CRIMINAL JUSTICE COMMISSION
QUEENSLAND

REVIEW OF PROSTITUTION-RELATED LAWS IN QUEENSLAND

INFORMATION AND ISSUES PAPER

This is a discussion paper, not a report. Your comments on the matters raised are welcome, and the Commission will take them into account when compiling its Report. Please send your comments to the Commission by 5th April, 1991.

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PUBLIC SUBMISSIONS

The Commission seeks written public submissions on its Review of Prostitution-Related Laws in Queensland. The review will culminate in a report to Parliament and the Premier later in 1991 which may include recommendations for changes to existing laws.

For the purposes of facilitating informed community responses, the Criminal Justice Commission has prepared an Issues Paper entitled, Review of Prostitution-Related Laws in Queensland.

Written submissions should be sent to the Commission by 5th April, 1991. The address for submissions is:

Criminal Justice Commission
P.O. Box 157
NORTH QUAY QLD 4002

Submissions marked "confidential" will be treated as such and not made available for public inspection.

All other submissions received will be copied and made available for public inspection in the Commission's Library at 557 Coronation Drive, Toowong.

Copies of the Issues Paper can be obtained from:

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NOTE: **Persons desiring to collect a copy of the issues paper in person, are requested to do so by calling at the Commission on or after Monday, 4th March, 1991.**

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THE PURPOSE OF THIS ISSUES PAPER

The publication of this paper is the first step in a review by the Criminal Justice Commission of the laws relating to prostitution.

The Commission undertook to review these laws after Commissioner Fitzgerald commented in his report that:

> "A review of the criminal laws, particularly those affecting prostitution and S.P. bookmaking, needs more information if it is to make decisions with reasonable confidence that it is not simply creating more problems;"[1]

and that:

> "The depressing facts about prostitution do not necessarily mean that prohibition of it and other sex related activities are the best ways of meeting social need. It is safe to assume that prostitution will continue to exist, whether or not it is illegal, so long as people are willing to buy and sell sex. It may be better to control and regulate prostitution, not just prohibit it, for the overall benefit of the community."[2]

Commissioner Fitzgerald also drew attention to matters of public health associated with prostitution:

> "As well, public health considerations are probably better served by legal, controlled prostitution where women can be urged or forced to go for health checks, or at least feel free to do so without the fear of prosecution. Safe sex practices might also be able to be enforced as part of a regulated system of prostitution, and education of clients and prostitutes would be easier".[3]

In accordance with the recommendations of the Commission of Inquiry, the Criminal Justice Commission has been vested with, among other things, the following statutory responsibilities:

* to review and where necessary initiate reforms of the criminal justice system;

* to discharge those functions that the Commission feels it is not appropriate for the police to discharge, particularly in relation to organised crime;

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1 **Report of a Commission of Inquiry Pursuant to Orders in Council, dated 26 May 1987, 24 June 1987, 25 August 1988 and 29 June 1989, Government Printer, Brisbane 1989, p. 190.**

2 **ibid, pp. 192-193.**

3 **ibid, p. 193.**

* to generate reports based on the Commission's own research, that relate to the effectiveness of the criminal law and its enforcement;

* to provide the police force with clear policy directives in relation to law enforcement priorities, and enforcement methods.

In fulfilling these functions, the Commission aims to consult with persons or bodies known to have special competence or knowledge in the area under review, and additionally, seeks submissions from the public. At all times it is the Commission's objective to carry out the most widespread consultation possible before making any recommendations for changes to laws. All submissions, whether they are supportive of or contrary to the Commission's final recommendations on the matter, are then given full consideration in the Commission's report to Parliament.

The Commission's report on prostitution is still some time away. The purpose of releasing this issues paper now is to provide information which will assist the community to make informed comment about the policy options on prostitution.

It should be noted that the important subject of the connections between organised crime and prostitution will be dealt with in the Commission's final report.

1. DEFINITIONS

Sex workers are people who offer sexual services for money or material gain. They work for parlours, brothels, escort agencies, and on the streets. Some self-employed workers operate from home. The term "sex worker" is preferred to the term "prostitute", which is often used in a pejorative sense.

The term "prostitution" is used throughout this paper for ease of reference to statutory provisions and common law. "Prostitution" is also retained to describe the services sex workers provide. This distinguishes these services from other aspects of the sex industry such as pornography.

A brothel is a premises maintained for the purposes of prostitution in which two or more sex workers operate. It is illegal for a brothel to advertise as such.

A parlour sometimes advertises as a massage parlour but it can be a premises where prostitution is carried out. There are also massage parlours which only offer massage without prostitution.

An escort agency is a service that is established for the purpose of introducing people to prostitution or a service that facilitates prostitution. Any sexual services provided take place off the premises. There is speculation about whether any escort agencies provide companionship without sexual services being an essential part of the transaction.

A self-employed sex worker operates from private premises and is the only person offering such a service from those premises.

A street worker attracts clients from the streets. Sexual services are provided to clients in a variety of locations such as rented rooms and cars.

2. INTRODUCTION

The structure and operation of the prostitution industry in Queensland have changed markedly during the last 50 years.

During the 1940's and for much of the 1950's, most prostitution took place in brothels or "houses of prostitution".

In 1957, police issued an order to close prostitution establishments. Some sex workers then operated in a discreet manner from their own homes. Other sex workers made arrangements with the publicans of certain hotels; allegations of police involvement in such activities were responsible for the Royal Commission into the National Hotel (Brisbane) in 1963.

In the late 1960's, the "massage parlour" first appeared in Queensland. It quickly became the dominant facade used for prostitution. The first "escort services" were associated with massage parlours.

Through the 1980's, more and more massage parlours dropped their facade. Double beds replaced massage benches. Deep pile carpets, mirrored ceilings, spas, and well stocked bars greeted clients, who could order sexual services from a "menu".[4]

In 1987, journalists exposed the link between massage parlours and organised prostitution and questioned the lack of police interference with this industry. Media reports of police toleration and protection of massage parlours, two of which were operated by suspected organised crime syndicates, proliferated. Reports published in "The Courier-Mail",[5] and on the A.B.C.'s "Four Corners" program alleged that:

* drug distributors were involved in the operation of Brisbane's parlours;

* these operators had links with present and previous senior officers in the Queensland Police Department Licensing Branch;

* the Licensing Branch knew of and tolerated existing parlours and agencies;

* police were paid in money and alcohol by parlour and escort agency operators; and

* knowledge of police payment by operators was known to and condoned by higher ranks of the Police Department administration.

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4 Dickie, P., The Road to Fitzgerald and Beyond, U.Q.P. St Lucia, 1989, p. 85.

5 See in particular "The Courier-Mail" 12 January, 1987, 13 April, 1987 and 18 April, 1987.

On 12 May 1987, the acting Premier, Mr Bill Gunn, announced that an inquiry would be held into the matters raised by these reports. The resulting Commission of Inquiry, chaired by Mr Tony Fitzgerald QC, began on 27 July 1987.

Commissioner Fitzgerald's findings confirmed the trends already identified by journalists. Additionally, he found that:

* officers-in-charge of the Licensing Branch (Parker, Dwyer and Bulger) "were all paid regularly, and the amount received from graft expanded constantly as more persons and premises were extended protection";[6]

* police accepted sexual favours as well as money and property from prostitution industry operators;[7] and

* police charged those involved in the prostitution industry who were out of their favour more regularly than those in favour.[8]

On the issue of prostitution generally, Commissioner Fitzgerald observed that some prostitution activities constituted a public nuisance; some sex workers overlooked health risks and suffered from low self-esteem; and many involved in prostitution did not pay tax. Violence, drug taking and drug distribution were features of the trade. Commissioner Fitzgerald observed that many sex workers entered prostitution for economic reasons. He suggested that:

> "Leaving aside the influence of organised crime, a regulated system of prostitution could eliminate many of the problems associated with the industry. Any such system should have appropriate controls and a strong emphasis on education of prostitutes about private and public health considerations. Such a system would reduce prostitutes' present vulnerability to pressure for unsafe sexual practice and inability to seek help when they are being abused."[9]

One of the statutory responsibilities of the Criminal Justice Commission, formed pursuant to Fitzgerald's recommendations, is:

> "researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of criminal justice, including assessment of relevant initiatives and systems outside the State".[10]

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6 **Report of a Commission of Inquiry pursuant to orders in Council dated 26 May 1987, 24 June 1987, 25 August 1988 and 29 June 1989, Government Printer, Brisbane 1989, p. 65.**

7 **ibid, p. 207.**

8 **ibid, p. 65.**

9 **ibid, pp. 192-3.**

10 **Criminal Justice Act 1989-1990, Clause 2.15 (e),**

To that end, the Commission is conducting research into the laws surrounding prostitution, their enforcement, and associated matters identified by Commissioner Fitzgerald's inquiry.

3. THE PRESENT LAWS RELATING TO PROSTITUTION

3.1 Some Figures

Statistical information about the activities of police is published in the annual reports of the Queensland Police Department. Since 1989-90, these publications have been called Police Service Annual Reports. These reports list, among other things, numbers of offences which have come to the attention of the police during the past financial year. Significantly, the reports show that the highest number of prostitution-related offences came to the attention of police in the 12 months between July 1986 and June 1987, the year the media began questioning apparent police inactivity with regard to prostitution and Commissioner Fitzgerald began hearing related evidence. See Table 1 (page 8).

The reports also show that between July 1977 and June 1989 the majority (63.14 per cent) of prostitution-related offences which came to the attention of the police, were for "using a massage parlour for the purposes of prostitution". During this period, other prosecutions were commenced for "keeping a premises for prostitution" (25.56 per cent), "living off the proceeds of prostitution" (6.53 per cent), and "soliciting for immoral purposes" (4.78 per cent). See Table 2 (page 8) and Figure 1 (page 9).

Changes in the Pattern of Individual Offences

Figures for the 13 years between July 1977 and June 1990 show large variations in the frequencies with which certain offences came to the attention of the police. See Table 1 (page 8) and Figure 1 (page 9). It would be difficult to establish whether the changes were due to alterations in the nature of prostitution or variations in the way in which police exercised their discretion to prosecute.

Use Massage Parlour for the Purposes of Prostitution

The offence of "using massage parlour for the purpose of prostitution" came most frequently to the attention of the police during 1979-80 (793 times) and least frequently during 1989-90 (49 times). This is the last year for which statistics are available.

Keep Premises for Prostitution

For the 13 years between July 1977 and June 1990, this offence came to the attention of the police least in 1977-78 (46 times) and most in 1984-85 (317 times).

TABLE 1

Prostitution Related Offences which came to the Attention of the Police 1977-1978 to 1989-90
Under the Vagrants, Gaming and Other Offences Act 1931-1988 and the Criminal Code 1899-1989

	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90
Use massage parlour for purpose of prostitution	647	629	793	562	393	449	447	500	414	544	59	115	49
Keep premises for prostitution	46	56	69	149	147	200	309	317	266	242	236	181	49
Live off proceeds of prostitution	8	13	13	24	38	53	97	57	38	51	76	99	12
Solicit for immoral purposes	16	17	5	7	2	1	5	33	30	83	101	72	52
TOTAL	717	715	880	742	580	703	858	907	748	920	472	467	162

Source: Queensland Police Department Annual Reports 1977-88 to 1988-89 and Queensland Police Service Annual Report 1989-90

TABLE 2

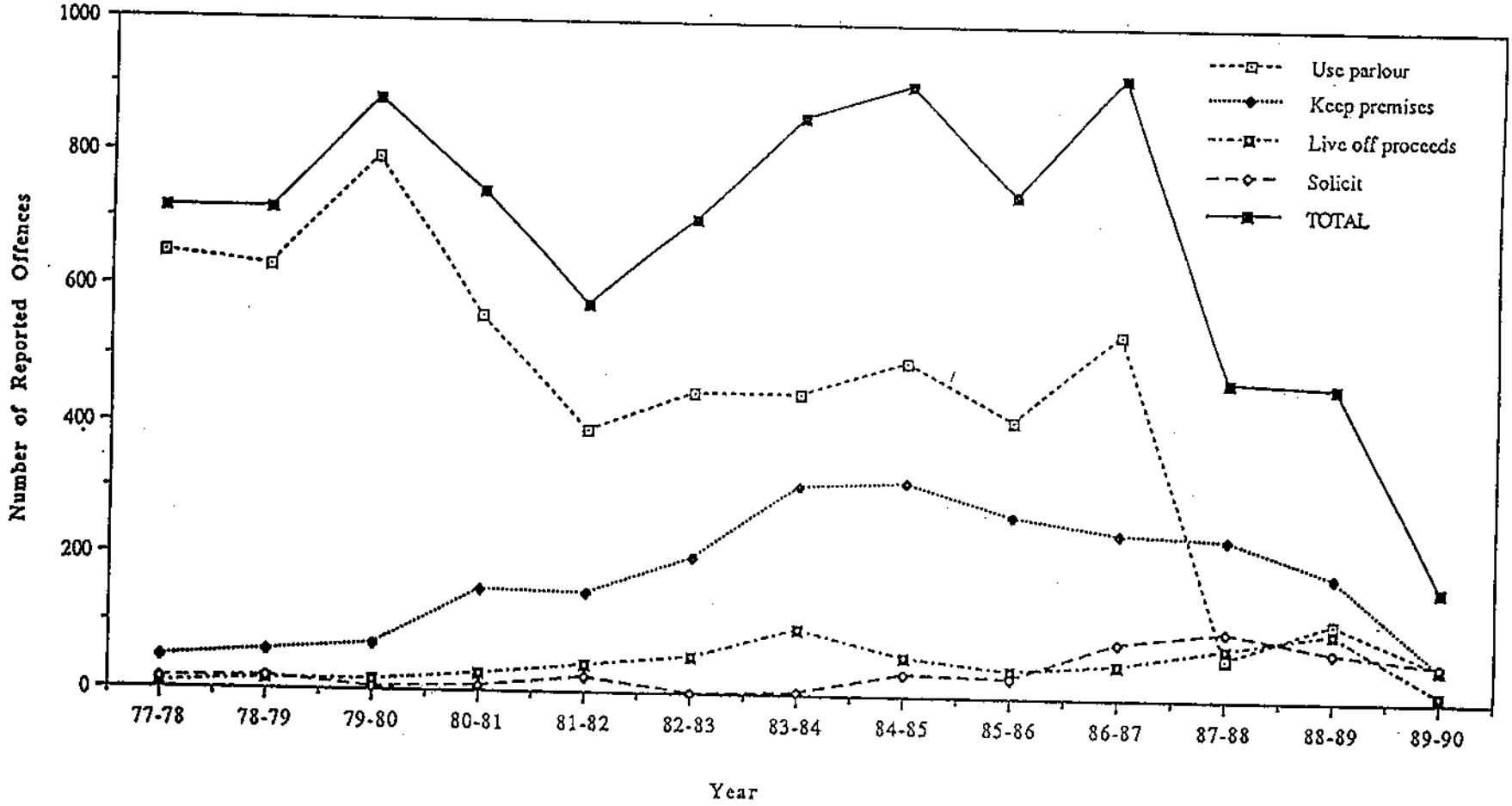
PERCENTAGE TABLE

Prostitution Related Offences which came to the Attention of the Police 1978-79 to 1989-90
Under the Vagrants, Gaming and Other Offences Act 1931-88 and the Criminal Code 1899-90

	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90	Total
Use massage parlour for purpose of prostitution	90.24	87.97	90.11	75.74	67.76	63.87	52.10	55.13	55.35	59.13	12.50	24.63	30.25	63.14
Keep premises for prostitution	6.42	7.83	7.84	20.08	25.34	28.45	36.01	34.95	35.56	26.30	50.00	38.76	30.25	25.56
Live off proceeds of prostitution	1.12	1.82	1.48	3.23	6.55	7.54	11.31	6.28	5.08	5.54	16.10	21.20	7.41	6.53
Solicit for immoral purposes	2.23	2.38	0.57	0.94	0.34	0.14	0.58	3.64	4.01	9.02	21.40	15.42	32.10	4.78
TOTAL	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Extracted From: Queensland Police Department Annual Reports 1977-78 to 1987-88 and Queensland Police Service Annual Reports 1988-89 to 1989-90

PROSTITUTION RELATED OFFENCES WHICH CAME TO THE ATTENTION OF THE POLICE FROM 1977-78 TO 1989-90 UNDER THE VAGRANTS, GAMING AND OTHER OFFENCES ACT, 1931-1988 AND THE CRIMINAL CODE, 1989.



