 of the Prostitution Act will apply. This specifies:

- (1) A person must not publish an advertisement for prostitution that describes the services offered.
- (2) A person must not publish an advertisement for prostitution that is not in the approved form.
- (3) A person must not publish any advertisement for prostitution through radio or television or by film or video recording.

The important aspect of section 93 in this context is the requirement that the advertisement be in the approved form. The PLA is currently applying this requirement by making every advertisement comply with either the licensed brothel advertising policy or the sole operator advertising policy.

The licensed brothel policy sets out some clear guidelines. In relation to general print publications (newspapers, magazines, etc.), an advertisement:

- may include business name, by-line, logo, address, telephone, contact details
- cannot exceed 54 square centimetres in size
- may be in colour or black and white.

However, there are many aspects of the policy that require the PLA to look at every advertisement. For example:

- Approval will only be given to line drawings, pencil renderings and photographs that are not likely to offend the general public.
- Any advertisement intended for a classified publication must be individually submitted to the PLA for consideration.
- Flyers, brochures, posters and coasters must be submitted to PLA for specific approval.
- Websites must be submitted for specific approval.

The sole operator policy is the same. Some requirements are clearly stated, but there are still many aspects of the advertisement that require individual approval by the PLA.

Proposed 'approved form' for print media advertising

The Commission recommends that the PLA use its experience and expertise to develop an approved form for all print media advertising (including newspapers, magazines, promotional material, etc.). As explained above, the PLA has been reluctant to do this because it believes the licensed brothels and sole operators need to be able to compete with the illegal operators (masquerading as social escort agencies), who have no restriction on their advertising. However, if social escort advertising is restricted, the Commission believes there would be no reason to hold back from creating tighter policies.

The content of the approved form for print media advertising should be left largely to the PLA, in consultation with other stakeholders. The Commission makes some suggestions about what the approved form should contain, however.

In relation to advertising by licensed brothels:

- Consider requiring the inclusion of a licence number in the advertisement (though this may not be necessary, because the small number of licensed brothels enables advertisements to be easily monitored).
- Consider requiring the word 'legal' to be used. (Many already do; this would form part of the education campaign described below to inform the public about what is legal.)
- 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. The guidelines must be clear enough, and tight enough, to make it unnecessary for the PLA to approve every advertisement.

In relation to 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 (e.g. 'From Russia with Love' or 'Expect More').
- Consider requiring every advertisement for a sole operator to use an individual's name (usually a pseudonym) so that it clearly indicates to the reader that the services are being offered by a sole operator.
- Consider a requirement that the PLA only approve one name per sole operator. The PLA currently approves multiple advertisements for sole operators using different pseudonyms and multiple phone numbers to allow broader exposure for workers. However, this makes it more difficult for the police to differentiate between sole operators and illegal escort agencies.
- Consider restricting the size of sole operator advertisements to two lines.
- Consider requiring sole operators to have a registration number based on photo identification and pseudonym (provided to the PLA) for display advertisements, but not for shorter ones (e.g. two lines). This would provide sole operators with a choice: either register and be entitled to a display advertisement, or not register and still be able to place a two-line advertisement.

- If photographs and line drawings are permitted, require the PLA to develop clear guidelines on what line drawings, pencil renderings and photographs are not likely to offend the general public. Again, the guidelines must be clear enough, and tight enough, to make it unnecessary for the PLA to approve every advertisement.

Importantly, the Commission does not consider that the words used in a print media advertisement need to be included in the PLA 'approved form'. The PLA currently has a list of 'approved words' which can be used in licensed brothel and sole operator advertisements. This requires a great deal of PLA time in maintaining and applying the list of words to advertisements submitted for approval.

Our consultations with newspapers have revealed that the editorial guidelines voluntarily imposed by the newspapers are stricter than the PLA list of approved words. This is because readers demand 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.

