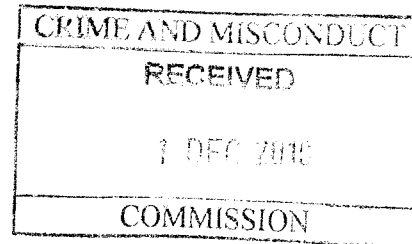




Prostitution
Licensing Authority
Queensland Government

30 November 2010

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



Dear Mr Moynihan

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

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

Yours sincerely

Manus Boyce
Chairman



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

Risk of policy failure

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

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

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

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

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

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

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

Outcalls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹² CMC, *Regulating Outcall Prostitution*, 2006, p. 34.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³³ p. 22.

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

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

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

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

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

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

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

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

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

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

³⁸ email correspondence, 19 November 2010.

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

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

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

Room numbers at brothels

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

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

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

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

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

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

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

Brothel licence fees

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

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

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

⁴³ QABA RIS response, p. 10.

⁴⁴ *Hansard*, 10 November 1999, p. 4832.

⁴⁵ p. 4.

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

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

Licensed brothel location and community amenity

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

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

⁴⁶ QABA RIS response, p. 8.

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

Registration of sex workers

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

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

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

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

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

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

The only ground on which registration of sex workers could be justified is that it is in the interests of public safety. The policy rationale for requiring registration of health workers is to ensure that they hold qualifications from an accredited institution and are fit to practise because otherwise they are likely to present a danger to the public. There are no similar considerations for sex workers. There is no cogent reason that the registration of sex workers is required in the public interest.

Sex worker health and safety

Violence is a wholly unacceptable hazard of sex work. Sex workers are just as entitled as any community member to a safe and healthy work environment. Any legislative regime should have the principle of harm minimisation at its core.

Workers in the illegal sector are more prone to the risk of intimidation, coercion, violence and pressure to have unsafe sex. It is the illegal sector which poses the greatest risk of the exploitation of minors and sex trafficking. Workers in this sector must rely on unscrupulous operators to cater for their health and safety. Moreover, client perceptions of the ability of these workers to access the protection of the police makes them more vulnerable to intimidation and violence. Sex workers in the illegal sector are hardly likely to approach the police to make a complaint about a violent client out of fear that they will instead be arrested by the police for involvement in illegal prostitution. Street sex workers are widely acknowledged to be the most vulnerable to acts of violence from clients and passersby.

Sole operator sex workers are self-employed and responsible for making their own arrangements to safeguard their health and safety. Except in a limited number of circumstances, they must work alone, which is an obvious source of vulnerability. The PLA welcomes recent amendments to the Criminal Code which give sole operator sex workers a couple of additional tools to enhance their health and safety. The amendments permit sole operators to employ the services of a driver or a message taker (a person who receives a message directly from a sole operator sex worker about the worker's location or activities).

The advantage of legalising an industry is that it can then be regulated. Apart from any sex industry specific regulations, businesses that lawfully provide prostitution are legally obliged under workplace health and safety legislation to provide a safe work environment. A variety of academic literature demonstrates that lawfully operated brothels provide the safest and healthiest work environment for sex workers.

Quadara has said that:

indoor environments are subject to a range of controls that inhibit the likelihood of violence. The environmental design of sex work premises (lighting, security doors, intercom and surveillance systems) can increase workers' ability to control the interaction ... and increase awareness of

encounters that are not going well ... The presence and skill of other staff is another feature that increases safety. In brothels, the receptionist is a key 'gatekeeper' who can assess the potential danger a client might present (for example, if he is intoxicated), respond to violent encounters or monitor situations.⁴⁹

Seib et al. have stated that: "There is little doubt ... that sex workers in legally regulated brothels are safer and healthier than those who work in illegal indoor venues or on the streets".⁵⁰

Sullivan has asserted that:

Brothels ... offer the safest working environment for sex workers – as evidence from Australia and elsewhere in the world clearly demonstrates. In brothels, sex workers are far less vulnerable to violence, including sexual assault, because of a number of proven safety measures including the presence of other staff, increased possibilities for screening clients (in reception areas), and the provision of alarms. Workers in brothels are also more likely to feel they are able to complain to police if problems do occur.⁵¹

There are a range of statutory and regulatory requirements to maximise the safety of sex workers in Queensland's licensed brothels, including:

- brothels must be personally supervised at all times
- each room used for prostitution must have a concealed alarm
- there must be electronic surveillance of the brothel, and
- ensuring that the risk from harm in the workplace is controlled and minimised.

Compliance officers of the PLA conduct announced and unannounced audits and inspections of each licensed brothel throughout the year to ensure that they are complying with their statutory and regulatory obligations. Sex workers at licensed brothels may also complain to the PLA about the operations of the brothel or their treatment by a brothel licensee or an approved manager. The PLA will investigate these complaints and take appropriate action.

The autonomy of sex workers is a paramount consideration for the Authority. Section 77 of the Prostitution Act prohibits a person from applying duress to another person to continue to provide prostitution. There is the potential for the exploitation of sex workers by licensees and managers. Sex workers in brothels have additional protections by way of licence conditions, so that licensees and approved managers must:

⁴⁹ Antonia Quadara, "Sex workers and sexual assault in Australia", *Issues*, No. 8 2008, Australian Institute of Family Studies, p. 12.

⁵⁰ Charlotte Seib et al., "Commercial Sexual Practices Before and After Legalization in Australia", *Arch Sex Behav*, 2010, 39, p. 980.

⁵¹ Barbara Sullivan, "When (Some) Prostitution is Legal: The Impact of Law Reform on Sex Work in Australia", *Journal of Law and Society*, Vol. 37, No. 1, March 2010, p. 93.

- observe the rights of a sex worker as an independent party. This includes not coercing, directing, bullying, threatening or unfairly penalising a sex worker, by whatever means, express or implied, and
- not either, directly or indirectly, compel a sex worker against their wishes to provide an introduction, to see a client or to provide a particular service.

Because sex workers have a significantly higher number of sexual encounters than the average person, there is a much greater likelihood of exposure to sexually transmissible infections (STIs) and a higher risk of transmission. However, despite community perceptions of sex workers as vectors of disease, studies consistently show that the sexual health of sex workers is comparable or even superior to that of the general community. Wilson et al. have said that: "Female sex workers have one of the lowest prevalences of HIV (and other STIs) in Australia, compared with levels in other groups of the general sexually active population".⁵² The main source of risk of the acquisition of STIs by sex workers is from their private partners.⁵³ The *Second National STI Strategy 2010-2013* says that:

Despite the occupational risks, the incidence of STIs in sex workers in Australia is among the lowest in the world. This has largely been through the establishment of safe-sex as a norm, the availability of safe sex equipment and community-driven health promotion and peer-based interventions.⁵⁴

Similarly, the *Sixth National HIV Strategy 2010-2013* says that: "Despite the occupational risks, the incidence of HIV in sex workers in Australia is among the lowest in the world".⁵⁵

The peer education of sex worker organisations has been invaluable in impressing the importance of safe sex on sex workers so that safe sex is the norm in the industry. As Donovan et al. have said: "Since the mid-1990s repeated surveys of female sex workers working privately or in brothels ... show almost universal condom use with clients".⁵⁶ In a sense, this is not surprising. Sex workers are motivated to stay healthy and well because their livelihood depends on it. In conducting examinations of clients for any visible signs of STIs, sex workers also perform a valuable educative and public health role, especially in terms of encouraging clients with a suspected STI to seek medical attention.

In respect of legislative and regulatory requirements for licensees and sex workers regarding sexual health and education, all sex workers in Queensland are legally required to use prophylactics. The requirement to observe safer sex practises is not just restricted to sex workers but also

⁵² David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 11.

⁵³ David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 3.

⁵⁴ Department of Health and Ageing, *Second National STI Strategy 2010-2013*, p. 16.

⁵⁵ Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, p. 16.

⁵⁶ Basil Donovan et al., *The Sex Industry in Western Australia: A Report to the Western Australian Government*, 2010, p. 4.

extends to their clients. Under s. 77A of the *Prostitution Act 1999*, it is an offence for:

- a sex worker to provide prostitution involving sexual intercourse or oral sex unless a prophylactic is used
- a sex worker to offer to provide such a service without the use of a prophylactic
- a person to accept such an offer from a sex worker
- a person to ask a sex worker to provide prostitution involving sexual intercourse or oral sex without the use of a prophylactic, or
- a person to obtain prostitution involving sexual intercourse or oral sex unless a prophylactic is used.

Because the licensed brothel sector is sanctioned by the state, and it is in the public interest and consistent with community expectations to have high standards of health and safety in licensed premises, sex workers in brothels are subject to a number of requirements not imposed on sex workers in other sectors of the industry. Section 90 of the *Prostitution Act* prohibits a sex worker from providing prostitution at a licensed brothel during any period in which that person is knowingly infective with a STI. The sex worker will be taken to have known, unless they can prove that, at the time the offence is alleged to have been committed:

- they held a current sexual health certificate of attendance (evidence that they had submitted to a sexual health examination); and
- they believed on reasonable grounds that they were not infective with a STI.

For this reason, sex workers in licensed brothels are required to undergo three-monthly sexual health testing and to present evidence of that to the brothel at which they are working in the form of a current sexual health certificate of attendance. There is no similar requirement for sole operator sex workers. For workers in the illegal sector, evidence of the conduct of a recent sexual health check may be taken into account by a court in mitigation of sentence (s. 229I(3), *Criminal Code*). Mandatory testing of all sex workers in Queensland would be likely to attract opposition from sexual health clinicians and sex worker organisations. There are clinicians who view compulsory testing as a human rights issue and an unnecessary violation of a person's bodily integrity. Clinicians point to the generally low levels of STIs experienced by sex workers and high rates of condom use in questioning the need for compulsory testing and point to the likely impact it would have on demand for services at sexual health clinics. The attendance of greater numbers of sex workers would likely be at the expense of higher risk groups, such as men who have sex with men, and of highly questionable public health benefit. One study has pointed to the high cost of mandatory testing and argued that it is not cost-effective.⁵⁷ In questioning the need for mandatory sexual health

⁵⁷ David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 2.

testing of the sex worker population, clinicians point out that in those jurisdictions where testing is voluntary, STI prevalences are as low as jurisdictions with mandatory testing.⁵⁸ Regular sexual health examinations of sex workers, at intervals consistent with their risk of acquiring a STI and in consultation with their clinician, are industry best practice and encouraged by the PLA. It is, of course, the case that all sexually active individuals are responsible for practising safe sex – the burden does not just fall on sex workers.

Whilst there is a legal requirement for the use of prophylactics for all acts of prostitution involving sexual intercourse or oral sex which all sex workers in Queensland must observe, sex workers in licensed brothels must ensure that prophylactics are used for all contact sexual services, including masturbation. This is achieved by way of a brothel licence condition which requires licensees to have such arrangements in place.

Section 77A of the Prostitution Act prohibits brothel licensees or approved managers from discouraging the use of prophylactics at the brothel. Section 13 of the *Prostitution Regulation 2000* requires brothel licensees to prominently display a sign in the brothel's reception area stating, "only safe sexual activities are practised on these premises". Brothel licensees and approved managers must also take reasonable steps to ensure that:

- a person does not provide or obtain prostitution involving sexual intercourse or oral sex without the use of a prophylactic, or
- a person does not offer to provide, or ask a sex worker to provide, such a service without the use of a prophylactic.

Section 89 of the Prostitution Act prohibits brothel licensees and approved managers from permitting a sex worker to provide prostitution at the brothel during any period in which that person knows the sex worker is infective with a STI. There is also a requirement in the Prostitution Regulation that each room in the brothel must have enough lighting to enable sex workers to check for clearly visible signs of STIs. Additionally, there are a range of brothel licence conditions to promote and facilitate safe sex in brothels, including that:

- sex workers are provided with relevant information about sexual health and the detection of STIs
- written information about STIs is available in client waiting areas
- sex workers must hold a current sexual health certificate of attendance
- direct and immediate access to a supply of personal protective equipment must be provided in each room, and
- clinical waste must be properly managed.

⁵⁸ David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 11.

Sex trafficking

Australia has ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. People trafficking is the physical movement of persons across borders through deception, coercion or force, with the intention of exploiting those persons in the destination country.

Due to the clandestine nature of people trafficking, its extent in Australia is difficult to establish. Most cases brought to official attention have involved the trafficking of women into Australia, predominantly from South-East Asia, for the purpose of sexual exploitation. According to the Australian Institute of Criminology report, *Trafficking of women for sexual purposes*:

Between 1999 and 31 December 2007, the Department of Immigration and Citizenship (DIAC) referred 221 matters (relating to 208 people) about trafficking in persons to the Australian Federal Police (AFP). 196 of these referrals (relating to 174 persons) related specifically to the sex industry.⁵⁹

Not all of these referrals resulted in an investigation. Between 2004 to 29 February 2008, the AFP investigated more than 150 human trafficking allegations.⁶⁰ Moreover, according to the report, by "31 January 2008, seven defendants had been sentenced for offences related to slavery and conducting a business involving the sexual servitude of others in Australia".⁶¹

The *Trafficking of women for sexual purposes* report notes that there are a variety of cultural factors at play when it comes to sexual servitude, and the cases discovered in Australia have rarely conformed to stereotypes of women kidnapped from a rural village, or held at gunpoint, or chained to a bed, or even locked in a room. The cases have been more complex, subtle and multi-dimensional than these stereotypes would indicate. The report says that:

In many cases, the suspected victims of trafficking have known they are coming to Australia to work in the sex industry; many have had access to mobile telephones while here in Australia; and only some have been physically restrained, through detention in brothels and safe houses. However, in all cases, coercion and control has involved a range of subtle methods such as threats of violence, obligations to repay debt, isolation, manipulation of tenuous or illegal migration situations and a general sense of obligation.⁶²

The Commonwealth Criminal Code was amended in 1999 to introduce a variety of relevant offences, including:

- slavery (penalty of up to 25 years imprisonment);
- sexual servitude (up to 15 years);
- deceptive recruiting for sexual servitude (up to seven years);
- trafficking (up to 12 years); and

⁵⁹ Fiona David, *Trafficking of women for sexual purposes*, p. 6.

⁶⁰ Fiona David, *Trafficking of women for sexual purposes*, p. 6.

⁶¹ Fiona David, *Trafficking of women for sexual purposes*, p. 7.

⁶² Fiona David, *Trafficking of women for sexual purposes*, p. 39.

- debt bondage (up to 12 months).

There are also a range of relevant offences which may apply under Queensland law in relation to forced prostitution, assault, sexual assault, and deprivation of liberty.

It is noted in the Australian Government *Trafficking in Persons* report that: "Opportunities to traffic people into Australia are low because of our strong migration controls and geographic isolation".⁶³ The PLA is rightly proud that during the past decade there has not been a single incidence of the discovery of a trafficked person for the purposes of sexual servitude in any licensed brothel in the state. It is considered that the Authority's probity and compliance functions present a low risk of sex trafficking in licensed brothels. Nonetheless, the PLA is aware that there have been instances of trafficking in legal brothels in other states, albeit that they do not have the same level of probity checking and monitoring of brothels as we have in Queensland, and that it cannot afford to be complacent. The Authority's compliance officers are vigilant for indications of trafficking and the Authority works in conjunction with other agencies where appropriate.

There are now five specialist Asian brothels in the state. The business model associated with these brothels is that the sex workers are from interstate and travel to Queensland for periods of typically two weeks duration. During this time they tend to be housed on-site at the brothels. This presents an obvious risk of sexual servitude. The Authority manages this risk through its probity of brothel licence applicants and by conducting announced and unannounced inspections and audits of brothels. If it is warranted, the PLA will conduct inspections with other relevant agencies including the Australian Federal Police and the Department of Immigration and Citizenship. To further minimise any risk, the PLA is currently developing a code of practice for culturally and linguistically diverse (CALD) sex workers.

It is in the illegal sector of the sex industry where there is the greater risk of sex trafficking. A case involving a Gold Coast hairdresser, Dobie, is relevant. After experiencing difficulty in repaying 'loan sharks', he had apparently lured two Thai prostitutes to Australia with false promises about their earnings and working and living conditions. On arrival, the women were forced to provide prostitution and see clients against their will. Dobie was apparently verbally and physically abusive to the victims of his deception. The money they earned was confiscated and they were given just \$20 a day for food and other necessities. In addition to pleading guilty to two counts of people trafficking, Dobie also pleaded guilty to one count of handling proceeds of crime, and four counts of presenting false documents.

The CMC *Regulating Outcall Prostitution* report referred to evidence from CATWA that legalising prostitution creates a demand for sex trafficking, referring in particular to the sex industry in Victoria.⁶⁴ In recent years, there

⁶³ Australian Government, *Trafficking in Persons: The Australian Government Response 1 May 2009 – 30 June 2010*, p. 3.

⁶⁴ p. 29.

has been a trend internationally to conflate prostitution with trafficking, so that every migrant sex worker is immediately regarded as trafficked and exploited (for more on this phenomenon refer to Appendix 2 of this submission). For the moment, the following observation from Leslie Ann Jeffrey and Barbara Sullivan will suffice:

In relation to trafficking Mary Sullivan [of CATWA] (2007, 219-27) argues that the reforms in Victoria have created a “growing market for sex trafficking victims” – as legalization fuels men’s “demand” – and that there is a “connection” between the incidence of trafficking and the “tolerance” of prostitution in domestic policy which has exacerbated the problem of dealing with trafficking. But the whole field of trafficking research suffers from a number of now well-known problems including widely varying definitions of trafficking and the conflation of (forced) trafficking with sex work (B. Sullivan 2003). Di Nicola (2007: 49) has recently argued that such trafficking research is “weak”, the data collected (even for official statistics) is of dubious quality and “based more on emotions, political or dogmatic bias than on strong and substantiated research work.” Mary Sullivan certainly presents no substantive evidence to support her claims of a link between legal prostitution and trafficking. Moreover, in the Australian context, there is good evidence which tends to call her claims into question. While there are certainly migrant sex workers working in Australia this is not a new phenomenon (Frances, 2004) and most are not trafficking victims who have been coerced or duped into sex work (Scarlet Alliance, 2008; Brockett and Murray, 1994).⁶⁵

Further, of the sex workers interviewed for the study of the Victorian sex industry:

many stressed the autonomy of overseas workers as global economic migrants, and noted the significantly higher levels of pay available for sex work in Australia. None of the workers from overseas directly described being coerced by brokers or agents but rather indicated that the drivers for entering sex work were social and economic.⁶⁶

Finally, Dr Nick Mai from the London Metropolitan University conducted a study of 100 migrant male, female, and transgendered sex workers.⁶⁷ He found that only six per cent of female respondents, “felt that they had been deceived and forced into selling sex in circumstances within which they had no share of control or consent”.⁶⁸ Other key findings revealed by the study were:

- Working in the sex industry is often a way for migrants to avoid the unrewarding and sometimes exploitative conditions they meet in non-sexual jobs
- By working in the sex industry, many interviewees are able to maintain dignified living standards in the UK while dramatically improving the living conditions of their families in the country of origin

⁶⁵ Leslie Ann Jeffrey and Barbara Sullivan, “Canadian Sex Work Policy for the 21st Century: Enhancing Rights and Safety, Lessons from Australia”, *Canadian Political Science Review*, 3(1) March 2009, p. 64.