Source: Queensland Police Department Annual Reports 1977-78 to 1987-88 and Queensland Police Service Annual Reports 1988-89 to 1989-90

Live Off the Proceeds of Prostitution

In 1977-78 this offence came to the attention of the police only eight times. Its frequency increased until 1983-84, when there were 97 offences detected, but then declined markedly until 1988-89, when it again peaked at 99. This figure also could be explained by evidence heard at the Commission of Inquiry.

Solicit for Immoral Purposes

In 1977-78 this offence came to the attention of the police 16 times. The figure dropped to 1 in 1982-83 and then peaked at 101 in 1987-88, which was the second year of operation of the Commission of Inquiry.

3.2 Prostitution Laws in Queensland

The act of prostitution itself is not illegal in Queensland. Prostitution is ancillary rather than central to each of the offences under discussion. The conduct prohibited by these offences either leads to or results from the act of prostitution. To establish each offence, it must be proved that the conduct was either for the purpose *of* or derived *from* prostitution.

The essential concept in prostitution is the gratification of sexual appetite for gain.[11]

It is not clear whether the gain for which the sex worker performs the sexual service has to be monetary gain. It suggests some material gain not limited to money, for example, temporary accommodation or food. However, in cases in which the concept of prostitution has been defined by the courts, judges have equated gain with monetary gain.[12]

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

Prostitution is not characterised by the gender of the participants or the type of sexual service sought or obtained: "Whether a man or a woman is involved or whether homosexual or heterosexual activities are involved are of little consequence".[13]

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11 **Poiner v Hanns; ex parte Poiner [1987] 2 Qd R 242 at 246.**

12 **Poiner v Hanns; ex parte Poiner ; R v de Munck [1918] 1 KB 635, ibid.**

13 **Per Demack, J., in Poiner v Hanns; ex parte Poiner, quotation from the headnote.**

3.2.1 Statutory Offences

The Vagrants, Gaming and Other Offences Act 1931-88 provides in s. 5 (1) (c) that:

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

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

Proof that a male "lives with or is habitually in the company of a prostitute, and has no visible lawful means of support or has insufficient lawful means of support"[14] is prima facie evidence that he is knowingly living on the earnings of prostitution. This section effectively requires sex workers' husbands and male de facto partners who are charged with an offence under this section to satisfy the court otherwise.

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

> "[A] person may fairly be said to be living in whole or in part on the earnings of prostitution if he is paid by prostitutes for goods or services supplied by him to them for the purpose of their prostitution which he would not supply but for the fact that they were prostitutes".[15]

In some cases, it is difficult to determine whether or not the person would have supplied the services if the recipient had not been a sex worker. However, in the case of the driver of a car employed to transport escort agents to and from their appointments, it was clear that he would not have supplied the service unless his passengers were sex workers.[16]

The section also makes a proprietor who accepted advertisements solely or predominantly from sex workers liable.[17] This is obvious in the case of publications wholly or predominantly designed to advertise services of sex workers. However, in the case of a

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14 Vagrants, Gaming and Other Offences Act 1931-88, s. 55 (iv).

15 Shaw v D.P.P. [1962] AC 220, p. 264.

16 R v Farrugia (1979) 69 Cr App R 108. This is so irrespective of who paid the driver Calvert v Mayes [1954] I All E R 41.

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

publication providing advertising to the general public, some of whom may be sex workers, it would be harder to obtain a conviction under this section.

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

On 12 December 1988, the Brisbane Licensing Branch served Sun Newspapers with eight notices alleging that it was living in part on the earnings of prostitution[18] by running escort agency advertisements in its classified advertisements section.[19]

The notices were served after non-compliance by Sun Newspapers with a Licensing Branch request to withdraw the escort agency advertisements from publication. Similar requests had been complied with by newspaper proprietors in Cairns and Townsville and on the Gold Coast.[20] "The Courier-Mail" had, on policy grounds rather than at the behest of the police, refused requests to run advertisements concerning prostitution services from 23 September, 1988.[21]

Advertisements for prostitution services are now buried in the health and beauty and the personal introduction columns of daily newspapers around the state. Although some advertisements for massage services are now published only after the production of a certificate from the Massage Therapists Association of Queensland,[22] this is not a guarantee that such advertisements do not promote prostitution since sex workers state that this certification is not difficult to obtain.

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

The Inquiry into Prostitution in Victoria argued in its Final Report that the abandonment of criminal penalties should be combined with measures designed to minimise prostitution. It recommended that discreet advertisements for prostitution services (as dictated by regulation) be permitted. However, it also recommended that advertisements for prostitution services be prohibited from any

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18 **Vagrants, Gaming and Other Offences Act, s. 8 (a).**

19 **The Courier-Mail, 13 December, 1988.**

20 **per Inspector Graeme Williams as quoted in The Courier-Mail, 13 December, 1988.**

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

22 **ibid.**

publication which is produced with the financial support of either government or semi-government organisations (such as the "Yellow Pages").[23]

Under s. 5 (1) (b) of the Vagrants, Gaming and Other Offences Act 1931-88, it is also an offence to be:

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

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

Sex workers cannot be charged under this section unless they are physically present during the solicitation. An advertisement or notice soliciting clients seeking prostitution services is not an offence under this section.[24]

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

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

To the knowledge of the Commission, solicitation for the purpose of prostitution provides the only charge that can be levelled at the clients of sex workers.

Under The Criminal Code 1899-1989, s. 231 provides that:

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

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23 **Inquiry into Prostitution Final Report, Victoria, October 1985, Vol 1 of 2, p. 281.**

24 **Weisz v Monahan [1962] 1 All E.R. 664.**

The Vagrants, Gaming and Other Offences Act 1931-88 provides in ss. 8 (1) (a) and (b) that:

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

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

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

The Queensland Supreme Court recently held that under the Vagrants, Gaming and Other Offences Act 1931-88 a person who welcomed clients and/or accepted money from clients for the purpose of prostitution which was to be provided elsewhere could not be found to be keeping premises at which these activities took place.[25] Justice Demack said that premises could not be held to be kept for the purposes of prostitution unless the evidence showed that the premises in question "was a place to which persons of both sexes resorted for the purpose of prostitution".[26]

The same reasoning can be extended to the charge of using premises for the purposes of prostitution. It must be established that prostitution takes place upon the premises.

Receptionists, operators and managers of escort agencies may therefore be immune from prosecution under these sections. However, they can still be charged with living on the earnings of prostitution.

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25 **O'Sullivan v Brennan; ex parte Brennan. Supreme Court, unreported judgment delivered by Demack. J., on 31 January, 1989.**

26 **ibid.**

The courts have consistently refused to extend the operation of the above sections to a single sex worker working either alone on premises or from home. This is so even though the legislature appears to have intended that single sex workers should be charged under these sections.[27]

With the passage of the 1931 Vagrants, Gaming and Other Offences Act, the legislature clearly wished to extend criminal liability to sole sex workers keeping, using or occupying premises for the purposes of prostitution.[28]

However the sub-section designed to fulfil this intention; section 8(4);[29] was given a different meaning by the courts. In Parker v Jeffrey [30] Philp J. observed:

> "If the legislature had intended to make it an offence for a woman to use her residence or any other place for the prostitution solely of herself it could easily have said so in clear terms; I am unable to spell out such an intention from the words of section 8(4)".[31]

As a consequence, sex workers operating alone from premises or their homes cannot be prosecuted for keeping or using premises for the purposes of prostitution. Similarly, they cannot be prosecuted under other prostitution-related legislation.

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

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

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

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

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

30 Parker v Jeffrey, [1963] Q.W.N. 32.

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

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

The landlord must then serve a seven day eviction notice on the tenant - sex worker,[32] or face the possibility of being convicted for letting premises knowing that the premises are being used for prostitution purposes.

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

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

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

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

32 **Under Vagrants, Gaming and Other Offences Act 1931-1988 s. 8 (3).**

4. ENFORCEMENT OF PRESENT PROSTITUTION-RELATED LAWS IN QUEENSLAND

Present laws punishing prostitution-related activities have not eradicated the sale and purchase of sex in Queensland. According to Roberta Perkins, the founder of the Australian Prostitutes' Collective:

> "The major effect of a change in the prostitution laws is neither to decrease nor increase the trade, regardless of whether this change is "reform" or "repression". What changes in prostitution is the structure of the industry."[33]

Presently, the act of selling sexual intercourse or sexual gratification for money is not itself illegal. Rather, selected activities associated with the sale of sexual gratification are the subject of criminal sanctions.

When efforts are made by the police to concentrate on any particular illegal prostitution activity, the sex workers concerned can continue working by restricting their activities to those currently countenanced by the law.

Responsibility for the enforcement of prostitution-related laws began to be transferred from the Brisbane Licensing Branch to the regions in early 1990. The Licensing Branch was formally wound down on 21 January, 1991. Regional police can seek specialised assistance from the Task Force Crime Operations in Brisbane.

The prevalence and structure of prostitution-related activities varies markedly from region to region in Queensland. Differences between regions maybe linked to the attitudes adopted by local police to prostitution. Generally, it could be said that in tourist areas where police resources are thinly spread, the policing of prostitution has a relatively low priority.

4.1 Brisbane

Prior to the Commission of Inquiry, the apparent attitude of the Queensland Police Department (now called the Queensland Police Service) to prostitution in Brisbane was one of control and containment. This attitude was illustrated by a statement in the Queensland Police Department Annual Report for 1984:

> "Detection of offences associated with prostitution received a high level of attention from police officers. The number of massage parlours operating in the Metropolitan area remain the same at 14. In addition, there are some 15 major home massage and escort agencies and up to 20 escort agencies

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33 Perkins, R., "Working Girls in 'Wowserville': Prostitute Women in Sydney since 1945", in R. Kennedy (ed), Australian Welfare: Historical Sociology, South Melbourne, MacMillan, 1989, p.362.

> operated by women working alone. The increased attention by police resulted in the detection of 858 prostitution-related offences compared with 703 at the previous year, an increase of 155 or 22 per cent in prosecutions."[34]

Former Commissioner of Police, Sir Terence Lewis, gave evidence to the Fitzgerald's Commission of Inquiry that five successive Police Ministers and the Premier, Sir Joh Bjelke-Petersen had told him to give a low policing priority to brothels conducted in "a tolerable manner". Sir Terence said that "uniformly the policy as to prostitution has been put on the basis that prostitution was to be contained and controlled".[35]

Sex workers explain that, before the Commission of Inquiry began, police allowed parlours, brothels and agencies to remain open, but regularly charged the operators and their workers with criminal offences.

A sex worker who operated a Fortitude Valley massage parlour before the Inquiry said that police routinely contacted the parlour before it was due to be raided by them. This notice allowed those workers who would face prison sentences for any further prostitution-related conviction to be off the premises when police raided it. Those who were charged as a result of the raid would then plead guilty as a matter of course, irrespective of whether or not the charge could be established.

Sex workers report that within days of the announcement of the Inquiry in May 1987, the attitude of police toward them changed. Police gave parlours seven days to close and many in fact did close or cease operations. This made nonsense of previous police claims that they were unable to close these establishments. Two parlours, claiming that only legitimate massage was conducted upon their premises, stayed open. Shortly afterwards, pressure was exerted on existing escort agencies to close.

Operators of parlours which remained open during the life of the Commission of Inquiry were eventually prosecuted under the **Criminal Code 1899-1989**, which provides for heavier criminal penalties than the vagrancy legislation already discussed above.

Although escort agencies are less numerous now than they were during the term of the Commission of Inquiry, the Criminal Justice Commission has received reports that many are being re-established.

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34 **Queensland Police Department Annual Report 1984, p. 15.**

35 **Transcript of evidence heard at the Commission of Inquiry, 27 July, 1990.**

During and following the Commission of Inquiry, many sex workers went underground for fear of prosecution. Many workers started to operate legally on their own, working from their homes or flats.

4.1.1 Gold Coast

An estimate by the police puts the number of sex workers on the Gold Coast at 200.[36] They can be found in most areas but are concentrated in Surfers Paradise, Broadbeach and Bundall.

The "Gold Coast Bulletin" carries about one and a half pages of advertisements for sex workers on Saturdays. These can be found in the health and beauty, massage and personal introduction columns. Advertisements for sex workers are also included in at least two free magazines which cater to tourists.

There is reportedly a huge demand for sex workers. The demand is boosted by the large number of international tourists on the Gold Coast, some of whom expect sex workers to be easily accessible.

Organised sex workers operate from brothels, parlours, units and homes. In addition, there are many escorts and single operators working from their own residences. Street prostitution is largely limited to homeless young people. Some sex workers solicit in Jupiters Casino.[37] According to police, the sex workers are sent there by brothel and parlour managers when business needs a boost. This practice is not necessarily condoned by the casino management.

In an attempt to avoid detection in Queensland, some sex workers use telephone numbers connected in Tweed Heads. The number in New South Wales is diverted to a Gold Coast number. This presents problems in relation to offences committed in either state.

4.1.2 Cairns

Through seven meetings in Cairns with a total of fourteen sex workers, four receptionists, and three escort agency operators, the Commission received information that three escort agencies operated within the city in conjunction with a number of private escorts operating from their homes. Brothels and parlours were absent. The standard rate for private escorts was $150 per hour and $110 per half hour. In contrast, agencies charged between $120 and $130 per hour, with a $90 charge per half hour. Sex workers working on an hourly rate for an escort agency received approximately $90 per hour.

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36 Briefing from former Licensing Branch, 19 January, 1990.

37 ibid, and information from Task Force Crime Operations, 14 February, 1991.

It is difficult to estimate the number of private escort outlets operating in Cairns. Thirty-one entries for escorts can be found in the Cairns District Telecom Yellow Pages. However, the common practice of both escorts and agencies is to place two Yellow Pages advertisements with two different telephone numbers.

Until 1988 the main advertising forum for Cairns' sex workers was the "Cairns Post". This avenue closed when newspaper proprietors throughout Queensland responded to the police threat that they would be charged with living on the earnings of prostitution if they continued to allow sex workers to advertise in their papers.

4.1.3 Gladstone, Rockhampton and Mount Isa

Sex workers reported that police enforcement practices in Gladstone, Rockhampton and Mount Isa do not allow prostitution to be openly conducted within these regions. There are no Yellow Pages listings for escorts in any of the three areas. One sex worker in Cairns who recently went to Gladstone to work was forced by police pressure to leave town after six days. During that time, however, she operated from a private residence and earned $3,000.

Mount Isa also hosts no visible escort agencies or massage parlours. Discussions were held in Mount Isa with a man who operated an escort agency in the city for six years until 1987. He alleged that the only outlets that had been permitted to operate by the police were those which provided a particular police officer with either sexual favours or money. In 1988 this ex-operator was the defendant in the last prostitution-related charge heard by the Mount Isa Magistrates Court.

4.1.4 Townsville

In Townsville, the Commission spoke with nine sex workers, two receptionists and four escort agency managers during the course of two meetings and one personal telephone interview.

The extent of prostitution in Townsville is unclear. The 1990 Telecom Yellow Pages lists ten escort agency outlets in that city but no parlours or brothels. The situation is clouded by the fact that some escort agency managers in Townsville are also sex workers. The extent to which they employ other sex workers depends on police enforcement practices at the time: they will revert from management to worker status whenever police strictly enforce prostitution laws.

Agency rates in Townsville vary. One agency charges $150 per hour, of which $110 is kept by the sex worker. This agency also charges $100 per half hour, with the sex worker retaining $70. In contrast, another agency charges $100 per hour, $60 of which is retained by the sex worker. This agency tends to employ younger staff.

Contacts in both Cairns and Townsville reported that prostitution outlets had decreased since the Commission of Inquiry began. A sex worker with 12 years experience in Cairns estimated that before the Inquiry there were 150 sex workers in Cairns. After the Inquiry this number had dropped to between 45 and 75 sex workers. Following the Inquiry, the Brisbane-based Licensing Branch conducted a number of operations in both northern cities.

4.1.5 Mackay

In Mackay, the only operational escort agency listed in the Yellow Pages closed temporarily after contact was made with the agency operator. Motel owners and taxi-drivers said that escort agencies and massage parlours were not visible within the town. However, two taxi-drivers believed that sex workers solicited for clients at a local night club, and a third taxi-driver explained that two motels were known to rent rooms up to six times a night to sex workers who obtained clients in bars.

4.2 The Costs of Enforcing Prostitution Laws

In the past, the detection of prostitution-related offences by the Queensland police has most affected those who used massage parlours for the purposes of prostitution and those who managed, kept, operated, owned or leased premises for the purposes of prostitution. Over the 13 years from July 1977 to June 1990, offences of this type resulted in 88.7 per cent of all prostitution-related prosecutions.

