

## **INQUIRY INTO THE REGULATION OF BROTHELS**

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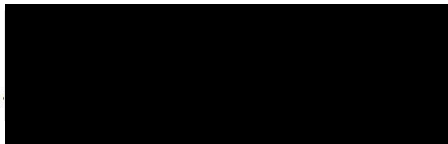
19 August, 2015

Select Committee on the Regulation of Brothels  
Parliament House  
Macquarie St  
Sydney NSW 2000

To the Committee Manager,

On behalf of the Australian Christian Lobby I am pleased to present our submission to the Select Committee on the Regulation of Brothels in response to the Inquiry into the Regulation of Brothels.

Yours sincerely,



**Mark Makowiecki**  
**NSW Director**  
**Australian Christian Lobby**



**Submission to the  
Select Committee on the Regulation of Brothels  
Inquiry into Brothels in NSW**

August 2015

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## Executive Summary

The Australian Christian Lobby (ACL) welcomes this opportunity to make a submission to the Select Committee on the Regulation of Brothels' *Inquiry into Brothels in NSW*.

ACL has long advocated for reform on prostitution law throughout Australia. Since March 2011, ACL has made submissions to the ACT,<sup>1</sup> WA,<sup>2</sup> NSW and Tasmanian<sup>3</sup> Governments supporting the Swedish or Nordic approach to prostitution legislation.

In August 2012, ACL made a submission to the NSW Community Relations Commission's *Inquiry into the Exploitation of Women through Trafficking*.<sup>4</sup> Legal prostitution is closely linked to human trafficking and ACL believes this should be acknowledged in the discussion of brothel regulation.

In October 2012, ACL made a submission the NSW Department of Premier and Cabinet, Better Regulation Office's *Issues Paper on the Better Regulation of Brothels in NSW*.<sup>5</sup> That submission argued for the "Nordic Approach" to prostitution be adopted in NSW and rejected both ideas of licencing and registration.

This submission, like the one in 2012, advocates for the "Nordic Approach" to be adopted by NSW. An examination of the evidence shows that the "Nordic Approach" to prostitution is successful. The experience of other jurisdictions shows that legalisation of prostitution does not work. Some of the significant problems associated with prostitution, including health risks and sex trafficking, will be examined.

Should prostitution remain decriminalised, ACL believes that neither registration nor licensing of brothels would be an effective solution to solve issues around community concerns. Local governments already have some measures for rejecting brothels in their communities. However it does appear that local government's efforts to regulate brothels are frustrated by planning law that places too high a requirement on council reject and shut down brothels. The options available to local councils should be strengthened to allow councils the ability to better regulate the establishment of brothels in their communities. Doing so would have the benefit of reducing the costs of regulation on local government.

ACL's recommendations are listed on page 4.

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<sup>1</sup> Australian Christian Lobby (April 2011), *Submission to the Standing Committee on Justice and Community Safety Inquiry into the Operation of the Prostitution Act 1992*, <http://australianchristianlobby.org.au/wp-content/uploads/110331-ACL-ACT-prostitution-submission.pdf>.

<sup>2</sup> Australian Christian Lobby (16 February 2011), *Re: Proposed Prostitution Reforms*, <http://www.acl.org.au/wp-content/uploads/2012/04/110216-ACL-WA-prostitution-submission.pdf>.

<sup>3</sup> Australian Christian Lobby (March 2012), *Submission to the Department of Justice – Regulation of Sex Industry in Tasmania Discussion Paper*, <http://www.acl.org.au/wp-content/uploads/2012/05/120322-ACL-Submission-to-the-Regulation-of-the-Sex-Industry-in-Tasmania-Discussion-Paper.pdf>.

<sup>4</sup> Australian Christian Lobby (August 7, 2012), *Submission to the Community Relations Commission – Inquiry into the Exploitation of Women through Trafficking*, <http://www.acl.org.au/wp-content/uploads/2012/10/120807-ACL-Submission-to-the-Inquiry-into-the-Exploitation-of-Women-through-Trafficking.pdf>.

<sup>5</sup> Australian Christian Lobby (October 2012), *Submission to the Department of Premier and Cabinet Better Regulation Office – Better Regulation of Brothels in NSW*, <http://www.acl.org.au/wp-content/uploads/2012/10/20121012-ACL-Submission-to-the-Better-Regulation-Office.pdf>

## Recommendations

- That the NSW government develop a broad policy towards prostitution that is in line with the Swedish approach to prostitution law.
- That the NSW government introduce legislation that criminalises the purchase of sex but not the selling of sex.
- That the NSW Government provide support to women trying to exit the prostitution industry, for example through exit programmes.

Alternatively, if the government declines to criminalise the purchase of sex.

- That local councils continue to have the ability to regulate the development approvals of brothels within their communities.
- That local councils be able to have greater discretion to reject development applications for brothels.
- That changes to legislation be made in order to reduce the high hurdles councils must satisfy when making applications for brothel closure orders, issued by the Land and Environment Court under the *Environmental Planning and Assessment Act 1979* or the *Restricted Premises Act 1943*.
- That consideration be given to what other changes might be made to planning law that would reduce the financial burden on local government when regulating brothels.

## Introduction

Prostitution is a form of exploitation, mostly of women. This abuse is perpetuated not only by traffickers and pimps, but by the men who create the demand for sexual services. Prostituted women are not to be blamed for the prostitution industry, and should instead be provided with support in leaving the industry.

The Nordic approach does not criminalise the selling of sex. Rather, it criminalises the purchase of sex, rightly targeting the driving factor of prostitution, demand, and places criminal liability on those who create the demand.

Decriminalisation or regulation is justified as a way of controlling prostitution and creating a safer industry for prostitutes. However, experience shows that these aims not only fail, instead the opposite outcomes occur. Legal prostitution creates an environment in which human trafficking is more likely, underage prostitution is more likely, and underground and illegal prostitution grows parallel to legal or regulated prostitution.

Legal acceptance of prostitution sends the message to society that men have a right to sex on demand. It promotes a culture of acceptance among those men who demand paid sex as well as in the wider community. Legalisation contributes to the social acceptability of prostitution. It increases the likelihood of vulnerable women and girls being drawn into the industry and fosters degrading attitudes towards women in society, including the view that women's bodies are objects and can be purchased and used for sexual pleasure.

Prostitution is a degrading and destructive industry for women and girls. Acceptance of prostitution is incongruent with a society that values women.

If prostitution continues to remain legal in NSW, local governments should at least be given greater power to reject brothels. Communities should not be forced to accept brothels when they are not wanted. If communities are against the establishment of brothels in their local area, they should be able to have effective action taken to close brothels. This could be done effectively through local government if the system was working, however it is not. Changes to the law are needed to ensure that council's hands are not tied on this issue.

## Demand drives prostitution

Prostitution is driven by demand for prostitution. Without strong demand from men who expect to be able to purchase women for sex, there would be no prostitution industry.

At its core, prostitution is a form of abuse and violence against, and exploitation of, women. The male demand for sexual services is the driving force behind prostitution, not the women who are being prostituted.