⁶⁶ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 27.

⁶⁷ *Migrant Workers in the UK sex industry*.

⁶⁸ Nick Mai, *Migrant Workers in the UK sex industry*, p. 4.

- The stigmatisation of sex work is the main problem interviewees experienced while working in the sex industry and this impacted negatively on both their private and professional lives
- Interviewees generally describe relations with their employers and clients as characterised by mutual consent and respect, although some reported problematic clients and employers, who were disrespectful, aggressive or abusive
- Most interviewees feel that criminalisation of clients will not stop the sex industry and that it would be pushed underground, making it more difficult for migrants working in the UK sex industry to assert their rights in relation to both clients and employers.⁶⁹

Sex worker exit programs

The PLA, quite appropriately, takes a neutral stance on the sex industry. It neither encourages nor discourages individuals from entering or exiting the sex industry. As far as the Authority is concerned, it is very much a matter of individual autonomy and freedom of choice to be left to freely consenting adults.

The PLA supports the availability of sex worker exit programs for those workers that choose to leave the industry of their own accord. It does however note that some sex workers find the very concept that they require 'saving' to be patronising and offensive, whilst others are eager for assistance to leave the industry. In one sense, that some workers should express a desire to leave sex work is unsurprising. The same would be true of workers in any industry.

Not surprisingly, studies have consistently revealed that the primary motivation for involvement in the sex industry is financial. In comparison to other low skilled occupations, large amounts of money can be earned over a relatively short period. A recent study of the Victorian sex industry, involving interviews with 55 sex workers from a variety of industry sectors found that:

Many workers cited the potential for significant financial rewards as a key motivator for entering the industry. As other studies have found, **there are no other forms of semiskilled labour that can produce comparable income.** The financial independence made possible by working in the sex industry is highly valued by all workers. It is seen as a source of confidence and security.⁷⁰

Other significant factors are the independence, autonomy and flexible working hours afforded by prostitution. As made clear by the Victorian study, the flexibility offered by sex work makes it attractive to parents (especially single

⁶⁹ Nick Mai, *Migrant Workers in the UK sex industry*, p. 5.

⁷⁰ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 12 (emphasis added).

mothers) and students who can more easily accommodate their parenting responsibilities or study commitments than with most other forms of work.⁷¹

The barriers to exit are essentially the same as the motivations to entry, especially financial considerations. After all, financial considerations tend to be the major barrier to exit for any person dissatisfied with their job. More than 90 per cent of all sex workers in a New Zealand study conducted by the Christchurch School of Medicine in 2007, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* said that money was a reason for staying in the industry.⁷² Another significant barrier to exit that has been identified is the camaraderie and sense of belonging experienced by some sex workers. A lack of employment history or the existence of a criminal record may also act as inhibitors. Some workers might acquire a criminal record as a result of participation in the illegal sector. It is ironic that this very same record may make it harder for them to leave the sex industry.

Studies have also demonstrated that leaving the sex industry is very difficult and is generally characterised by several attempts. Money continues to be a powerful attractant to those persons with few skills or qualifications. The Christchurch School of Medicine study found that 67 per cent of respondents who had taken a break from the industry returned because they needed the money, and half of the participants reported that money was the one thing they missed most when not working.⁷³

The New Zealand Prostitution Law Review Committee has summarised what it regards as best practice principles for exiting interventions. These are:

- *Holistic interventions:* A range of different service providers need to be engaged.
- *Dealing with changes of mind:* Interventions need to be patient and accept that sex workers trying to exit may take small, incremental steps.
- *Facilitating free choice:* Sex workers need choices, but have to make their own decisions.
- *Dedicated services and brokerage:* Dedicated services are needed to broker the provision of mainstream services. One-to-one support from a 'key worker' seems to work best.
- *Building trusting relationships:* Relationships of trust can provide the basis for exploring routes out.
- *Adequate resourcing:* To ensure good service provision. Continuity of resourcing is also important.

⁷¹ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 13.

⁷² Cited in New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 67.

⁷³ Cited in New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 66.

- *Public education:* To raise awareness about the issues associated with prostitution, and that support services aim to develop routes out.
- *Outreach:* Outreach maximises the chances of engaging those who might be considering exit and who need extra reinforcement.
- *Location of services:* Services should be close, but not too close, to areas of prostitution.⁷⁴

In 2007, a report by the Victorian Prostitution Control Act Ministerial Advisory Committee recommended to the Victorian Government that it fund a career transition program for sex workers who wished to exit the industry. The report stated that:

The committee favours a case management approach that builds linkages and non-judgemental referral pathways for sex workers to other programs and services delivered by government agencies, education and training institutions and community organisations. This model allows the case manager to tailor support to the needs of individual participants.⁷⁵

This demonstrates that a 'one size fits all' approach would be impractical and ineffective in meeting the needs of all sex workers. The needs of individual sex workers will be different, and so too will the needs of sex workers from different sectors of the industry. For example, street workers are more likely to require assistance with basic life skills, homelessness, mental health, and illicit drug and alcohol dependence, and may require emergency funding.

At the commencement of the Prostitution Act, recurrent funding of \$217,718, commencing 2000-01, was specifically provided to Queensland Health to fund appropriate programs for sex workers who may wish to exit the industry. Queensland Health has entered into a service agreement with Southern Edge Training (SET) to provide an exit and retraining program to sex workers in the state. The service offered by SET is voluntary and confidential and targets sex workers and those who are likely to enter or re-enter sex work. It provides career transition and employment training programs and involves the provision of one-on-one career counselling and assistance. The program consists of competency based modules covering basic computer skills, resume writing, job search training, interview techniques, job preparation and basic first aid. The training needs of individual sex workers are assessed and services cover living skills training, and literacy and numeracy skills, as well as accredited vocational training. In addition, the program provides support and referral to other agencies for specific problems unrelated to employment, such as drug and alcohol providers. Training and advice provided to sex workers includes, but is not limited to: health; TAFE; crisis counselling referral; life skills and training services for work placement preparation; identification, motivation and goal setting; referrals to sex worker organisations; Centrelink; job network agencies; senior first aid; computer skills; OH&S; customer service; budgeting; literacy and numeracy; and change management.

⁷⁴ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 78.

⁷⁵ Victorian Prostitution Control Act Ministerial Advisory Committee, *Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want to Move On*, 2007, p. 5.

Participants in the SET program have been employed in areas such as hospitality, education, retail and sales, travel, community services, and health.

The PLA has been advised that the program is promoted in a number of ways, including through state-wide print media, local, and industry-specific newspapers. Representatives of SET might also attend licensed brothels, adult shops, and engage in outreach to street workers via Drug Arm and by 'cold calling' sole operators who advertise their services in newspapers. The PLA has promoted the SET program in its newsletter, *In Touch*, and has a link on its website.

The PLA understands that Queensland Health has contracted with an organisation to undertake a review of the sex worker exit and retraining program and this review is in its early stages.

Prostitution advertising

In order to limit the impact of prostitution on the community, advertisements for prostitution in Queensland are strictly regulated. Advertisements must be in an approved form and may not:

- describe the services offered
- be published through radio or television, or by film or video recording
- state directly or indirectly, that the person's business provides or is connected with massage services, or
- be worded such that the advertisement might induce a person to seek employment as a sex worker.

Until 30 May 2008, licensed brothels and sole operator sex workers were required to seek approval from the PLA for all proposed prostitution advertising. As a result of legislative amendment, the PLA issued *Guidelines for prostitution advertising*, enabling the industry to self-assess advertisements for prostitution against the approved form. The guidelines apply to:

- general print publications, including newspapers, magazines and tourist publications
- adult publications
- print directories
- business cards
- flyers, brochures, posters and coasters
- internet advertising, and
- merchandising, gift vouchers, corporate gifts and other promotional signage.

The guidelines have been welcomed by the sex industry and publishers alike. They have resulted in a simpler, more efficient and streamlined advertising approval process, which in the vast majority of cases circumvents the need to submit advertisements to the PLA for approval. The PLA has gone from approving thousands of advertisements each year to just a handful.

In response to complaints about advertising, the Authority developed an Advertising Surveillance Program in 2003. The PLA compliance unit examines a sample of approximately 500 print media advertisements per month. This program provides an opportunity for the PLA to communicate with advertisers and publishers in respect of the requirements of the guidelines. Where appropriate, the PLA refers suspected advertising breaches to the Prostitution Enforcement Taskforce (PETF) of the Queensland Police Service (QPS) for investigation. Since the inception of the surveillance program, with its strong emphasis on the proactive provision of information on the requirements of the Act, the advertising surveillance results have indicated a 95 per cent improvement in print media advertising compliance. Significantly, advertising complaints have not increased since the inception of the *Guidelines for prostitution advertising*.

As a result of recent amendments to the Prostitution Act which have not yet been proclaimed, the PLA will assume responsibility for the regulation of 'social' (i.e. non-sexual) escort advertising, which will involve the issuing of advertising guidelines. This has been prompted by concerns that illegal prostitution operators are masquerading as social escort agencies, and advertising as such. Whilst the Authority does not want to be unduly pessimistic, it is aware that the illegal sector has proven quite adept at altering its business operations to cater for changes in the law. The likely impact will be that these businesses will no longer masquerade as social escort agencies but instead their workers will advertise as legitimate sole operator sex workers whilst in reality operating as part of an illegal escort agency.

Finally, the PLA is aware from Ms Edwards' report that there is some support amongst brothel licensees for a registration number to be attached to sole operator advertising.⁷⁶ Presumably, this would be a registration number obtained as a result of the registration of sex workers. As stated earlier in this submission, the Authority is opposed to the registration of sex workers. Furthermore, it does not believe that this proposal would be effective in combating advertising by illegal operators. Sex workers would simply make numbers up and/or share numbers. How are publishers expected to reconcile a registration number with a sex worker? How are they supposed to know that a sex worker is who he/she claims he/she is?

Youth involvement in prostitution

Section 229L of the Criminal Code provides that it is an offence, carrying a maximum penalty of 14 years imprisonment, for a person to knowingly cause

⁷⁶ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 30.

or permit a minor to be at a place used for the purposes of prostitution by two or more sex workers. This effectively precludes minors either from providing prostitution at a licensed (or unlicensed) brothel or from accessing the services of a sex worker at a licensed (or unlicensed) brothel. By way of condition of brothel licence, licensees or approved managers are required to sight and record evidence that a sex worker is at least 18 years of age before they can provide sexual services at the brothel. The PLA's compliance activities have revealed no evidence of minors working in the state's licensed brothel sector. The Authority has no jurisdictional responsibility for minors that engage in prostitution outside of licensed brothels. The PLA is unaware of how many minors in Queensland might be involved in prostitution at any one time. The Queensland Commission for Children and Young People and Child Guardian last year advised the Authority that it was not aware of any relevant statistics.

The PLA identified that the Criminal Code was deficient in not criminalising persons who purchase sexual services from minors. This left 16 and 17 year olds, who are of the age of consent (except for anal intercourse), vulnerable to approaches from persons seeking to pay them for sexual services. The Authority considers that a threshold of 18 years of age for involvement in sex work is appropriate because it acknowledges the vulnerability and immaturity of minors and the risk of potential harm. There is a significant difference between commercial sexual activity and other activity. Whilst a young person in Queensland aged 16 or 17 years is legally able to have consensual sex, the exchange of sex for money or some other consideration raises genuine concerns about exploitation. The inherent nature of prostitution makes it suitable only for adults. In response to these concerns, it has recently been made an offence under s. 229FA of the Criminal Code for a person (a client) to obtain prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult. This offence carries a maximum penalty of imprisonment for seven years. In circumstances where the person who provides prostitution is under 16 years, the offender is liable to a maximum penalty of 14 years imprisonment. Minors engaging in prostitution should be regarded as victims, in need of protection, and it is appropriate that their behaviour not be criminalised.

The involvement of minors in prostitution tends to be opportunistic in nature and is generally what might be termed 'sex for survival' (shelter, food, to support drug addictions) and occurs outside of the mainstream sex industry. Often it is the case that young people involved in prostitution do not identify as a sex worker. Their involvement in prostitution is the culmination of a range of complex and interwoven social factors. Known pathways to prostitution are homelessness, social disadvantage, family breakdown, illicit drug and/or alcohol use, abuse (sexual, physical and psychological), unemployment (and lack of employment potential), and leaving school prematurely. Some young people start out performing sex for favours (accommodation, food, drugs) before moving on to paid sex work. Often they are introduced to sex work and drugs by other individuals in a similar life situation.

Child Wise, an organisation working to prevent the sexual abuse and exploitation of children, has conducted research into the phenomenon of the involvement of minors in prostitution. A 2004 study of 30 young Melbourne sex workers, *Speaking for Themselves*, found that all had started sex work while age 16 or younger. Eighteen had started by the age of 14 and four had started at age 12.⁷⁷ All participants in the study were supporting expensive drug habits, and preferred sex work as an alternative to dealing drugs or other crimes.⁷⁸ Studies have shown that drugs are used as "emotional anaesthesia".⁷⁹ All of the participants claimed to have suffered abuse (sexual, physical and neglect) either in the family, the state care system or both.⁸⁰

Participants in the *Speaking for Themselves* study had begun to engage in sex work soon after leaving home or while within the state care system.⁸¹ Street sex work is acknowledged as the most dangerous form of sex work. Street sex workers are prone to violence and sexual assault, not just from clients but by other sex workers and passersby. Young people on the streets are even more vulnerable, especially as they are unlikely to be aware of risk management techniques. Almost all of the participants in the study indicated that they had been sexually assaulted or exposed to another form of violence at least once since they started working.⁸² 'Tim', a 16 year-old participant in the study, had been attacked the night before he was interviewed and had a black eye and cut lip as a result. He had reached only Year Six in his education, his mother had died when he was five, he was placed in foster care at age seven, and claimed that his foster father was sexually abusing him so he ran away at age 12. He started out doing sex for favours and moved on to commercial sexual acts.⁸³

Young people engaged in sex work are also more prone to unsafe sex practices, potentially exposing themselves to a range of STIs. They lack life-experience and negotiating skills, especially considering that they are likely to have a low level of education. Homelessness tends to be incompatible with attending school. Drug and alcohol abuse also makes them prone to risk taking and desperate behaviours. For a person hanging out for their next 'fix', safe sex practices are hardly likely to be uppermost in their thoughts.

To address the problem of youth involvement in prostitution early intervention and diversion is required. Ideally, that intervention should come in the earliest stages of their vulnerability, so that they do not get caught in the trap of prostitution to begin with. Programs that divert youth at risk of homelessness should therefore be seen as a priority. The less desirable point of intervention is when young persons are engaged in prostitution. Participants in the *Speaking for Themselves* study nominated two crucial points of intervention.

⁷⁷ Child Wise, *Speaking for Themselves*, 2004, p. 6.

⁷⁸ Child Wise, *Speaking for Themselves*, 2004, p. 32.

⁷⁹ Grant, David and Grabosky, 2001, cited in Child Wise, *Speaking for Themselves*, 2004, p. 19.

⁸⁰ Child Wise, *Speaking for Themselves*, 2004, p. 37.

⁸¹ Child Wise, *Speaking for Themselves*, 2004, p. 42.

⁸² Child Wise, *Speaking for Themselves*, 2004, p. 51.

⁸³ Child Wise, *Speaking for Themselves*, 2004, p. 69.

They said that they would have benefited from intervention on leaving the family home (voluntarily, being told to leave, or being removed by authorities) or before becoming addicted to drugs.⁸⁴ Outreach programs that proactively target young people at the time they arrive on the streets, before they have an opportunity to become entrenched in prostitution and/or drugs, would be beneficial in preventing the cycle of hopelessness, despair and marginalisation experienced by young people on the streets. The *Speaking for Themselves* participants also advocated a need for 24-hour drop-in centres and 24-hour outreach services that deal with issues that youth involved in sex work have identified as important.⁸⁵ Services that operate only nine to five are impractical and inconsistent with the needs and lifestyle of these young persons.

Young people involved in prostitution, or at risk of becoming involved, have multiple and complex needs. Crisis accommodation and housing, drug and alcohol detoxification programs, income support, assistance with education and the development of job skills, employment assistance, health services, assistance with basic life skills, and counselling are all required. Youth workers must be supportive, non-judgemental and have appropriate training and skills to deal with young people who are at risk of engaging in prostitution or who are participating in sex work. They should also possess knowledge of services to which young people can be directed and take an active role in facilitating and encouraging them to seek appropriate support and assistance. At a bare minimum, young people require shelter and sustenance. It is also important to note that difficulties accessing assistance can be compounded because minors involved in prostitution may be reluctant or determined not to come into contact with authorities because of a fear that they will be put into state care, particularly when they have had previous negative experiences of that system, like neglect and abuse by a foster parent.

Child Wise has made the following recommendations in respect of the involvement of minors in prostitution:

- The provision of sufficient housing for young people who are homeless and transient.
- Major systemic change and restructuring within the state care system.
- Service provision to provide holistic support for young people with multiple and complex needs.
- Non-judgemental 24-hour outreach support and accommodation to be provided to meet the immediate needs of at risk young people.
- A safe house/drop-in centre with health and welfare services.
- Pathway programs that offer alternatives and options to marginalised young people to be developed for long term positive change.⁸⁶

⁸⁴ Child Wise, *Speaking for Themselves*, 2004, p. 33.

⁸⁵ Child Wise, *Speaking for Themselves*, 2004, p. 33.