The statistics in Table 1 indicate a considerable fall in the number of prostitution-related offences which have come to the attention of the police in the last few years: from 920 in 1986-87, to 467 in 1988-89 and 162 in 1989-90. Such a reduction may indicate either a less concerted effort by police in the detection of prostitution offences, or a decline in the extent of prostitution, or a shift by sex workers into areas of prostitution presently condoned by the law.

The key organisation for sex workers in Queensland, Self-health for Queensland Workers in the Sex Industry (SQWISI), claims that police have not become less vigilant in policing prostitution. Indeed, it observes that police are now preferring more serious charges against offenders than in the past. SQWISI believes that the offence of

keeping a bawdy house under the Criminal Code 1899-1989[38] (which attracts a maximum penalty of three years imprisonment) is being laid with increasing frequency. It says it is preferred by the police over comparable offences under the Vagrants, Gaming and Other Offences Act 1931-1988, which attract significantly lesser penalties.[39] Here SQWISI is defining vigilance as the laying of more serious charges. To draw a conclusion about police vigilance, the number of prostitution outlets and the number of prosecutions would also need to be considered.

Of course, a decline in illegal prostitution operations does not necessarily mean a commensurate decline in the number of sex workers. It is possible that many Brisbane sex workers who would have worked in escort agencies and parlours may now be working on the streets or from their homes.

In addition, the perceived benefits from a decline in illegal operations must be weighed against the costs in enforcement time and resources. Previous methods of police detection of brothel and parlour-related offences were expensive. These methods involved the use of police agents who carried out the role of a client. Current methods take longer and are also expensive. In order to obtain evidence police attempt to interview clients as they are coming out of a brothel. Clients are under no obligation to answer questions and many are sensitive about responding.

The second financial cost of the prosecution policy adopted by the police is incurred as a result of the more serious penalties imposed following conviction under the Criminal Code 1899-1989; namely imprisonment. For the 11 year period from July 1978 to June 1989, 27 men and 49 women went to prison for prostitution-related offences. Most of the females (77.6 per cent) were fine defaulters but most of the males (81.5 per cent) were sentenced. Most of those who went to prison spent three to six months there. In 1990, it cost the Corrective Services Commission $95 a day to keep a female in prison and $21-$30 a day to keep a male in a low to medium security establishment.[40]

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38 Criminal Code 1899-1989, ss. 231 and 235.

39 Vagrants, Gaming and Other Offences Act 1931-1988, s. 8. The penalty for the first offence is $400 or imprisonment for 3 months. For a second offence, the penalty is $800 or imprisonment for 6 months. Third and subsequent offences attract an additional penalty of a 12 month bond with recognizance.

40 Corrective Services Commission Statistical Database System, 1987-88, 1988-89.

It seems that, when the ratio of females to males in prostitution is considered, a disproportionate number of males was sentenced for prostitution-related offences.

A third cost of enforcing prostitution laws is the deployment of scarce police resources from other, more serious criminal investigations. Other costs include the court time associated with the hearing of charges, the collection of fines and in some cases the cost of legal aid.

5. SOCIAL AND COMMUNITY WELFARE ASPECTS OF PROSTITUTION

5.1 The Notion of Economic Security

Several studies have shown that most sex workers enter the field for economic reasons. Given that most sex workers are women, such findings may reflect on the comparatively poor wages paid to women in mainstream jobs. Indeed, the Select Committee of the Legislative Assembly upon Prostitution in New South Wales found that witness after witness spoke of the contrast not only between male and female earnings but also between female earnings in "straight" employment and in prostitution.[41]

In Queensland in February 1990, a large gap still existed between average male and female weekly earnings. Males earned an average of $504 a week while females earned an average of $329.[42] Other figures for Queensland showed that women tended to dominate in the lower-grade clerical and sales occupations and were under represented in managerial and senior administrative positions.[43] These facts illustrate the economic and social position of women in our society and probably cause some women to be despondent about their chances of earning a high income and achieving a senior position in what is still a society dominated, at least economically, by men.

The Victorian Inquiry into Prostitution found that prostitution enabled people with low educational and work skills to earn relatively high incomes[44]. Perkins[45] found that although sex workers usually entered prostitution at a time of financial crisis, they came from diverse social backgrounds and some were highly skilled in other fields. She also found that being a single mother and having dependent children was an important reason for them remaining as sex workers.

Of the 47 sex workers with whom the Commission spoke, some had degrees and diplomas. They included two trained dental nurses, a law student, accountants, an industrial chemist, a horticulturist, a legal secretary, and a member of the armed forces.

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41 **Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, 1986, p. 133,**

42 **Australian Bureau of Statistics, "Australia - Average Weekly Earnings", July, 1990.**

43 **Australian Bureau of Statistics, "The Labour Force in Queensland", February, 1990.**

44 **Inquiry into Prostitution, Final Report, October 1985, Victoria, p. 79.**

45 **Perkins, R., Working Girls: Normality and Diversity Among Female Prostitutes in Sydney, 1988, M.A. Thesis, Macquarie University.**

Although the financial rewards are relatively high, they can be offset by factors such as the danger, health risks and social stigma associated with work in prostitution. Additionally, sex workers usually do not have the benefits of sick leave, annual leave or workers' compensation. These types of leave would probably only be paid by sex workers' employers if criminal sanctions were removed from prostitution and it was regulated by another statute.

Sex workers' earnings can also be reduced by costs peculiar to their situation. Some sex workers in brothels have been fined for lateness and for faults in their dress and appearance. The cost of fines payable upon conviction for prostitution-related offences and the expense of the type of clothing and make-up required by some high-class brothels and escort agencies also reduces the real earnings of many sex workers.

One ex-sex worker recently wrote in her memoirs:

> "Money, which I had never learned to manage, I wasted on rewarding myself for pain endured, and to strengthen my faltering ego. I showered people with niceties to make them look up and not down on me".[46]

The Victorian Inquiry found that sex workers seemed to squander their high incomes and consequently, did not have many assets.[47] That inquiry found that only 21 per cent of women lived in their own homes, while 62 per cent lived in rented accommodation. The remainder lived in hostels and a small number were homeless. The fact that only about one fifth owned their own homes could be due to a number of factors, including the greater difficulty sex workers seem to have in obtaining mortgages and loans and their lack of money management skills. These matters require further investigation.

5.2 Taxation Matters

Commissioner Fitzgerald noted in his report that prostitution was a trade with a high financial turnover which employed many people who apparently paid little in tax.[48]

This may result from sex workers' fear of prosecution for their prostitution-related activities or their failure to declare their income to the Australian Taxation Office. Some sex workers justified their failure to pay tax by saying that they contributed to the public purse through court imposed fines, while others suggested that these fines should be made tax deductible. According to at least one accountant,

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46 **Anthony, U., "Memoirs of a Hooker" in The Courier-Mail, 5 January 1991.**

47 **Inquiry into Prostitution, Final Report, Victoria, op. cit, p. 79.**

48 **Report of a Commission of Inquiry Pursuant to Orders in Council dated 26 May 1987, 24 June 1987, op. cit, p. 192.**

tax deductions already available to sex workers include the cost of condoms and creams, the depreciation of beds, stereos and other personal items.[49]

Sex workers' reluctance to come into contact with the Australian Taxation Office at all was probably reinforced in 1989 by a new provision which was inserted into the Taxation Administration Act 1953[50]. This provided that the Commissioner could disclose information acquired under a tax law to an authorised law enforcement agency officer if the Commissioner was satisfied that it related to:

(a) establishing whether a serious offence has been, or is being committed;

(b) the making, or proposed or possible making, of a "proceeds of crime order".

Before 1989, secrecy provisions were in force which provided some protection to persons who disclosed their illegal earnings to the Commissioner of Taxation. The Commissioner was barred in most cases from disclosing information received unless it concerned a tax-related offence.

Whilst these amendments mean that those involved in prostitution now have less protection than before 1989, the definition of "serious offence"[51] means that the Commissioner can only disclose information relating to offences under the Criminal Code, not the Vagrants, Gaming and Other Offences Act. In this respect, it is only tax return information about people who keep premises for the purposes of prostitution which may legally be passed on to the State police and result in prosecution for an offence under the Criminal Code.[52]

Most managers and sex workers with whom the Commission has spoken are prepared to pay tax if prostitution laws are reformed. They wish to know their legal position in regard to previous years when tax was not paid. An amnesty from prosecution for non-payment of taxes incurred in the past, may work as an incentive for sex workers to come forward and declare their future incomes.

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49 Tucker, B., "How to Hang onto your Loot", in Hookers' Herald, June, 1990.

50 Taxation Administration Act 1953, s. 3E.

51 A serious offence "means an offence against a law of the Commonwealth, of a State or Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence). Taxation Administration Act 1953, s. 3E.

52 Criminal Code 1899-1989, ss. 231 and 235.

Rules governing the forms of taxation and the declaration of income by individual workers, brothels and escort agencies need to be developed. The attitude of the Taxation Office to an amnesty for Queensland sex workers who have failed to lodge taxation forms in the past needs to be ascertained.

5.3 The Backgrounds of Sex Workers

Contrary to popular opinion, many sex workers were raised in middle class homes. Their fathers were white collar workers.[53]

Some research suggests a link between the sexual abuse of children and prostitution. In the United States, Silbert and Pines[54] interviewed 200 female street sex workers and found that 60 per cent of them reportedly suffered from sexual assault as children. For the majority, the assailant had been a relative or family friend.

The problems with most research on the backgrounds of sex workers is that control groups have often not been used and the studies have tended to concentrate on street workers who may be unrepresentative of sex workers as a whole. Perkins tried to overcome these flaws in her 1988 study.[55] In this she compared the backgrounds of 128 female sex workers in Sydney with similar samples of students and health and welfare professionals. She found that 40 per cent of the sex workers had been victims of child molestation compared to less than 20 per cent of the students and less than 30 per cent of the professionals. She also found that molestation was more likely to have been carried out by a female's natural father than by another relative or a stranger.[56]

It should be emphasised, however, that these findings are based on a study of a relatively small number of persons. Further study would be required to ascertain the application of the findings. There may, for example, be many sex workers who have no such characteristic in their backgrounds.

Witnesses before the New South Wales Select Committee argued that links between child sexual assault and female homelessness were only just beginning to come to light.[57] The Committee also found that many girls who were labelled "uncontrollable" were in fact victims of

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53 Perkins, R., Working Girls: Normality and Diversity Among Female Prostitutes in Sydney, 1988, M.A. Thesis Macquarie University, p. 150.

54 Silbert, M.H. and Pines, A.M., "Early Sexual Exploitation as an Influence in Prostitution", Social Work, 28, 4, July-August 1983, p. 287.

55 Perkins, R., op. cit, p. 138.

56 Perkins, R., op. cit, p. 159.

57 Report of the Select Committee of the Legislative Assembly upon Prostitution, op. cit. p. 141.

incest, and that the response of the victim's family and the community to that incest affected the victim's chances of entering prostitution.

Reports on prostitution in Australian jurisdictions such as in New South Wales and Victoria[58] have generally agreed that the goal of social policy should be to limit the need for women to enter prostitution. Legal sanctions have either failed or been largely ineffective in this regard. The consensual view is that a reduction in the need for women to enter prostitution can only be achieved through economic and social preventive programs. It is important to obtain more information about the backgrounds of sex workers in order to know the type of programs to implement.

5.4 The Experience of Being a Sex Worker

Few of the 47 sex workers to whom the Commission spoke said they enjoyed their work. Most were ambivalent about it.

A former parlour manager told the Commission that sex workers often enjoyed feelings of camaraderie and support from other sex workers. She said that sex workers also enjoyed discussing their clients with each other. The excitement of being involved in an illegal activity and playing "cat and mouse" games with the police was an attraction to some. Others also enjoyed the thrill of the nightlife. One stress associated with prostitution stemmed from competition with other workers to be chosen by clients.

5.5 Matters of Public Inconvenience Associated with Prostitution

Reports investigating legislative reform of prostitution have, to varying degrees, made recommendations for the regulation of prostitution in keeping with initial laws which relate to it. The reports have upheld the view that the ways in which clients and sex workers make contact offend the community's sensibilities and cause inconvenience.

The Inquiry into Prostitution in Victoria surveyed residents of an inner-city Melbourne suburb where street walking by sex workers was predominantly conducted and found that:

> "Complaints of residents often centred on the activities of gutter-crawlers rather than on the presence of prostitutes. Women said that gutter-crawlers were sometimes drunk and used obscene language and that they were often frightened and

58 **Select Committee of the Legislative Assembly upon Prostitution and Inquiry into Prostitution Final Report, op. cit.**

> offended by propositions from men looking for prostitutes. Other problems included offensive litter (including condoms and syringes) left in front gardens and noise and heavy traffic in residential streets. Many residents were also concerned about the well-being of prostitutes who were often drug addicted and risked abuse and assault from clients".[59]

This Inquiry recommended that street solicitation should be decriminalised only when it is conducted in designated areas.[60]

In presenting its reasons for recommending the retention of criminal sanctions against street solicitation, the United Kingdom Criminal Law Revision Committee summarised the public nuisance associated with street-walking:

* squabbles following unsuccessfully concluded bargaining;

* slow-driving by possible clients, which caused traffic problems;

* women who were not sex workers being inappropriately approached by men;

* the provision of services within public view in the back of cars and alleyways; and

* the discarding of used condoms onto the street.[61]

When the transaction involved homosexual services, the Committee found two further nuisances:

* violence occasioned when a man is offered unwanted sex by another man; and

* transactions sometimes take place in view of children in public toilets.[62]

The Committee also rejected the option of legalizing brothels as an alternative to street walking:

> "In our Working Paper we rejected as facile the argument that brothels should be legalized. We thought that the evils of legislation (sic) would be great. There are few who would want a brothel next door and from the evidence which we have received to live near a brothel can be unpleasant. Legalizing

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59 **Inquiry into Prostitution Final Report, Victoria, October 1985, p. 254.**

60 **ibid, p. 260.**

61 **Criminal Law Revision Committee 16 Report - Prostitution in the Street, Her Majesty's Stationery Office, London, 1984, p. 3.**

62 **ibid, p. 5.**

> brothels would remove the incentive to be discreet and would no doubt increase their number. It would increase demand for the services of prostitutes and attract more girls into prostitution. Further, some of our members were of the opinion that legalizing brothels would lead to areas acquiring a reputation for vice, which would not be in the public interest".[63]

Another disadvantage of both legal and illegal brothels could be the perceived or actual reductions in the value of properties surrounding them. Further, an increase in male strangers visiting streets in which brothels are located may alarm children and their parents.

Public acceptance of various prostitution-related activities may also vary with the degree of public visibility that the activity attracts. A survey of 2,018 Canadian adults conducted for the Canadian Special Committee on Pornography and Prostitution found that:

> "Although only 11% as opposed to 84% found street prostitution acceptable, and 28% as opposed to 67% considered designated "red light" areas acceptable, the ratio shrank to 38% to 55% in the case of brothels, to 45% to 52% in the case of "prostitution in private", and 43% to 52% in the case of escort and call girl services".[64]

5.6 Child Prostitution

5.6.1 Background

Young sex workers are more commonly found working the streets than for brothels or escort agencies. These younger workers, some of whom are homeless, sell sexual services far more cheaply than their adult counterparts. It is not uncommon for them to be given payment in kind; accommodation, food or alcohol. These young people do not always appreciate the need to protect themselves from contracting sexually transmitted diseases and Acquired Immune Deficiency Virus (AIDS). Condom usage is reportedly not prevalent.

According to reports received by the Commission, young sex workers are usually aged between 14 and 16 years. However, a 9-year-old boy was reportedly involved in prostitution on the Gold Coast.