Given this, the CMC believes that the PLA approved form for print media should not regulate the words used in the advertisements. The approved form should regulate the form of the advertisement (i.e. the size, the images used, no reference to race or ethnic origin, and the like). The words used, however, can be left to the newspapers and other publishers themselves to regulate, according to the demands of their readership. This would also remove the current necessity to develop different 'approved words' lists in line with the nature of the publication (e.g. allowing more explicit words in 'R' classified magazines). It is the Commission's view that the work of the PLA to date has set appropriate standards and from now on, in the print media, publishers can be relied on to permit wording that is acceptable to their particular readership.

In relation to promotional material such as business cards or drink coasters, the PLA should develop an approved form that does not require the PLA to approve every individual item. For example, it may be that the only information permitted on promotional material for licensed brothels or sole operators is name, address, telephone number, and images that fall within the guidelines in relation to what does not offend the general public.

The PLA should also retain some capacity to require individual approval of advertising by unusual means, for example at the Indy car race.

Proposed 'approved form' for Internet advertising

Internet advertising differs from print media advertising in a number of ways. Unlike print media advertising, which is constrained by the demands of the readership, it has no mechanism that enables the Internet audience to complain to an Internet content host (ICH) or an Internet service provider (ISP) about the content of a website. In the case of Internet advertising, therefore, we cannot rely on the 'publisher' to regulate the content of the website. On the other hand, Internet websites are not as visible to the general public as some print media advertising

(e.g. the Yellow Pages, which are delivered free to every door); a person seeking a prostitution website must actively look for it on the Internet. So, in the context of current Internet usage, the arguments for regulating the content of these websites may not be as compelling as the arguments for regulating print media advertising. This may change if, for example, the Internet becomes as readily accessible as the print media (e.g. a computer screen, rather than the Yellow Pages, in every motel room).

Given this context, the Commission believes that the PLA should develop an approved form for Internet advertising that sets out:

- strict guidelines about the types of images that may be included (e.g. the PLA in consultations indicated a long list of exclusions such as 'no animals', 'no other person in the photographs', 'no violence', etc.)
- strict guidelines about the type of text that may be included (but not requiring the PLA to approve every website).

The PLA should play a monitoring role (e.g. monitoring the content of the websites and liaising with the QPS for the prosecution of offences). However, this role should not include approving every individual website.

New penalties

In the CMC report *Regulating prostitution* we recommended:

That the PLA monitor the time taken to process advertising requests and make every effort to expedite the process. (Recommendation 22)

The Queensland Government has supported this recommendation. To give it effect, 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. However, when an advertisement does not meet these requirements the licensed brothel or sole operator will be liable to a fine of 70 penalty units, which is equivalent to \$5250.

Essentially, this amendment will complement the reforms proposed above, but it is vital that these penalties and the proposed reforms be implemented simultaneously, to ensure that legal operators are not severely disadvantaged.

Participation offence

Introducing the deeming provision and refining the existing prostitution advertising policies will make it easier to prosecute illegal operators who masquerade as sole operators for the participation offence (s. 229H of the Criminal Code).

A person who advertises as a sole operator and then makes more than one worker available at the end of the telephone would necessarily commit the offence of knowingly participating in the provision of prostitution by another person. That is, if police made three separate calls to a telephone number which had advertised a sole worker, each time requesting a worker to be available at the same time in three different places, and the person answering the phone agreed to provide

these services, the person placing the advertisement would commit the offence of knowingly participating in the provision of prostitution by another person. If the words 'non-sexual' do not appear in the advertisement, they are advertising prostitution; and if they make more than one worker available, they are necessarily participating in the provision of prostitution by another person. The fact that they have advertised prostitution services means that they have no defence to the participation offence. They cannot argue, as they do now, that they were providing only social escort services.

This provision would make police enforcement much easier than it currently is. The QPS would only need to monitor the advertisements. If an advertisement for prostitution leads to a worker being made available at different places at the same time, the offence of knowingly participating in the provision of prostitution by another person has been committed.

To ensure that section 229H is applicable in this scenario, it could be amended to refer specifically to advertising in the 'examples of the crime' listed in the section. For example:

A person who knowingly participates in the provision of prostitution by another person by publishing an advertisement for prostitution that enables contact with that other person.