⁸⁶ Child Wise, *Speaking for Themselves*, 2004, p. 8.

The complex and multiple factors that lead to involvement in youth prostitution, and the significant resources required to address the issue, mean that no single government agency can assume responsibility. A whole-of-government approach is required to ensure a coordinated and sustained response to the issue. Relevant lead agencies are the Department of Communities, Commission for Children and Young People and Child Guardian, Queensland Health, and the QPS. As police on the beat are likely to come into contact with at risk youth, the QPS has an important role to play in terms of early intervention and diversion.

Appendices

A number of documents are attached which may be of assistance to the CMC Review of the Prostitution Act.

Appendix 1: Fact Sheet 1: Safety and Security Guidelines for Sex Workers Who Provide Outcall (Occupational Safety and Health Service, New Zealand Department of Labour).

Appendix 2: The Ban on Purchasing Sex in Sweden: The so-called 'Swedish Model' (Bob Wallace, Principal Policy Officer, Office of the PLA).

Appendix 3: PLA response to recommendations of Anne Edwards in *Selling Sex; Regulating Prostitution in Queensland*.

Appendix 4: First PLA Submission to the Review of Government Boards, Committees and Statutory Authorities.

Appendix 5: Second PLA Submission to the Review of Government Boards, Committees and Statutory Authorities.

Fact Sheet 1: Safety and Security Guidelines for Sex Workers Who Provide Outcall

SEX INDUSTRY WORKERS PROVIDING OUTCALL HAVE SAFETY AND SECURITY issues particular to this form of sex work. Operators in an outcall service also have added responsibilities to ensure the safety of their sex workers while working.

Having an established outcall work safety procedure is essential — as is adhering to it. The following guidelines are designed to assist outcall workers maximise their health, safety and well-being.

Bookings

Whoever is taking bookings for outcall work, either the receptionist or the sex worker themselves, should take the following steps:

- When a client calls, take their name, address and phone number and tell the client you will call them back to take the booking. Call Telecom Directory Assistance (018) and verify that the name matches the name and address given.
- Keep a list of bad clients at hand, and share this information with other sex workers.
- When calling the client back, ascertain whether the client is alone. Explain that the sex worker will not stay if the client has misrepresented how many people are there.
- Make it clear to the client that the sex worker will only provide services that conform to safer sex practices.
- Receptionists should keep all potentially necessary emergency phone numbers up-to-date and share them with sex workers. Financial incentives for receptionists are sometimes used to encourage them to book as many jobs as possible. This may lead to sex workers going on a job to a bad client. Safety of the worker — not financial profit — must be the first consideration.

Getting to the job

- Drivers must be provided with training in their role by the employer and be clear as to their responsibilities.
- On arrival, the sex worker should note whether the house is well lit and listen as she/he approaches the front door for voices that may indicate more than one person. If the client is not alone, then the sex worker may require the driver to accompany her/him inside. The sex worker should try to ascertain whether the client is too intoxicated. If the sex worker feels uncomfortable or endangered at any stage, she/he should leave immediately.
- The sex worker should always get the payment first. She/he should give it to the driver or put it straight into a discreet pocket or bag. The money bag should be kept within sight at all times, even when the sex worker goes to the bathroom.
- The sex worker should phone in on arrival. Repeating the address, the booking in and out time and having a pre-arranged code word or phrase that represents a dangerous situation is strongly advised.
- If the sex worker is working alone, she/he should still make the phone call to a friend. Even calling her/his own number is better than nothing, so that the client believes that someone is aware of her/his location at all times.

Doing the job

- The sex worker should always carry a “work kit” containing condoms, lubricant, dams, gloves and any other tools of the trade with them at all times.
- Checking the client for visible signs of sexually transmissible infections is strongly advised.

Operators' responsibility for outcall worker safety

- Operators should ensure that sex workers are aware of, understand and follow any safety guidelines and policies.
- Operators who provide outcall services should provide sex workers with a mobile phone and personal alarm while working, at no cost to the sex worker.
- Operators should provide training in procedures and responsibilities to all sex workers providing outcall services, reception staff and drivers.
- Operators should ensure that drivers have adequate driving skills, do not indulge in intoxicating substances while working

and interact with sex workers in a respectful and supportive manner.

- Operators should provide training to new sex workers on all aspects of outcall work including safer sex practices. Local sex work organisations can assist with training provision.
- Operators who provide outcall should provide secure lockable facilities for sex workers to store clothing, valuables, etc.

THE BAN ON PURCHASING SEX IN SWEDEN: THE SO-CALLED 'SWEDISH MODEL'

Prostitution and human trafficking for sexual purposes represent a serious obstacle to both social equality and gender equality. It is unacceptable that people – mostly women and children – are being purchased and exploited like merchandise. Victims of human trafficking and prostitution lose power over their lives and their bodies. They are robbed of the chance to enjoy their human rights.

Nyamko Sabuni

Swedish Minister for Integration and Gender Equality¹

Now it actually says, in the context of the law, it says that no prostitution is prostitution out of free will. It means that everybody is a victim. If you scream and shout that you're not a victim you are suffering from a false consciousness. And if you try to convince them that you're not even suffering from a false consciousness, they will say: "Well you're not representative".

Pye Jacobsson

Swedish sex worker and activist²

The law in Sweden and its rationale

Since 1999, there has been a prohibition on the purchase of sexual services in Sweden. Buying sex in Sweden is a criminal offence. Obtaining casual sexual relations in exchange for payment is forbidden, on penalty of a fine or up to six months imprisonment. Conversely, the selling of sexual services is not an offence. The law is targeted at the demand for prostitution (the clients) without focusing on the supply (the sex workers). The theory is that if the demand for prostitution is cut, so too are avenues for sex work. The ultimate aim is to eradicate demand for prostitution and thereby eradicate prostitution. This is commonly referred to as the 'Swedish model' in debates. The law is popular in Sweden – polls have shown that it is supported by about 80 per cent of the population³. Although, only a fifth of those surveyed believe that the law has been effective in reducing demand.⁴

The law is grounded in the radical feminist perspective where prostitution is a form of male violence against women and children. Sex workers are "prostituted women" and victims of men who are not clients but at best criminal exploiters and abusers of women and at worst are rapists. Men do not purchase sex, instead they purchase women to sexually exploit. Prostitution is seen as a barrier to gender equality, and therefore not only harmful to individuals but to society at large.⁵ It normalises that it is

¹ Cited in, Government Offices of Sweden, *Against prostitution and human trafficking for sexual purposes*.

² Pye Jacobsson, Sweden: "We want to save you. And if you don't appreciate it, we will punish you" – www.swannet.org/node/1512

³ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, p. 14.

⁴ Tom Sullivan, "Sweden revisits prostitution law", *The Christian Science Monitor*, June 2009 – www.csmonitor.com

⁵ Gunilla Ekberg, "Update on Swedish Model of Sex Industry Reform", *Debate*, Issue 3, September 2008, p. 25.

acceptable for men to buy and sexually exploit all women.⁶ Probably the most prominent international advocate of the Swedish model is Gunilla Ekberg, Co-Executive Director, Coalition Against Trafficking in Women and former Special Advisor to the Swedish Government. She has explained the genesis of the Swedish law:

The initiative to criminalize the prostitution buyers originally came from the Swedish women's movement. Feminists analyzed women's position in society and how men, through the exercise of violence against women ensured that the subordinate position of women was maintained, including by men using some women and girls for prostitution purposes. In agreement with other feminists worldwide, they concluded that prostitution was another patriarchal tool of oppression that has deleterious effects on the women and girls, who are induced and kept in prostitution, as well as an extreme form of male violence used to control female human beings as a class. Since the beginning of the 1980s, Swedish feminists have consistently argued that men who buy prostituted women should be criminalized, and that the women and girls in prostitution should be seen as victims of male violence who have a right of assistance to escape prostitution.⁷

Ekberg has previously said that: "My whole life has been about ending male violence against women".⁸ That Ekberg could claim that her entire life has been dedicated to this cause indicates a peculiar zealotry. Her extremist, one-dimensional views are evident from this statement, describing clients of sex workers as sexual predators and rapists:

In prostitution, men use women's and girls' bodies, vaginas, anuses, mouths for their sexual pleasures and as vessels of ejaculation, over and over and over again. Prostitution is not sexual liberation; it is humiliation, it is torture, it is rape, it is sexual exploitation and should be named as such. Consequently, males who use women and girls in prostitution are sexual predators and rapists.⁹

All sex workers are seen through the prism of passive victimhood and the proponents of the Swedish model deny that any person could ever freely choose to work in the sex industry. Ekberg argues that it is impossible to separate choice from patriarchal power structures. The dominant position of men in society means that for women freedom of choice is illusory because it is not possible to choose from equal alternatives. This is especially the case for women living in poverty.¹⁰ Anna Skarhed, Chancellor of Justice, who conducted an evaluation of the Swedish law for the government, *Prohibition on the purchase of sexual services: An evaluation 1999-2008* (the Skarhed Report), released in July 2010, has said that issues of voluntariness are irrelevant. She has stated that, "based on a gender equality and human rights perspective ... the distinction between voluntary and non-voluntary prostitution is not relevant".¹¹

⁶ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008.

⁷ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, p. 4.

⁸ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008.

⁹ Gunilla Ekberg, Statement at the Seminar on the Effects of Legalisation of Prostitution Activities in Stockholm, November 2002, cited on ProCon.org – www.prostitution.procon.org/viewanswers.asp?questionID=000102

¹⁰ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008.

¹¹ Summary (in English), p. 31.

Laws which in any way give legitimacy to the sex industry by legalising or decriminalising prostitution are decried as legitimating violence and abuse of women by males and entrenching patriarchy. Ekberg has stated that:

... we must understand all forms of legal or policy measures that legalise different prostitution activities, such as brothels, or that decriminalise the perpetrators of the prostitution industry, including pimps, traffickers, brothel owners, and buyers, as some of the most serious present-day threats to gender equality and the rights of women and girls to live lives free of male violence. We must understand that the legalisation of prostitution will inevitably normalise an extreme form of sexual discrimination and violence and strengthen male domination of all female human beings.¹²

The reason that so much is heard about the Swedish model internationally is that the Swedish Government is particularly eager to promote it to other countries as the panacea to prostitution and to urge its adoption. Ekberg has said that one of her functions as Special Advisor to the Swedish Government was to export the Swedish model to other countries by influencing their members of parliament and their feminist lobby to campaign for change.¹³ The export of Sweden's policies has had some success. In 2009, both Norway and Iceland adopted a similar law. Ekberg has said that: "For me, personally, I cried when the law was passed by the parliament in Norway. So much hard work. We all really felt like we had made enormous political change that day".¹⁴ Policies regarding prostitution in England and Wales have clearly been influenced by the Swedish model. Following a review of the legal framework for prostitution, in January 2006, the Government published a Coordinated Prostitution Strategy, which whilst rejecting a specific offence of paying for sex, "support[s] the principles of the Swedish model – focusing on the areas of prostitution where exploitation and violence are commonplace and where the existence of a sex trade is a nuisance for local communities"¹⁵

In January 2008, a number of UK Government Ministers visited Sweden on a fact finding mission as part of a six month review exploring what more could be done in respect of tackling demand for prostitution.¹⁶ The review rejected decriminalisation or a licensing system on the basis that it would not reduce overall demand for prostitution.¹⁷ The review concluded that the Swedish model was superior because it sent an appropriate message about paying for sex but conceded that it was not practical because of the sheer number of women selling sex in the United Kingdom and the lack of public support for the measure.¹⁸ It recommended that, rather than criminalising all buyers of sex, those people paying for sex with a person who is being controlled for someone else's gain (such as a pimp or a trafficker) should be criminalised. Moreover, the offence should be one of strict liability so that it would be irrelevant whether the purchaser of sex knew if the woman was being controlled or

¹² Gunilla Ekberg, "Update on Swedish Model of Sex Industry Reform", *Debate*, Issue 3, September 2008, p. 26.

¹³ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008.

¹⁴ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008.

¹⁵ UK Home Office, "Tackling demand for prostitution review begins with Sweden visit", *Media Release*, 10 January 2008.

¹⁶ UK Home Office, "Tackling demand for prostitution review begins with Sweden visit", *Media Release*, 10 January 2008.

¹⁷ UK Home Office, *Tackling the Demand for Prostitution: A Review*, November 2008, p. 12.

¹⁸ UK Home Office, *Tackling the Demand for Prostitution: A Review*, November 2008, p. 13.

not.¹⁹ According to the review, such a measure would have a positive impact on reducing demand for prostitution:

Under the new offence it will be irrelevant whether the sex buyer knew that the prostitute was controlled or not. It is argued that those who pay for sex will know that they could be paying for sex with a person who is controlled, and therefore they will think twice about what they are doing and their attitude towards those selling sex. This will also help to achieve the goal of reducing the size of the 'sex market' by sending a clear message that those who pay for sex should consider the potential implications of their actions.²⁰

The UK Government has accepted this recommendation and put relevant legislation in place so that on 1 April 2010 it became a strict liability offence to pay for sex with someone who has been forced, threatened, exploited or otherwise coerced or deceived into providing prostitution by someone else who has engaged in such conduct for gain. On the day the legislation took effect, Metropolitan Police raided a London brothel and arrested three men on suspicion of paying for the sexual services of a prostitute subjected to force.²¹ The influence of radical feminist perspectives is evident from this quote from Detective Inspector Kevin Hyland, who does not even refer to 'forced' women:

Men who visit brothels and pay for sex are exploiting vulnerable women and plying a trade of abuse. The new legislation, enforceable from today, means that people who pay for sex in brothels can be arrested and appear before the courts, which we hope will act as a deterrent to others.²²

In Australia, probably the most high profile advocate of the Swedish model is Professor Sheila Jeffreys, public officer of the Coalition Against Trafficking in Women Australia (CATWA). In her book, *The Idea of Prostitution*, she argued that "prostitution is a form of male sexual violence against women, consistent in its effects upon the abused woman with other forms of violence, particularly child abuse ...".²³ Jeffreys contends that clients of sex workers (or in her terminology 'prostituted women') are more accurately described as 'batterers', 'rapists', and 'prostitution abusers'. In the same book, Jeffreys made the quite startling claim that: "The act which men commonly perform on prostituted women is penis-in-vagina sexual intercourse. There is nothing 'natural' about that act".²⁴ This is consistent with, "her firm belief that men maintain power over women by the act of sexual intercourse, and that heterosexuality is therefore bad for women".²⁵ In 1979, she stated that feminists who sleep with men are enemy collaborationists and to her sexuality is the basis of oppression of women by men.²⁶ Consistent with this belief, Jeffreys has described marriage as a form of prostitution, whereby women guarantee men sex in return for subsistence.²⁷ Even in today's society, in which women are better educated and hold professional employment, Jeffreys contends that, "the right of men to women's bodies for sexual use has not gone but remains an assumption at the basis of

¹⁹ UK Home Office, *Tackling the Demand for Prostitution: A Review*, November 2008, p. 14.

²⁰ UK Home Office, *Tackling the Demand for Prostitution: A Review*, November 2008, p. 15.

²¹ "Brothel' arrests under new laws", *BBC News*, 1 April 2010 – www.newsvote.bbc.co.uk

²² cited in "Brothel' arrests under new laws", *BBC News*, 1 April 2010 – www.newsvote.bbc.co.uk

²³ Sheila Jeffreys, cited in a book review by Dr Jody Hanson, www.scarletalliance.org.au/Reviews/hanson98/

²⁴ Sheila Jeffreys, cited in a book review by Dr Jody Hanson, www.scarletalliance.org.au/Reviews/hanson98/

²⁵ Julie Bindel, "Marriage is a form of prostitution", *The Guardian*, 12 November 2008.

²⁶ Julie Bindel, "The ugly side of beauty", *The Guardian*, 2 July 2005.

²⁷ Julie Bindel, "Marriage is a form of prostitution", *The Guardian*, 12 November 2008.

heterosexual relationships".²⁸ In essence, Jeffreys regards every married woman as a prostitute. In 1973, Jeffreys decided to abandon both her heterosexuality and femininity. She has said:

I gave up beauty practices, supported by the strength of thousands of heterosexual and lesbian women around me who were also rejecting them. I stopped dying my hair 'mid-golden sable' and cut it short. I stopped wearing make-up. I stopped wearing high heels and, eventually, gave up skirts. I stopped shaving my armpits and legs.²⁹

To Jeffreys, prostitution is a harmful cultural practice and those states that have legalised or decriminalised frameworks for prostitution are entrenching patriarchy.³⁰ Incidentally, Jeffreys has also argued that western beauty practices such as makeup, high heels, and cometic surgery, are harmful cultural practices.³¹

In furtherance of its objective to outlaw sex work, the Christian lobby in Australia has hitched itself to the radical feminist bandwagon (in an unlikely alliance between the right and the left of the political spectrum). Its opposition to the sex industry has traditionally been rooted in moral considerations revolving around the unacceptability of sex outside marriage but has now been broadened to encompass the exploitation and harm of women involved in sex work. In its submission to the Tasmanian Department of Justice, *Review of the Sex Industry Offences Act 2005*, the Australian Christian Lobby argued that:

Prostitution is inherently exploitative ... it is not possible for any legislation that accepts the continued existence of prostitution to protect those involved from exploitation ... the legalisation of certain types of prostitution still sends the message that it is acceptable to use women for sex, meaning that sex workers are still being exploited.³²

The Australian Christian Lobby was also active during the recent Tasmanian election, apparently obtaining an undertaking from the leaders of both the Labor Party and the Liberal Party that they would consider adopting the Swedish model. Leader of the Liberal Party, Will Hodgman MP, agreed that the matter should be considered by a parliamentary committee.³³

A liberal feminist or 'agency' perspective

An opposing view to the radical feminist perspective is the liberal feminist or agency perspective, which sees prostitution as a form of work (sex work). At the core of this approach is agency and freedom of choice and a view that sexual relations between freely consenting adults should not be subject to interference or regulation by the state. Proponents of this view dismiss assertions that sex work can never be truly voluntary and instead argue that sex workers are free, autonomous agents. It is a woman's right to choose what she does with her body, who she wants to have sex with, and the form that sex will take. As free agents, they enter into a contract with a client for the supply of a sexual service.

²⁸ Sheila Jeffreys, cited in Julie Bindel, "Marriage is a form of prostitution", *The Guardian*, 12 November 2008.