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63 **Criminal Law Revision Committee, Seventeenth Report - Prostitution: Off-street Activities, Her Majesty's Stationery Office, London 1985, p. 14.**

64 **Pornography and Prostitution in Canada, Report of the Special Committee on Pornography and Prostitution Volume 2. Canadian Government Publishing Centre, Ottawa, 1985, p. 514.**

The National Inquiry into Homeless Children, chaired by Commissioner Brian Burdekin, reported that homeless children who had no other saleable skills were sometimes forced into prostitution within days of leaving home in order to survive. One youth told the inquiry that he perceived only two choices when he left home: to steal and go to jail, or to prostitute himself. He considered prostitution to be the lesser of the two evils.[65] Commissioner Burdekin also stated that drug dealing was not as widespread among homeless children as prostitution, because such children often did not have sufficient money to buy large amounts of drugs.[66] There are a variety of reasons why children prematurely leave home. Commissioner Burdekin received evidence that there were two approaches which broadly described the reasons for children leaving home:

> "The first group (of persons working in the field) saw homelessness primarily in terms of relationship breakdowns, problems in the family, that type of thing, and they strongly favoured support programs. The second group saw structural issues as the main cause of homelessness and a way to overcome this through social action and concerted involvement in the policy area with a view to changing structures."[67]

Homelessness among children can be triggered by poor family relationships such as lack of a sense of belonging and child sexual abuse. Difficulties in adjusting to school, and the misuse of alcohol or drugs can play a role. Gender inequality, high unemployment levels and inadequate support for the family are also contributory factors.

5.6.2 Relationships with Police

Workers for a Brisbane youth service told the Commission that relations between police and many young people were not good. The service said some children were harassed by the police, who reportedly took their names and then broke into their accommodation, if they had it, and removed photographs of the children. These photographs were sometimes displayed on notice boards in police stations. The youth service believed that such actions could result in the early labelling of children as deviant. This labelling could be difficult for young people to outlive.

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65 **"Our Homeless Children, Report of the National Inquiry into Homeless Children", Canberra, Australian Government Publishing Service 1989, p. 162.**

66 **ibid, p. 50.**

67 **ibid, p. 85.**

Conversely, it must also be borne in mind that homeless young persons often derive a sense of adventure and a "buzz" from living on the fringes of the law and that they sometimes provoke police as a way of achieving this.

Relationships between police and young people were reportedly further unsettled by the high turnover of police at some stations, although it was appreciated that some officers did what they could to foster good relationships with young people.

The observation was also made that, as a disciplinary measure, police were sometimes sent to some locations considered undesirable by their fellow officers. Such areas often contain a high number of homeless young people.

It was suggested that matters could be improved by having more stable staffs in police stations and by appointing police with a special interest in the welfare of children.

5.6.3 Education

Some sex workers told the Commission they would be prepared to educate young homeless sex workers about health issues.

However, they were not prepared to proceed unless they received a guarantee that they would not be charged with procuring a child to become a common prostitute, since such offenders are liable for imprisonment for up to 14 years[68]. While some people may see the education of young sex workers as procurement, others may see it as a preventive health measure. In some cases, the distinction may be a fine one. It would be up to the established sex worker to observe the highest ethical standards. Since the education of young people is subject to monitoring by the state in other contexts, perhaps the education of young sex workers by established workers should also be monitored.

Consideration must also be given to young sex workers in their late teens and early twenties. These young people have yet to properly formulate their sexuality. Prostitution tends to confuse the natural development of their sexual standards and identities.

Additionally, some new workers often did not recognise the limits of acceptable behaviour with clients. In particular, novices who were not familiar with industry standards were more likely to accede to the request of clients for unusual sexual practices than workers who had been involved in prostitution for some time.

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68 **Criminal Code 1899-1989, s. 217.**

Research is required to ascertain how young workers could be assisted by the provision of information or counselling at the time they enter prostitution or propose to enter it. Consideration could be given to diverting them to other livelihoods.

5.7 Aboriginal Prostitution

According to the Commission's aboriginal informants, prostitution does not exist in traditional aboriginal society. Today, however, some aboriginals have reportedly entered prostitution; not to earn a living but in intermittent exchange of sexual services for accommodation, shelter, support, protection, drugs including alcohol, and money.

The reasons for the existence of prostitution among aboriginal people are complex and derive from historical and cultural factors, such as:

* high levels of unemployment in aboriginal communities, which could encourage people to turn to other means of survival;

* restricted access to social security payments. In the past, access to Sickness and Unemployment Benefits from the Department of Social Security was not easy. Aboriginal people had to go to the local police station or court house to register. The journey could involve a two or three hour walk possibly with a couple of children, from the mission. When they arrived, many felt the police and public officials looked down on them for needing to apply for Benefits. Payment was often in kind. In some ways it was easier to turn to prostitution;

* the relative absence of womens' refuges close to where most aboriginal women live, could influence some to turn to prostitution for shelter and support;

* the feeling among some white people that black people are "second-class" citizens and that black women in particular have lower moral standards than whites and are "fair game". This seems to have become embedded in some black peoples' consciousness and led to a feeling of resignation that they may as well meet whites' expectations of them;

* previous government policies which separated many aboriginal children from their families and placed them in institutions, foster families or as servants to white people. In these situations many suffered physical abuse and sexual abuse. Some aboriginal people told the Commission that these experiences led to a feeling that their bodies were an object for exploitation or exchange.

5.8 Male Sex Workers

Few male sex workers responded to the Commission's requests for information and for expressions of their views.

It is reported that most male sex workers are 17 to 25 years of age,[69] although the Commission has heard that some homeless youths younger than 17 engage in prostitution. The New South Wales Select Committee found that male sex workers generally have shorter working lives than their female counterparts.[70]

Male sex workers are usually homosexual, but may also be bisexual, heterosexual or transsexual. Their workplaces are streets, beats, escort agencies, brothels, gay hotels or nightclubs.

One male sex worker wrote:

> "Money is not the only motivating factor which leads men to turning tricks. Some are addicts, hooked on drugs or sex, or simply homeless. Others confess that they are just plain lonely, and say that their work is just to pass the time. Still others use their income to put themselves through college or build a nest egg to start an independent business of their own".[71]

Male sex workers reportedly have a higher rate of HIV and AIDS than female sex workers. One study found that 27 per cent of 152 male street workers in the United States were HIV positive and that 40 per cent were intravenous drug users.[72]

It was suggested to the Commission that an increasing number of babies could be born with HIV and AIDS as a result of male involvement in prostitution, since some male sex workers and their clients were bisexual but did not admit this to female partners.[73]

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69 Information given in by a male sex worker at a seminar, Aids Prevention and the Sex Industry, organised by the Queensland Department of Health, 12 December, 1990.

70 Select Committee of the Legislative Assembly upon Prostitution, op. cit, p. 7.

71 "Boys Bits" in Hookers Herald, Newsletter of Self-Health for Queensland Workers in the Sex Industry, No. 7, December, 1990.

72 Elifson, K.W. ,et al, "Seroprevalence of HIV Among Male Prostitutes", New England Journal of Medicine, 21 September, 1989, p. 832.

73 Article in "The Courier-Mail", 10 January, 1991.

5.9 Transsexual Sex Workers

There is sometimes confusion about the difference between transsexuals and transvestites. Transsexualism is defined as:

> "a persistent discomfort and sense of inappropriateness about one's assigned sex in a person who has reached puberty. In addition there is persistent preoccupation for at least two years, with getting rid of one's primary and secondary sex characteristics and acquiring the sex characteristics of the opposite sex".[74]

The estimated prevalence of transsexualism is one per 30,000 for males and one per 100,000 for females in the United States.

Transvestism or transvestic fetishism is characterised by:

> "over a period of at least 6 months in a heterosexual male, intense, sexual urges and sexually arousing fantasies involving cross-dressing. The person has acted on these urges or is markedly distressed by them".[75]

Transsexuals told the Commission that a large number of them resort to prostitution. Their reasons were:

* employers are often reluctant to employ a transsexual;
* those who were in employment often suffered harassment from supervisors and co-workers. This harassment was said to be subtle and was directed at a person's work performance, even though the work performance was felt by others to be satisfactory;
* to pay for food and accommodation if the person left home at an early age because of lack of understanding at home and belittlement at school;
* homelessness, and not being old enough to qualify for social security benefits;
* refusal of accommodation in hostels and refuges on the basis of one's transsexuality;
* to raise money for a sex change operation.

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74 **Diagnostic and Statistical Manual of Mental Disorders, Third Edition - Revised, American Psychiatric Association, Washington D.C. 1987, p. 74.**

75 **ibid, p. 288.**

Most transsexual sex workers reportedly work on the streets. The Commission's informants said that many would cease prostitution-related activities if they could compete in the job market without discrimination and under fair working conditions.

5.10 Violence Committed Against Sex Workers

> Within the context of prostitution, women are sometimes raped and sexually harassed by the police, by their clients, by their managers, and by strangers: Roberta Perkins and G. Bennett, Being a Prostitute.[76]

Identifiable violence to which sex workers have been subjected includes emotional coercion; for instance, a manager withholding drugs from a sex worker; physical coercion, and non-consensual physical violence during consensual intercourse.[77]

A survey of inner-city street and brothel sex workers in Sydney during 1983 revealed that 34 per cent of workers had been raped during the course of their work. Forty-five per cent of those raped had been raped more than once. Forty-eight per cent of those surveyed had been victims of other violence.[78]

Anecdotal accounts of violence given to the researchers of the Commission were disturbing. In Cairns, sex workers described two recent rapes of sex workers within their region. Such violence usually occurred when sex workers were working in an isolated environment. Other accounts of violence given to the Commission follow:

* One escort worker described having a gun forced into her face upon her arrival at the home of a client. Another sex worker from her agency was huddled in a corner. The agency had sent the second sex worker around to check on the safety of the first sex worker, although the second sex worker had not been prepared by an indication from the agency that fears were held for the first sex worker.

* Another escort worker had been subjected to an attack with a knife by the wife of a client.

* Two home-based sex workers reported attempted strangulation during intercourse.

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76 International Committee of Prostitutes' Rights (1986), Draft Statement on Prostitution and Feminism, European Parliament, Brussels, October, p. 3.

77 Hatty, S., "Violence Against Prostitute Women: Social and Legal Dilemmas", in Australian Journal of Social Issues, Vol. 24, No. 4, November, 1989, p. 235.

78 Perkins, R. and Bennett, G., Being a Prostitute, George Allen and Unwin, Sydney, 1988, pp. 295-6.

* Another home-based sex worker had rocks thrown through her window by a client whose previous advances had been rejected.

Sex workers appeared reluctant to report such incidents, with the exception of rape, to the police. Some thought that the police would be dismissive of their complaints and ask them what else they could expect in their job. Others thought that complaining of violence may subject them to greater police scrutiny.

One escort manager/worker explained that some workers took matters into their own hands. For instance, if a worker was hurt by a client, arrangements would be made to spraypaint that client's car rather than telephone the police. The Commission's informant said she would not telephone the police under any circumstances, since she had in the past telephoned for police assistance twice and been ignored. She looked forward to a time when she would be able to have the same access to the protection afforded by the police as other citizens.

Sex workers have little confidence in police protection, and do not feel the current laws afford them adequate security. For instance, escort workers cannot employ a driver to take them to and from assignments and ensure that they safely leave their destination at an appointed time, since such a driver could be convicted of living on the earnings of prostitution.

During and immediately following Commissioner Fitzgerald's inquiry, police actively sought to close down premises where organised prostitution occurred. Consequently, some sex workers who had worked in these establishments began working on the streets or from their homes and flats. These workers are said by some to face greater dangers than workers working in groups or with a manager. Working in isolation, they may not have access to nearby back-up or assistance to deal with potentially or actually violent clients. However, some self-employed workers to whom the Commission spoke did not agree with this view. They felt they took precautions against violence such as screening clients over the telephone and wording their advertisements in a way that would tend to attract only legitimate clients. Some of the self-employed workers who had also worked in brothels and parlours did not think they were safer places to work; they knew of managers who expected workers to perform any service clients requested. Establishments were cited where clients had committed violence against workers and no one had come to their aid.

The present law encourages sex workers to work in isolation. Sex workers argue that, for safety reasons, legal countenance of prostitution conducted from a home or a flat should be extended from one to two workers.

5.11 The Involvement of Male Managers in the Industry

Many sex workers believe that men should not be allowed to own, operate or manage premises upon which prostitution is conducted.

These workers explained that men for whom they had worked took an "all money, no care" approach. They reported that male managers have used stand-over tactics to pressure female sex workers to perform demeaning sexual practices.

Some workers wished to extend the exclusion to women who had not worked as sex workers. They believed that the same arguments applied to any person who had not had experience of the job. They said that both male and female managers who had not themselves worked as sex workers did not understand the nature of the work or the pressures involved. For instance, managers who had previously been sex workers were much more likely than managers who had not to understand that a sex worker who was suffering from pre-menstrual tension may wish not to work on a particular evening.

Male managers reportedly are less sensitive to safety issues and may be more prepared to expose their workers to dangerous environments.

5.12 The Clients of Sex workers

Both the New South Wales and Victorian Reports on Prostitution found that married men comprised a large number of sex workers' clients. However, further research on this topic is needed since those clients who responded to the surveys may not have been generally representative.

The New South Wales Select Committee found that police, some researchers and the public generally believed that although sex workers were doing something deviant when they sold sexual services, their clients were only doing something natural when they bought the services.[79] As a result of this perception, the clients of sex workers have enjoyed relative privacy and anonymity until recently.

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79 **Report of the New South Wales Select Committee 1986, op. cit, p. 74.**

A Western Australian study[80] found that men used sex workers for three main reasons; sexual relief, emotional needs and for specific sexual activities. Some men have said that they use sex workers because they feel themselves to be unattractive:

> "Disabilities like mine are abnormal. For some, if not for most able-bodied people, abnormalities like mine can be offensive, and I find that very sad, though I understand".[81]

There appears to be a need to discuss whether the use of sex workers by married men reflects a breakdown of their views of marriage. Additionally, the reasons why these men turn to sex workers need to be addressed.

5.13 Why does Prostitution exist at all?

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

The New South Wales Select Committee and several feminist commentators[82] have questioned the prevailing perspective that prostitution is inevitable because some men's sexual drives cannot be suppressed. Indeed, some feminists have suggested that historical, sociological and sexological evidence shows that this "need" to purchase sexual services is socially constructed and stimulated and not biological or innate. In support of this argument, the New South Wales Select Committee pointed to the climate of sexual freedom in the 1970's and the AIDS scare in the 1980's which could increase or reduce the demand for prostitution.

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

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80 Edwards, J., Prostitution and Human Rights, A Western Australian Case Study, Human Rights Commission Perth, 1986. Quoted in Final Report of the Community Panel on Prostitution, Government of Western Australia, 19 September, 1990.

81 Fitzsimons, P., "Hoping for the Human Touch" in The Sydney Morning Herald, 6 February, 1991.

82 Pateman, C., The Sexual Contract, Stanford University Press, California, 1988, p. 198 and Allen, J., Sex and Secrets, Oxford University Press, Melbourne, 1990, p. 197.

6. DRUGS AND SEX WORKERS

6.1 Definitions

Discussions of drug use and misuse in the general community tend to be controversial. Discussions of the incidence of drug use and misuse among sex workers tend to be even more so.

Most people have their own idea of what a drug is. Yet many people would find it difficult to define drug abuse in a way that covered all types of drugs and all types of misuse.

In general, drug misuse is characterised by a compulsion to go on taking a drug either because of the 'desired' effects it produces, or because of the ill effects it produces if it is not taken, or both.

In Australia, the term "drugs" is commonly associated with illegal drugs, such as cocaine, heroin, and cannabis. Over-the-counter and prescribed drugs are commonly thought of as medicines. Approved recreational substances such as coffee, alcohol and tobacco are rarely thought of as drugs at all. However, all of these substances are drugs which can alter mood or behaviour. Defined in this way, it is clear that most of us are at least psychologically dependent on a great many substances. Many people feel they cannot start the day without a cup of coffee or cannot rest without a cup of tea, and so on. The important factor to be considered is whether misuse produces mental, physical or social problems .

6.2 The Types of Drugs Being Referred To

The most common drugs or substances used non-medicinally to alter mood or behaviour are:[83]

* alcohol;
* amphetamines or similarly acting sympathominetics such as 'speed' or some diet pills;
* caffeine;
* cannabis;
* cocaine;
* hallucinogens such as LSD, mescaline and "hallucinogenic mushrooms";

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83 **Diagnostic and Statistical Manual of Mental Disorders, Third Edition Revised, American Psychiatric Association, Washington, 1987, pp. 165-185.**

* inhalants such as petrol and glue;

* nicotine;

* opiods such as heroin, morphine, methadone, codeine, pethidine and cough suppressants;

* phencyclidine or 'angel dust';

* sedatives, hypnotics or anxiolytics. Sedatives calm without inducing sleep. Hypnotics induce sleep; they include benzodiazepines and barbiturates. Anxiolytics reduce anxiety. Some drugs in these classes have overlapping functions.