The United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UN Protocol) requires States Parties to

*adopt or strengthen legislative or other measures, such as educational, social or cultural measures... to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking".<sup>6</sup>*

Liberalising prostitution laws sends the message that demanding sexual services is acceptable in contemporary society. Despite arguments that making prostitution illegal pushes it underground, legalising prostitution leads to an expansion of the underground industry as well as the legal industry. This is evidenced in Queensland's experience since its *Prostitution Act 1999*, discussed further below. The best way of tackling the problems of prostitution is to cut off demand, and the best way to do this is to criminalise the purchase of sex, rather than the selling of sex.

## The German study

A 2012 study from the University of Goettingen, Germany,<sup>7</sup> analysed data from about 150 countries in an economic theory context. The researchers also conducted three case studies, looking at the situation in Sweden, Denmark, and Germany, each with different prostitution regimes. In the context of supply and demand, the study states:

*some clients will be deterred from consuming commercial sex services if prostitution is illegal and they expect that there is a reasonable probability of being prosecuted, as this raises the costs of engaging in such activities. Legalizing prostitution will therefore almost invariably increase demand for prostitution.<sup>8</sup>*

Supply will also increase if prostitution is legalised as some "potential sex workers", that is, those women who would enter the market but are deterred by the law, will be induced to enter the market.<sup>9</sup>

In short, legalising prostitution expands the industry.

## The Nordic approach to prostitution

Sweden has come closest to meeting the requirement in the UN Protocol to discourage demand for prostitution. In 1999, Sweden passed the *Act Prohibiting the Purchase of Sexual Services*. Sweden

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<sup>6</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, Article 9.5.

<sup>7</sup> Seo-Young Cho, Axel Dreher, Eric Neumayer (January 2012), *Does Legalized Prostitution Increase Human Trafficking?*, Courant Research Centre, University of Goettingen, Germany.

<sup>8</sup> Ibid. p 6.

<sup>9</sup> Ibid. p 6.



recognised prostitution as a “serious form of male violence against women and children” and, in keeping with the country’s commitment to gender equality, sought ways to protect women from prostitution by focusing on the core cause, that is, the demand for paid sex.<sup>10</sup> The women’s movement played a pivotal role in the introduction of the laws,<sup>11</sup> highlighting the fact that prostitution is at its core an issue of respect for women and concern for equality.

Under the Swedish law, prostituted women are not criminally liable; it is the purchaser of sex who is committing the crime. It covers all forms of sexual services purchased in any circumstances.<sup>12</sup>

The new law has been remarkably effective. Sweden’s National Board of Health and Welfare has reported significant decreases in the number of women in street prostitution and the number of men buying sex.<sup>13</sup> Stockholm, with a population of 1.3 million, has about 200 people in street prostitution. By comparison, prostitution hot-spot Amsterdam (population 750,000) has tens of thousands of prostitutes.<sup>14</sup> Although the law was initially met with criticism by police and judicial authorities, they are now supportive of the legislation.<sup>15</sup>

Co-Executive Director of the Coalition Against Trafficking in Women, Gunilla Ekberg, argues that prostitution and human trafficking are intrinsically linked.<sup>16</sup> The Swedish laws have led to a “concrete decrease in the number of victims” of human trafficking, with the European Parliament finding that because “traffickers have had problems finding enough sex buyers in Sweden, the demand has been much lower than expected.”<sup>17</sup> Police wiretaps have confirmed that criminal groups view Sweden as a poor market, and the illegal brothels that do exist are small in scope.<sup>18</sup> The National Rapporteur on Trafficking in Human Beings has estimated that around 400-600 women were trafficked into Sweden and the law has had “direct and positive effects on the trafficking of human beings for sexual purposes to Sweden and that Sweden is no longer an attractive market for traffickers”.<sup>19</sup>

A concern with the Swedish model of prostitution, one raised by the European Parliament,<sup>20</sup> is that while it may decrease the amount of trafficking into the jurisdiction, it simply creates displacement and trafficking increases in neighbouring areas. However, insofar as a country or a state or territory has control over its own laws, it can and should deal with issues as serious as human trafficking to whatever extent it can.

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<sup>10</sup> Gunilla Ekberg (2007), *Update on Swedish Model of Sex Industry Reform*, pp 2-3.

<sup>11</sup> Kajsa Claude (2010), *Targeting the Sex Buyer: The Swedish Example: Stopping Prostitution and Trafficking Where it All Begins* pp 36-37.

<sup>12</sup> Gunilla Ekberg (2007), *Update on Swedish Model of Sex Industry Reform* p 4.

<sup>13</sup> Ibid. p 5

<sup>14</sup> Kajsa Claude (2010), *Targeting the Sex Buyer: The Swedish Example: Stopping Prostitution and Trafficking Where it All Begins Targeting the Sex Buyer*, pp 13-14.

<sup>15</sup> Gunilla Ekberg (2007), *Update on Swedish Model of Sex Industry Reform* p 5.

<sup>16</sup> Ibid. p 3.

<sup>17</sup> European Parliament (2005), *Study on National Legislation on Prostitution and the Trafficking in Women and Children*, p. 133, [http://ec.europa.eu/anti-trafficking/download.action;jsessionid=h932NJLT8bGTNJKlpWq3vpfs2vJD1ZsvZmtkJdhKNPD5Sw4txpV!-285985297?nodeId=94d50494-83a2-4787-8f70-7e55ae564ba2&fileName=Study+on+National+Legislation+and+Prostitution\\_en.pdf&fileType=pdf](http://ec.europa.eu/anti-trafficking/download.action;jsessionid=h932NJLT8bGTNJKlpWq3vpfs2vJD1ZsvZmtkJdhKNPD5Sw4txpV!-285985297?nodeId=94d50494-83a2-4787-8f70-7e55ae564ba2&fileName=Study+on+National+Legislation+and+Prostitution_en.pdf&fileType=pdf)

<sup>18</sup> Ministry of Justice (2010), *Selected extracts of the Swedish government report SOU 2010:49: The Ban against the Purchase of Sexual Services. An evaluation 1999-2008*, p. 29.

<sup>19</sup> Ekberg (2007), *Update on Swedish Model of Sex Industry Reform*, p. 5

<sup>20</sup> European Parliament (2005), *Study on National Legislation on Prostitution and the Trafficking in Women and Children*, p. 133.

The Swedish laws have been successful in decreasing the demand in Sweden for the purchase of sex by men, and it is unlikely that all of that demand has spilled over borders. Indeed, rather than simply “transferring” the problem, the laws have started to have an influence in the region, with both Iceland<sup>21</sup> and Sweden’s neighbour Norway<sup>22</sup> now implementing the same model. Norway’s prohibition on the purchase of sex goes further to include prohibiting Norwegian citizens from purchasing sex abroad as well as at home.<sup>23</sup>

### ***The Nordic approach in other European countries***

The Nordic approach was adopted by Norway in January 2009.<sup>24</sup> Norway’s law also prohibited Norwegian citizens from purchasing sex abroad as well as in Norway.