²⁹ Sheila Jeffreys, cited in Julie Bindel, "The ugly side of beauty", *The Guardian*, 2 July 2005.

³⁰ Julie Bindel, "Marriage is a form of prostitution", *The Guardian*, 12 November 2008.

³¹ Shelia Jeffreys: www.ssps.unimelb.edu.au/about/staff/profiles/jeffreys

³² Cited in Tasmanian Department of Justice, *Report on the Review of the Sex Industry Offences Act 2005*, p. 11.

³³ Matthew Denholm, "Christians push sex agenda", *Australian*, 17 February 2010, p. 6.

This is a more nuanced perspective than the radical feminist one. It acknowledges that women can be forced into prostitution, it acknowledges that women can be exploited, it acknowledges that violence is an occupational hazard of sex work, and it decries that, but it denies that all acts of prostitution are inherently violent, it denies that every woman that sells sex is a passive, disempowered victim. No reasonable, rational person supports violence against women or non-consensual sexual acts or women being forced into prostitution by a third party. Not only are they abhorrent and abusive but they are a crime. Violence, rape, and coercion are separate to prostitution. They are not part of the contract between the sex worker and the client. For it to be prostitution, the sex worker must have freely consented without the application of duress or coercion and the activities in which they engage should be the result of negotiation and agreement between the sex worker and client. As 'Juliet', a sex worker writing in the *British Medical Journal* has said:

Prostitution is having sex for money, and neither having sex nor getting paid is inherently degrading, abusive, exploitative, or harmful. Yes, there are women working in prostitution who are coerced or drug dependent or homeless or whose backgrounds have otherwise limited their choices – but the problem is coercion, drug dependency, lack of choices, not prostitution itself.³⁴

The problem with the radical feminist perspective of sex work is that it is inherently simplistic and relies on stereotypes. So that sex workers are all from marginalised and impoverished backgrounds, are poorly educated, drug addicted, have been abused as a child, are homeless, have been trafficked or coerced, and generally have no other choice but to prostitute themselves. This not only appeals to, but reinforces, commonly held community prejudices about sex workers. This is clear from the Swedish Government publication, *Against prostitution and human trafficking for sexual purposes*, which states that:

Poverty, gender inequality, lack of respect for human rights, under-education and unemployment are all factors that make it easier to exploit people and lead them into prostitution and the sex trade. Other social problems, substance abuse or health reasons may explain why people end up in prostitution in Sweden.³⁵

Or, as Ekberg has put it:

You have to look at, first of all, who it is, who is used in prostitution, and we do know that the absolute majority of those who are victims of prostitution come from already marginalised backgrounds. They're living in poverty, they come from families where they've been sexually abused by the father or the brother or whoever. They may have drug problems, they often have run away from home if they're young.³⁶

This ignores that there are women (and men) in sex work from a wide variety of backgrounds who have consciously chosen to enter the sex industry after considering a range of options, and who have diverse motivations for selling sex. High earnings (without requiring formal qualifications) in combination with flexible working hours are generally cited as the predominant reasons for sex work.³⁷ As Scarlet Alliance, the Australian sex worker organisation has said:

³⁴ "Juliet", "Prostitution shake-up: one sex worker's view", *British Medical Journal*, 2006, 332.

³⁵ Government Offices of Sweden, *Against prostitution and human trafficking for sexual purposes*.

³⁶ Gunilla Ekberg cited in, "Transcript: Prostitution in WA", *Law Report on ABC Radio National*, 25 September 2007.

³⁷ PLA, *Selling sex in Queensland 2003*, p. 10 and Sharon Pickering, et. al, *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, June 2009, p. v.

Many sex workers in Australia have described their decision to work as a sex worker as a decision made after considering a range of options. To many, sex work offers greater flexibility of hours and the ability to earn larger amounts of money in a shorter amount of time – allowing single parents and students, for example, to devote extra time to their children or studies without sacrificing their income. However, as sex workers are not an homogenous group, our motivations for entering the industry are diverse and uniquely individual.³⁸

The *Selling Sex in Queensland 2003* report found that about one in four sex worker respondents had completed a university degree.³⁹ Similarly, the June 2009, *Working in Victorian Brothels* report found that, “sex worker respondents to this study revealed high levels of training”.⁴⁰ This would tend to indicate that these individuals were involved in sex work not because of lack of education and other skills, not as a result of not having any alternative employment options but because they had chosen to sell sex. This is given further credence by the finding of the Victorian study that there is a, “prevalent trend which sees sex workers leave and subsequently return to the industry, even after professional qualifications and experience in alternative industries have been obtained”.⁴¹ This certainly does not support the claim of Ekberg that, “99% of the women in prostitution are certainly not willing to be there”.⁴²

There are undoubtedly individuals who are selling sex who are unhappy and would rather not be doing it but the same could be said of any occupation. To some extent, freedom of choice is an illusory concept. If we were truly free, how many of us would be in our current jobs? An annual survey of United States job satisfaction found that only 45 per cent of respondents were happy with their jobs in 2009, down from 49 per cent in the previous year.⁴³ This means that more than one in two workers are unhappy in their job. Why do they turn up to work each day, however reluctantly, even though they have no job satisfaction? Because they have a standard of living to maintain, mouths to feed, and a mortgage or rent and bills to pay. Because despite the drudgery, monotony and unpleasantness of dragging themselves to work each day, the consequences of not working are too awful to contemplate. Why should it be any different for sex workers? As Swedish sex worker and activist, Pye Jacobsson has said:

And the fact of the matter is that most people in the sex industry chose it for whatever reason. It maybe suits their purposes, their way of living, or the money, or for whatever reason. And then you will also get, especially here in Sweden, people will challenge you and say: ‘so what’s a free choice?’ Yeah, but ask someone working as an assistant in a hospital, working with old people, cleaning the faeces the whole day, if that was a free choice. She probably wanted to pay her rent. There are a lot of occupations that we take because we need to survive.⁴⁴

³⁸ Scarlet Alliance, *the Australian response to “10 Reasons for Not Legalising Prostitution”* – www.scarletalliance.org.au

³⁹ PLA, *Selling sex in Queensland 2003*, p. 10.

⁴⁰ Sharon Pickering, et. al, *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, June 2009, p. 2.

⁴¹ Sharon Pickering, et. al, *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, June 2009, p. 14.

⁴² Gunilla Ekberg cited in, “Transcript: Prostitution in WA”, *Law Report on ABC Radio National*, 25 September 2007.

⁴³ BBC, *US job satisfaction has hit 22-year low, survey says*, 29 January 2010 – www.news.bbc.co.uk

⁴⁴ Pye Jacobsson, Sweden: “We want to save you. And if you don’t appreciate it, we will punish you” – www.swannet.org/node/1512

This goes to the inherently condescending and paternalistic (although maternalistic would be more apt) nature of the Swedish model. It tells all women selling sex that they are victims and that they need saving, even if they do not realise or are incapable of realising it. It tells them that there is no way that they could possibly have chosen to be a sex worker or in the terminology of radical feminists, a 'prostituted woman'. The Swedish law fundamentally infantilises women and tells them that they are incapable of making rational choices. It is the state telling those women, we do not actually care what you think, because we know best. In this regard, it is instructive that sex workers or sex worker organisations were not even consulted on the Swedish law.⁴⁵ It would be hard to think of any other area of policy where the major stakeholders, those most affected by the law, were not even consulted. Rather than being supportive of women, some sex workers and commentators have argued that it is oppressive. Petra Ostergren, who describes herself as a writer and social commentator, has said that:

Swedish politicians and feminists are proud of the state's prostitution policy. They insist that it has positive effects. Sex workers are of a different view. Most of the female Swedish sex workers I have interviewed voice a strong critique of their legal and social situation. They feel discriminated against, endangered by the very laws that seek to protect them, and they feel under severe emotional stress as a result of the laws ... Several sex workers say that they feel used by politicians, feminists and the media. They think that sex workers are only listened to and being paid attention to if they say the correct things, i.e. that they find prostitution appalling, that they are victims, that they have stopped selling sex and will never go back, and that they are grateful to the current prostitution policy and to the policy makers. Sex workers feel overlooked in decision-making processes regarding juridical changes etc, something they find undemocratic. They question whether any other social group would have been so consistently excluded from any relevant policy making process ... Sex workers say that contrary to the official belief, they are not the victims of their customers, but victims of the state.⁴⁶

In a similar vein, Liv Jessen, a recipient of the Human Rights Award from Amnesty International for her prostitutes rights work, a social worker, and head of the Pro Centre, a national centre for sex workers in Norway, has written:

We know today that women 'choose' prostitution for a variety of reasons. Some from a more enforced and inferior position than others. Some are extremely unhappy with what they are doing, become deeply troubled, and need years of good support to repair the damage. Some seem to sail through it without a problem. But they all have one thing in common. They all know that society around them condemns them for what they do. They are a pariah race, branded, outcasts and feared. Combating this should be a major challenge for all feminists. Instead, the radical feminists continue to talk about her as a victim. If she defends her participation in prostitution, they say that she is not credible; they talk about a false consciousness syndrome. The only women who are believed and who know what is best for them are the 'repentant sinners', who have been called Survivors. Women in prostitution naturally have different views on the subject of prostitution, but to say that only the ones who agree with us are right, while the prostitutes who think differently are not described human qualities like the right to make their own choices or to be believed, is oppressive and a fundamentalist attitude.⁴⁷

⁴⁵ Johannes Eriksson, *The "Swedish model" – arguments, consequences*, Green Ladies' Lunch – Prostitution in Europa, Berlin, 16 March 2005.

⁴⁶ Petra Ostergren, *Sex workers critique of Swedish prostitution policy* – www.petraostergren.com

⁴⁷ Liv Jessen, *Prostitution seen as Violence Against Women – a supportive or oppressive view?* – www.bayswan.org/swed/livjessen.html

Describing sex workers as “prostituted women”, implying that they have no choice or control over their work, “in itself reinforces the view that a person selling sex is a passive victim”⁴⁸ in need of rescuing. Holding sex workers out as victims is not only inherently disempowering, but reinforces community stereotypes about sex workers being drug dependent and forced into prostitution by ‘pimps’. This only contributes to the further marginalisation and alienation of sex workers from society and to the stigma and discrimination that they experience. The words of sex worker, ‘Juliet’, are again instructive:

... how the world thinks of us is internalised. The constant abuse of prostitutes and street prostitutes in particular contributes to the low self esteem and emotional degradation we have to face not from our clients but from society itself ... those who want to ‘rescue’ us while determinedly ignoring the voice of the sex workers’ rights movement and the complexity of our experiences are part of creating the very problems they say they wish to solve.⁴⁹

Astoundingly, this negative impact of the law is welcomed by the Skarhed Report which refers not even to prostitutes but people “being exploited in prostitution”:

Those individuals who are being exploited in prostitution say that criminalization has strengthened the social stigma associated with selling sex. They describe themselves as having chosen to prostitute themselves and don’t see themselves as being involuntarily exposed to anything. Even if it’s not forbidden to sell sex, they feel hunted by the police. They feel as if they’ve been declared incapable of managing their own affairs in that their actions are tolerated, but their will and choices are not respected. Further, they believe it is possible to distinguish between voluntary and forced prostitution ... **[These] negative effects of the ban that they describe can almost be regarded as positive when viewed from the perspective that the aim of the law is to combat prostitution.**⁵⁰

Those governments that have legalised or decriminalised frameworks for sex work do not necessarily favour prostitution or endorse involvement in it. Sex work is not necessarily viewed as ‘ordinary’ work. That would certainly appear to be the case in Queensland, for example, with the prohibition under s. 229G of the Criminal Code in respect of procuring another person to engage in prostitution (which prevents licensed brothels from advertising for sex workers). Instead, legalisation or decriminalisation is a pragmatic response to centuries of human behaviour, based on the impossibility of stamping out the sex industry. It puts aside moralistic concerns, and in acknowledging the harms that can be associated with sex work, is focused squarely on harm minimisation. The overarching aim is to reduce the risk of harm to sex workers, their clients, and thereby the entire community, for example, by insisting on safer sex practises and by insisting on appropriate workplace health and safety arrangements to reduce the risk of violence to sex workers.

The impact of the ‘Swedish model’

The Swedish law prohibiting the purchase of sex is intended to send a message to men that prostitution is inherently degrading, abusive and exploitative of women. The aim is to get men to change their behaviour, so that those men who purchase sex stop and so that other men never purchase sex in the first place. It is intended to

⁴⁸ Tasmanian Department of Justice, *Report on the Review of the Sex Industry Offences Act 2005*, p. 6.

⁴⁹ ‘Juliet’, “Prostitution shake-up: one sex worker’s view”, *British Medical Journal*, 2006, 332.

⁵⁰ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 129-130, cited in, Lo Tekk, *Another one to prostitutes and their best friend, Julie Bindel*, <http://lotekk.wordpress.com/2010/07/13/another-one-to-prostitutes-and-their-best-friend-julie-bindel/> (emphasis added).

have a normative impact. The rationale is, if you can wipe out the demand for prostitution, there will be no basis for supply. In other words, if there are no men purchasing sex, there will be no sellers of it. If there are no clients, there will be no sex workers. As Ekberg describes it:

The ultimate goal of the Law is to protect the women in prostitution by, among other measures, addressing the root cause of prostitution and trafficking: the men who assume the right to purchase female human beings and sexually exploit them. From the Swedish experience, we know that when the buyers risk punishment, the number of men who buy prostituted women decreases, and the local prostitution markets become less lucrative. Traffickers will then choose other and more profitable destinations.⁵¹

According to the Skarhed Report, the law prohibiting the purchase of sexual services has had an impact on demand. Surveys have revealed that the proportion of men who purchase sex has decreased and some men have reported that they have stopped purchasing sex.⁵²

The Swedish model has been hailed as a great success, including by those groups and organisations in this country that agitate for its adoption. Ekberg has claimed that street prostitution has declined, that most purchasers of sex have disappeared, that the law is an effective deterrent to the purchase of sex and the trafficking of women.⁵³ She has said that: "We know that the number of individuals in prostitution has gone down considerably and that Sweden has the lowest number of trafficking in human beings in the European Union".⁵⁴

The Skarhed Report was somewhat more muted. It said that the ban on purchasing sex was an important instrument to prevent people trafficking and combat prostitution.⁵⁵ Whilst claiming that street prostitution has halved, the best that could be said is that, unlike neighbouring Nordic countries, there has been no increase in prostitution in Sweden.⁵⁶ This should be seen alongside an October 2009 Swedish Government publication, which stated that it is very difficult to monitor the extent of prostitution in Sweden because it is practised discreetly and that existing figures "are very uncertain".⁵⁷ The Swedish National Board of Health and Welfare was just as circumspect when it said in a 2007 report that, "it is impossible to form a precise picture of prostitution and its extent, regardless of the chosen method".⁵⁸ Similarly, the Swedish Government publication says that Kasja Wahlberg, the national rapporteur at the National Police Board, has acknowledged in her reports that there is, "a general lack of knowledge concerning the extent of trafficking for sexual

⁵¹ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, p. 19.

⁵² Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 38 (English Summary).

⁵³ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, p. 18.

⁵⁴ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008.

⁵⁵ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 32 and 40 (English Summary).

⁵⁶ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 34 and 36 (English Summary).

⁵⁷ Government Offices of Sweden, *Against prostitution and human trafficking for sexual purposes*, p. 5.

⁵⁸ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, p. 10.

purposes in Sweden” and once again there are no exact figures.⁵⁹ Given these admissions from the Swedish Government, it is very difficult to see how Ekberg and other proponents of the Swedish model could possibly claim that the law has been successful in reducing the number of women involved in prostitution and the incidence of trafficking.

In terms of effectiveness in reducing demand for prostitution, according to a June 2009 report in *The Christian Science Monitor*: “When Swedish public radio stations posted fake ads for sexual services on websites in May, they were swamped with almost a thousand inquiries”.⁶⁰ Ekberg has claimed that the law has not resulted in an increase in the number of Swedish men who travel to other countries to purchase sex.⁶¹ This is disputed by others who argue that there has been a displacement in demand to neighbouring countries, such as Finland and Denmark.⁶² Ostergren has claimed that a brothel opened in Denmark especially to cater for Swedish men.⁶³

In order to have a practical impact, in terms of changing the behaviour of individuals, laws need to be enforced. The Skarhed Report refers to the importance of the priority that is given to enforcement and the need to make resources available. It states that:

According to both police officers and prosecutors with whom the Inquiry has spoken, considerably larger numbers of purchasers of sexual services could be prosecuted if priority had been given to this type of crime in day-to-day activities. One reason why priority is not given to sexual purchases offences is the low penal value of this type of offence.⁶⁴

A perceived lack of enforcement will mean that there is no real deterrence to the purchase of sex. According to Ekberg, between January 1999 and December 2007, 1,648 males were reported for purchasing sex and between 1999 and 2006, more than 500 males have been convicted and fined.⁶⁵ Not a single person has been jailed.⁶⁶ Interestingly, four judges have been arrested and convicted for the purchase of sex.⁶⁷ There are also obvious evidentiary issues with enforcing the law. A client is unlikely to admit to purchasing sex. A sex worker, fearful of losing her client base, is unlikely to admit that she was providing the person with a sexual service. According to the Skarhed Report, in eight out of ten cases which are prosecuted, the offence has been admitted to, highlighting the importance of the client or sex worker making admissions.⁶⁸ Moreover, proving attempted crimes is so difficult that when it comes to street prostitution, “the police deliberately wait until the sexual act has begun before

⁵⁹ Government Offices of Sweden, *Against prostitution and human trafficking for sexual purposes*, pp. 15 and 5.

⁶⁰ Tom Sullivan, “Sweden revisits prostitution law”, *The Christian Science Monitor*, 30 June 2009.

⁶¹ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, p. 11.

⁶² Vincent Clausen, *An assessment of Gunilla Ekberg’s account of Swedish prostitution policy*, January 2007, p. 6.

⁶³ Petra Ostergren, *Prostitution in Sweden*, www.bayswan.org/swed/flasback_sweden.html

⁶⁴ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 39 (English Summary).

⁶⁵ Gunilla Ekberg, “Update on Swedish Model of Sex Industry Reform”, *Debate*, Issue 3, September 2008, p. 27.

⁶⁶ Tom Sullivan, “Sweden revisits prostitution law”, *The Christian Science Monitor*, 30 June 2009.