In his report, Commissioner Fitzgerald observed that:

> " . . . there is every indication that some, and maybe many, prostitutes use and are addicted to dangerous drugs. There are also indications that the operators of prostitution supply addictive drugs both as payment of prostitutes and as a means of forcing their continued involvement."[84]

Any discussion of drug use by sex workers should be kept in perspective by a comparison between sex workers' use of drugs and the use of drugs by the general population.

Some agency and parlour operators told the Commission that they would not employ workers who appeared to misuse drugs. However, the effects of some drugs can be well concealed, particularly in those long-term stable users who have achieved high degrees of "tolerance". Some people with knowledge of prostitution confirm that drug misuse exists within the industry.

Some operators and managers believe that workers with drug problems give their businesses, and the industry generally, a bad name. It is claimed that those workers who misuse drugs lose their sense of responsibility for health care, and may not insist on safe sex practices. It is said they cannot be trusted to keep their appointments.

One worker suggested that the presence of people who misuse drugs within prostitution encourages violence. She explained that these persons would do anything for money, clients then expected other sex workers to perform the same services and became angry when their previously satisfied requests were denied.

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84 **Report of a Commission of Inquiry Pursuant to Orders in Council, dated 26 May 1987, 24 June 1987, 25 August 1988 and 29 June 1989, Government Printer, Brisbane 1989, p. 192.**

Personal and physical stresses associated with sex workers' employment, and the effects of that employment on family and close friends, can cause drug dependence. It was suggested to the Criminal Justice Commission that adequate support from professionals may alleviate these stresses and therefore minimise the potential cause of substance misuse. The Department of Health may wish to nominate some mental health or drug and alcohol workers who are interested in providing support and counselling to sex workers. A holistic approach to sex workers' health and welfare might be appropriate.

6.3 Matters which Require Consideration

The matters which require consideration are:

* patterns of drug use among sex workers compared with the general community;

* whether there are particular occupational health risks associated with being a sex worker and using certain drugs, such as using cigarettes or alcohol to socialise with clients or to relax while waiting for clients;

* whether any drugs are taken to cope with the occupational stress of being a sex worker, such as facing clients or to hide feelings about the nature of the work;

* whether entry into prostitution was made to support dependency on any drug or whether any dependency developed as a way of coping with being a sex worker;

* the extent to which prostitution and drug abuse may be associated with other criminal activities;

* whether there is any evidence of sex workers being paid in kind by being given drugs;

* whether there is evidence of sex workers using intravenous drugs and sharing needles.

7. HEALTH CONSIDERATIONS

7.1 Incidence of HIV and AIDS Among Sex Workers and Their Clients

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

Despite these risk factors, the prevalence of HIV among female sex workers in Australia has been found to be very low. A survey[85] in 1990 of 153 female sex workers in Sydney, Canberra and on the New South Wales North Coast found that none were HIV positive or had AIDS. To date, no evidence of a *sexually acquired* HIV infection in a female sex worker in Australia has been found.[86] However, this finding is based on sex workers who attend STD clinics and who identify themselves as sex workers.

There have, however, been several cases detected in Australia of former sex workers who are HIV positive.[87] Where female sex workers are infected, they usually attribute this to the fact that they had been *using drugs intravenously* and the circumstances indicate that this was the source of infection.

Some evidence indicates that sex workers place themselves at greater risk of contracting AIDS or becoming HIV positive during private sexual relations than at work. The aforementioned 1990 survey found that while more than 97 per cent of the women used condoms at work, less than 47 per cent did so during private sexual relations.[88]

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

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85 Perkins, R., Lovejoy, F. and Marina, "Protecting the Community - Prostitutes and Public Health Legislation in the Age of AIDS", in Criminology Australia, October - November 1990.

86 Donavan, B., "Female Sex Workers and HIV Infection in Australia: So far so good", National Aids Bulletin, June 1990.

87 Harcourt, C. and Philpot, R., "Female Prostitutes, AIDS, Drugs and Alcohol in New South Wales" in Plant, E.M., AIDS, Drugs and Prostitution, Tavistock, RKP 1990.

88 ibid, p. 8.

The clients of sex workers also raise a number of public health concerns. Two Australian men have been diagnosed with advanced HIV disease attributable to unprotected contact with female sex workers in Germany and Holland.[89] Departments of Health in Australia are becoming increasingly concerned that Australian men who go on "sex holidays" to Asia may increase the spread of HIV among the heterosexual community and among sex workers in Australia. In 1988, some 13,000 men from Queensland visited Thailand, and it is popularly assumed that a large number of these may have done so for "sex holidays".[90] The British Medical Journal reported that in Thailand 700 new carriers of HIV are detected each month. It attributed this to the country's "lethal mix of cheap sex and widespread heroin addiction".[91]

A number of studies indicate that HIV is more prevalent among male sex workers than among females. One study in Sydney found that 33.3 per cent of male sex workers who were intravenous drug users were HIV positive.[92]

In Queensland, no self-identified male sex worker has been found to be HIV positive.

The current approach of the Queensland Department of Health to informing sex workers about AIDS control and the prevention of HIV transmission, is to reach them through peer education and to encourage voluntary testing. This is in keeping with the national HIV/AIDS strategy.

7.2 The Incidence of STDs Among Sex Workers

There has been a general decrease in the incidence of sexually transmissible diseases (STDs)[93] among female sex workers who attended Australian public health clinics in the last few years. The figures for the Brisbane Special Clinic conform to this trend. In 1989, for example, there were 2 cases of a STD detected among 122 visits by sex workers.[94] The Clinic states[95] the relative risk of most STDs

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89 Donavan, B., op. cit, p. 17.

90 Information from Australian Bureau of Statistics quoted in an unpublished paper by Queensland Department of Health.

91 Anderson, J., "Aids in Thailand", British Medical Journal Vol. 300, 17 February, 1990, p. 415.

92 Morlet, A., et al, "Intravenous Drug Users who Present at the Albion Street Centre for Diagnosis and Management of HIV Infection", in Medical Journal of Australia, 15 January 1990, Vol. 152.

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

94 Report of the Director-General of Health and Medical Services, Queensland Department of Health, 1989-90.

95 Department of Health, correspondence from Division of Specialized Health Services, dated 11 February, 1991.

among female sex workers is about half that compared to females who are not sex workers. It should be noted that some sex workers attend the Clinic repeatedly for routine checks, whereas females who are not sex workers usually attend because of symptoms or as a result of contact tracing.

In the opinion of Clinic staff, STDs have decreased among sex workers because of increased use of condoms and an awareness that these reduce the rates of infection.

7.3 Health Legislation

Current health legislation does not focus specifically upon sex workers.[96] It gives the Department of Health wide powers to deal with any person who is suspected to be suffering from "notifiable diseases", which include some STDs and AIDS-related diseases.

The legislation allows the Director-General of the Department of Health to make regulations that are necessary to provide for or compel the examination and treatment of persons having or suspected of having a notifiable disease.[97] The Director-General also has power to direct a public hospital to provide facilities for the isolation and treatment of any person believed to be suffering from a notifiable disease[98] or to requisition or establish an alternative place for isolation and treatment aside from a public hospital.[99]

The forced detention of a person suspected of suffering from a notifiable disease is contingent upon certification by a doctor that the person has suffered from or been exposed to a notifiable disease and refuses to submit to reasonable examination or treatments or refuses to enter or remain in a hospital or temporary isolation place. Once such a certificate has been issued, the Director-General of the Department of Health may make an application to a justice of the peace for an order that the person "be removed to a public hospital or temporary isolation place specified in the order".[100] The duration of the detention depends on the discretion of the Director-General. No maximum period is stipulated.[101] No appeal or review procedures are provided. The person to whom a detention order relates commits a criminal offence in the event of his or her resistance or obstruction.[102]

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96 **Health Act 1973-1989.**
97 **ibid, s. 33 (1)(c).**
98 **ibid, s. 34.**
99 **ibid, s. 35.**
100 **ibid, s. 36.**
101 **ibid, s. 36 (4).**
102 **ibid, s. 36 (6).**

While the effect of certification is extreme, doctors are under no statutory duty to perform this procedure in relevant cases. The legislation merely requires medical practitioners to notify the Director-General of patients who are suffering from or have symptoms of a notifiable disease.[103]

Most escort agencies, brothels and parlours require their workers to be checked for STDs either monthly or fortnightly, and to provide proof that they are free of such diseases.

Most individual operators also said that they obtained frequent, regular STD checks. However, one individual operator said that she submitted to STD examinations only twice a year and another said that she did not need to be examined for STDs.[104]

AIDS testing is less frequent. Agencies reported that they required their sex workers to obtain a monthly or quarterly HIV test. Most individual workers favoured such testing once or twice a year.

It must be observed that the Commission's discussions to date have been with articulate and enthusiastic people only, most of whom wished to remain within the industry on a continuing professional basis. Their interests lie in the removal of criminal sanctions from prostitution. The Commission has not yet had access to street-walkers or to young or inexperienced individuals working from their own homes. These workers may be less aware of the need for regular STD and HIV testing.

7.4 Compulsory Testing of Sex Workers

It has been suggested that community concerns about sexually communicable diseases would be allayed by the compulsory health testing of sex workers.

Such compulsory screening would require sex workers to go to a STD clinic either fortnightly or monthly for STD checks and every three or six months for Hepatitis and AIDS tests. Eligible sex workers would then receive a certificate of clearance from the clinic.

The supervision and enforcement of such a scheme may present problems. For instance, would it be an offence for a sex worker to work in the industry without holding a current certificate? Who would enforce this requirement - the Department of Health or the Police

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103 ibid, s. 32A.

104 This Cairns sex-worker has been involved in the sex industry for 12 years. She has worked during the pre-condom days when workers would conduct hand examinations of their clients' genitals to ascertain whether or not any one of these clients was suffering from a STD. She says that she knows when her body is "off".

Service? Or should the onus lie with the agency or parlour operator, so that any management member who cannot satisfy the enforcing authority that their workers are covered by current certificates would be liable to criminal sanction? How would the enforcing authority proceed to compel managers, operators and sex workers to produce current certificates? Would such officials have power of entry and examination? Further research must address these issues.

Most of the sex workers and managers with whom the Commission raised the matter of compulsory health checks had no objection to them.

Arguments advanced for compulsory health checks include:

* sex workers' exposure to significantly more sexual contact with a greater diversity of partners than a non-sex worker. This means the possibility that they may become infected with a STD or AIDS is commensurately greater than the risk experienced by non-sex workers.

* the duty of care sex workers owe to their clients. They should take every precaution to protect their clients from infectious disease. Whilst many sex workers adopt a responsible attitude to regular health checks, some are irresponsible. Compulsory health checks will encourage more sex workers to undertake regular health checks.

* the possibility that a client who contracts AIDS may be fatally affected. Untested sex workers have a greater chance of passing on an infection than tested workers. The increased protection from exposure to a life-threatening infection outweighs the infringement to civil liberties that the proposal may entail.

Arguments against compulsory health testing are that:

* the concept may lull clients into a false sense of security so that they are less inclined to wear condoms. Clients may believe that regular checks will guarantee that the sex worker is free from infection.

* the concept necessarily involves the continual monitoring of sex workers by government officials.

* it is not necessary to compel sex workers to undertake regular health checks.

* education and training within the industry have markedly increased awareness of the need for regular checks at marginal cost to the tax-payer. The result that compulsory health checks is designed to achieve, namely regular health checks of sex workers, can be obtained without compulsion and without expending significant amounts of public money to establish and maintain a bureaucratic body to police health checks.

There are problems with the administration of a compulsory scheme. Medical practitioners may conceivably be reluctant to perform tests on involuntary patients. This issue is likely to generate significant debate within the community. Comments from medical practitioners and affected parties will greatly assist the Commission in formulating relevant recommendations .

7.5 How One Public Health Authority Dealt with an HIV Positive Sex Worker

On 1 July, 1989, "The Australian" reported the story of "Charlene", a 26 year old heroin-addicted sex worker who, three years previously, had contracted AIDS. She believed she became infected through *sharing needles*, not through commercial sex. She had continued to work as a sex worker.

Within days of the "60 Minutes" program that followed that report, Charlene was forcibly detained at Prince Henry Hospital under Section 32A, Public Health Act (New South Wales) 1902. It was the first time that this power had been exercised. Charlene, who insisted she used condoms for every client, was detained against her will. The public health concerns which resulted in her detention focused on Charlene's occupation as a sex worker rather than the risks associated with the fact that she was an addict who shared needles.

Charlene had no right to have the decision to detain her reviewed.

When hospital staff, tired of both media attention and the forced detention, threatened industrial action, Charlene was taken to a hastily created AIDS unit at Rozelle Psychiatric Hospital, where she remained under a 24-hour police guard for nearly one month. She then returned to her flat where she lived with her defacto, even though the Section 32A order was still in force.

Charlene assured medical authorities before and after her admission to Rozelle that she would no longer work as a sex worker[105]. However, she was recently placed in the care of an AIDS centre in Kings Cross after another sex worker told police she was soliciting.[106]

7.6 Improving Access to Medical Checks

Several sex workers are concerned that some private doctors in their areas do not appear to be fully aware of the range of tests that should be conducted for sex workers. They believe that appropriate tests are not being done when bodily signs indicate to them that infection may be present. Sex workers who entrust their physical health to STD clinics do not voice these concerns.

However, many sex workers do not have access to STD clinics. Presently, STD clinics services are restricted to Mackay, Townsville, Brisbane and the Gold Coast. A facility in Cairns commenced in August 1990, but is not yet fully operational.

One sex worker alleged that some doctors in private practice sell a number of certificates to sex workers, who in turn sell them to co-workers, thus making a profit and negating the worth of certificates.

7.7 The Sexual Health of Clients

A number of sex workers said it was not unusual for clients to display obvious signs of sexual disease. They believed some of these infected clients' seemingly indifferent attitudes meant they might infect others. These sex workers believed that a pamphlet prepared by a government department to explain the symptoms of and treatment for various STDs would be of invaluable assistance to them in the education of their clients.

Sex workers and managers with whom the Commission has spoken were unanimous in recommending condom use during sexual intercourse. Most clients reportedly accepted this practice with minimal objection. However, official publications about sexually transmitted diseases and AIDS would help sex workers stress the importance of condom use to their clients.

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105 Hicks, R., "The Troubles of Charlene", in The Australian Magazine, 25-26 November, 1989, p. 71.

106 The Daily Telegraph Mirror, 4 December, 1990.

7.8 Establishing Training Programs for New Sex Workers

One of the most important features of any such program should be sexual health education. New workers in parlours and agencies often learn personal hygiene techniques from more experienced workers. Although they also learn about genital inspections which quickly and efficiently diagnose the sexual health of their clients, such examinations cannot diagnose all STDs or indicate whether a client is HIV positive.

7.9 Access to Suitable Protection

Many young street-workers, particularly homeless youth, do not appreciate the importance of using condoms. Even if these young workers accept the need for condoms, the fact that they do not have access to free ones is a disincentive to use. Apart from making strenuous efforts to reduce the number of homeless young people, consideration of methods to improve access to condoms for young homeless sex workers would also appear appropriate.

7.10 Support for Community Organisations Engaged in Health Education Work

A primary focus of organisations and collectives working with and for sex workers has been education programs designed to minimise the risk of AIDS and STDs for workers and their clients. The programs have focused on giving brothel managers and sex workers information about safe sexual practices, the need for regular STD checks and mandatory condom usage. The success of these programs may be gauged by the rates of infection with AIDS and STDs.

Self-Health for Queensland Workers in the Sex Industry, which conducts state government-funded health education campaigns for sex workers, believes its educational efforts are presently circumscribed by a lack of resources and current police enforcement strategies. SQWISI's programs are restricted mainly to Brisbane's inner-metropolitan area, although the organisation has undertaken education in Townsville and Cairns.

SQWISI workers have had negligible contact with sex workers in some areas. In Brisbane more sex workers now work in isolation,[107] and because of this SQWISI believes the potential success of its educational initiatives is limited.

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107 Compared to pre-Commission of Inquiry period.

Since the Commission of Inquiry, which sat from May 1987 to June 1989, the number of visits by sex workers to the Brisbane Special Clinic has decreased. The following figures for visits to the Clinic by sex workers are for calendar years:[108]

- 4,185 in 1984;
- 3,885 in 1985;
- 2,558 in 1986;
- 1,656 in 1987;
- 296 in 1988; and
- 122 in 1989.