Again, the person carrying on the business of providing prostitution should be taken to be the person who has published the advertisement unless the contrary is proven to a court.

3 Improve enforcement measures

The third aspect of the CMC's package to attack illegal operators involves improving law enforcement measures. In particular, we suggest measures relating to:

- education
- new business offences
- disabling telephone numbers.

Education

An important aspect of law enforcement is education. In Queensland, licensed brothels and sole operators are legal, and the Commission considers that there needs to be more education about this. Education in itself has the potential to disrupt the illegal prostitution providers. Anecdotally, it appears that illegal prostitution providers (and some licensed brothels)³ may be controlling their workers by making them believe that sole operators are not legal, or that sole operators cannot provide legal outcalls. Non-English-speaking and young workers would be particularly vulnerable to this sort of manipulation. Information targeting these groups would be useful.

3 PLA, *In Touch* newsletter, Issue 12, September 2005, p. 4.

In *Regulating prostitution* the Commission recommended:

That the policy and research functions of the PLA be adequately resourced to enhance its capacity to review and collate information about a range of issues relevant to prostitution (such as sexual health, workplace health and safety, and workplace relations), and to the social factors that contribute to involvement in the sex industry. (Recommendation 4)

That the Prostitution Act be amended to make it clear that the PLA is entitled to provide information to sex workers, other stakeholders and the community about issues relating to prostitution. This could include the establishment of communication strategies such as an information website or an information line, as well as other opportunities for direct consultation. (Recommendation 27)

The government has endorsed Recommendation 27, and Recommendation 4 is currently under consideration by Treasury. If these recommendations are implemented, the PLA will have the capacity to provide relevant material to sex workers in licensed brothels, and the organisation SQWISI (Self-Health for Queensland Workers in the Sex Industry) could take on more of an advisory role to the PLA. SQWISI could then focus its services on sole operators and illegal workers. We were told that the introduction of licensed brothels has largely diverted the services of SQWISI to the development and implementation of various training and induction modules for sex workers in licensed brothels. This has severely curtailed the services they can provide to sole operators and illegal sex workers, and these groups have consequently lost touch with the peer support programs once offered (thus placing them at greater risk).

Some reorientation of these services may provide benefits across a number of areas. For example, with better access to peer education and prevention advice, the safety of sole operators and illegal workers should increase, and licensed brothel workers will be able to liaise more closely with the PLA about a number of broader issues, not just complaints.

Given the Commission's proposals for changes in the way in which advertisements for prostitution are approved by the PLA, significant staff resources should be freed up and could be redirected into an educative function, particularly for the sex workers in licensed brothels.

Another option is for the PLA, sex workers and their representatives to work more closely with community groups (e.g. women's legal services) for additional advice. Many sex workers told us that the legislation in Queensland is not sufficiently clear for them to be sure which activities are legal and which are not. If the law is not clear enough, additional changes may be required to help workers operate legally, and to be of intrinsic value in reducing illegal activity.

'Carrying on business' offences

The prostitution offences currently 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).

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 offence (found in place) to obtain a certificate of discharge in return for giving evidence about the commission of an offence against the Criminal Code in relation to the premises by any other person.
- 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 do not cover illegal escort agencies that provide prostitution services, because there is no place or premises which is being used for the purposes of prostitution by two or more prostitutes. Accordingly, the Commission suggests that new offences be introduced that use the 'illegal premises' model described above, but apply to 'carrying on a business'. For example:

A person who has an interest in a business that enables prostitution to be provided by two or more prostitutes commits a crime.

The Commission recommends an offence like the section 229J offence, but applying to clients and workers of illegal escort agencies, allowing them to seek a certificate of discharge in return for evidence against the person running the illegal escort agency. For example:

A person who, without reasonable excuse, is involved (as client, worker, etc.) in a business that enables prostitution to be provided by two or more prostitutes commits a crime.

The Commission also recommends a provision like the section 229N provision, enabling the fact that a business is being carried on (i.e. one that enables prostitution to be provided by two or more prostitutes) to be **inferred** from particular evidence.