In Iceland, prostitution was decriminalised in 2007, but the Nordic approach was later adopted in April 2009.<sup>25</sup>

France came close to adopting the Nordic approach when it passed a bill in December 2013,<sup>26</sup> subsequently defeated in the Senate in July 2014.<sup>27</sup>

Northern Ireland has also adopted the model, passing its *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act* in January this year.<sup>28</sup>

The European Parliament passed a non-binding resolution in February 2014, calling on European countries to adopt the Nordic approach. The resolution was adopted by a vote of 343-139, with 105 abstentions.<sup>29</sup>

### ***Canada***

Canada implemented the Nordic approach in 2004 under the *Protection of Communities and Exploited Persons Act*. The act prohibits the purchase of sex but not the selling of sex. There are offences for gaining benefit, procuring, and advertising. There are significantly higher penalties when the offence involves a person under eighteen years old.

Purchasing sexual services has a maximum penalty of five years in Canada. Purchasing sexual services from a person under eighteen carries a penalty of six months, or ten years if the person is under fourteen. The penalty for receiving a material benefit is ten years or fourteen years if the victim is under eighteen.

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<sup>21</sup> Erla Sigurðardóttir (June 3, 2009), ‘Buying sex now punishable in Iceland’, *Nordic Gender Institute*, <http://www.nikk.no/English/Subjects/Prostitution/News/?module=Articles;action=Article.publicShow;ID=920>.

<sup>22</sup> BBC (January 1, 2009), ‘New Norway law bans buying of sex’, *BBC*, <http://news.bbc.co.uk/2/hi/europe/7806760.stm>.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> The Economist (April 20, 2013), ‘Naked ambition’, <http://www.economist.com/news/international/21576366-iceland-determined-outlaw-worlds-oldest-business-can-it-succeed-naked-ambition>.

<sup>26</sup> Taina Bien-Aime (February 13, 2014), *Huffington Post*, ‘France Takes First Steps Towards Abolition of Prostitution’, [http://www.huffingtonpost.com/taina-bienaime/france-prostitution-laws\\_b\\_4775608.html](http://www.huffingtonpost.com/taina-bienaime/france-prostitution-laws_b_4775608.html).

<sup>27</sup> Ben McPartland (July 9, 2014), *The Local*, <http://www.thelocal.fr/20140709/prostitution-france-law-clients-prostitutes-sex-workers>.

<sup>28</sup> BBC (January 14, 2015), ‘Human Trafficking Bill receives Royal Assent’, <http://www.bbc.com/news/uk-northern-ireland-30805990>.

<sup>29</sup> European Parliament News (February 26, 2014), ‘Punish the client, not the prostitute’, <http://www.europarl.europa.eu/news/en/news-room/content/20140221IPR36644/html/Punish-the-client-not-the-prostitute>.

### **South Korea**

South Korea has also been trying to prevent prostitution and punish purchasers since 2004. The *Act on the Punishment of Procuring Prostitution and Associated Acts*<sup>30</sup> prohibits the purchase of sex and also requires the government to “take legal and institution measures and raise necessary funds regarding education and promotion of public awareness on the prevention and elimination of prostitution, procuring prostitution and associated acts”.<sup>31</sup> The *Act on the Prevention of Prostitution and Protection of Victims Thereof*<sup>32</sup> requires states to “provide legal and institutional devices and take necessary administrative and financial measures . . . to prevent prostitution and support the protection and self-reliance of the victims of prostitution and those who sell sex”.<sup>33</sup>

### **Other Countries**

Similar models have been considered in Israel.<sup>34</sup> The state of Illinois<sup>35</sup> and the state of Massachusetts<sup>36</sup> are both experimenting with laws that target the demand side of prostitution.

These examples show that many jurisdictions are noting the effectiveness of the laws in Sweden in decreasing sex trafficking. ACL urges the NSW Government to lead the way in Australia by adopting a similar policy.

### **The failure of legalising prostitution**

Legalisation, decriminalisation, or regulation of prostitution is often justified by appeals to harm minimisation and control of the illegal prostitution sector. However, none of these aims are achieved by liberalising prostitution laws. Trafficking continues to be a problem in NSW after many years of decriminalisation, and the illegal prostitution industry is often fuelled by an increase in the demand for prostitution. Prostitution remains an inherently unhealthy occupation for the women involved, and health risks to men and the wider community cannot be removed.

Legal prostitution in New South Wales has failed to control sex trafficking. The state also has a problem with child abuse through prostitution.<sup>37</sup> In 2009 the Daily Telegraph reported 400 illegal brothels in metropolitan Sydney alone, outnumbering legal brothels by four to one.<sup>38</sup>

Research into other jurisdictions shows that their experiments with legal prostitution have likewise failed to curb illegal prostitution.

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<sup>30</sup> *Act on the Punishment of Procuring Prostitution and Associated Acts* (2004) (South Korea), [http://www.stop.or.kr/english/htm/08eng\\_03\\_01\\_01.asp](http://www.stop.or.kr/english/htm/08eng_03_01_01.asp)

<sup>31</sup> *Act on the Punishment of Procuring Prostitution and Associated Acts* (2004) (South Korea), Article 3

<sup>32</sup> *Act on the Prevention of Prostitution and Protection of Victims Thereof* (2004) (South Korea),

<sup>33</sup> *Act on the Prevention of Prostitution and Protection of Victims Thereof* (2004) (South Korea), Article 3

<sup>34</sup> Ruth Eglash (February 2, 2012), *Jerusalem Post*, “Gov’t backs jail time for soliciting prostitution”, <http://www.jpost.com/NationalNews/Article.aspx?id=257511>.

<sup>35</sup> Rachel Durchslag (February 29, 2012), *Huffington Post*, “Changing the Conversation About Prostitution and Sex Trafficking”, [http://www.huffingtonpost.com/rachel-durchslag/sex-trafficking-chicago\\_b\\_1311776.html](http://www.huffingtonpost.com/rachel-durchslag/sex-trafficking-chicago_b_1311776.html).

<sup>36</sup> Ed Davis and Swanee Hunt (February 22, 2012), *Boston Globe*, “Want to buy sex in Massachusetts? Think again”, [http://articles.boston.com/2012-02-22/opinion/31081994\\_1\\_human-trafficking-anti-trafficking-pimps](http://articles.boston.com/2012-02-22/opinion/31081994_1_human-trafficking-anti-trafficking-pimps).

<sup>37</sup> Home Office (2004), *Paying the Price: a consultation paper on prostitution*, Home Office Communication Directorate, [http://news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/16\\_07\\_04\\_paying.pdf](http://news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/16_07_04_paying.pdf), p 85.

<sup>38</sup> Adam Walters (May 18, 2009), ‘Illegal brothels booming across Sydney’, *The Daily Telegraph*, <http://www.dailytelegraph.com.au/news/sydney-news/illegal-brothels-booming-across-sydney/story-e6freuzi-1225713067757>.