This decline may indicate a decrease in the number of operational sex workers. It may show that sex workers have greater confidence in their sexual health, perhaps as a result of regular condom use, or it might demonstrate a less responsible approach by sex workers. Additionally, it could indicate that more sex workers are attending private doctors for testing. According to the Queensland Department of Health:

> "The number of sex workers attending STD clinics in Queensland has fallen to 20 per cent of the pre-Fitzgerald Inquiry level and workers are very reluctant to have any contact with Government services or any initiative which may expose their occupation".[109]

A further explanation is the decline in the number of brothels and parlours. Many managers required a certificate which stated sex workers were free of disease before they could work. As discussed earlier, many sex workers left these establishments to work on their own.

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108 **Report of the Director-General of Health and Medical Services, Queensland Health Department 1989-90.**

109 **ibid.**

8. PHILOSOPHICAL APPROACHES TO PROSTITUTION LAW REFORM

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

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

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

8.1 Against

It could be argued that because prostitution can involve adultery, fornication and irregular sexual behaviour, prostitution weakens the ideal and practice of family life. Deception cleverly practised at one time may set off a series of events which may cause people to mistrust each other later.

Proponents of criminalisation argue that society, as well as individuals, are harmed by prostitution. As society is the victim in the long-term, the behaviour can and should be the subject of criminal prohibitions.[110]

Those who subscribe to this view believe that the government should use laws to shape values, behaviour and attitudes within the community. They argue that if criminal sanctions are removed, more people will think it is acceptable to enter prostitution. Those who advance this argument believe the law is an instrument to uphold morality.

8.2 For

Others argue that, even if there is a degree of harm to society caused by prostitution, it does not warrant stigmatisation as "criminal". They believe that the enactment of criminal laws is not the only way of making people conform with social mores, since licensing, civil liability and administrative regulations also limit and fashion moral

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110 Oaks, D.H., "The Popular Myth of the Victimless Crime", in The Law Alumni Journal, University of Chicago Law School, Summer 1975.

conduct.[111] One commentator has argued that to impose criminal sanctions for acts of private morality is a misallocation of social resources:

> "The prime function of the criminal law is to protect our persons and our property; these purposes are now engulfed in a mass of other distracting, inefficiently performed legislative duties. When the criminal law invades the spheres of private morality and social welfare, it exceeds its proper limits at the cost of neglecting its primary tasks. This unwarranted extension is expensive, ineffective and criminogenic".[112]

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

> "If her client had an affair with the woman next door, he might disrupt two families. By coming to her he threatens neither".[113]

8.3 Policy Directions

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

The Victorian Inquiry into Prostitution took the position that prostitution is exploitative of women and should not be encouraged as an occupation.[114] It concluded that sex workers were often victims of income and gender inequalities, which should be addressed by law. Reformers have suggested that an extension of employment opportunities available to women could diminish the number who chose to be sex workers.[115]

Although sex workers have traditionally been painted as women whose poverty and limited employment options have forced them to enter prostitution, many Queensland sex workers denied such motivations. They said that they would remain within prostitution whether or not the range of employment opportunities for them was expanded. Their entry into and continuing involvement in

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111 Hawkins, G., "In Defence of Decriminalisation: A Reply to Dallin Oaks" in The Law Alumni Journal, University of Chicago Law School, Fall 1976, p. 9.

112 Morris, N. and Hawkins, G., The Honest Politician's Guide to Crime Control, Sun Books Melbourne, 1970, p. 1.

113 Honore, T., Sex Law, Duckworth London 1978, pp. 133-4.

114 Inquiry into Prostitution Final Report, Victoria, October 1985, op. cit, p. 243.

115 For example, ibid, p. 244.

prostitution constituted a response to the overall structure, rather than the range, of employment opportunities for women. They were dissatisfied with the limited economic and social status of other employment open to women.

The majority of the people working within prostitution with whom the Commission has spoken believe that the community should accept that prostitution involves legitimate transactions between providers and consumers of services.

If the community did accept that, other compelling questions would need answers. For instance:

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

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

Since little is known about the attitude of the Queensland community to prostitution law reform, the Commission would welcome public submissions on these and related questions. Such public reaction will help the Commission formulate recommendations about the extent of future laws governing prostitution.

9. OPTIONS

9.1 Terminology

In discussing prostitution law reform, such concepts as "decriminalisation", "legalisation" and "criminalisation" cannot be avoided. The problem is that while these terms have been used frequently, there appears to have been little or no consistency in the definition of them. In some publications the terms are contrasted, in others the terms are used interchangeably.

The Australian Institute of Criminology has defined four possible approaches in law reform:[116]

> Criminalisation - Laws which have criminal penalties (and) seek to prohibit the behaviour.
>
> Legalisation - Legalisation involves formal recognition and state sanctioning of the trade.[117]
>
> Decriminalisation - Decriminalisation means that activities are no longer crimes and participants are not subject to criminal penalties.[118]
>
> Decriminalisation with controls - Decriminalisation with controls involves legal recognition with full government controls.[119]

Commissioner Fitzgerald's report provided definitions of "legalisation" and "decriminalisation" in the following terms:

> "Legalization and decriminalization are not the same. Legalization means that the activities are made legal and are no longer regulated in any way. Decriminalization means the activities are no longer crimes, and the participants are no longer liable to criminal penalties, but their activities are regulated by law and transgressors can still be penalized."[120]

In contrast to Commissioner Fitzgerald's definition of legalisation, the Report of the New South Wales Select Committee suggested that a legalisation approach would involve such activities as the registration of sex workers, the licensing of brothels or brothel managers, and the

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116 Pinto, S., Scandia, A. and Wilson, P., "Prostitution Laws in Australia", Trends and Issues in Crime and Criminal Justice, Wilson, P. (Ed), Australian Institute of Criminology.

117 ibid, p. 6.

118 ibid, p. 6.

119 ibid, p. 6.

120 Report of a Commission of Inquiry Pursuant to Orders in Council, op. cit, p. 188.

establishment of one or several "red light" districts while maintaining prohibition elsewhere.[121] It viewed legalisation as a state whereby the activities are made legal but are accompanied by regulation. Commissioner Fitzgerald, on the other hand, viewed legalisation as a state where the activities are no longer regulated in any way.

The Victorian Report stated that decriminalisation was sometimes contrasted with the "legalisation" or "regulation" of prostitution, which involved the imposition of legal controls on prostitution in order to minimise its harmful effects.[122] This seems to be more in line with the New South Wales definition than it is with Commissioner Fitzgerald's; however, the Victorian Report goes on to state that the terms decriminalisation and legalisation do not have any precise legal meaning and the distinction between the two is largely a matter of degree.

The Council of Europe prepared a Report on Decriminalisation 1980, in which it defines decriminalization and breaks it down into three categories. "Type A Decriminalisation" refers to a full legal and social recognition of the decriminalised behaviour. "Type B Decriminalization" can be brought about not by the wish to give a full legal and social recognition to the decriminalised behaviour but by a change of opinion about the role of the state in the field. This type of decriminalisation can imply state neutrality with regard to certain forms of behaviour (as in the homosexual law reform in Queensland). The third type, "Type C Decriminalisation" refers to the situation where, although there may be no change of opinion about the undesirability of a certain form of behaviour, it is thought appropriate that another sort of approach other than the criminal law ought to be taken in order to deal with it. For example, the behaviour might be regulated through the health system or the social welfare system or the education system.

In some cases either "legalisation" or "decriminalisation" can be applied to the approach being considered. For example, "Type A decriminalisation" defined by the Council of Europe and "legalisation" as defined in the New South Wales Select Committee are equally appropriate where there is legal recognition and social recognition of behaviour that was once illegal, criminal or an offence.

Whatever terms are used to describe the options, for practical purposes there are three. Either:

* the activity should be an offence; that is, regulated by the criminal justice system; or

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121 **Select Committee of the Legislative Assembly upon Prostitution, op. cit, p. 238.**

122 **ibid, p. 179.**

* the activity should be subject to some other form of regulation; for example, town planning or health laws; or

* the activity should no longer be illegal or regulated in any way.

In choosing an option, the state must consider its resulting moral stance. This could mean it might view prostitution as inevitable, undesirable or acceptable. For example, if licensing and registration fees for sex workers were introduced, these would become part of government revenue and, as the law stands, the state could be said to be "living off the earnings". However, if criminal sanctions were removed, prostitution would no longer be seen as illegal. Licensing and registration fees could then be collected in the same way as they are from other legitimate businesses.

The above examples demonstrate the difficulties involved in labelling the different approaches to the problem. Many of the arguments about the reform of prostitution-related laws are really arguments about:

* whether criminal sanctions should be provided for the activities or not;

* whether other forms of regulation should be provided or not.

In this paper, the approach which involves the criminal law is referred to as the Use of Criminal Sanctions. The approach which involves no restrictions of any kind is called No Sanctions at All. The approach which involves the imposition of other kinds of controls is referred to as The Regulatory Approach.

9.2 The Use of Criminal Sanctions

Current Queensland criminal laws attempt to limit prostitution by applying criminal penalties to activities related to it.

If the community wishes to prohibit people from forcing others to commence or remain in prostitution, from exploiting sex workers, and from recruiting minors to prostitution, the continued involvement of the criminal law at some level in the prostitution industry will be inevitable.

Decisions about the type of prostitution-related activities which might attract criminal sanctions in future will structure prostitution. Community concerns about prostitution will be addressed by further decisions about the type of regulatory features, if any, that are necessary or desirable.

The present laws and enforcement practices have not eliminated prostitution-related activities. If a prohibition approach was adopted, then deterrence mechanisms would need to be strengthened. An extension of criminal sanctions may be appropriate.

At present, the act of prostitution is not illegal in Queensland. Instead, Queensland law governs both the manner by which sex workers come into contact with clients and the place where the sexual act can be consummated.

Consideration could be given to making sex workers' clients liable to criminal penalties.

If criminal sanctions are to be retained, then the present law requires review. The existing legislative framework and enforcement practices contain anomalies which need to be addressed. The way they were addressed would depend on the answers to the following questions:

* Should criminal sanctions concerning prostitution extend to disadvantaged persons who exchange sexual services for accommodation, food or alcohol?

* Should the charge of living on the earnings of prostitution apply only to those who exploit sex workers for gain? Should the charge extend to:

  - people who can also be charged with "premises" related offences?

  - people who provide services which assist sex workers in prostitution (for example, drivers of escort workers, providers of a telephone answering or booking services, people and organisations who publish advertisements of sex worker services)?

  - any other persons?

* If advertisers of sexual services are potentially liable, should the sex worker who places the advertisement also be guilty of an offence?

* Should sex workers operating alone from premises or home be criminally liable? If so, for what?

* Should escort workers be criminally liable? If so, for what?

* Should clients be liable for prosecution?

* Should landlords who know that their premises are being used by their tenants for prostitution purposes be criminally liable?

In addition, consideration will need to be given to whether the predominant criminal sanctions concerning prostitution should be retained under vagrancy legislation.

The law continues to classify those who solicit or loiter for prostitution purposes and those who live on the earnings of prostitution as vagrants.[123]

A current definition of "vagrant", taken from a popular dictionary,[124] would not seem to accurately describe modern sex workers:

> "vagrant (noun) wanderer, idle rover, vagabond, idle, disreputable person without settled home or regular work."

Consideration could be given to incorporating re-formulated legislative provisions in a separately named Act.

Finally, the retention of provisions concerning prostitution in current liquor, health and local government legislation should be discussed.

9.3 No Sanctions At All

It is difficult to find a jurisdiction where there are no sanctions at all on prostitution or prostitution-related activities. The Netherlands and the then Federal German Republic were said by some to have "legalised" systems. However, further investigation showed that these systems restricted prostitution to particular areas or cities with a certain population.

9.4 Forms of Regulatory Approaches

There are a number of ways in which governments can regulate prostitution:

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123 **Vagrants, Gaming and Other Offences Act 1983-1988, s. 5.**

124 **Turner, G. (ed), The Australian Concise Oxford Dictionary, 7th Edition, Oxford University Press, Melbourne, 1987, p. 1258.**

9.4.1 A "Red Light" District

The creation of "red light areas" and the consequent prohibition of prostitution elsewhere are commonly proposed as a way of containing prostitution. Proponents argue that sex workers and clients would be able to make contact there without harassing or embarrassing others.

Opponents believe the establishment of such areas may encourage drunken clients and voyeurs and could make sex workers feel as though they were in a human zoo. Additionally, it encourages competition between workers.

It is also questionable whether a "red-light" district would prevent prostitution from taking place elsewhere. Many sex workers prefer to work discreetly at home or in a flat and many clients do not wish to be seen entering a brothel, especially one located so conspicuously.

The New South Wales Select Committee of the Legislative Assembly upon Prostitution thoroughly investigated the much vaunted example of the red-light district in Amsterdam. It concluded that although this area was fairly well controlled, one part of it was dominated by pimps and the other by illegal hard drugs. The Committee also examined the problems associated with the red-light area in Boston USA which had become a "no-go" areas where every kind of criminality flourished. The Committee decided that these areas promoted the connection between prostitution and pornography. It concluded that such a connection was undesirable.[125]

9.4.2 Freedom to Operate Like any Other Business

Some sex workers believe that prostitution should be self-regulating and subject only to the same laws and planning requirements which affect the location of other businesses.

Sex workers believe their capacity for self-regulation is currently hindered by the special powers which police and other officials currently have over them.

Others, however, do not believe that the prostitution industry can be self-regulating. In particular, they fear uncontrolled growth in the trade if external controls are relaxed. They argue that prostitution is not a business like any other, since its visible presence can offend public sensibilities. Additionally, like other businesses, it can also impede public access and convenience. For example, within a year of the removal of criminal sanctions from street soliciting in New South Wales, residents of inner-city Darlinghurst complained to Sydney

125 **Report of New South Wales Select Committee, op. cit, p. 240.**

police that sex workers and clients were loudly haggling over the prices of sexual acts taking place in nearby cars, laneways and on residents' doorsteps. Bitter fights between girls over territorial rights were said to be common. Drunken clients were said to urinate and vomit in street, lifts and stairwells.[126]

In New South Wales and Victoria, it became necessary to recognise that prostitution was a business which presented special conditions.

9.4.3 Licensing or Registration of Brothels

As a means of regulating prostitution, consideration could be given to licensing or registration.

In Victoria, this system was recommended by the Inquiry into Prostitution as a way of preventing criminal involvement in prostitution and reducing aspects of public inconvenience associated with it. Town planning laws were strengthened to ensure the location of brothels could be controlled by local government authorities who would have a detailed knowledge of local land use. Councils could also assess potential brothel owners.

If licensing or registration was the option chosen in Queensland, questions arise concerning the criteria for licensing and which section of government would be responsible for it.

The possibility of licensing sex workers and brothels which met certain health and planning standards is considered in detail in Appendix II, which examines the application of the Workplace Health and Safety Act to prostitution-related activities.

126 Matthews, R., "Commentary" in Street Offences, Proceedings of the Institute of Criminology, University of Sydney, no 56, 1983.

10. SUGGESTED ISSUES FOR PUBLIC COMMENT

The purpose of this Issues Paper is to assist public comment on prostitution-related laws and any directions for change. The issues raised by this paper about those laws may not be exhaustive and the Commission encourages persons making submissions to bring to its attention any other relevant matters not discussed in this paper.

10.1 The perceived benefits from a decline in illegal activity in prostitution must be weighed against the costs in time and resources to the police and the courts in enforcing the law. Are the time and resources spent in enforcing prostitution-related laws justified? (See pp. 21-23)

10.2 As a means of diverting persons from entering prostitution, what social and economic initiatives could be introduced? (See pp. 24-28 and 33-36)

10.3 What measures can be taken to prevent young persons from entering prostitution? (See pp. 30-33)

10.4 Is law an instrument to uphold morality, or should it reflect prevailing community attitudes? (See pp. 52-53)

10.5 Use of Criminal Sanctions

Should the present criminal sanctions relating to prostitution remain in place or be extended? (See pp. 57-59)

10.5 Regulatory Approaches

Is it appropriate to remove prostitution from the criminal law and impose other forms of control? (See pp. 59-61) These might include:

* the treatment of prostitution as a planning matter with regulations to prevent public inconvenience associated with aspects of the trade;

* limitation of prostitution to one or more areas to establish "red light" districts;

* restrictions on the types of prostitution permitted;

* licensing sex workers and premises where prostitution is carried out;

* determination of the appropriate authority to grant licences and monitor such a system;

* consideration of the suitability of the Workplace Health and Safety Act 1989 as a means of regulating prostitution;

* should sex workers be able to operate like any other business?