Any new offences should be nominated as serious crimes for the purposes of the *Criminal Proceeds Confiscation Act 2002* (i.e. enabling the assets of illegal prostitution providers to be confiscated).

It is expected that introducing these offences will lead to greater effectiveness and efficiency in policing, and will therefore have beneficial implications for police resourcing.

Disabling telephone numbers

Further consultations have demonstrated to the Commission that an effective means of attacking illegal prostitution providers may be to disable the telephone number that they have advertised for their illegal business. For example, an illegal prostitution provider may pay for a full-page advertisement in the Yellow Pages that is current for 12 months. If a means of disabling the telephone number can be found, this may be a significant blow to the illegal prostitution provider.

Further work is required to develop a mechanism that would effectively disable a telephone number of an illegal prostitution provider. The *Telecommunications Act 1997* (Cwlth) places an obligation on carriers and carriage service providers to do their best to prevent telecommunications facilities from being used to commit offences. This could possibly assist in developing operational procedures by which telephone numbers used by illegal prostitution providers could be disabled. However, this raises state and federal jurisdictional issues that would need to be further explored.

The rationale behind any such provision is similar to that of the confiscation of the proceeds of crime — the telephone number is ‘tainted property’, having been used in the commission of an offence, and it should therefore be confiscated.

4 Improve safety for sole operators

The Commission agrees that the law must be reformed to improve the safety of sole operators. There are two options available:

- Set minimum safety requirements.
- Set minimum safety requirements and allow a receptionist or driver.

The Commission believes that sole operators should not be permitted to refer clients to other sex workers, or attend calls with other sex workers. We feel this would erode the concept of the sole operator, and would increase the opportunities for illegal operators to masquerade as sole operators and continue to dominate the prostitution industry.

Safety

The first option is to allow actions that are necessary for the safety of the sex worker. This option would cover only limited actions, such as the sole operator doing the following:

- telling someone else where they are going and when they will be back
- remaining in telephone contact with someone while they are providing the services (so that help may be called if the safety of the worker is threatened).

The defence would be available only to someone who was not a sex worker themselves. This means that the ‘safety contact’ for a sole operator could not be another sole operator.

If this option was accepted, a possible amendment to section 229H might be as follows:

Subsection (1) does not apply to a person who knowingly participates, directly or indirectly, in the provision of prostitution by another person if —

- (a) the provision of the prostitution by the other person does not take place at a licensed brothel, and is not otherwise unlawful under this chapter; and*

- (b) *the participant participates in the provision of the prostitution **to no more than the extent necessary to ensure the safety of the person providing the prostitution; and***
- (c) ***the participant has not provided prostitution either at the time of the participation or any other time; and***
- (d) *the other person is an adult and is not an intellectually impaired person.*

Such a provision would not allow someone to act as a receptionist for a sole operator, because acting as a receptionist would be **more** than was required to ensure the safety of the worker. It would, however, allow activity such as the two examples specified above. It may be that these examples should even be stated in the legislation itself.

Another consideration within this option is the capacity for sole operators to advise a central agency (such as SQWISI) about dangerous clients, so that important safety information can be disseminated more broadly to other sex workers.

Receptionist/driver

The second option is to allow sole operators to have receptionists and/or drivers. If this is accepted, section 229H could be further amended as follows:

Subsection (1) does not apply to a person who knowingly participates, directly or indirectly, in the provision of prostitution by another person if —

- (a) *the provision of the prostitution by the other person does not take place at a licensed brothel, and is not otherwise unlawful under this chapter; and*
- (b) *the participant participates in the provision of the prostitution **to no more than the extent necessary for providing services as a receptionist and/or driver; and***
- (c) ***the participant has not provided prostitution either at the time of the participation or any other time; and***
- (d) ***the participant has not provided the services of receptionist and/or driver to any other sex worker; and***
- (e) *the other person is an adult and is not an intellectually impaired person.*

The defence would, again, apply only to a person who was not a sex worker themselves.

The receptionist or driver would be permitted to work for one sole operator only.

Please send your comments about this proposed model to the CMC by **31 January 2006**.