## Queensland

Queensland's Crime and Misconduct Commission (CMC) commented in its 2004 report:

*The rationale underlying much prostitution legalisation policy is to minimise harm, reduce and control criminal involvement and control expansion... However, research has indicated that the effect has frequently been the reverse.*<sup>39</sup>

In a 2011 follow-up report, the CMC acknowledged there is "clear evidence of a link between the legal brothel industry and organised illegal prostitution".<sup>40</sup> It adds that the Queensland Police Service "is unable to provide an estimate of the size of the illegal industry . . . but acknowledges that it is very likely to continue to be larger than the legal prostitution industry in Queensland".<sup>41</sup>

Schloenhardt and the Human Trafficking Working Group estimated that up to 90% of prostitution in Queensland was unregulated after ten years of prostitution regulation in that state.<sup>42</sup> The "spirit of the Act", as stated by the CMC, "is to draw as many of the illegal operators and workers as possible into the legal industry".<sup>43</sup> This aim has "clearly failed", according to Schloenhardt, who says that introducing licensed brothels has had "little, if any impact on illegal forms of prostitution".<sup>44</sup>

Schloenhardt's report questions the effectiveness of the system in decreasing illegal prostitution, questioning whether it "assists in making human trafficking unnecessary or whether it contributes to an influx of foreign sex workers and their exploitation in Queensland's legal and illegal brothels".<sup>45</sup>

Indeed, there is a large number of illegal brothels operating in Queensland. One 2002 estimate suggested that for every legal brothel in Queensland there were 100 illegal operators.<sup>46</sup> More moderate estimates still report a large illegal sector, and Schloenhardt concludes that it is "plausible that the number of illegal brothels exceeds the number of licensed brothels in Queensland". Those women in prostitution who do work in legal brothels constitute a mere 10% of the industry in that state.<sup>47</sup>

Of particular relevance to this NSW inquiry is the finding that many illegal escort agencies in Queensland are "organised or controlled by criminal syndicates" which "operate from interstate, especially from Sydney".<sup>48</sup> It is noteworthy that criminals in New South Wales are operating both within and beyond the state's borders. Significantly, Schloenhardt acknowledges that licensing has failed to eliminate the *demand* for illegal prostitution.<sup>49</sup> As discussed above, legal prostitution is linked with trafficking, and the regulation of prostitution in Queensland has not eliminated the problem of sex trafficking into the state. Queensland police have stated that Mount Isa and other mining towns are "increasingly being confronted" with the problem, saying:

<sup>39</sup> Crime and Misconduct Commission (2004), *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (QLD)* p 30.

<sup>40</sup> Crime and Misconduct Commission (2011), *Regulating Prostitution: A follow-up review of the Prostitution Act 1999*, p 22.

<sup>41</sup> Ibid. p 23.

<sup>42</sup> Andreas Schloenhardt et al (2009), *Happy Birthday Brothels: Ten Years of Prostitution Regulation in Queensland*, University of Queensland TC Beirne School of Law, p 31, <http://www.law.uq.edu.au/documents/humantrafficking/reports-presentations/UQ-HTWG-Ten-Years-of-Prostitution-Regulation-in-Qld-Sep-2009.pdf>, p 31.

<sup>43</sup> CMC (2004), *Regulating Prostitution*, p 65.

<sup>44</sup> Schloenhardt et al (2009), *Happy Birthday Brothels*, p 31.

<sup>45</sup> Ibid. p 9.

<sup>46</sup> CMC (2004), *Regulating Prostitution*, p. 81

<sup>47</sup> Schloenhardt et al (2009), *Happy Birthday Brothels*, p. 29

<sup>48</sup> CMC (2004), *Regulating Prostitution*, p 50. Emphasis added. See also Schloenhardt et al, *Happy Birthday Brothels*, p 31.

<sup>49</sup> Schloenhardt et al, (2009), *Happy Birthday Brothels*, p 31.

*women and girls who cannot speak English, or who have a very low level of English, and a very low level of education, [are] basically being trafficked for sex, from one mining town to the next.*<sup>50</sup>

The police are concerned that these women are subject to coercion and threats.

### **Australian Capital Territory**

The Australian Capital Territory, in which prostitution has been regulated since the *Prostitution Act 1992*, has nevertheless had problems with illegal prostitution. There have also been concerns about illegal immigration and trafficking in connection with prostitution. In 2009 a woman from Kambah, ACT was arrested on sex slave and trafficking charges.<sup>51</sup> In 2010, a Kaleen, ACT woman was fined for operating an illegal brothel.<sup>52</sup> Later in 2010, a group of Thai women were found by immigration authorities to be illegally employed in two legal brothels in Fyshwick.<sup>53</sup>

### **Victoria**

In Victoria, which legalised prostitution in 1984, an estimated 50% of prostitution remains illegal. The CMC commented that:

*Since legalisation in Victoria (Australia), the sex industry has expanded, the legal industry has been 'pushed underground', criminal involvement has increased and the industry is now more dangerous.*<sup>54</sup>

The UK Home Office found that the prostitution industry had grown in Victoria after legalisation, "with the illegal sector outstripping the legal sector".<sup>55</sup> The number of illegal Melbourne brothels was estimated to have grown threefold in one year and legalisation had not "overcome the lure of street prostitution", as had been hoped.<sup>56</sup>

### **New Zealand**

In New Zealand, a Maxim Institute study of prostitution showed that decriminalisation has not led to any decrease in the number of street workers or underage workers and had in fact likely led to an increase.<sup>57</sup> This conclusion is supported by outreach workers, who claim the number of women prostituted on the streets has grown significantly since decriminalisation.<sup>58</sup> This agrees with the

<sup>50</sup> AAP (July 10, 2012), 'Women 'trafficked for sex' in Queensland's booming mining towns', [http://www.news.com.au/national/women-trafficked-for-sex-in-queenslands-booming-mining-towns/story-fndo4ckr-1226422238553?sv=668660d6fee64608cb0d6c3b07e83743#.T\\_uPCUJnQvw.twitter](http://www.news.com.au/national/women-trafficked-for-sex-in-queenslands-booming-mining-towns/story-fndo4ckr-1226422238553?sv=668660d6fee64608cb0d6c3b07e83743#.T_uPCUJnQvw.twitter).

<sup>51</sup> AAP (November 18, 2009), 'Woman to front court on sex slave charges', *The Daily Telegraph*, <http://www.dailytelegraph.com.au/news/breaking-news/woman-to-front-court-on-sex-slave-charges/story-e6freuz0-1225799141833>.

<sup>52</sup> ABC (October 15, 2010), 'Fine for illegal brothel owner', *ABC*, <http://www.abc.net.au/news/stories/2010/10/15/3039265.htm?site=canberra&source=rss>.

<sup>53</sup> AAP (December 20, 2010), 'Illegal sex workers found in Canberra', *Sydney Morning Herald*, <http://news.smh.com.au/breaking-news-national/illegal-sex-workers-found-in-canberra-20101220-192zt.html>.

<sup>54</sup> CMC (2004), *Regulating Prostitution*, p 30.

<sup>55</sup> Home Office (2004), *Paying the Price*, p 85.

<sup>56</sup> Home Office (2004), *Paying the Price*, pp. 86.

<sup>57</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, [http://www.maxim.org.nz/files/pdf/submission\\_plrc.pdf](http://www.maxim.org.nz/files/pdf/submission_plrc.pdf), p 6, citing Coppedge, S. (2006) *People Trafficking: An International Crisis Fought at the Local Level*, Fulbright New Zealand; available at [http://www.fulbright.org.nz/voices/axford/docs/axford2006\\_coppedge.pdf](http://www.fulbright.org.nz/voices/axford/docs/axford2006_coppedge.pdf).