10.6 No Sanctions At All

Could prostitution operate without any sanctions? (See p. 59)

10.7 Health

If criminal sanctions were removed from prostitution and a system of licensing introduced, is it appropriate for sex workers to be subject to compulsory health checks or should such checks be voluntary? (See pp. 43-48)

Appendix I

1. OTHER JURISDICTIONS

In four jurisdictions which have based prostitution law reform upon the Report of a Committee or Inquiry[1], a number of common features can be identified:

* the Committee or Inquiry have adopted the position that prostitution cannot be eradicated. Rather, their reports have focused upon regulating or retaining criminal sanctions for those prostitution-related activities which cause an identifiable harm to the public and upon mechanisms to reduce as far as possible the incidence of prostitution.[2]

1.1 Street Solicitation

All four Reports concluded that street solicitation caused a sufficient public inconvenience to require the intervention of the criminal law either to prohibit street solicitation outside defined areas,[3] to prohibit overt nuisance,[4] or to totally prohibit the activity.[5]

The United Kingdom Report recommended retention of the offence of street solicitation for the purpose of prostitution.[6]

The Wran Government had abolished the offence of soliciting for the purpose of prostitution in 1979. The number of street sex workers in inner Sydney increased. There was widespread public opposition from inner city residents. This followed the unruly behaviour of persons who flocked to Kings Cross and Darlinghurst to observe the street spectacle.

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1 Inquiry into Prostitution Final Report, Victoria, October 1985. Report of the Select Committee of the Legislative Assembly upon Prostitution, Parliament of NSW, April 1986. Pornography & Prostitution in Canada - Report of the Special Committee on Pornography & Prostitution in Canada, Volume 2, Ottawa, 1985.
Criminal Law Revision Committee, U.K.: Sixteenth Report - "Prostitution in the Street", August 1984. Seventeenth Report - "Prostitution: off-street Activities", December 1985.

2 Inquiry into Prostitution Final Report, Victoria, October 1985, p. 249. Report of the Select Committee of the Legislative Assembly upon Prostitution, Parliament of NSW, April 1986, p. 153. Pornography & Prostitution in Canada - Report of the Special Committee on Pornography & Prostitution in Canada, Volume 2 Ottawa 1985, p. 526. Criminal Law Revision Committee, U.K.: Sixteenth Report - "Prostitution in the Street", Appendix B, August 1984, p. 22.

3 Inquiry into Prostitution Final Report, Victoria, October 1985, p. 256. Report of the Select Committee of the Legislative Assembly upon Prostitution, Parliament of NSW, April 1986, pp. 258-9.

4 Pornography & Prostitution in Canada - Report of the Special Committee on Pornography & Prostitution in Canada, Volume 2 Ottawa 1985, p. 540.

5 Criminal Law Revision Committee, U.K.: Sixteenth Report - "Prostitution in the Street", Appendix B, August 1984, p. 3.

6 Criminal Law Revision Committee, U.K.: Sixteenth Report - "Prostitution in the Street", Appendix B, August 1984, p. 8.

The New South Wales Report took the approach that criminal liability should attach to solicitation for the purpose of prostitution conducted "directly in front of or in close proximity to or directly opposite a dwelling, school, church or hospital".[7] The approach sought to clarify the ambit of the legislation then in force which prohibited solicitation "near" dwellings, school, churches and hospitals. The stated aim of this approach was to confine solicitation to commercial areas.[8] The present Greiner Government in New South Wales re-introduced the Summary Offences Act in 1988. The new Act provided that:

> "A person in a public street shall not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution".[9]

The words "within view from" restricted further the areas where sex workers could solicit. The fine for soliciting outside designated areas was increased. A provision was also included whereby a sex worker could go to prison for up to three months in certain circumstances.

The Canadian Report recommended that the criminal law should not intervene unless some perceptible interference with members of the public or neighbouring occupiers could be proven.[10] Solicitation itself should not be a criminal offence unless the sex worker or potential client stops or impedes a pedestrian or a car on more than one occasion.[11] The legislature rejected the Committee's recommendation by removing these aspects from the offence. Communication about bargaining rather than impediment is sufficient to constitute the offence. The solicitation need occur on one occasion only.[12]

The Victorian Report adopted a regulatory approach. It recommended that solicitation should be allowed at the discretion of local councils. Each council should be given the right to pass by-laws which set forth designated areas in which street solicitation could be legally conducted. It would remain a criminal offence to solicit outside these boundaries.[13] This recommendation in the Victorian Report was rejected by the government.[14] Solicitation for the purpose of prostitution remains an offence in Victoria.[15]

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7 **Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, April 1986, p. 261.**

8 **ibid, p. 259.**

9 **Summary Offences Act 1988 (NSW) s. 19 (1).**

10 **Pornography and Prostitution in Canada - Report of the Special Committee on Pornography and Prostitution in Canada, Vol. 2, 1985, Ottawa, p. 540.**

11 **ibid, p. 539.**

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

13 **Inquiry into Prostitution Final Report, Victoria, op. cit, p. 260.**

14 **News Release issued by the Attorney-General of Victoria dated June 30, 1986.**

15 **Prostitution Regulation Act 1986 (Victoria) s. 5.**

Three Reports considered that the clients of street-walking sex workers should be equally liable; the New South Wales Report specifically[16] and the Victorian and Canadian reports implicitly.[17] The United Kingdom Report recommended that clients be criminally liable only when either kerb crawling or persistent behaviour which evokes fear was present.[18]

1.2 Premises used for Prostitution Purposes

1.2.1 Places of Residence

In the working paper released prior to the Final Report of the United Kingdom Criminal Law Revision Committee, it was proposed that the law, which did not at that time penalise one sex worker from running her own one-woman business of prostitution from premises, should be relaxed to allow two sex workers to operate from the same premises. The Committee was of the view that the individual sex worker would benefit from the greater security of such an arrangement, as well as the companionship, mutual help and the emotional support it would encourage. It was thought that the measure might also encourage a reduction in street solicitation.[19]

The Canadian Committee agreed with the reasoning put forward by the United Kingdom Committee in its working paper and added:

> " ... if prostitution is a reality with which we have to deal for the foreseeable future, then it is preferable that it take place, as far as possible, in private, and without the opportunities for exploitation which have been traditionally associated with commercialised prostitution".[20]

It therefore proposed the removal of criminal penalties for prostitution conducted from a place of residence by two sex workers.[21]

The Victorian Report, which acknowledged the reasoning applied in the United Kingdom Working Paper and the Canadian Report, recommended that the use of a place of residence for prostitution by one sex worker no longer be an offence.[22] The Victorian Inquiry was of the view that the difficulties attached to enforcement of a law that only two sex workers were able to work from a particular premises made the extension to two workers untenable.[23]

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16 **Select Committee of the Legislative Assembly upon Prostitution, op. cit., p. 262.**

17 **Inquiry into Prostitution Final Report, Victoria, October 1985, p. 260 and Pornorgraphy and Prostitution in Canada, Report of the Special Committee on Pornography and Prostitution in Canada, Vol. 2, Ottawa, 1985, p. 539.**

18 **Criminal Law Revision Committee, U.K.: Sixteenth Report - "Prostitution in the Street", p. 15.**

19 **"Working Paper on Offences Relating to Prostitution & Allied Offences" Criminal Law Revision Committee. Government Printer London, 1982, para. 2 p. 32-33.**

20 **Pornography and Prostitution in Canada, op. cit., p. 547.**

21 **ibid, p. 547.**

22 **Inquiry into Prostitution Final Report, Victoria, op. cit., pp. 304-5.**

23 **ibid.**

In contrast to its working paper, the United Kingdom Criminal Law Revision Committee's Final Report recommended that the current law in the United Kingdom should prevail - that only one sex worker be permitted to work from a place of residence.[24] The Committee reasoned that, if the law sanctioned prostitution by two sex workers from a residential premises, that:

* it would facilitate the exploitation of one sex worker by another; and

* it might encourage the young and the homeless to drift into prostitution in return for accommodation.

The New South Wales Report stands alone in recommending that the premises of single sex workers operating from home should be treated in the same manner as any premises used for the purposes of prostitution.[25] The reason for this was the proliferation in Sydney of sole operators in home units, flats and houses. The Select Committee found that these operators caused disruption to neighbours and to the amenity of the locality. The Committee also envisaged that one owner could buy or lease all the units on a floor and then rent them to individual sex workers.

1.2.2 Collective Prostitution Conducted in One Premise

The Canadian, Victorian and New South Wales Reports recommended that the operation of brothels which conform with land-use requirements under town planning legislation be allowed. Additionally, the Victorian Report recommended that operators of brothels must be licensed.

At the time that the New South Wales Committee was considering its recommendations, New South Wales legislation dealing with brothels did not attach criminal liability to a person who owned, used, managed or kept premises simply for the purposes of prostitution. Rather, it was an offence to manage or occupy premises for the purpose of prostitution if the premises had been held out to the public as being a massage parlour, sauna, gym or photographic studio.[26] The Report recommended the retention of this as a criminal offence.

In addition, it was an offence for any person to be in, enter or leave premises that had been declared by the Supreme Court to be a disorderly house.[27] An application for a declaration that premises were disorderly could be made based upon an affidavit by a superintendent or inspector of police showing reasonable grounds for suspecting that the premises were being habitually used for prostitution purposes.[28] The Committee recommended that this

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24 **Criminal Law Revision Committee - U.K. Seventeenth Report - "Prostitution: Off-Street Activities", December 1985, p. 15.**

25 **Select Committee of the Legislative Assembly upon Prostitution, op. cit, p. 280.**

26 **Prostitution Act 1979 (NSW), s. 7(1).**

27 **Disorderly Houses Act (NSW) 1943 s. 7.**

28 **ibid, "Or that they have been so used for that purpose and are likely to be so used for that purpose", s. 3(1)(e).**

offence be repealed. However, this did not occur; the New South Wales Court of Appeal[29] has recently determined that the definition of a "disorderly house" in s. 3 (1)(e) of the Disorderly Houses Act 1943, is to be interpreted to mean a brothel and that such premises were to be suppressed. This gives the police power to close many prostitution establishments.

The Committee recommended a system of town planning controls which would allow local councils to determine applications to use premises as a brothel. At a state level, it recommended that a state environmental planning policy (which could be stipulated to apply to all local councils), should be implemented. It should preclude brothels from operating in residential areas and prescribe distances from schools, hospitals and churches in which brothels are not allowable.

The local council, through its own environmental plan, could further limit the areas in which brothels were not allowed to operate without planning consent. Should a person operate a brothel contrary to the use permitted of the land upon which the brothel is situated, then the council could obtain a restraining order from the Land and Environment Court. A breach of a restraining order would constitute criminal contempt and could attract a term of imprisonment.[30]

The Canadian Report recommends a model for the offences of both operating (or aiding in the operation of) premises used for the purpose of prostitution, and knowingly allowing premises to be used or let for prostitution purposes.[31] It would be legal to operate or knowingly allow premises to be used for prostitution purposes if either:

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

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

The Canadian Report suggests limitations that would need to be imposed upon operational premises through a regulatory procedure. It recommends that a public approval process to allow for full examination of applicants should be built into the regulatory structure.[32] Whilst favourably acknowledging the Victorian scheme, (which then allowed for the public examination and vetting of brothel owners through local council land use applications)[33], the Report did not go so far as to recommend that the regulation of brothels be tied to town planning legalisation:

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29 **Sibuse Pty Ltd v Shaw, NSWLR 1988, 13.**

30 **Environment Planning and Assessment Act (NSW) 1979, pp. 273 and 286.**

31 **Pornography and Prostitution in Canada - Report of the Special Committee on Pornography and Prostitution in Canada, Volume 2, Ottawa, 1985, p. 547.**

32 **ibid, p. 552.**

33 **ibid, p. 551**

> "For the Federal Government and Parliament to foist such a system on the country would be, to put it mildly, a disastrous political move".[34]

At the time that the Canadian recommendations were being considered, Victorian brothels could operate legally provided that a planning permit concerning the brothel had been obtained from the relevant local council.[35] Like the Canadian proposal, decisions about where and what brothels could operate within any region were made at a local level.

In Melbourne the Metropolitan Planning Scheme deemed brothels to be not permitted in residential, rural, local business, and conservation and landscape zones. By October 1985, 35 Victorian municipalities had amended their planning schemes to totally prohibit the operation of brothels in all land zones.[36]

The Victorian Report describes the process by which operators could obtain permits in zones where brothels were not prohibited.[37] If the council refused the permit, or granted it with conditions unacceptable to the applicant, the applicant could appeal to the Planning Appeals Board.[38] If the council granted the permit, objectors to the brothel could similarly appeal.[39]

Councils were precluded from granting a permit for the operation of a brothel to anyone who had, within the previous five years, been convicted of any drug, offence or of any offence punishable by 12 months imprisonment.[40] Thus, the legislation required that councils which considered brothel permits adopt a licensing function in addition to their normal land-use review.

Provisions similar to the New South Wales Disorderly Houses Act 1943 were available to close those brothels reasonably suspected of either operating without a permit or being a venue at which drug offences were being committed.[41]

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34 ibid, p. 551.

35 The Planning (Brothels) Act 1984, exempted those who lived on earnings of prostitution, who kept, managed or assisted in managing premises used for prostitution purposes, and who used or knowingly allowed premises to be used for prostitution purposes from criminal conviction provided that the prostitution was conducted from a permitted brothel - ss. 7, 10, 11 and 13.

36 Inquiry into Prostitution Final Report, Victoria, October, 1985, p. 156.

37 ibid, p. 155.

38 Planning Appeals Board Act 1980 (Victoria), s. 66.

39 Appeal procedures concerning land use consent applications in Queensland are not handled by a specially constituted Tribunal (then Board) as in Victoria. The Local Government Court, a division of the District Court, has jurisdiction.

40 Town & Country Planning Act 1961, (Victoria) s. 27A.

41 ibid, s. 49F.

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

* Only municipalities with populations of less than 20,000 people should be able to deem brothels to be a prohibited land-use. Councils with populations of 20,000 people or more would therefore be required to allow applications to be made for permits in designated zones (excluding residential areas). The power of councils to refuse such an application would remain unfettered.[42]

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

  - the size of the brothel;

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

  - the proximity of the brothel to residential buildings;

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

  - the proximity of the applicant's proposed brothel to other brothels.[43]

* An order that premises should be closed should be made only if a Magistrate (as opposed to a Supreme Court judge) was satisfied on the balance of probabilities that premises were being used as a brothel for which a permit had not been obtained.[44]

* Those persons who operate brothels must hold a valid licence to do so. Those persons who assist a licensed operator in managing a brothel must be approved by the licensing body. Thus it would be the function of the local councils to regulate the potential for public nuisance associated with the operation of a brothel. A specially constituted Licensing Board was to monitor and control those who managed and profited from brothels. To operate without a conviction a brothel owner or manager would need to ensure that the responsible council had granted a Town Planning Permit for the brothel to operate, and the Licensing Board had granted appropriate approval to the individual to operate or manage the permitted brothel.[45]

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42 Inquiry into Prostitution Final Report, Victoria, October, 1985, p. 307-8.

43 ibid, p. 302.

44 ibid, p. 317.

45 ibid, the Licensing Scheme is explored in detail in Chapter 10, p. 325 et seq.

* Restrictions on premises operated by one or two sex workers should be eased. Sole sex workers working from home should not have to obtain a Town Planning Permit to operate a brothel.[46] A licence to operate a brothel need not be required for brothels used by only one or two sex workers.[47] Therefore, sex workers operating from a single premises could choose to work in licensed brothels or for themselves: either by working alone from home (which would not require a permit or licence) or together with another sex worker from a detailed residence (which would require a permit only).

The Victorian Government attempted to implement through legislation all but one of the recommendations of its Report into prostitution.[48] The attempt did not survive the legislative process.

Local municipalities, irrespective of size, retain the right to prohibit outright brothels in their localities. The Bill provided for the Minister for Local Government to block a council prohibition of brothels, but only if, after receiving and considering submissions, the Minister considered that the prohibition did not have the support of the relevant local community.[49] The relevant provisions have not been proclaimed.

Provisions for the statutory establishment of the Brothel Licensing Board[50] have not been proclaimed. Also the time that the legislation was being considered by the Victorian Parliament, amendments made to the Bill by the Liberal Party Opposition required all persons using premises for prostitution purposes to obtain a licence. The Government believed that the licensing requirements were unduly onerous for one- and two-person operators,[51] and consequently, it did not proclaim the licensing provisions which differentiate between small and large-scale prostitution establishments.