⁶⁷ Gunilla Ekberg, “Update on Swedish Model of Sex Industry Reform”, *Debate*, Issue 3, September 2008, p. 27.

⁶⁸ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 39 (English Summary).

intervening, and the offence has thus been committed in full".⁶⁹ All of this indicates that a significant amount of resources would be required for the law to have a deterrent effect. In Australia, many in the community would likely regard prostitution as a victimless crime. Accordingly, it would be difficult to justify committing significant resources to enforcing such a law. This would be doubly the case when it is understood that resources would need to be redirected from areas which would be regarded as much higher priorities by the community.

There seems to be a general consensus that there has been a reduction in street prostitution in Sweden. There was a 30 to 50 per cent reduction in street workers following the introduction of the law.⁷⁰ According to a report by the Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, whilst street prostitution declined following the introduction of the ban it gradually returned, although not on the same scale.⁷¹ The Skarhed Report has said that street prostitution in Sweden has been halved as a direct result of the ban on purchasing sexual services.⁷² Whether the reduction can be attributed entirely to the Swedish law is debatable. It has been noted that the law prohibiting the purchase of sex has coincided with the increasing availability of the internet and mobile telephones, which are a less visible form of soliciting than working on the street.⁷³ It is worth noting here that in Queensland, the incidence of street prostitution is only very minor. There are not many individuals involved in selling sex on the street. The Crime and Misconduct Commission has said that street prostitution constitutes only about two per cent of the sex industry.⁷⁴ Accordingly, street prostitution does not tend to be an issue of significant concern in this state.

The Skarhed Report denies that there has been any element of displacement from street work to other avenues of sex work such as the internet. The report claims that the halving of street prostitution has represented, "a real reduction in prostitution".⁷⁵ According to the report, because there has been "nothing to indicate" a greater increase in internet based prostitution in Sweden than in neighbouring countries, there must have been no shift to the internet by street workers.⁷⁶ The report also claims that there is no, "information that suggests that prostitutes formerly exploited on the streets are now involved in indoor prostitution".⁷⁷ The report also rejects that the ban on the purchase of sexual services has driven prostitution underground.⁷⁸ It should be mentioned that the report has been criticised, especially for its

⁶⁹ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 40 (English Summary).

⁷⁰ Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, p. 41.

⁷¹ p. 46.

⁷² Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 34 (English Summary).

⁷³ Norway Ministry of Justice and the Police, *Purchasing Sexual Services in Sweden and the Netherlands*, 2004, p. 11, Vincent Clausen, *An assessment of Gunilla Ekberg's account of Swedish prostitution policy*, January 2007, p. 5, and Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, p. 28.

⁷⁴ CMC, *Regulating Prostitution*, December 2004, p. xiii.

⁷⁵ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 35-36 (English Summary).

⁷⁶ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 35 (English Summary).

⁷⁷ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 36 (English Summary).

⁷⁸ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 37-38 (English Summary).

questionable objectivity and lack of an evidence base.⁷⁹ Louise Persson, author of *Klassisk Feminism*, has pointed out that Skarhed had already made up her mind about the effect of the law and went about gathering the evidence to support her case. Persson has quoted Skarhed as saying at the press conference launching the report: "I think that these are quite obvious conclusions. But the important thing for the inquiry has been to try to, so to speak, get the basis for being able to draw them. And this is how we have worked".⁸⁰ Persson has also criticised the inquiry's terms of reference which said that, "the inquiry could not suggest, or point in any direction other than, that buying of sex should be criminalised".⁸¹

It is interesting that the Skarhed Report can make such sweeping claims about the level of prostitution in Sweden and to deny the possibility of displacement given what has been previously said in other official reports. The 2007 report by the Swedish National Board of Health and Welfare acknowledged that it was not possible to draw any conclusions about the overall level of prostitution in Sweden:

It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the 'hidden prostitution' – we are even less able to make any statements.⁸²

A 2004 report by the Norwegian Ministry of Justice and the Police said that it was not possible to conclude what had happened to those women who had left street prostitution:

Irrespective of the reason for the reduction in street prostitution it has not been possible for the working group to find an answer to the question as to what happened to the women who disappeared from the street.⁸³

Contrary to the conclusions of the Skarhed Report, sex workers, support groups, commentators and academics have argued that there has been a spatial displacement of sex work from the street to other sectors (most likely as a result of a combination of the law prohibiting the purchase of sexual services and technological advances such as the internet, email and the affordability of mobile telephones) that has had the effect of driving prostitution underground. According to an academic working paper, *Regulation of sex work in Sweden*:

Reviewing most sources, it appears the most direct impact of the law has been a spatial switching from street to off-street, with much more sex work now occurring in hidden sectors which are not monitored by the police ... Widespread claims that the law has resulted in an overall decline in sex work ... are unsubstantiated, and appear to be based on the assumption that a decline in visible street working equates to an overall decline in the sex industry ... In fact, the decline in street work appears to be

⁷⁹ Louise Persson, "Behind the happy face of the Swedish anti-prostitution law", 3 July 2010, cited in, Laura Agustin, *Border Thinking on Migration, Trafficking and Commercial Sex*, www.lauraagustin.com

⁸⁰ Anna Skarhed, quoted in Louise Persson, "Behind the happy face of the Swedish anti-prostitution law", 3 July 2010, cited in, Laura Agustin, *Border Thinking on Migration, Trafficking and Commercial Sex*, www.lauraagustin.com

⁸¹ Louise Persson, "Behind the happy face of the Swedish anti-prostitution law", 3 July 2010, cited in, Laura Agustin, *Border Thinking on Migration, Trafficking and Commercial Sex*, www.lauraagustin.com

⁸² Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, p. 63.

⁸³ Norwegian Ministry of Justice and the Police, *Purchasing Sexual Services in Sweden and the Netherlands*, p. 52.

matched by a rise in Internet working, flat working, bar work and work in sex clubs, and numbers of prostitutes today appear roughly equivalent to the numbers existing in the 1990s.⁸⁴

The Skarhed Report contends that the ban on purchasing sexual services has not driven prostitution underground, has not made it harder for support services to access sex workers, and has not increased the risk of abuse of women or created worse living conditions for sex workers.⁸⁵ These were all problems raised with the law by its detractors at the time of its introduction and since. Likewise, Ekberg has dismissed these as genuine problems, saying that there is no evidence, and described these as myths promoted by the pro-prostitution lobby.⁸⁶

The effects of driving prostitution underground are well known, especially in terms of their impact on the health and wellbeing of sex workers. They are marginalised, isolated and more vulnerable to exploitation, abuse, violence, coercion, and unsafe sex practises. Sex workers may be more reluctant to seek police assistance in response to an abusive client. It makes it more difficult for social and health services to access sex workers. There is also the danger of the involvement of third parties, such as 'pimps'. Some informants to the Swedish National Board of Health and Welfare have claimed that the law banning the purchase of sexual services has acted as a conduit to the involvement of pimps.⁸⁷ The report says that:

According to one informant in Goteborg, there are probably more pimps involved in prostitution nowadays. The informant says the law against purchasing sexual services has resulted in a larger role and market for pimps, since prostitution cannot take place as openly ... Informants from the Stockholm Prostitution Centre also mention that the law has opened the door to middlemen (pimps), because it has become more difficult for sellers and buyers of sexual services to make direct contact with one another.⁸⁸

Moreover, it has been asserted that for those women still plying their trade on the streets, the law prohibiting the purchase of sex has made their situation more dangerous. It is well established that street sex work is more dangerous than any other form of sex work. These workers are especially prone to being raped, bashed, robbed or murdered by clients or passersby. Ostergren, after speaking with sex workers, considering published interviews with sex workers, and interviewing women who sell sex to buy drugs has said that:

the sex workers say it is now harder for them to assess the clients. The clients are more stressed and scared and negotiation outdoors must be done in a more rapid manner.

The likelihood of ending up with a dangerous client is thereby greater. Due to the law, sex workers feel hunted by the police, social workers, media and sometimes even anti-prostitution activists on the streets. They find this unacceptable. One sex worker commented that no other vocational group would accept that the police 'patrolled their workplace'.

⁸⁴ Phil Hubbard, et. al, *Regulation of sex work in Sweden* – Working Paper, pp. 20 and 42.

⁸⁵ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 37 (English Summary).

⁸⁶ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008, and Gunilla Ekberg cited in, "Transcript: Prostitution in WA", *Law Report on ABC Radio National*, 25 September 2007.

⁸⁷ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, pp. 47-48.

⁸⁸ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, pp. 47-48.

Another consequence is that the sex workers are now more apprehensive about seeking help from the police when they have had problems with an abusive customer. They do not want to be forced to report the client.

Since the number of sex workers on the streets has decreased and they are more scared, previous informal networks amongst the sex workers have weakened. The result is that they are no longer able to warn each other about dangerous clients or give each other the same support.

Women also report that another consequence of the law is lower prices on the streets since there are less customers and more competition. This means that women in more desperate need of money will engage in unsafe sex and sexual activity they usually would not perform. This in turn leads to poorer self-esteem and exposure to infection. Other women who have turned to the Internet to advertise claim a positive effect insofar as they have been able to raise their prices. But note that this only benefits some sex workers. The more vulnerable sex workers seem to be the ones most negatively affected by the law.

Women working on the streets in some bigger cities claim that there is now a greater percentage of 'perverted' customers and that the 'nice and kind' customers have disappeared. A 'perverted' customer is someone who demands more violent forms of sex, sex with faeces and urine and who is more prone to humiliate, degrade and violate the sex worker. He also more often refuses to use condoms. Since there are fewer customers on the streets many women who sell sex in order to finance a drug habit can no longer refuse these customers, as they were previously able to. These women say the 'kind' customers have either turned to the Internet to find sexual services or have been arrested by the police. On the contrary, the 'perverted' customers know what to do to not be arrested and fined - they just have to deny it since there is rarely hard evidence.⁸⁹

A number of other issues have also been identified. The police have used the possession of condoms as evidence of sex work.⁹⁰ This means that there is an obvious disincentive to the practise of safe sex by street workers. Because the clients of street sex workers are common targets for the police, and they fear discovery and arrest, sex workers are forced into more out of the way areas where they are more vulnerable to attack. This problem was described by a street sex worker in Norway, where it is also illegal to purchase sex: "Now the men drive us out of town to find an empty space with no one in sight. It often takes more than an hour before we're back. Before we would go down to the harbour and be done in 15 minutes".⁹¹

The Norwegian Ministry of Justice and the Police, in its report into the Swedish ban on the purchase of sex concluded that: "There is no documentary evidence from the hospitals or the police that there is more or less violence directed towards prostitutes, but there is much evidence that there is a tougher market with more violence".⁹²

Whilst the ban on the purchase of sex was originally justified because prostitution is a form of male violence against women, recent years have also seen this expanded to include that it combats the trafficking of women to Sweden for sexual servitude. The Skarhed Report concluded that:

Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially

⁸⁹ Petra Ostergren, *Sex Workers Critique of Swedish Prostitution Policy*, www.petraostergren.com

⁹⁰ Petra Boynton and Linda Cusick, "Sex workers to pay the price", *British Medical Journal* 2006; 332, p. 190 and Don Kulick, *Talk delivered at Beijing Plus Ten meetings on the 'Swedish model'*, www.salli.org

⁹¹ 'Michelle', cited in, "Sex ban puts us at greater risk", *The Guardian*, 27 May 2009.

⁹² Norway Ministry of Justice and the Police, *Purchasing Sexual Services in Sweden and the Netherlands*, 2004, p. 30.

smaller in scale than in other comparable countries. According to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden.⁹³

Wahlberg, has said that the ban on purchasing sex has reduced the attractiveness of Sweden as a destination for human traffickers:

We know from our colleagues in Estonia who have eavesdropped on traffickers that they consider Sweden to be a bad market. They can no longer send the women on the streets, which was the easiest way to find clients. Now they have to find flats for the women, they must advertise on the internet, and clients are afraid of getting caught. [Traffickers] think it's not worth doing business in Sweden.⁹⁴

Prohibiting the purchase of sexual services is a blunt instrument to deal with the phenomenon of human trafficking. Moreover, it conflates prostitution with human trafficking. This leads to a problem where all migrant women involved in prostitution are regarded as being trafficked. In fact, this was acknowledged in the 2007 report of the Swedish National Board of Health and Welfare which said:

There are for instance people who believe that prostitution and human trafficking are synonymous, both with regard to organisation and content ... Some believe there is a misconception that all prostitution is synonymous with trafficking ... In our interviews, some women engaged in prostitution emphasise that they are opposed to human trafficking but not prostitution and that the two cannot be considered the same.⁹⁵

The conflation of prostitution with trafficking is particularly problematic in Sweden because there is no distinction made between voluntariness. All prostitution is regarded as violent and exploitative. Almost by definition, a migrant woman engaging in prostitution is regarded as a victim of trafficking. In other words, there is, "a failure to concede that migrants might gravitate towards sex work voluntarily".⁹⁶ As Vincent Clausen has remarked:

There is a strong tendency in Swedish debate towards the notion that prostitution generally speaking is violent and exploitative *per se*. From this perspective, prostitution across borders tends to be perceived as trafficking *per se*, regardless of the circumstances ... There is a gross difference between being of 'foreign descent' and being a 'victim of trafficking'.⁹⁷

Other consequences of this attitude in Sweden have also been identified. Jacobsson has argued that it is clients who are most likely to form a suspicion that a woman has been trafficked or is being forced to sell sex but that they are now unlikely to inform the police out of a fear of being arrested themselves.⁹⁸ According to Professor Kulick, a non-citizen or non-legal resident of Sweden found to be working in prostitution is immediately deported.⁹⁹ This would make it unlikely that a foreign sex worker abused by a client would report the matter to the police.

⁹³ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 37 (English Summary).

⁹⁴ Kasja Wahlberg, cited in, "Sex ban puts us at greater risk", *The Guardian*, 27 May 2009.

⁹⁵ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, pp. 43 and 49-50.

⁹⁶ Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, p. 38.

⁹⁷ Vincent Clausen, *An assessment of Gunilla Ekberg's account of Swedish prostitution policy*, 2007, pp. 11 and 13.

⁹⁸ Pye Jacobsson, *Sweden: "We want to save you. And if you don't appreciate it, we will punish you"* – www.swannet.org/node/1512

⁹⁹ Don Kulick, *Talk delivered at Beijing Plus Ten meetings on the 'Swedish model'*, www.salli.org

The way to deal with human trafficking is by measures to directly address trafficking, not by the blunt instrument of a blanket ban on the purchase of all sexual services. Indeed, it has been pointed out that since 2002, Sweden has had specific legislation on human trafficking which was amended in 2004 to comply with the United Nations Palermo Protocol.¹⁰⁰

The conflating of prostitution with trafficking has the effect that the incidence of trafficking for the purpose of sexual servitude is inflated because every migrant woman participating in prostitution is regarded as being trafficked for the purpose of sexual exploitation because no woman would possibly freely choose to sell sex. As Gillian Abel and Lisa Fitzgerald have said in a chapter of a book researching the impact of the decriminalisation of prostitution in New Zealand:

The trafficking rhetoric has gained momentum since the mid-1990s with reports worldwide of the millions of children and women trafficked both within and between countries ... Women who migrate voluntarily, with the full knowledge that they will be working in the sex industry, are conflated with helpless women and children, forced against their will to a life of slavery and sex work, both acquiring the label of trafficked victims.¹⁰¹

Whilst especially problematic in Sweden, this is an issue by no means confined to that country and has been described as having the characteristics of a 'moral panic' or even a 'moral crusade'.¹⁰² Nick Davies, writing in *The Guardian*, has described a process in the United Kingdom where sex trafficking figures that are misleading are bandied about, repeated by others in pursuit of their cause, inflated further by others, or just made up entirely.¹⁰³ One politician reportedly claimed in the House of Commons that the Home Office had estimated that there were 25,000 sex slaves in Britain. Apparently, there is no such Home Office statistic.¹⁰⁴ Another politician, Fiona Mactaggart, a former Home Office minister, has apparently claimed that, "something like 80% of women in prostitution are controlled". Davies has said that, "there is no known source for this".¹⁰⁵

As Davies has said: "Somewhere beneath all this, there is a reality. There have been real traffickers".¹⁰⁶ Part of the problem in the UK is that as far as some are concerned, it is sex trafficking even where a migrant is willingly working in the sex industry. This is not a situation which meets the definition under the UN Palermo Protocol, which involves the use of force, fraud or coercion to transport an unwilling victim into sexual exploitation. There is a vast difference between trafficking a person and smuggling a person (one is an unwilling victim, the other is a willing passenger).

¹⁰⁰ Vincent Clausen, *An assessment of Gunilla Ekberg's account of Swedish prostitution policy*, 2007, p. 11.

¹⁰¹ Gillian Abel, et. al, *Taking the Crime out of Sex Work*, 2010, p. 3.

¹⁰² Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

¹⁰³ Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

¹⁰⁴ Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

¹⁰⁵ Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

¹⁰⁶ Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009 and Weitzer, cited in, Gillian Abel, et. al, *Taking the Crime out of Sex Work*, 2010, p. 3.

Whilst there are undoubtedly women in Britain who have been trafficked for the purpose of sexual exploitation, it is unlikely that it is anywhere near the magnitude claimed by some of the more alarmist figures in the debate. As the UK Network of Sex Work Projects has stated: "It is undoubtedly the case that women are trafficked into the sex industry. However, the proportion of sex workers of whom this is true is relatively small ..."¹⁰⁷ The exaggeration of the sexual trafficking problem in Britain was given further credence by a *Guardian* investigation into the outcomes of Operation Pentameter Two. According to the *Guardian* report:

The UK's biggest ever investigation of sex trafficking failed to find a single person who had forced anybody into prostitution in spite of hundreds of raids on sex workers in a six-month campaign by government departments, specialist agencies and every police force in the country.¹⁰⁸

Dr Nick Mai from the London Metropolitan University conducted a study of 100 migrant male, female, and transgendered sex workers.¹⁰⁹ He found that only six per cent of female respondents, "felt that they had been deceived and forced into selling sex in circumstances within which they had no share of control or consent".¹¹⁰ Other key findings revealed by the study were:

- Working in the sex industry is often a way for migrants to avoid the unrewarding and sometimes exploitative conditions they meet in non-sexual jobs
- By working in the sex industry, many interviewees are able to maintain dignified living standards in the UK while dramatically improving the living conditions of their families in the country of origin
- The stigmatisation of sex work is the main problem interviewees experienced while working in the sex industry and this impacted negatively on both their private and professional lives
- Interviewees generally describe relations with their employers and clients as characterised by mutual consent and respect, although some reported problematic clients and employers, who were disrespectful, aggressive or abusive
- Most interviewees feel that criminalisation of clients will not stop the sex industry and that it would be pushed underground, making it more difficult for migrants working in the UK sex industry to assert their rights in relation to both clients and employers.¹¹¹

Finally, it should be noted that the Federal Government believes that the incidence of human trafficking to Australia is low in comparison to most other countries in the world.¹¹² This is attributed to, "our strong migration controls and geographic isolation".¹¹³

¹⁰⁷ cited in Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

¹⁰⁸ Nick Davies, "Inquiry fails to find single trafficker who forced anybody into prostitution", *The Guardian*, 20 October 2009.