<sup>58</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, [http://www.maxim.org.nz/files/pdf/submission\\_plrc.pdf](http://www.maxim.org.nz/files/pdf/submission_plrc.pdf), pp 5-7.

Prostitution Law Review Committee's report on the operation of the *Prostitution Reform Act 2003*, which noted an increase in the number of street workers since legalisation.<sup>59</sup>

### **The reality of prostitution**

Prostituted women suffer a range of disadvantages and negative outcomes from a harmful industry. Women with backgrounds of abuse, poverty, and drug addiction are grossly over represented in the industry. It must be acknowledged that the issues that impact on the health and safety of prostituted women are particular to the industry.

The nature of the industry makes comprehensive statistics difficult to gather, but typical concerns, in addition to the trafficking, debt bondage, and coercion concerns highlighted below, include high numbers of women who are abused, physically assaulted, raped, or otherwise intimidated and bullied, and who have psychological distress including post-traumatic stress disorder. Other concerns surround the trends that show prostituted women often have a background of physical or sexual abuse, do not have viable career alternatives, and especially that a large number of prostituted women are working or began work while under the age of eighteen.

Some studies show alarming numbers of women in prostitution do not want to be there. Researcher Melissa Farley claims that as many as 90% or more of prostitutes "want out of prostitution immediately, but the decision is out of their hands and in the hands of their pimps, their husbands, their landlords, their addictions, their children's bellies". She cites studies conducted in Toronto and across five nations.<sup>60</sup> She also claims that up to half the women in prostitution in the UK started underage and the average age of entry into prostitution in the USA is thirteen to fourteen years.<sup>61</sup>

### **Child abuse background of workers**

Max Waltman, from the Department of Political Science at Stockholm University, cited figures showing that the majority of prostituted women – between 55 per cent and 90 per cent according to different studies – had been subjected to sexual abuse as children.<sup>62</sup>

In New Zealand, Maxim Institute has cited a range of New Zealand studies showing that prostituted women in New Zealand tend to come from very disadvantaged backgrounds and from families with high rates of interpersonal difficulties and parental separation. They are more likely to have suffered high rates of physical abuse, to have left home and school early, have lower qualifications and fewer work opportunities, and experience early pregnancy.<sup>63</sup> Another study cited by Maxim "identified participation in prostitution as part of 'a cycle of abuse and disempowerment'".<sup>64</sup>

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<sup>59</sup> New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (2008, May), <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>, p 118.

<sup>60</sup> Melissa Farley (2009), *Myths and Facts about Trafficking and Illegal Prostitution*, p. 3

<sup>61</sup> Farley (2009), *Myths and Facts about Trafficking and Illegal Prostitution*, p. 6

<sup>62</sup> Max Waltman (2011), 'Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential', *Women's Studies International Forum* 34 (2011) 449-474, p 451.

<sup>63</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, p. 3, citing Potter, K., Martin, J. & Romans, S. (1999), 'Early developmental experiences of female sex workers: a comparative study', *Australian and New Zealand Journal of Psychiatry*, 33, 935-940

<sup>64</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, p. 3, citing Fitzgerald, P. (1997), *Bridging the Gap: Commercial sexual exploitation of young people in metropolitan Melbourne*, ECPAT Australia.



Maxim also conducted interviews with people who assist prostituted women, providing safe houses and helping women leave prostitution. The experience of such people reaffirms what available statistics show – that the main reasons for girls becoming involved in prostitution include disadvantaged histories that include poverty, lack of education, and homelessness, as well as histories of sexual abuse “to the extent that the abuse has become normalised”, family breakdown, and a “learned sense of being worthless and of no value”.<sup>65</sup>

A similar experience is witnessed by social welfare workers and doctors in Sweden. Women who have been prostituted have “lost their self-esteem. There has been a lack of concern for these individuals . . . What they have in common are broken relationships or abuse”.<sup>66</sup>

There is no reason to doubt that prostituted women in Australia often come from similar backgrounds.

### Underage prostitution

The nature of child prostitution and people trafficking makes it extremely difficult to gather statistics. Anti-child pornography and child prostitution group ECPAT International has estimated that there are at least a million prostituted children worldwide, with the Philippines alone home to about 100,000.<sup>67</sup>

Waltman’s analysis suggests a majority of prostituted women began working as prostitutes under the age of eighteen. One large study reported 78 per cent of prostituted women started under eighteen, with an average entry age of 16; a majority – 62 per cent – started under the age of 16.<sup>68</sup>

One of the more shocking cases of underage prostitution brought the issue into public focus around the country. A 12-year-old girl was prostituted by her mother and the mother’s partner, Gary John Devine, to over 100 men from Devine’s flat in Glenorchy, Tasmania.<sup>69</sup> The case made national news again late in 2011 when former Tasmanian Upper House member Terry Martin received a manifestly inadequate 10-month suspended sentence for having sex with the girl.<sup>70</sup>

Before this case, an inquiry into the ACT’s prostitution laws was prompted by the death of Janine Cameron, who died of a heroin overdose in a legal brothel.<sup>71</sup> She was just six weeks past her 17<sup>th</sup> birthday and had had a drug addiction for two years before her death.

In New South Wales in 2010, a mother was jailed for prostituting her 16-year-old daughter through an escort agency.<sup>72</sup>

<sup>65</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, p. 8

<sup>66</sup> Claude (2010), *Targeting the Sex Buyer*, p. 32

<sup>67</sup> ECPAT International (2001), *Facts and figures: even one child is one too many*, [http://www.ecpat.net/worldcongressIII/PDF/Background/Briefing%20notes\\_2001/Note%20%20statistics.pdf](http://www.ecpat.net/worldcongressIII/PDF/Background/Briefing%20notes_2001/Note%20%20statistics.pdf)

<sup>68</sup> Waltman (2011), ‘Sweden’s prohibition of purchase of sex’, p 451.

<sup>69</sup> Sally Glatzer (March 23, 2010), *The Mercury*, “Tasmanian man prostituted 12-year-old and shared proceeds with mother”, <http://www.heraldsun.com.au/news/tasmanian-man-prostituted-12-year-old-and-shared-proceeds-with-mother/story-e6frf7jo-1225844141520>.

<sup>70</sup> ABC (November 30, 2011), “Former MP Terry Martin walks free”, <http://www.abc.net.au/news/2011-11-29/20111129-terry-martin-sentenced/3702258?site=hobart>

<sup>71</sup> N Towell and V Violante (2008, November 1) ‘Death of innocence: Janin 17, lost to the night’, *The Canberra Times*, <http://www.canberratimes.com.au/news/local/news/general/death-of-innocence-janin-17-lost-to-the-night/1349314.aspx>

<sup>72</sup> AAP (2010, October 19), ‘Mother jailed for prostituting daughter’, *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/mother-jailed-for-prostituting-daughter-20101019-16s8q.html>

The New Zealand experiment with decriminalising prostitution has not reduced the problem of underage prostitution and may have led to an increase.<sup>73</sup>

The evidence suggests that legalisation or decriminalisation systems may lead to an increase in underage prostitution by increasing the demand for sexual services and with it the illegal sector.