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

> "The result is unfortunate in two respects. No mechanism has been established to control the management of large brothels. At the same time the failure to permit prostitutes to work legally on a small scale is pushing women into escort agency prostitution or employment in highly visible brothels run by big business. Multi-story brothels may flourish in Flinders Lane, while prostitutes who wish to see clients discreetly at home, cannot do so. This is hardly likely to increase the control of prostitute women over their working conditions and lives".[52]

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46 ibid, p. 305.

47 ibid, p. 330.

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

49 **Prostitution Regulation Act 1986, ss. 61-65.**

50 ibid, ss. 15-49.

51 **Bryant, T.L., "Planning and Social Issues of the Prostitution Regulation Act 1986", in Law Institute Journal, (Victoria) V. 61(9), September 1987, pp. 902 - 903.**

52 **Neave, M., "The Failure of Prostitution Law Reform", 1988, 21 in Australian New Zealand Journal of Criminology, pp. 202 - 211.**

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

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

Female sex workers who work on the streets, outside the system of legal regulation, are now more vulnerable to both police harassment and corruption and violence at the hands of others. Although work on the street now involves higher financial returns, it is reportedly much more hazardous.[53]

1.2.3 Escort Agencies

Whilst escort agency workers operate within the bounds of Queensland's laws, escort agency operators are liable to prosecution for living on the earnings of prostitution.[54]

The New South Wales and Canadian Committees and the Victorian Inquiry were unanimous in their reasons for recommending that the offence of living on the earnings be repealed:

(a) The offence does not limit itself to the evil to which it is purportedly directed; namely the exploitation of sex workers. The offence should be limited. Only those who induce a sex worker through coercion, violence, or intimidation to support them wholly or partly from the proceeds of prostitution should be criminally liable;[55] and

(b) The criminal law has a questionable role in regulating the relationships of responsible consenting adults. If a sex worker consensually gives financial support to lovers, partners or colleagues, the criminal law should not interfere.

The effect of the repeal was to allow escort agency operators to legally trade and this was condoned by the Victorian and Canadian Reports.[56]

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53 Hatty, S., "Violence Against Prostitute Women: Social and Legal Dilemmas" in Australian Journal of Social Issues Vol 24 No 4, November 1989, pp. 235 and 239-240.

54 Vagrants and Gaming and Other Offences Act 1931-88 s. 5 (1)(c).

55 Inquiry into Prostitution Final Report, Victoria, October 1985, pp. 263-4. Report of the Select Committee of the Legislative Assembly upon Prostitution, Parliament of NSW, April 1986, p. 251. Pornography & Prostitution in Canada - Report of the Special Committee on Pornography & Prostitution in Canada, Volume 2 Ottawa 1985, p. 544-5.

56 Inquiry into Prostitution Final Report, Victoria, October 1985, p. 268. Pornography & Prostitution in Canada - Report of the Special Committee on Pornography & Prostitution in Canada, Volume 2 Ottawa 1985, p. 544.

This result is consistent with the approach taken in both Reports that discreet prostitution activities should not attract criminal penalties in the absence of force or fraud.[57]

The New South Wales Report recommended that escort agencies be legalized. Escort agencies, like brothels, would be subject to planning controls devised on both a state and local level. Permission to operate should be obtained from local councils.[58]

In the United Kingdom the committee recommended a clarification of the existing offence. New offences were proposed:

* organizing prostitution for gain;

* directing or controlling a sex worker for gain; and

* assisting a person to meet a sex worker for the purpose of prostitution for gain.[59]

The new framework was designed to allow a sex worker to lend financial support to lovers or partners but to prohibit escort agency operators and drivers.[60]

Despite the recommendation of the various reports, the unqualified offence of living on the earnings remains on the statute books in each jurisdiction.[61]

These jurisdictions can therefore give limited insight into the effects of removing the offence of living on the earnings from the statute books.

1.3 Two Alternative Approaches to Reform

1.3.1 The Northern Territory: The Legal Treatment of Escort Agencies

The Northern Territory presently retains the prostitution offences of solicitation, procuration, living on the earnings and running a brothel. In practice, escort agencies are condoned.

The present operation of prostitution in the Northern Territory is based on a system of unauthorised co-operation between the police and escort agency operators. A new sex worker in an escort agency is interviewed by an officer

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57 As observed in the Inquiry into Prostitution - Final Report, Victoria, October 1985, pp. 263-4. Report of the Select Committee of the Legislative Assembly upon Prostitution, Parliament of NSW, April 1986, p. 268.

58 Report of the Select Committee of the Legislative Assembly upon Prostitution, Parliament of NSW, April 1986, p. 280.

59 Criminal Law Revision Committee, U.K.: Seventeenth Report - "Prostitution: Off-street Activities", December 1985, p. 7.

60 ibid, p. 9.

61 Vagrancy Act 1966 (Victoria) s. 10(1); Summary Offences Act 1988 (NSW) s. 15(1); Sexual Offences Act 1956 U.K. s. 30.

of the Bureau of Criminal Intelligence, who runs a criminal check on the worker's background. The worker is photographed and a record is kept by the police. If the worker has any serious previous convictions the agencies are notified and the operator ordinarily declines to employ the worker.

This arrangement has been designed to monitor prostitution and to ensure problems such as organised crime, drugs and the procurement of under-aged young people does not occur. It has no legislative backing at present.

The Attorney-General, the Hon. Daryl Manzie, has indicated in Parliament his intention to introduce legislation formalizing the present system of operation of the sex industry in the Northern Territory.[62]

Mr Manzie suggested that the government's aim was to minimise police dealings with the sex workers, while maximizing the clarity of contact. The present system of confidentiality surrounding the sex worker's records will be formalised along with the question of photographing the workers. A system of escort agency registration will also be introduced in order to maintain some form of regulation or check on the industry.

The broad application of "living off immoral earnings" will be reviewed, and amendments reflecting the exploitation of sex workers for financial gain will be made.

It is proposed that escort managers/receptionists will not be liable for conviction for any criminal offence.

Soliciting for the purposes of prostitution shall remain an offence. An effort will also be made to prevent men from managing escort agencies because of their lack of understanding of certain aspects of the industry.

Mr Manzie was of the view that compulsory health checks should be enforced. Presently a system of health checks is enforced by the police, who check that every girl in an agency has a medical certificate. Failure to provide a certificate would result in a fine imposed on the worker rather than on the escort agency operator. The Criminal Justice Commission met with five sex workers from Darwin who felt that this system of health checks by the police operated quite well.

Concern was, however, expressed about the level of police involvement and police abuse of their power. The workers argued that personal prejudice often entered into police judgments about whether a worker was permitted to work in the Northern Territory. These workers suggested that the police should not have the final say; they believed some form of monitoring of the police should be developed.

The Northern Territory Attorney-General's Department has informed the Commission that legislation has yet to be formulated.

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62 **Statement by the Attorney-General, the Hon. Daryl Manzie, 6 December, 1990, regarding prostitution in the Northern Territory, provided by Northern Territory Parliamentary Library.**

1.3.2 Negative Licensing: An Alternative Approach to Monitoring Prostitution

A summary of the licensing structure proposed in the Victorian Inquiry into Prostitution has previously been discussed. A scheme which requires all persons within a specified group to hold a licence is called positive licensing.

Professor Neave, the author of the Victorian Report, has recently suggested to the Commission an alternative licensing model. All persons operating a legal prostitution service could operate without a licence. However, any operator, owner or manager who:

* mistreats employee sex workers;

* breaches health or safety regulations;

* operates premises in a manner deleterious to the health of employees or their clients;

* is convicted of a specified offence; or

* otherwise offends the law,

could be subjected to court proceedings to prohibit or make conditional his/her further involvement in the prostitution industry.

Such an application could be made by health authorities, by sex workers, by police or by councils, depending upon the regulatory model which is adopted. Importantly, organisations representing ex-sex workers should also be entitled to make such an application. In this way, sex workers who wish to remain anonymous for fear of retribution can still access a method to initiate review of unsuitable operating practices.

1. THE WORKPLACE HEALTH AND SAFETY ACT 1989 AND ITS POSSIBLE APPLICATION TO THE REGULATION AND MONITORING OF PROSTITUTION

As part of the suggested regulatory approach to prostitution, the placing of prostitution under the Workplace Health and Safety Act 1989 could be examined.

This Act is administered by the Department of Employment, Vocational Education, Training and Industrial Relations. The Act provides for at least two senior personnel from the Department of Health to be members of the Workplace Health and Safety Council (s. 38).

In considering the application of the Act, one needs to address health and safety matters for the following types of sex workers and their clients:

* brothel and parlour workers;
* escort agency workers;
* managers and owners of escort agencies and brothels;
* street workers who rent a room for prostitution;
* self-employed workers who operate from their homes.

For controls to be effective, the legislation would need to limit the health and safety risks to which sex workers and their clients are exposed.

The long title of the Workplace Health and Safety Act 1989 is:

> "An Act to consolidate and amend the laws relating to securing the health and safety of persons performing work, protecting persons other than employees, and members of the public from danger from such work, protecting persons from risks to health and safety from certain plant, to repeal the Construction Safety Act 1971-87 and the Inspection of Machinery Act 1951-87, to amend the Factories and Shops Act 1960-1987 and the Health Act 1937-1988 and for related purposes."

1.1 Activities Directly Associated with Prostitution which are Presently Illegal

Those activities directly associated with prostitution which are set out in ss. 5 and 8 of the Vagrants, Gaming and Other Offences Act 1931-1987 are:

* soliciting or loitering;
* being a prostitute behaving in a riotous, disorderly or indecent manner in a public place;
* soliciting within view or hearing of a person in a public place;

* being an occupier of a house frequented by prostitutes;

* using premises held out for other purposes for prostitution.

1.2 Activities Ancillary to Prostitution which are Illegal

For the Workplace Health and Safety Act 1989 to be an effective means of regulating and monitoring prostitution, most activities ancillary to prostitution would need to have criminal sanctions removed as well. These offences presently are:

* living either wholly or partly on the earnings of a prostitute (Vagrants, Gaming and Other Offences Act s. 8);

* keeping or managing a brothel (Vagrants, Gaming and Other Offences Act, s. 8);

* keeping a bawdy house (Criminal Code ss. 231 and 235);

* being a tenant, lessee or occupier who permits premises to be used for prostitution (Vagrants, Gaming and Other Offences Act, s. 8);

* being a landlord who knows premises to be used for prostitution (Vagrants, Gaming and Other Offences Act, s. 8);

* being the keeper of a lodging house and/or permitting it to be the resort or place of meeting of prostitutes (Vagrants, Gaming and Other Offences Act, s. 9);

* procuring a person to become a prostitute (Criminal Code, s. 217).

The removal of criminal sanctions from most of these offences, except perhaps procuring, recruiting minors, and being an advertiser who partly lives off the earnings of prostitution, would enable employees to bring their concerns about aspects of building safety to the attention of the manager or lessee. The removal of criminal penalties would enable their concerns to be adequately addressed in an open manner; for example, for employees' complaints about washing facilities, ventilation, and dressing rooms to be acted upon, a manager or lessee would need to admit that he/she did in fact manage or own a brothel.

1.3 Definition of "Workplace"

Section 6 (1) (b) defines "workplace" in such a way that could apply to sex workers in brothels, escort agencies and those in self-employment:

> "Workplace" means any premises where work is or is likely to be performed by employees or self-employed persons and includes any area within the immediate vicinity of such premises where gear, plant, equipment or materials to be used in that work are kept, and any building or structure, bridge, wharf, road or way on or within such premises or in the immediate vicinity thereof".

1.4 Definition of "Employee" and "Employer"

Similarly, the definitions of "employee" and "employer" in s. 6 (1)(d) could apply to sex workers engaged by the managers of brothels and escort agencies and self-employed workers:

> "employee" means a person who performs work for an employer; and
>
> "employer" includes a person who, in the course of his business, engages the services of another person in the performance of any work: the term includes a self-employed person.

1.5 Workplace Code of Practice

Section 34 of the Act provides for a Code of Practice for Workplace Amenities. The Code consists of a set of standards or specifications for workplace health and safety. It refers mainly to physical aspects of buildings. Failure to observe the Code does not make a person liable to any civil or criminal proceedings. However, s. 35 of the Act states that the Code shall be admissible in evidence in proceedings where it is alleged that a person contravened or failed to comply with the Act.

The scope of the Code of Practice is probably sufficiently broad to encompass all buildings where sex workers are employed. However, the purpose of the Code is to provide guidance only and it can only be used in legal actions where it is alleged that an offence against the Act has been committed. Additionally, because of the intensely private nature of most dealings between sex workers and their clients and the relative secrecy of many venues, there could be difficulties in monitoring adherence to the Code, except perhaps in brothels.

Section 34 (2) provides for the Director-General of the Health Department to approve a Code of Practice for a specific area. It could be possible to formulate a code which deals specifically with health and safety matters for sex workers and clients.

1.6 Worker Participation

Self-regulation and worker participation are among the salient features of the Act.[1] It provides for the nomination of Health and Safety Officers, Health and Safety Representatives and Health and Safety Committees. In workplaces where 30 or more persons are employed, it is compulsory for an employer to nominate a suitably qualified person to be a Health and Safety

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1 Second Reading Speech Hansard, 16th March, 1990.

Officer. If the Workplace Health and Safety Authority determines that the nomination of such an officer is warranted, notification is given in the Queensland Industrial Gazette. For reasons of privacy and to protect themselves and their families, sex workers may not want their names published.

In workplaces where there are fewer than 30 employees, an employer may also nominate a Health and Safety Officer. (s. 58 (1) and(2))

The broad duties of Workplace Health and Safety Officers are set out in s. 59 of the Act. They include:

* advice to the employer on the overall state of health and safety in the workplace;

* conduct inspections of the workplace for the purpose of discovering unsafe or unsatisfactory conditions;

* conduct educational programs;

* ensure that all work-related injuries and illnesses are investigated and a record kept.

The main duty of a Workplace Health and Safety Representative is to make inspections of the workplace at prescribed intervals (s. 69).

The functions of Workplace Health and Safety Committee are set out in s. 72. In general terms these committees are to:

* advise the employer;

* create an interest in the workplace on health and safety;

* assist in reducing work-related injuries and dangerous work practices;

* consider measures for training and education in the promotion of health and safety in the workplace.

It seems that Health and Safety Officers and Representatives and Health and Safety Committees could perform important functions in the self-regulation of prostitution, especially in regard to health aspects. However, these aspects of self-regulation could only apply to sex workers in brothels because of the number of persons required to implement the provisions.

1.7 Implications of Regulating and Monitoring Prostitution Under the Act

Although there appears to be scope in the Act to regulate and control aspects of prostitution, there does not appear to be corresponding powers to monitor it. Under s. 81 of the Act for example, inspectors are appointed with powers to enter and examine any premises to ensure the Act is being complied with.

While inspectors may call on the assistance of any person who can assist them exercise their powers, it is difficult to see how transactions between sex workers and their clients could be scrutinised.

With regard to the risks of sex workers and their clients contracting STDs and AIDS, ss. 9 and 10 are probably sufficiently broad to regulate this. Section 9 deals with the responsibilities of employers to ensure the health of their employees; s. 10 deals with the responsibilities of self-employed persons to ensure the health and safety of themselves and persons other than employees. While health matters regarding infectious diseases may be subsumed under these sections, the matter of how transactions between sex workers and their clients could be monitored is still unresolved.

Section 13 covers the duties of employees not to endanger the health and safety of themselves or other persons and an employee's responsibility to use as far as possible protective clothing and equipment. Section 13 (3) (b) states that "an employee who wilfully places at risk the health and safety of any person in the workplace commits an offence against this Act." This could apply to an employee's duty to provide a condom; whether there is a corresponding obligation on a client to wear it is uncertain.

Many of the provisions of the Act have not been tested in the courts and require further investigation. The Act was not intended to apply to sex workers and their places of work, so the question of whether it could cover these circumstances may have to wait until cases which involve workers in factories and construction sites are determined.

1.8 Summary

The Workplace Health and Safety Act 1989 affords an opportunity to remove criminal sanctions from many aspects of prostitution and retain some government controls.

In the definition of "Workplace", "Employee" and "Employer", the Act could apply to all categories of sex workers. Under the Act, all workers have responsibilities not to endanger their health or themselves or other persons.

However, because of the special working conditions of sex workers, there are difficulties in monitoring their work.

The effective regulation and monitoring of prostitution under the Act presents difficulties unless most activities ancillary to prostitution were also decriminalised. If one of the aims of policy is to reduce the number of people who enter prostitution and to protect children, then the offences of procurement and recruitment of minors should be retained.