¹⁰⁹ *Migrant Workers in the UK sex industry*.

¹¹⁰ Nick Mai, *Migrant Workers in the UK sex industry*, p. 4.

¹¹¹ Nick Mai, *Migrant Workers in the UK sex industry*, p. 5.

¹¹² The Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response January 2004 – April 2009*, p. iii.

¹¹³ The Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response January 2004 – April 2009*, p. 1.

Conclusion

The available evidence does not match the widely heralded rhetoric of the success of the Swedish model in practically eliminating prostitution. Even the best that the Swedish Government's own Skarhed Report can conclude is that prostitution has not increased in Sweden. Hardly a ringing endorsement. There is some evidence that the prohibition on the purchase of sexual services has driven the sex industry underground and sex workers feel less secure and consider themselves at greater risk of violence. The law does not protect sex workers who have been left worse off as a result of the law. Trafficking is conflated with prostitution, so that all migrant women engaging in prostitution must be victims of trafficking and exploitation. One of the worst effects has been to marginalise an already stigmatised group in society. Sex workers have described how they feel like second rate citizens and they are infantilised by being told they could not possibly have freely chosen to enter the sex industry. They are not prostitutes, and certainly not sex workers, but prostituted women. They are told that they are disempowered victims of male violence and exploitation, even if they are incapable of comprehending that themselves because of a false consciousness syndrome. Their own views and experiences are discounted. They are deprived of their autonomy and agency as individuals. This is incompatible with the principles of a liberal democracy. Conversely, a harm minimisation model respects the right of adults to freely choose to enter the sex industry but puts in place measures to better protect the health, safety and welfare of sex workers and clients.



**PLA response to recommendations of Anne Edwards in
*Selling Sex; Regulating Prostitution in Queensland***

Recommendation One: That, as a matter of priority, Government establish and adequately resource an independent organisation which can provide sex workers with advice, counselling and advocacy.

PLA response:

The PLA agrees with this recommendation.

Sex workers in the state do need a group capable of effectively representing their interests. This role was performed by Self-Health for Queensland Workers in the Sex Industry (SQWISI) until its dissolution in 2007. It had been funded by the State Government (through Queensland Health) since 1988 to provide health and advocacy services for sex workers.

This recommendation has been addressed by the Government since the publication of the Edwards' Report. Queensland Health had announced its intention to fund a new sex worker body prior to the publication of the report. The PLA commends the efforts of Queensland Health in funding a new sex worker service, RESPECT Inc, which is shortly to commence operations. The Authority has committed to work cooperatively with this new organisation and is committed to regular engagement. However, the PLA had been concerned with the constant delays by Queensland Health in establishing the new sex worker service. It had consistently failed to meet previously advised deadlines for the establishment of the service. Whilst in the interim Queensland Health had funded a part-time telephone and email service, WISI Info, as a stop gap measure, until the establishment of RESPECT Inc, the state's sex workers had been without an effective organisation to meet their needs for almost three years.

Sex worker organisations have played a crucial role in developing a safer sex culture amongst sex workers. As stated in the *National Sexually Transmissible Infections Strategy 2005-08* by the Department of Health and Ageing: "Despite the occupational risks, the incidence of STIs in sex workers in Australia is among the lowest in the world. This has largely been achieved through the adoption of voluntary health policies implemented by the sex industry."¹ Peer educators at sex worker organisations provide information and practical training in respect of safer sex and sexually transmitted infections (STIs), proper use of condoms and other devices, techniques for negotiating condom use, and referral to health services. Their offices may

¹ p. 28

also provide a location for clinicians to provide outreach services to sex workers who may otherwise be reluctant or disinclined to attend sexual health clinics. The long-term absence of a sex worker organisation in Queensland had arguably been to the potential detriment of the sexual health of sex workers and the wider community.

Sex worker organisations also play a role beyond sexual health, in terms of enhancing the safety of sex workers by educating them and giving them skills in negotiation, how to defuse or respond to violent situations, tips to minimise risks when performing outcalls, and so forth. Other services performed by sex worker organisations include the provision of legal information, support, counselling, and referrals.

As a group which is marginalised and stigmatised in the community, sex workers require an organisation capable of advocating on their behalf and which can address and seek to correct commonly held community stereotypes. It is appropriate that sex workers in the state have an organisation which can represent their interests by engaging with the Queensland Government and its agencies by putting forward sex worker perspectives, advocating for law reform, and providing input on proposed policy initiatives.

Given the range of functions expected of the newly formed RESPECT Inc, which are not only health based, it could be argued that the burden of funding the organisation should not fall solely on Queensland Health. There are other government agencies whose responsibilities would make it appropriate to contribute to funding of the organisation. These include the Department of Justice and Attorney-General (legal information, workplace health and safety, etc), the Department of Education and Training (alternate pathways, involving education and training), and the Department of Communities (housing and homelessness, youth involvement in prostitution, counselling, addressing the social factors that contribute to involvement in prostitution, etc).

Recommendation Two: That Government reaffirm the following original principles on which prostitution regulation was to be based, or change them, and affirm new principles to guide regulation and include them in the objectives of the Prostitution Act:

- protection of children from exploitation and coercion;
- protection of sex workers and their clients (and thereby the community) against health risks;
- prevention of criminal involvement and corruption;
- prevention of exploitation of sex workers; and
- cost-effectiveness.

PLA response:

The PLA notes this recommendation.

It is reasonably commonplace for legislation to contain an objects clause or a statement of purpose or both. They are a useful tool of statutory interpretation in the event of ambiguity or uncertainty. The *Prostitution Act 1999* contains a statement of purpose rather than an objects clause. It is set out at s. 3 of the Act and states that: "The purpose of this Act is to regulate prostitution in Queensland."

This is simplistic, and because prostitution is regulated under both the Prostitution Act and Chapter 22A of the *Criminal Code*, it is potentially misleading. Chapter 22A of the Criminal Code has a far reaching impact on prostitution in the state. It effectively prevents sex workers from working together outside the confines of a licensed brothel; prohibits unlicensed brothels, sex worker cooperatives, and escort agencies; and places significant restrictions on the involvement of third parties in the business of prostitution. Conversely, apart from Part 6, Division 1 (general offences relating to prostitution) of the Prostitution Act, it is essentially a regulatory statute establishing a scheme for the operation of licensed brothels.

Whilst the PLA would support the insertion of an objects clause, comprehensively setting out the objects of the Act, it is not regarded as a pressing matter. The underlying principles of the Act were articulated by the then Minister for Police and Corrective Services, the Hon Tom Barton MP, in his second reading speech as:

- ensuring quality of life for local communities;
- safeguarding against corruption and organised crime;
- addressing social factors which contribute to involvement in the sex industry;
- ensuring a health society; and
- promoting safety.²

Three of these principles match three of the five objectives outlined in the Edwards' Report. The 'protection of sex workers, clients and community against health risks' is encompassed by 'ensuring a healthy society'. The 'prevention of criminal involvement and corruption' is equal to 'safeguarding against corruption and organised crime'. The 'prevention of exploitation of sex workers' is captured by the broader principle of 'promoting safety'.

To what extent does the Prostitution Act meet the objectives outlined in the Edwards' Report?

In respect of the protection of children, the Prostitution Act is largely silent but only for the reason that the involvement of minors in prostitution is addressed under the Criminal Code. Sections 8 and 34 of the Prostitution Act make a

² Hansard, 10 November 1999, p. 4826.

minor ineligible to apply for either a brothel licence or an approved manager's certificate. Section 101 of the Act also gives the PLA the function of advising the Minister about ways of promoting and coordinating programs that divert minors and other vulnerable persons from prostitution, especially opportunistic prostitution. The Prostitution Act does not contain any prohibition on a person under the age of 18 years from providing prostitution in a licensed brothel or any prohibition on a licensee or approved manager allowing a minor to provide prostitution at a brothel. Rather, s. 229L of the Criminal Code provides that it is an offence, carrying a maximum penalty of 14 years imprisonment, for a person to knowingly cause or permit a minor to be at a place used for the purposes of prostitution by two or more sex workers. This effectively precludes minors either from providing prostitution at a licensed (or unlicensed) brothel or from accessing the services of a sex worker at a licensed (or unlicensed) brothel.

There are a number of other relevant offences in the Criminal Code:

- procuring a minor to engage in prostitution;
- knowingly participating in the provision of prostitution – it is an aggravated offence if a minor is involved;
- being found in or leaving an illegal brothel – it is an aggravated offence if a minor is present;
- being found in or leaving a licensed brothel when a minor is in the brothel; and
- having an interest in premises used for prostitution – it is an aggravated offence if a minor is in the premises.

However, there is no offence of engaging the services of a minor working independently as a sole operator sex worker. There would only be an offence committed if the minor was below the age of consent. In Queensland, the age of consent for males and females is 16 years of age, but there is a higher age of consent of 18 years of age for anal sex. This means that there is no legal impediment to a person purchasing sex from a 16 or 17 year old male or female sole operator sex worker, provided that it does not involve anal sex. The nature of prostitution and the negative consequences of the involvement of minors provide a cogent argument for a prohibition on the purchasing of sex from minors, even in circumstances where they are of the age of consent. The involvement of children in prostitution is the culmination of a range of complex and interwoven social factors. Known pathways to youth prostitution are homelessness, social disadvantage, family breakdown, illicit drug and/or alcohol use, abuse (sexual, physical and psychological), unemployment (and lack of employment potential), and leaving school prematurely.

It could be strongly argued that youth involved in prostitution should be regarded as victims, in need of protection and assistance, rather than subject to punitive laws. Accordingly, it would be inappropriate to make the selling of sex by children an offence. Rather, those people that prey on them should be targeted. In New Zealand, for instance, it is not an offence for a person under the age of 18 years to engage in sex work. Rather, it is illegal to arrange for or

to receive commercial sexual services from a person under 18. This is appropriate because it acknowledges the particular vulnerability of youth engaged in prostitution and recognises that there is a distinction between commercial sexual activity and other sexual activity. A similar offence in Queensland to that which applies in New Zealand might be appropriate in further safeguarding the welfare of children, as it would directly target demand for such services. It would also be consistent with other protections in the Criminal Code which are intended to discourage the involvement of minors in prostitution.

However, the involvement of minors in prostitution is generally what might be termed 'sex for survival' (shelter, food, to support drug addictions) and occurs outside of the mainstream sex industry. Often it is the case that young people involved in prostitution do not even identify as a sex worker. The curtailing of opportunities for youth to sell sex may actually have the perverse unintended consequence of increasing their interaction with the criminal justice system. Denied the opportunity to sell sex, they might instead turn to illegal methods of making money such as drug dealing and theft. A tightening of the law in respect of the involvement of youth in prostitution therefore requires careful consideration.

In relation to protecting sex workers and their clients from health risks, the Prostitution Act contains a range of relevant measures. All sex workers and clients in Queensland (sex workers in licensed brothels, sole operator sex workers, and sex workers in the illegal sector) must use prophylactics (male condoms, female condoms and dams) for any act of prostitution involving sexual intercourse or oral sex.

Sex workers in licensed brothels are prohibited from working whilst knowingly infective with a sexually transmissible infection and it is compulsory for them to undergo regular three-monthly sexual health examinations. There are no similar requirements for sole operator sex workers. Absent the confines of the brothel environment, particularly given that there are no registration requirements for sex workers, such requirements would be almost impossible to police and would therefore be ineffective in protecting public health. The PLA would by no means support a system of registration of sex workers. This is a basic issue of civil liberties, would further stigmatise sex workers, and raises key concerns in respect of privacy. It would be overwhelmingly rejected by sex workers (many of whose family and friends are unaware of their involvement in the sex industry because of the stigma and social approbation associated with sex work) and have the effect of driving sex workers underground, criminalising their activities, and detrimentally impacting on their health and safety. Client perceptions of the ability of sex workers to access the protection of the police would also be likely to impact on levels of violence against sex workers and client demands for unsafe sex. It would also be likely to lead to a decline in the number of sex workers who access health services because of a reluctance to identify as a sex worker.

Moreover, despite community perceptions and stereotypes of sex workers as vectors of disease, studies have confirmed that, in general, sex workers have a comparable or even superior level of sexual health to the general population. This was confirmed by the recently conducted Law and Sexworker Health (LASH) Project by Donovan, et. al. This was a study of female brothel sex workers in three capital cities – Sydney, Melbourne and Perth. Each of the workers were tested for four STIs. The project found that condom use was “uniformly high”.³ This consistently high rate of condom use was reportedly, “reflected in STI prevalences that were as low as the general population”.⁴ Given this, requiring mandatory sexual health testing of all sex workers in the state would involve a misallocation of resources. It could be argued that scarce public health funding would be better directed to higher risk groups, such as men who have sex with men. Sex workers are already motivated to voluntarily have regular sexual health checks because staying healthy and well is integral to their livelihood.

Mandatory testing of all sex workers would also be likely to attract opposition from sexual health clinicians and sex worker organisations. There are clinicians who view compulsory testing as a human rights issue and an unnecessary violation of a person’s bodily integrity. In 2009, an officer of the PLA attended the annual meeting of sexual health clinicians. One clinician present objected to compulsory testing as a sexual assault. Other clinicians point to the generally low levels of STIs experienced by sex workers and high rates of condom use in questioning the need for compulsory testing and point to the likely impact it would have on demand for services at sexual health clinics. The attendance of greater numbers of sex workers would likely be at the expense of higher risk groups and of highly questionable public health benefit.

Scarlet Alliance, the national sex workers association, is opposed to compulsory sexual health testing of sex workers. The organisation cites low levels of STIs and high rates of condom use amongst sex workers in support of its position. Scarlet Alliance further states that compulsory testing is discriminatory and stigmatising, a waste of public health resources, places an unnecessary burden on sexual health clinics, and may discourage sex workers from seeking medical attention.⁵ Scarlet Alliance contends, “that voluntary testing is the optimum approach to sexual health testing for sex workers in Australia”.⁶

³ B. Donovan, et. al., *Law and Sexworker Health (LASH) Project* (unpublished) – quote taken from conference poster for the International Society for STD Research Congress in London in June/July 2009.

⁴ B. Donovan, et. al., *Law and Sexworker Health (LASH) Project* (unpublished) – quote taken from conference poster for the International Society for STD Research Congress in London in June/July 2009.

⁵ Scarlet Alliance, *Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context*, p. 1.

⁶ Scarlet Alliance, *Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context*, p. 2.

All sexually active members of the community are responsible for practising safer sex. Health education, promotion and prevention are the best way of limiting the incidence of STIs in the community. Sex workers and their clients should be encouraged to look out for their own health, and sex workers outside of licensed brothels should be encouraged to have sexual health checks of their own volition. Sex workers provide different services representing varying degrees of risk of transmission of STIs. For example, sex workers that only engage in non-penetrative sex are at comparatively lower risk of infection than their counterparts that engage in penetrative sex. This does not lend itself well to a 'one size fits all' approach. The risks involved should determine the need for and frequency of testing. Compulsory testing fails to acknowledge that sex workers are already motivated to stay healthy and well because ultimately their livelihood depends upon it. That is why voluntary testing is an effective public health measure.

In relation to the prevention of criminal involvement and corruption, probity checking of applicants for a brothel licence or approved manager's certificate to ensure that they are a fit and proper person for involvement in the sex industry has to date been effective in quarantining licensed brothels from organised crime and corruption. It was the nexus between prostitution and organised crime and corruption, revealed by the Fitzgerald Inquiry, which provided the impetus for the creation of the regime for licensed brothels in Queensland. The still substantial illegal sex industry does present a risk of the involvement of organised crime and an avenue for corruption. This is a reason why it is important to draw as much of the industry as possible within the regulatory sphere, so as to reduce opportunities for corruption and organised crime.

In respect of the prevention of the exploitation of sex workers, s. 77 of the Prostitution Act prohibits the application of duress or coercion to a person to provide prostitution. Sex workers in licensed brothels have additional safeguards, so that it is a condition of licence that sex workers must not be compelled, either directly or indirectly, to provide an introduction, to see a client or to provide a particular service. It is workers in the illegal industry that are most at risk of exploitation. Given the inherent nature of the industry, they are more prone to coercion, violence, and unsafe sex, especially given client perceptions of the ability of those sex workers to access the protection of the police. Sex workers in illegal enterprises are not likely to report a matter to the police and thereby potentially expose themselves to criminal charges. This is another reason why it is important to draw as much of the sex industry as possible into the regulatory sphere.

The objective of cost-effectiveness is problematic. The Queensland Adult Business Association (QABA), an organisation which represents the interests of brothel licensees, has previously argued that high licence fees and regulatory burdens are a disincentive to involvement in the licensed sector and mean that most prostitution occurs illegally.⁷ In his second reading speech, the then Minister for Police and Corrective Services, the Hon Tom

⁷ QABA RIS response, p. 10.

Barton MP, rejected arguments that the cost of brothel licences would be prohibitive.⁸ The Minister's reference to this indicates that issues of cost-effectiveness were contemplated by the Government at the time of enacting the Prostitution Bill. The issue of cost-effectiveness was also considered in the Regulatory Impact Statement for the original *Prostitution Regulation 2000*, which stated that, "in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers".⁹

Originally, the total fees payable for a brothel licence for a five-room brothel were \$16,500. Currently, the total of those same fees stands at \$27,852. This represents an increase in fees of 68.8 per cent over the period from 2000-01 to 2009-10. The PLA is heavily reliant on fees to fund its operations. In 2009-10, it is estimated that fees revenue (from brothel licences and approved manager's certificates) will represent approximately two-thirds of the Authority's total budget. These fees represent a contribution to the cost of probity and regulation of brothels.