Consider the following testimony from a former prostituted woman working in Canberra:<sup>74</sup>

*I was in the sex industry for 15 years. During that time it was Northside Studio's that had the bad rep, with Exotic Studio's running a close second . . .*

*Underage workers back then were a dime a dozen. Managers did everything they could to keep them employed and always covered the I.D part of it. Police raids were always "pencilled in the diary" so Owners knew when to remove the girls from the premises. Many of these young girls came into the industry because they knew someone already working, or had an older partner who paved the way for them. Many already had drug habits and the ones who didn't use drugs, very quickly joined the side which did. They used Speed to stay awake longer and make more money, they used Heroin to take away the emotion of the job, they drank to put on a false mask of happiness and they smoked weed to wind down at the end of the night, only to get up and do it all over again. Most of the owners took on a parental/mentor type role with these young girls, encouraging them to do whatever they had to do to make more money. Often these girls were told how 'lucky' they were to have this opportunity as no other industry could offer a 16/17 yr old \$600 per shift . . . They glamorised the Sex Industry, they built up their egos and they discarded them when they were no longer of any value. By this time these poor girls had already experienced a lifetime of trauma and depression and were not yet even in their 20's . . .*

*Customers want young girls, it is the most common request all places get. They want new faces, younger, more naive and easier to manipulate. The owners want the regular trade so they give the customers what they want. The only time the sex industry is investigated is times like now, when there has been a death on premises. After the media attention dies down everything will be business as usual again . . .*

## Health and Safety Concerns

Another justification for legalising prostitution is to protect the health and safety of prostituted women. Evidence shows, however, that the harm done to women even in a legal, so-called "safe" prostitution environment is tragically high and far exceeds what would be deemed acceptable levels for any other industry. Even if a regulated brothel is safer than an unregulated brothel or other forms of unregulated prostitution, as has been shown, the illegal prostitution sector increases when prostitution is legal. The minimal increases in safety to prostituted women working in regulated brothels is far offset by the increase in overall prostitution.

Prostitution is an inherently unsafe occupation which presents various risks to both women and men, but particularly to women. These risks include sexually transmitted diseases, violence and

<sup>73</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, p. 2

<sup>74</sup> The Riot ACT (2008, November 5), 'An insider's view of the Canberra sex industry', *The Riot ACT*, <http://the-riotact.com/an-insiders-view-of-the-canberra-sex-industry/9573>



abuse from their pimps and their male clients, psychological harm, drug use, and even a higher rate of murder among prostituted women.

### ***Sexually Transmitted Infections***

The nature of prostitution means that the women involved are at high risk of sex-related health issues. An occupation which brings a woman into sexual contact with multiple men on an almost daily basis will pose unavoidable dangers to the health of that woman.

The Queensland legislation acknowledges that prostitutes face these risks, with the law requiring rooms to be sufficiently lit so that prostitutes can identify visible signs of sexually transmitted infections. However, this addresses only a small part of the greater problem of STIs, as either a prostitute or a client may be carrying an STI without either of them being aware or showing any visible signs. Furthermore, it may not always be possible for a prostitute to check for visible STI symptoms or do anything if those symptoms are seen.

The requirement for prostitutes to have regular health checks does not create a safe environment. The Crime and Misconduct Commission noted in its 2004 evaluation of the Queensland legislation that examination samples cannot be analysed immediately, and that clinicians cannot provide a certificate to prostitutes stating that they are not carrying an STI – they can only provide a certificate stating that the prostitute was not infective at the time of examination.<sup>75</sup> Several submissions to the CMC discussed the long “incubation period for diseases such as gonorrhoea (2-8 days) and syphilis (2-8 weeks) [which] means that ‘any girl who is cleared on a Monday morning could have the infection passed on to her by her first client that afternoon’”, and go on to infect each subsequent client until her next health check.<sup>76</sup>

Far from a satisfying solution to the risk of STIs, the requirements demonstrate the inherent risk of STIs. They do not protect the prostituted woman from infection; at best they go some way to preventing the infection passing on to men, and even this is uncertain when checkups occur only every few months.

The CMC’s 2011 follow-up review to their 2004 evaluation contains only a brief discussion of health<sup>77</sup> and safety.<sup>78</sup> It notes the risks associated with overseas and temporary prostitutes.<sup>79</sup> The report then acknowledges the “increasing number of migrant sex workers and the potential risks they pose to the health of the industry and the community”, given a shortage of “linguistically and culturally appropriate health advisory services”.<sup>80</sup>

Basil Donovan’s report into the prostitution industry in Western Australia shows that very few women in prostitution in Perth brothels engage in intercourse without using condoms, but most are requested to do so at least once a week.<sup>81</sup> Medical testing of the brothel prostitutes in Donovan’s report showed low rates of current infection, but self-reporting indicated that a quarter had a

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<sup>75</sup> CMC (2004), *Regulating Prostitution*, p. 59

<sup>76</sup> Ibid. p 59.

<sup>77</sup> CMC (2011), *Regulating Prostitution: A follow-up review*, pp 39-41.

<sup>78</sup> Ibid. pp 42-44.

<sup>79</sup> Ibid. p 40.

<sup>80</sup> CMC (2011), *Regulating Prostitution: A follow-up review*, pp 41.

<sup>81</sup> Basil Donovan (2010), *The Sex Industry in Western Australia: A Report to the Western Australian Government*, National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, [http://www.nchechr.unsw.edu.au/nchechrweb.nsf/resources/SHPReport/\\$file/WASexReport.pdf](http://www.nchechr.unsw.edu.au/nchechrweb.nsf/resources/SHPReport/$file/WASexReport.pdf), p 14.

history of blood-borne viruses or STIs.<sup>82</sup> These figures may appear “low” but in any other context would not be acceptable.

Not only does the risk of STIs cause concern for the women involved, it is also a public health issue. Some researchers have claimed that 85 per cent of prostitution clients in the US have regular sexual partners and 60 per cent are married<sup>83</sup> and that most Swedish clients are married or partnered<sup>84</sup> and as many as 40 per cent have children.<sup>85</sup> The UK Home Office has said their profile of a typical client was “around 30 years of age [and] married”.<sup>86</sup> There is no reason to believe that the typical Australian prostitution client would not likewise be sexually active on a regular basis, carrying the health risks associated with prostitution across to the non-prostitute-using community.

Furthermore, as the Schloenhardt report suggests, even if prostitutes could be considered “safe” for clients, the prostitutes themselves are still at risk of acquiring STIs from clients who are infected. Men are not required to undergo health checks or provide certification that they are free from STIs, and such requirements would be very difficult or impossible to implement or enforce.

The inherent risks of prostitution are of great concern, both to the wider community and to the prostituted women who come into contact with hundreds of men over the course of their working lives. This is alarming as a public health issue. As an occupational health and safety issue, such a risk would be unacceptable in any other profession or in any organisation. Measures may be taken to reduce the risks but will never reduce them to an acceptable level.

### **Violence**

Prostituted women are constantly at risk of violence and abuse from the men who use them. Fifty percent of Sydney street prostitutes report violence as part of their work. While the rate for brothel and private prostitutes is much lower, an unacceptably high 5 to 10 per cent report some form of violence at work, including robbery with violence, rape, bashing, and stabbing.<sup>87</sup>

Waltman reports homicide rates for prostituted women in the USA at 204 per 100,000, a rate “many times higher” than other “standard occupations that had the highest workplace homicide rates”, including four per 100,000 for female liquor store workers and 29 per 100,000 for male cab drivers.<sup>88</sup> The homicide rate in Canada is estimated to be 40 times higher than the national average.

This rate of violence would not be accepted in any other context, let alone in any work environment. The secluded nature of prostitution activities exacerbates the risk of this, as does the fact that female prostitutes are usually paired with male buyers. This further reflects the inherent gender inequality of prostitution.

### **Psychological harm**

In 2010 a team led by Basil Donovan from the National Centre in HIV Epidemiology and Clinical Research at the University of New South Wales produced a report into the sex industry in Western

<sup>82</sup> Donovan et al (2010), *The Sex Industry in Western Australia*, p 15

<sup>83</sup> Farley (2009), *Myths and Facts about Trafficking and Illegal Prostitution*, <http://www.prostitutionresearch.com/Myths%20&%20Facts%20Legal%20&%20Illegal%20ProstitutionMelissaFarley3-09.pdf>, p 2.

<sup>84</sup> Ekberg (2007), *Update on Swedish Model of Sex Industry Reform*, p 5

<sup>85</sup> Claude (2010), *Targeting the Sex Buyer*, p 7.

<sup>86</sup> Home Office (2004), *Paying the Price*, p 17.

<sup>87</sup> Donovan et al (2010), *The Sex Industry in Western Australia*, p 5

<sup>88</sup> Waltman (2011), ‘Sweden’s prohibition of purchase of sex’, p 453.

Australia, conducting a survey (“the LASH survey”) of prostituted women in Western Australia and some other states. The survey found that ten per cent of Perth brothel prostitutes – twice the proportion of the general population – were found to be “severely distressed” psychologically, and that this was strongly associated with drug use.<sup>89</sup> The LASH survey also found that 11.7 per cent of Perth brothel-based women had scores indicating “extreme distress” on the Kessler 6 scale. This number was similar to the Melbourne and Sydney samples and nearly three times that of the general population.<sup>90</sup> The survey found that about a quarter (24.6 per cent) of Perth women in prostitution reported having no supportive relationship in their life, a similar number to their Melbourne and Sydney samples.<sup>91</sup> Street prostitutes suffer mental health problems at a much higher rate than the general population, with nearly half of Sydney street prostitutes meeting the criteria for post-traumatic stress disorder.<sup>92</sup> One American study estimates that, by comparison, about 7 or 8 per cent of the population suffers from post traumatic stress at some point in their lives.<sup>93</sup>

### ***Drug use***

The LASH survey found that over a quarter of Perth brothel prostitutes (25.7 per cent) reported using marijuana, more than 1 in 5 (22.9 per cent) reported using speed, and about a sixth (16.6 per cent) reported using ecstasy in the previous twelve months. Cocaine use was reported at 6.9 per cent.<sup>94</sup> Donovan’s study shows that “only” 7 to 17 per cent of brothel or outcall prostitutes report injecting drugs, a figure that rises for certain groups, such as teenagers and occasional prostitutes, and is high in street prostitutes (>85 per cent).<sup>95</sup>

### ***Tobacco consumption***

Another health issue associated with prostitution is the level of tobacco consumption, with up to 82 per cent of women in prostitution reporting as cigarette smokers.<sup>96</sup> This is in marked contrast with the general population. In 1995, 24 per cent of Australians smoked,<sup>97</sup> and by 2007 this was estimated to have dropped to 19 per cent.<sup>98</sup>

### ***Health and safety summary***

Legalising prostitution normalises an industry which is inherently harmful and dangerous. Despite the aim of improving health and safety standards for prostituted women, liberalising prostitution laws has the opposite effect.

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<sup>89</sup> Donovan et al (2010), *The Sex Industry in Western Australia*, p. 37

<sup>90</sup> Ibid. p 16.

<sup>91</sup> Ibid. p 16.

<sup>92</sup> Ibid. p 5.

<sup>93</sup> Psychiatric Disorders, ‘Post-Traumatic Stress Disorder (PTSD)’, <http://www.psychiatric-disorders.com/articles/ptsd/index.php>

<sup>94</sup> Donovan et al (2010), *The Sex Industry in Western Australia*, p. 16

<sup>95</sup> Ibid. p 5.

<sup>96</sup> Ibid. p 5

<sup>97</sup> Australian Bureau of Statistics (2000), 4102.0 - *Australian Social Trends*, <http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/4102.0Media%20Release22000?opendocument&tabname=Summary&prodno=4102.0&issue=2000&num=&view=>.

<sup>98</sup> Australian Women Online (2009, September 12), ‘Dramatic drop in the number of smokers in Australia’, *Australian Women Online*, <http://www.australianwomenonline.com/dramatic-drop-in-the-number-of-smokers-in-australia/>.

### **Inherent inequality in prostitution**

Prostitution is overwhelmingly a service provided by women for men. It is inherently unequal in terms of power and control exercised by the male clients over the female prostitutes. It was the concern for gender equality in general that drove reformation of Swedish prostitution laws.

If New South Wales regards respect for women and equality as important social principles, sanctioning prostitution is sending the wrong message.

### **Education**

Donovan noted a lack of education resources in Perth brothels,<sup>99</sup> with only 25 per cent having health education resources for their workers and only one having information for clients. Although these figures were higher in Melbourne (61 per cent and 40 per cent) and Sydney (40 per cent and 5 per cent), health resources and information for both those working in prostitution and the men who use them are by no means universal in brothels in those cities.<sup>100</sup>

### **Exit programs**

A key component of the Nordic approach to prostitution includes support for women who want to leave the industry. Research suggests that leaving prostitution is an extremely difficult process for prostituted women, despite the fact that a large percentage want to. Research in Queensland suggests that more than 35 per cent of women in legal brothels and single operator prostitution want to leave the industry and about half of women on the street want to leave.<sup>101</sup>

New Zealand research has estimated that between two thirds and four fifths of prostituted women had tried to leave prostitution, but only 20-25 per cent had been successful in doing so.<sup>102</sup> Reasons why it is so difficult include alienation from normal support groups, a tendency not to seek assistance, a lack of knowledge of social services, money, sexual abuse, and an inability to plan ahead.<sup>103</sup>

The social stigma surrounding prostitution may be one reason women in prostitution are reluctant to seek assistance. Rather than trying to remove the stigma by continuing with a decriminalised industry, ACL submits that the NSW Government should implement programmes with the aim of helping prostituted women exit the industry and assist with trauma counselling, drug support, medical support etc.

### **Organised Crime**

In addition to the issue of illegal prostitution and sex trafficking, prostitution may have links to organised crime. As discussed above, at least two brothels in Sydney have been found to be associated with an international trafficking and sex slavery ring. One of the brothels specialises in Korean prostitutes and was “closely linked to the Comanchero outlaw motorcycle club and senior Asian organised crime figures”.<sup>104</sup>

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<sup>99</sup> Donovan et al (2010), *The Sex Industry in Western Australia*, p 37.

<sup>100</sup> Ibid. p 13.

<sup>101</sup> CMC (2004), *Regulating Prostitution*, p 21.