When the PLA commenced operation on 1 July 2000 there was an expectation that it would become self-funding through revenue derived from brothel licence and manager's certificate fees, based on an assumption of up to 80 licensed brothels operating in Queensland. Self-funding of the administration and regulation of the licensed sex industry was a key plank in its establishment. Almost a decade on, the licensed brothel sector is still not self-funding. The PLA continues to rely on an annual government grant. In 2009-10, the PLA received a government grant of \$429,000. After almost a decade, there are just 26 licensed brothels throughout the state. Moreover, under the current restrictive regulatory regime, there is no reasonable prospect of the original assumption of up to 80 licensed brothels being realised. Licensed operators are prohibited from offering outcall services and must compete against a substantial illegal sex industry. According to the Crime and Misconduct Commission, demand for outcall services is estimated to be about 75 per cent of all prostitution.¹⁰ Accordingly, licensed brothels are restricted to just 25 per cent of the market. Not only does this limit the growth of the licensed sector, but there is also a danger that more entrants will simply cannibalise the existing market, without any impact on illegal operators but ultimately impacting on the financial viability of all licensed brothels.

Whilst some brothels are very profitable, others are experiencing genuine financial hardship. QABA has previously acknowledged that there are brothels in the state that are struggling financially.¹¹ In May 2008, a brothel closed following the automatic cancellation of the brothel licence as a consequence of the insolvency under administration of the licensee. From the perspective of the PLA, there have been instances where licensees have not been able to pay their fees on time – with them asking for a deferral or a payment plan – neither of which are authorised under legislation and accordingly are not open

⁸ *Hansard*, 10 November 1999, p. 4832.

⁹ p. 4.

¹⁰ *Regulating Prostitution: An Evaluation of the Prostitution Act*, p. 110.

¹¹ QABA RIS response, p. 8.

to the PLA. There are community benefits which accrue from the licensing regime and to the extent that the whole community benefits it could be argued that should be reflected in the fee structure. This would involve revisiting the (so far unrealised) intention that the licensed sector should be self-funding.

Any going back on the commitment to self-funding would inevitably entail a greater reliance on government funding by the PLA. Opportunities for the Authority to realise efficiency savings are extremely limited. Eighty per cent of the agency's budget is fixed costs. Employee expenses are by far the largest expense component of the Authority. In 2008-09, costs associated with the agency's eight employees were \$762,378. One of these employees is likely to accept a voluntary early retirement package in 2009-10. There are no further opportunities for staff rationalisation. Regardless of whether there was just one or 26 licensed brothels, the Authority's staffing requirements would remain unchanged. Probity of applicants would still be required and staff would still need to perform compliance checks. Also, the PLA is expected to meet all of the same relevant governance, fiscal and reporting obligations that are required of much larger government departments (who have a much larger number of staff with relevant skill sets and qualifications).

It is acknowledged and understood that the PLA's current organisational structure is that of a 'bare bones' agency. This is demonstrated by a perusal of the Authority's budget since its inception. At no stage has the Authority's budget exceeded \$1,500,000. At inception in 2000-01, the Authority had a budget of \$1,118,051. In 2009-10, the Authority's estimated budget of \$1,281,000 is only marginally higher.

Although the PLA's government grant of \$429,000 in 2009-10, represents just 0.0011 per cent of estimated government expenses of \$39,637,000,000, the current fiscal environment is less than optimal for seeking further government funding. In its *State Budget 2009-10 Mid Year Fiscal and Economic Review*, the Government has announced that it is expecting a deficit of \$2.351 billion in 2009-10 and deficits of between \$2.5 billion and \$3.3 billion are forecast in each year of the forward estimates.¹² Accordingly, a revision of the commitment to self-funding is unlikely to be practicable in the foreseeable future.

Recommendation Three: That, based on the principles adopted by Government, the Department of Premier and Cabinet be asked to undertake a review of the current regulatory framework to decide what changes might better serve the principles and the overall objective of the Prostitution Act to regulate prostitution, with particular attention to:

- the Crime and Misconduct Commission estimate that only 10 per cent of prostitution in Queensland is currently regulated;
- the views of stakeholders presented in this and other reports;

¹² p. 8.

- the potential tensions for the Prostitution Licensing Authority as the body with responsibility for regulating prostitution and the body with responsibility for advising the Minister about programs designed to help sex workers leave the sex industry;
- the most appropriate agency location within Government for the regulation of prostitution, given the principles upon which regulation is based; and
- the need to educate the community about what is legal and illegal in Queensland.

PLA response:

The PLA agrees partially with this recommendation.

Whilst the Authority agrees that there is a need for a thorough and comprehensive review of the regulatory framework for prostitution in the state, it does not agree that it should be conducted by the Department of Premier and Cabinet. Rather, the Authority considers that the review should be conducted by a panel of experts, genuinely independent of government. The PLA acknowledges that this is contentious because a community debate on prostitution is not in the interests of the Government. Moreover, the Government could rightly argue that there are much more pressing matters, of more immediate concern and relevance, with much greater impact on the everyday life of the average community member, in respect of health, education, transport, and the environment, for example. The Authority acknowledges that there are legitimate reasons why prostitution is a low priority issue. Nonetheless, with the ten year anniversary of the PLA and the licensed brothel regime fast approaching, it would be an opportune time for a thorough and wide ranging independent review of the regulatory framework for the sex industry in the state.

The focus of any review should be how Queensland can better regulate the sex industry, with an emphasis on harm minimisation, including consideration of, but not limited to:

- The nature, extent, and impact of illegal prostitution and measures that would be effective in drawing as much of the industry as possible under the legal framework. This would also have the consequential benefit of moving the regime closer to a self-funding model.
- Measures to underpin the viability of licensed brothels and erode the profits of illegal operators.
- Outcalls from licensed brothels.
- The appropriateness and impact of restrictions on the location of licensed brothels, considering the permitted location of adult shops, adult entertainment venues, sex on premises venues, and swingers clubs.
- Brothel licence fees and the extent to which they are a barrier to entry to the sector.

- The regulatory burden faced by the licensed brothel sector.
- Restrictions on room numbers and sex workers at licensed brothels.
- Legalisation of escort agencies.
- Measures to enhance the health and safety and autonomy and independence of sex workers.
- Exiting the sex industry.
- The regulation of advertisements for prostitution.
- The appropriateness and impact of restrictions on procurement.
- The involvement of minors in prostitution.
- Testing of sex workers for STIs.
- Numbers of street workers and effective interventions.
- People trafficking for the purposes of sexual servitude.

26 September 2008

Ms Simone Webb and Professor Patrick Weller AO
Independent Reviewers
Independent Review of Government Boards, Committees
and Statutory Authorities
PO Box 15185
CITY EAST QLD 4002

Dear Ms Webb and Professor Weller

Thank you for the opportunity for the Prostitution Licensing Authority to provide an initial submission to the Independent Review of Government Boards, Committees and Statutory Authorities.

Please find the PLA's submission enclosed.

I look forward to reviewing your initial report and to providing a further submission when the opportunity arises.

Yours sincerely

Manus Boyce QC
Chairman

REVIEW OF GOVERNMENT BOARDS, COMMITTEES AND STATUTORY AUTHORITIES

About the Prostitution Licensing Authority

The Prostitution Licensing Authority (PLA) is a statutory entity, responsible for the administration of the *Prostitution Act 1999* (the Act) and the regulation of prostitution in Queensland. It commenced operation on 1 July 2000. As a result of the intense probative nature of the work of the PLA and the risks associated with the regulation and control of Queensland's sex industry, the *Freedom of Information Act 1992* does not apply to a document given to or produced by the PLA.

The purpose of the legislation is to:

- ensure that only fit and proper persons may operate or manage a licensed brothel;
- regulate the practices and operations of licensed brothels;
- ensure that licensed brothels are not located in inappropriate places, such as a residential area or near a school or church;
- promote and improve safety and health in the sex industry and wider community;
- ensure that sex workers are not exploited or coerced into prostitution; and
- combat the involvement of organised crime and the incidence of official corruption in the sex industry; and
- eliminate the incidence of official corruption in the regulation of prostitution.

The functions of the PLA are set out in s. 101 of the Act.

The primary function of the PLA is to decide on applications for brothel licences and approved manager certificates. Only a person that holds a brothel licence may legally operate a brothel. Likewise, only a person with an approved manager's certificate may manage a licensed brothel. The Act specifies who is ineligible to be granted a licence or certificate (e.g. the holder of a licence or permit under the *Liquor Act 1992*, or a person convicted of a disqualifying offence). It also sets out the criteria to be considered in deciding whether an applicant is a suitable person to be granted a licence or certificate. This involves one of the most comprehensive probity investigations of a person, their associates and finances required under Queensland law. On a case by case basis the PLA may conduct formal closed hearings in respect of deciding brothel licence applications where an applicant may choose to have legal representation and call witnesses. On these occasions the State Reporting Bureau assists in the conduct of the hearings.

Another important function is to monitor the provision of prostitution through licensed brothels, which includes amongst other things, regular sexual health examinations of sex workers, safe sex practices, the elimination of drugs and alcohol from licensed premises and the elimination of exploitation practices. The PLA has a compliance team to fulfill this function. It conducts regular audits of licensed brothels (@ 2 per brothel per year) throughout the state, as well as unannounced inspections if they are warranted in the circumstances.

The PLA receives complaints about prostitution, which can be important in ensuring that licensed brothels are operating in accordance with the Act and their licence conditions. Complaints may be about a range of matters, including the operation of licensed brothels, or a suspected illegal prostitution activity. The PLA has limited capacity to investigate the wide range of complaints that are made to the Authority and some complaints, for example those about suspected illegal activities and assaults on sex workers, are referred to the Queensland Police Service (QPS) for action.

It is also the function of the PLA to conduct disciplinary inquiries in relation to licensees and approved managers and to discipline them accordingly. The disciplinary powers of the PLA are extensive and can range from reprimanding a licensee or manager, imposing penalties of up to 135 penalty units (\$10,125), suspending or canceling a licence or certificate, to permanently excluding a person from ever again holding a licence or certificate under the Prostitution Act in Queensland. Disciplinary inquiries ultimately take the form of a formal hearing.

Other functions specified in the Act are to:

- liaise with the police service and other agencies to help them carry out their functions in relation to prostitution;
- collect fees;
- inform relevant government departments and agencies about possible offences that are detected whilst the PLA is carrying out its functions; and
- raise in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution.

Section 101(j) of the Act charges the PLA with responsibility for advising the Minister for Police about ways of promoting and coordinating programs that:

- promote sexual health care;
- help prostitutes to leave prostitution;
- divert minors and other vulnerable persons from prostitution, especially opportunistic prostitution; or
- raise in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution.

The PLA is also responsible for advising the Minister about the development of codes of practice for licensed brothels.

PLA Board members

The Prostitution Act prescribes the Authority's membership, consisting of eight members, including:

- the Chair – an independent, respected member of the community nominated by the Premier (Inaugural Chair was a retired Supreme Court Judge and current Chair a retired Judge);
- the Commissioner of Police, or a police officer of at least the rank of superintendent nominated by the commissioner;
- the Chairperson, or the Assistant Commissioner, Crime, of the CMC;
- a health practitioner, with at least five years experience in the profession;
- a lawyer who has been admitted for at least five years and has knowledge of or experience in administrative law, company law or criminal law;
- a person who represents local government; and
- two persons who, in the Minister's opinion, are qualified to represent community interests.

The Board consists of members with a variety of expertise relevant to the functions of the PLA, including law enforcement, legal knowledge, health, and local government. Given that the PLA works so closely with the police, in terms of both probity, compliance and investigations, the presence of a high-ranking member of the QPS has been particularly helpful in terms of managing the Authority's relationship with that organisation.

The performance of the PLA

In December 2004, Mr Brendan Butler SC, Chairperson, Crime and Misconduct Commission (CMC), wrote that:

There is no doubt that Queensland now has a safe and effective legal brothel industry, albeit one that is much smaller than originally envisaged; it is better, we believe, than that of any other state in Australia. Queensland's brothels provide a safe and healthy option for sex workers who choose to work in the industry and for the clients who choose to use their services. There is no evidence of corruption or organised crime within the legal industry and the impact of legal brothels on the community appears to have been minimal.¹

The PLA administers a regime that has high guarantees of health and safety for sex workers and their clients. Licensed brothels are subject to regular scheduled and unannounced compliance audits by the PLA's compliance staff, and brothel licence conditions are continuously monitored and updated by the PLA.

In conjunction with the QPS, the PLA conducts exhaustive and extensive probity checks of brothel licence applicants to ensure that they are a suitable person to operate a brothel. In 2004, the CMC found that there was no evidence of police corruption or organised crime in the legal prostitution industry. The Authority is vigilant to ensure that this remains the case in Queensland's licensed brothels.

¹ CMC, *Regulating Prostitution: an Evaluation of the Prostitution Act 1999 (Qld)*, December 2004, p. v.

The PLA continues to implement the policy, spirit and intent of the *Prostitution Act 1999* and is determined to ensure the maintenance of an effective and efficient brothel licensing regime.

In 2007-08, the PLA:

- investigated >900 persons and >270 companies relating to brothel licence and manager applications;
- presided over the regulation of 23 licensed brothels;
- received @ 4,000 inquiries;
- received >60 complaints in relation to prostitution;
- decided >155 brothel and manager applications;
- considered 12 annual returns;
- considered >9,000 advertising approval requests;
- undertook 202 compliance activities and as a result of audits and inspections made 118 recommendations for improvements to brothel operations; and
- met 66 times with key stakeholders.

The PLA is in a sound financial position. From 2007 to 2008 its equity has increased by over \$130,000. When the PLA was established it was the intention of the Government that it would be self-funding through licence and certificate fees. Because the industry has not grown to the size originally predicted, due to legal restrictions on brothel operations which limits access to the full range of business opportunities in the sex industry, the PLA has relied on an annual government grant. It should be noted, however, that government contributions have declined by about \$170,000 over the past year and user charges and fees have increased by almost \$300,000, as a result of fee increases for brothel licences and approved manager certificates. The PLA is an efficiently and economically operated organisation which seeks to make savings wherever possible. Over 80% of the PLA's total budget is fixed costs.

The PLA has a strong customer service ethos, receiving around 4,000 inquiries in 2007-08, considering >9,000 advertising approval requests, and deciding >155 applications. Our client satisfaction surveys have revealed a consistently very high rate of satisfaction by the PLA's clients. It is imperative that sex workers in particular have reliable and timely access to PLA staff because in general they are extremely reluctant to leave their name and contact details and will usually only call once. To lose communication with such a significant part of the sex industry would have a detrimental impact on the PLA's ongoing knowledge and education of Queensland's sex industry. The PLA maintains a dialogue with its stakeholders and the Chair has reiterated to licensees and managers that he and the Board are always available to meet with them if there are any issues that they would like to raise.

Efficiency of the PLA

The PLA endeavours to fulfill its statutory obligations in an efficient manner. It has a small staff of only seven-and-a-half full-time-equivalent officers. In 2007-08:

- 98% of complaints to the PLA about prostitution were resolved within 30 days;

- 99% of brothel licence and approved manager certificate applications were processed and forwarded to the QPS within 30 days;
- The average time to process a brothel licence application was 55 days²; and
- 100% of advertising approval requests³ were processed within 30 days.

The ongoing relevance of the PLA

The PLA remains as relevant today as when it first commenced operation in mid-2000. The Authority presides over Queensland's licensed brothel industry and there are currently 151 individuals who are licensed to operate or work in brothels throughout the state. By and large, the Queensland community accepts the existence of a licensed sex industry provided that it is strictly regulated and controlled, is crime and corruption free, that operating brothels have limited impact on amenity, and there are high guarantees of health and safety for sex workers and clients alike. The obligations and restrictions placed on the licensed sex industry are generally well regarded by the community and accepted as a reasonable and pragmatic trade-off for permitting legalised prostitution in the state. Ongoing vigilance by the PLA is required to ensure that the licensed prostitution industry remains free of the incidence of organised crime and official corruption. Since its inception, the PLA has placed a high priority on safe and secure work environments for staff and clients within brothels and insistence on appropriate workplace health and safety arrangements for workers in the licensed sex industry. It is not widely known, for example, that it is only sex workers in licensed brothels who are required to undergo regular sexual health examinations.

It is only through exhaustive probity processes and scheduled and unannounced compliance audits that the PLA can safeguard the industry and community and fulfill the intent and spirit of the Prostitution Act. For example, in 2007-08, PLA compliance officers undertook 202 compliance activities which included audits, inspections, interviews with prospective licensees, as well as meetings with and referrals to other government agencies. As a result of audits and inspections throughout the year, 118 recommendations for improvements to brothel operations were made.

The PLA and 'red tape'

The PLA is subject to all relevant government reporting processes.

In order to operate or manage a brothel in Queensland a person needs a licence or certificate, respectively. All brothels operated without a licence are illegal. The PLA must assess the suitability of applicants for brothel licences and approved manager certificates. This involves an exhaustive and extensive probity process by which applicants must reveal very personal and intimate details to the PLA, including:

- a physical description, involving height, weight, build, complexion, eye and hair colour;
- details of any criminal convictions, including in relation to prostitution offences;
- details of the criminal convictions of any associates;

² Less for renewal applications.

³ >9,000 advertisements submitted to the PLA for consideration.

- whether they have ever been charged with an offence of a sexual nature;
- whether they have a controlling interest in any companies and whether they hold a position in those companies;
- whether any companies in which they have a controlling interest have been the subject of any investigations by government authorities or have been convicted of an offence;
- details of all loans and overdrafts held by companies in which they have a controlling interest;
- details of bank accounts of the company;
- details of all significant investments held by the company;
- whether any company has been placed in receivership or the like;
- various other requirements in relation to any companies, including a requirement to provide the PLA with a statement of company records;
- whether they have ever been refused an occupational licence or had one suspended or cancelled;
- whether they own weapons or hold a weapons licence or have been refused a weapons licence;
- details of residences in which they have lived for the last ten years;
- details of all employment over the last ten years;
- details of any cautions, summonses, arrests, charges or convictions, whether they have been subject to a domestic violence order, or had their driver's licence suspended or cancelled;
- their involvement in prostitution;
- details of all associates, including family members;
- details of the owners of the brothel premises;
- details of any brothel leasing arrangements;
- details of how the brothel is being financed;
- who will receive income from the brothel;
- personal financial details, including whether they have ever been a bankrupt;
- a statement of net assets, involving cash assets, debts and mortgages, investments, fixed assets, and other assets, credit cards and other liabilities;
- sources of funds over the past five years; and
- a business plan and an operational plan for the brothel.

Whilst extensive, this information is necessary for the PLA to meet its objective of ensuring that organised crime does not gain a foothold in the licensed brothel industry and that only suitable persons operate a brothel.

Moreover, under the August 2007 amendments to the Prostitution Act, there has been a significant reduction in 'red tape' associated with licences and certificates. Applicants now receive a three-year licence or certificate. Previously, they had to make an application to renew annually. Three-year licences facilitate continuity of business, provide greater certainty, and make it easier to obtain finance from lending institutions. The process significantly reduces the administrative burden on applicant's who are now only required to complete annual returns (until the end of their three year term at which time they must renew their licence/certificate). The annual return process does not in any way limit the capacity of the PLA and QPS to undertake annual probity investigation of existing licence and certificate holders (to determine continued suitability to hold a licence or certificate) nor the annual

assessment of the viability of brothel operations (precursor to increased risk of illegal activity and involvement of organised crime). Due to the PLA business re-engineering processes and high level negotiations with the QPS, the information required of clients is considerably truncated in comparison to applications/renewals for a licence/certificate but facilitates ongoing consistent probity checking by the PLA and QPS. These changes have been overwhelmingly welcomed by the industry. Regular announced and unannounced compliance audits are necessary to ensure compliance with regulatory and statutory obligations. This is focussed on safeguarding the health and safety of sex workers and clients. Compliance teams are required to be of mixed gender to mitigate the obvious risks with male-only teams.

Licence holders and certificate holders are also subject to a range of conditions imposed by the PLA. These include:

- allowing the PLA to enter and inspect the brothel premises;
- permitting the PLA to examine any documents relating to brothel operations;
- record keeping requirements;
- occupational health and safety obligations (such as that sex workers hold a current sexual health certificate and that prophylactics are used for all contact sexual services);
- matters relating to financial operations; and
- specifying the content of brothel policies and procedures.

These conditions are necessary to assist the PLA to effectively perform its functions, for reasons of transparency, to limit opportunities for organised crime and official corruption, and to protect the health and safety of sex workers, clients, and the community. Where appropriate, stakeholders are consulted on any draft conditions.

In order to further insulate the community from any negative impact of legalising prostitution, the Act also requires that advertisements for prostitution be in an approved form. It is an offence to publish an advertisement for prostitution in Queensland that is not in the approved form. Under August 2007 amendments to the Act the PLA may issue guidelines about the approved form for advertisements for prostitution. Following an extensive process of development and stakeholder consultation, the guidelines took effect on 30 May 2008.

Prior to the commencement of the guidelines, the PLA was faced with the onerous task of considering and approving each advertisement for prostitution published in Queensland. With the commencement of the guidelines, the onus is now on advertisers and publishers to ensure that advertisements for prostitution are in the approved form. Advertisers and publishers must self-assess the proposed advertisement against the guidelines and thereby determine whether the advertisement is in the approved form. An advertisement which complies with the guidelines will be in the approved form. In a very limited range of circumstances, the guidelines require that advertisements must still be submitted for the approval of the PLA.

The guidelines have reduced 'red tape' and resulted in a simpler, more efficient and streamlined advertising approval process, which in the vast majority of cases circumvents the need to submit advertisements to the PLA for approval. In 2007-08, >9,000 advertising approval requests were lodged with the PLA. Since the commencement of the guidelines at the end of May 2008, the PLA has approved <100

advertisements. The guidelines have been welcomed by the sex industry, and accommodated by publishers. The principal advertising role of the PLA has shifted from approving advertisements to providing advice to the sex industry and publishers on the application and interpretation of the guidelines. As a result, however, media surveillance activities have increased to ensure ongoing high levels of compliance.

The 'red tape' that the PLA imposes on its clients is appropriate and reasonable in the circumstances, is accepted by the PLA's clients as being relevant given the inherent risks of prostitution, and expected by the legislature and in the interests of the community of Queensland.

Whether the work of the PLA could be merged into the functions of an existing government department

The PLA was established by the *Prostitution Act 1999* and commenced operation in July 2000. It was specifically established to regulate the licensed brothel regime created by the Act. There have been no events or reasons in the intervening period to alter the need for the PLA.

Whilst the PLA maintains a close working relationship with the QPS, the breadth of the PLA's responsibilities mean that no single department would provide a 'best fit'. The Authority's work traverses the gamut of police, health, industrial relations, and local government. It would not fit well in any single government department. Other than the QPS and Queensland Health, it has been the Authority's experience that no other agency or department considers that their work has a sex industry dimension. Significant effort has been required to secure cooperation from agencies and departments to assist the work of the PLA.

The PLA is needed:

- to independently and dispassionately assess applications, free from any improper or undue influence;
- to bring together a group of people, in the form of the Board, with a range of expertise relevant to the regulation of the sex industry;
- to provide independent advice to the Minister for Police, the government, and various departments in relation to matters and issues pertaining to prostitution;
- to provide a body which is independent and approachable and with which the sex industry is comfortable dealing. The QPS is not such an agency given its role in policing the industry and also given the particular unfortunate history of police involvement with the sex industry revealed by the Fitzgerald Inquiry;
- to overcome the sex industry's systemic negative opinion or association with state authority so that the objectives of the Act can be achieved in an efficient and effective manner;
- to limit the possibility of official corruption which may go hand-in-hand with departmental consideration of licences and certificates and the conduct of compliance audits. Given the history of corruption revealed by the Fitzgerald Inquiry this would be particularly problematic for the QPS; and
- as a result of the exemption from the *Freedom of Information Act 1992*.

The PLA should remain a statutory authority within the police portfolio because of the need for the Authority to work closely with the QPS in respect of probity and compliance. For each licence applicant and their deemed associates, the QPS are required to conduct 26 individual checks. The PLA has limited capacity to investigate complaints about suspected illegal activities and they are routinely referred to the QPS. The PLA's location within the police portfolio encourages cooperation, the timely exchange of information, and facilitates an efficient, cooperative and high performing work relationship. The most appropriate portfolio for the PLA to be attached to was considered by Cabinet in the context of the August 2007 amendments to the Prostitution Act, and it was agreed that the Authority's ongoing location within the police portfolio complemented and facilitated the work of the Authority.

Whether there are other bodies carrying out similar or complementary functions and whether they could be merged into a single entity

There are no other government bodies carrying out a sex industry function. In any case, the PLA should not be merged with another entity because:

- it undertakes extensive personal and financial probity checking far beyond that of any other government entity;
- as previously indicated, the PLA must consider an extensive amount of information in deciding whether to grant an applicant a licence or certificate as well as dealing with sex workers and clients in the sex industry. Further, given the level of anonymity and confidentiality required by sex workers and their clients when dealing with state authority as well as the controversial nature of prostitution, and the consequent media attention that it can invoke, the PLA is exempt from the Freedom of Information Act;
- to limit the possibility of official corruption which may go hand-in-hand with departmental consideration of licences and certificates and the conduct of compliance audits. Given the history of corruption revealed by the Fitzgerald Inquiry this would be particularly problematic for the QPS. Indeed, it was for this very reason that the Prostitution Act places limits on the ability of police to enter licensed brothels, so that a police officer must be of at least the rank of Inspector or authorised by a police officer of at least the rank of Inspector to enter a brothel; and
- the involvement of corruption and organised crime in prostitution revealed by the Fitzgerald Inquiry underscores the need for an independent statutory authority.

19 December 2008

Ms Simone Webb and Professor Patrick Weller AO
Independent Reviewers
Independent Review of Government Boards, Committees
and Statutory Authorities – Secretariat
PO Box 15185
CITY EAST QLD 4002

Dear Ms Webb and Professor Weller

Thank you for the opportunity for the Prostitution Licensing Authority (PLA) to provide a further submission to the Independent Review of Government Boards, Committees and Statutory Authorities following consideration of the Part A Report. Please find the Authority's submission enclosed.

The PLA's submission focuses on the public interest map for government bodies and seeks to demonstrate the need for and on-going relevance of the Authority.

I also draw your attention to the initial submission made by the PLA, which contains a range of information relevant to your consideration of the PLA in the context of your Part B Report. To aid your consideration of the Authority, I have also enclosed two copies of the PLA's *Annual Report 2007-08*.

Please do not hesitate to contact me if I can be of further assistance throughout this review.

Yours sincerely

Manus Boyce QC
Chairman

INDEPENDENT REVIEW OF QUEENSLAND GOVERNMENT BOARDS, COMMITTEES AND STATUTORY AUTHORITIES

PROSTITUTION LICENSING AUTHORITY SUBMISSION ON PART A REPORT

Public Interest Map for Government Bodies

As the Prostitution Licensing Authority (PLA) is captured under the Independent Review of Queensland Government Boards, Committees and Statutory Authorities, this submission seeks to apply the public interest map to the PLA in order to demonstrate the need for and on-going relevance of the Authority.

Threshold test (why)

Does the activity need to be done?

No society has been successful in eradicating prostitution. The fact, however much it may be regretted, is that sex is a commodity. It sells. There are those who are anxious purchasers of it. There are many who are willing vendors. There is an almost universal acceptance by the community that prostitution will always occur in one form or another. A significant majority favour its regulation and control. This was demonstrated by the *Selling Sex in Queensland 2003* study which investigated community attitudes to prostitution. 99.7 per cent of respondents agreed that prostitution exists in Queensland and 93.5 percent either strongly agreed or agreed with the licensing and registration of brothels in a legalised environment.¹ Ultimately, the decision to legalise and regulate prostitution is a pragmatic one, with the overall objective of limiting its impact on the community and addressing its more unpalatable aspects. In reforming the prostitution laws in the state, the Government sought to reflect the reality of prostitution as a continuing social issue and to reflect community expectations about how prostitution should be handled.

The *Prostitution Act 1999* (the Act) created a licensing scheme and legalised prostitution provided through licensed brothels. It is the role of the PLA to ensure that only fit and proper persons may own or manage a brothel, and to regulate the industry in the public interest. The then Minister for Police and Corrective Services, the Hon Tom Barton MP, identified the five guiding principles of the Act as:

- ensuring quality of life for local communities;
- safeguarding against corruption and organised crime;

¹ PLA, *Selling Sex in Queensland 2003: a study of prostitution in Queensland*, pp. 90 and 97.

- addressing social factors which contribute to involvement in the sex industry;
- ensuring a healthy society; and
- promoting safety.²

The attention of the Independent Reviewers is drawn to the Authority's initial submission to this review, where the functions of the PLA were comprehensively explored. Broadly, the functions of the PLA correspond with the purpose of the Act in:

- ensuring that only fit and proper persons may own or manage a brothel;
- regulating the practices and operations of licensed brothels and ensuring the imposition of proper workplace arrangements;
- limiting the impact of the licensed brothel industry on the community;
- limiting the incidence of sexually transmitted infections and promoting safe sex practices;
- ensuring that sex workers are not exploited or coerced into prostitution, especially the more vulnerable members of society;
- safeguarding the health and safety of sex workers and clients; and
- combating the involvement of organised crime and the incidence of official corruption in the sex industry.

Should the Queensland Government undertake the activity?

The licensing and regulation of the brothel industry is most appropriately the province of the Queensland Government. It is unarguably within the constitutional jurisdiction of the state. Licensing and regulation are functions which are not appropriate to outsource to the private sector. Decisions in respect of applications for brothel licences and approved managers' certificates must be objective, dispassionate, and transparent.

Is there any compelling reason why a department cannot, or should not, undertake the proposed activity?

The PLA has previously addressed this limb of the threshold test in its initial submission to this review.

By giving the Authority the function of deciding who should be granted a licence or certificate, the decision is made at arms-length and independent from the Government, thereby overcoming the potential for any actual or perceived Ministerial interference.

The PLA's previous submission identified that the Authority's activities cross the gamut of state government portfolios, including police, health, local government, and industrial relations. Accordingly, there is no single department that would provide a 'best fit' for the work of the Authority.

² Hon Tom Barton MP, "Second reading speech", *Hansard*, 10 November 1999, p. 4826.

By not locating the function inside a department, decisions in respect of licences and certificates are taken out of the hands of anonymous bureaucrats. Rather, decisions are in the hands of the members of the PLA (the Board). The Board brings together a collection of eight members with relevant expertise relating to prostitution, including legal and judicial, law enforcement, crime and anti-corruption, health, local government, and community interest. This array of knowledge and expertise puts the PLA in good stead to fulfil its statutory obligations, and objectively and dispassionately assess applications for licences and certificates. By putting decisions in the hands of this collection of individuals, it more effectively minimises opportunities for corruption that would occur in a department.

The prospect of corruption and organised crime weighed heavily on the Government in its formulation of the Prostitution Bill. The then Minister for Police and Corrective Services stated that:

We cannot ever forget the part prostitution has played in corruption and organised crime in this State during some dark years in Queensland's history. We must remain ever vigilant against corruption and organised crime, and the passage of this Bill will assist us in that task.³

The Minister's reference was to the Fitzgerald Inquiry, which revealed a direct nexus between police corruption, organised crime, and the operation of brothels. The Inquiry uncovered significant vice and apparent inaction by Queensland police in enforcing prostitution laws. Amongst other things, it was found that drug distributors were involved in the operation of Brisbane brothels (which at that stage were illegal), that operators had links with senior officers in Queensland police, and that the police were paid protection money by operators and accepted sexual favours. Several former Licensing Branch officers were subsequently charged and convicted of corruption. Whilst there is no suggestion that the modern day Queensland Police Service (QPS) would involve itself in such nefarious activities, it places the creation of the PLA in its historical context, and demonstrates why the licensing and regulation of brothels should remain separate from the QPS.

The location of the functions of the PLA within QPS is also not feasible because it would not be conducive to an open and productive relationship with the sex industry, which is traditionally distrustful of authority, and especially given QPS' role in policing the industry. Indeed, it is for this very reason that the PLA has been meticulous in emphasising to the sex industry that it is a distinct entity, separate to and independent from the QPS. Furthermore, the location of the functions of the PLA within QPS would be more consistent with a strict law enforcement approach to prostitution, when it is widely acknowledged that a holistic approach which crosses departmental boundaries is needed.

³ Hon Tom Barton MP, "Second reading speech", *Hansard*, 10 November 1999, p. 4826.

Application of sunset clause or review period

There is no sunset clause that applies to the licensed brothel industry. In accordance with the Authority's responsibility for regulating the industry, the application of a sunset clause to the PLA would not be feasible.

There is a provision of the Act which requires the Crime and Misconduct Commission (CMC) to undertake regular reviews of the effectiveness of the Act. The CMC has already undertaken one review of the Act, resulting in a positive report, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999*, tabled in December 2004. The review found that:

- there is no evidence of corruption or organised crime within the licensed brothel industry;
- probity and compliance functions have resulted in a clean legal industry;
- brothels provide a safe and healthy option for sex workers and clients alike;
- compliance with the health and safety requirements of the Act in brothels has been generally high; and
- there was no evidence of any adverse effects on community amenity by brothels.

Section 141(1) of the Act stipulates that the CMC must review the effectiveness of the Act as soon as practicable after the end of three years following the commencement of s. 34 of the *Prostitution Amendment Act 2006*.

Organisational form guide (what)

The PLA is a statutory authority created by the *Prostitution Act 1999*. According to figure 6.5 in the Part A Report, the only acceptable form in relation to a regulatory/registration body is a statutory authority.

The report cites Uhrig's recommendation that a board is not the appropriate governance structure for statutory authorities involved in regulation, and that the Commonwealth Government has replaced many governing boards with CEOs who report directly to the secretary/minister. In the case of the PLA, it is contended that the Board is an appropriate governance structure. Firstly, because as mentioned previously, it brings together a group of people with a range of skills and expertise relevant to the functions of the Authority. Secondly, limiting opportunities for corruption was a major preoccupation of the Government in framing the Act. A single person, in the form of a CEO, would be more prone to the risk of corruption and improper influence than a collective of persons, in the form of the Board.

Good governance framework (how)

As a public sector entity, in receipt of an annual government grant, the PLA believes that the Authority should be subject to high standards of governance that maximise transparency, accountability, and efficiency.

Sections 108A and 108B of the Act provide that the Authority is a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*. This means, for example, that the PLA is required to:

- have a Financial Management Practice Manual;
- prepare annual financial statements for the Auditor-General;
- give the Minister an Annual Report on its operations; and
- comply with any financial management standards made by the Treasurer.

There are a raft of other documents that the PLA is also required to produce as a result of obligations placed on it by the government, such as a Service Delivery Statement, a Strategic Plan, and a Code of Conduct. In addition, the Chairman of the Authority, previously the Hon Bill Carter QC and currently Manus Boyce QC, attends Estimates each year.

Section 108C of the Act also requires the Authority to develop a budget each financial year for the approval of the Minister, and that the budget may only be amended with the approval of the Minister.

Section 108D of the Act states that the Minister has the responsibility of ensuring that the PLA operates to best practice standards. For this purpose, the Minister may require the Authority to report on the efficiency, effectiveness, economy and timeliness of the Authority and its systems and processes, including operational processes.

Section 13B of the *Prostitution Regulation 2000* also requires the PLA to keep and implement a complaints policy and stipulates certain minimum requirements for that policy.

In the interests of good governance, the PLA supports a common and certain set of minimum standards, processes and responsibilities, established in a generic legislative framework, for the external and internal governance of government boards, committees and statutory authorities, as recommended in the Part A Report. The Authority agrees that a 'one size fits all' approach would not recognise the diverse needs and requirements of specific forms of entities, and that accordingly flexibility of standards is required.

However, the PLA is also of the view that there should be an appropriate balance between governance requirements and the capacity of individual entities to deliver them within the constraints of available and limited resources. In short, the requirements should not be unjustifiably onerous. In particular, there needs to be an appropriate recognition that non-departmental entities do not have access to the same level of resources and staff expertise

and knowledge available to government departments. This means, for example, that they do not have their own human resources unit, or legal unit, or records and archiving unit, or most likely any officers with specific expertise and background in organisational governance. It is therefore crucial that small agencies such as the PLA be adequately resourced and supported.