<sup>102</sup> Maxim Institute (2007), *Submission to the Prostitution Law Review Committee*, p 7.

<sup>103</sup> Ibid. p 7.

<sup>104</sup> McKenzie et al, (October 10, 2011), ‘Legal brothels linked to international sex trafficking rings’, *The Sydney Morning Herald*.

In the ACT, Chief Police Officer Roman Quaedvlieg has said that the police regularly receive information about criminal activity regarding prostitution including drugs, overstaying of visas, sexual servitude and exploitation of minors. Prostitution “still attracts the kind of people around which crime fringes do occur”.<sup>105</sup>

### Sex trafficking

Australia is considered a destination for sex trafficking by the US Department of State, which noted in 2010 that women from Southeast Asia, China, and South Korea may come to Australia voluntarily to work in both legal and illegal brothels, but “under conditions that amounted to debt bondage or sexual servitude.”<sup>106</sup> The Department of State’s 2012 *Trafficking in Persons Report* made the following comment:

*Some women from Thailand, Malaysia, South Korea, China, and, to a lesser extent, India, Vietnam, Eastern Europe, and Africa migrate to Australia voluntarily intending to work legally or illegally in a number of sectors, including the sex trade. Subsequent to their arrival, however, some of these women are coerced into prostitution in both legal and illegal brothels. There were news reports that some Asian organized crime groups recruit Asian women to migrate to Australia, sometimes on student visas, and then subsequently coerce them into the sex trade. The women and girls are sometimes held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, and obliged to pay off unexpected or inflated debts to their traffickers.*<sup>107</sup>

Citing a UN Save the Children report, the UK Home Office said in 2004 that:

*Victoria and New South Wales were the two worst states for the abuse of children through prostitution. The trafficking of East Asian women for the purpose of prostitution was also found to be a growing problem.*<sup>108</sup>

A study by the University of Goettingen (hereafter “Cho”) ranked Australia as a high volume destination country for trafficking.<sup>109</sup> The study found a link between sex trafficking and legalised prostitution, as discussed below.

The reports indicate that the trafficking of women from Southeast Asia is of particular concern. Recently, the Seoul Metropolitan Police Agency arrested 18 Korean pimps who were involved in trafficking women into Australia to work as prostitutes, including to brothels in Sydney.<sup>110</sup>

<sup>105</sup> D Stockman (2010, August), ‘Prostitution-related crime blitz’, *The Canberra Times*

<sup>106</sup> US Department of State (2009), *2009 Human Rights Reports: Australia*, <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135985.htm>.

<sup>107</sup> US Department of State (June 2012), *Trafficking in Persons Report*, <http://www.state.gov/documents/organization/192594.pdf>, p 73.

<sup>108</sup> Home Office (2004), *Paying the Price: a consultation paper on prostitution*, Home Office Communication Directorate, [http://news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/16\\_07\\_04\\_paying.pdf](http://news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/16_07_04_paying.pdf), p 85. Emphasis added.

<sup>109</sup> Cho (2012), *Does Legalized Prostitution Increase Human Trafficking?*, Appendix B, p 30, citing the United Nations Office On Drugs and Crime.

<sup>110</sup> Kim Young-won (June 29, 2012), ‘Korean pimps caught trafficking in Australia’, *The Korea Herald*, <http://view.koreaherald.com/kh/view.php?ud=20120629000874>.

A number of other incidents highlight the problem of trafficking in eastern Australia, including New South Wales. In 2012, a Korean woman thought to work at a nearby brothel was set alight in Chippendale, suffering severe burns.<sup>111</sup>

In 2011, *The Sydney Morning Herald* and *The Age* reported that several legal brothels located in Sydney and Melbourne were linked to an international human trafficking and sex slavery ring. At least two brothels in Sydney were associated with the ring, including one which specialises in Korean prostitutes which was “closely linked to the Comanchero outlaw motorcycle club and senior Asian organised crime figures”.<sup>112</sup>

The authors reported that there have been 308 federal investigations of trafficking allegations, with 181 victims identified, including 147 women forced into sex slavery.<sup>113</sup> According to the authors, victims are forced into unsafe sex, work up to seven days a week, and have no knowledge of the money they earn for their pimps or how much of their “debt” has been paid off.<sup>114</sup>

In February 2012, a Chinese-Cambodian man was charged with human trafficking offences when three young Thai women claimed they had been lured to Australia from Thailand on the promise of student visas. The women, believed to be under the age of eighteen, were then held as sex slaves in a Sydney brothel.<sup>115</sup>

The reports indicate that victims of trafficking into Australia are mainly from Southeast Asia, and as the stories cited above show, the known victims and criminals usually have ties to that region. Trafficking and exploitation of prostituted women in Sydney is a significant issue.

Studies of the demographics of brothels increase these concerns. According to the LASH report, only 50.9 per cent of the women surveyed in Western Australia were born in Australia, while 28.6 per cent were born in Asian or other non-English speaking countries, and – of particular concern – almost one in five reported only “fair” or “poor” English skills.<sup>116</sup>

In New South Wales, different sources suggest that over half of women in brothels were born in Asia. Donovan (2010) found 53% of prostituted women in brothels were Asian-born, while a CSIRO publication found that over 54% of Western Sydney prostitutes were born overseas.<sup>117</sup>

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<sup>111</sup> NSW Police Force (19 July, 2012), ‘Teenager charged with attempted murder after woman set alight – Chippendale’, Media Release, [http://www.police.nsw.gov.au/news/media\\_release\\_archive?sq\\_content\\_src=%2BdXJsPWh0dHBzJTnBJTJGJTJGd3d3LmViaXoucG9saWNlLm5zdy5nb3YuYXUIMkZtZWRpYSUyRjI0NDQyLmh0bWwYwxsPTE%3D](http://www.police.nsw.gov.au/news/media_release_archive?sq_content_src=%2BdXJsPWh0dHBzJTnBJTJGJTJGd3d3LmViaXoucG9saWNlLm5zdy5nb3YuYXUIMkZtZWRpYSUyRjI0NDQyLmh0bWwYwxsPTE%3D).

<sup>112</sup> McKenzie et al, (October 10, 2011), ‘Legal brothels linked to international sex trafficking rings’, *The Sydney Morning Herald*.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Rachel Olding (February 3, 2012), ‘Tip-off leads to trio of young Thai women who were ‘held as sex slaves’’, *The Age*, <http://www.theage.com.au/national/tipoff-leads-to-trio-of-young-thai-women-who-were-held-as-sex-slaves-20120202-1gynu.html>.

<sup>116</sup> Donovan et al, (2010), *The Sex Industry in Western Australia: A Report to the Western Australian Government*, National Centre in HIV Epidemiology and Clinical Research, University of New South Wales, [http://www.nchechr.unsw.edu.au/nchechrweb.nsf/resources/SHPReport/\\$file/WASexReport.pdf](http://www.nchechr.unsw.edu.au/nchechrweb.nsf/resources/SHPReport/$file/WASexReport.pdf), pp 11-12.

<sup>117</sup> Kakar et al, (2010) *A retrospective case note review of sex worker attendees at sexual health clinics in the western suburbs of Sydney*, CSIRO Publishing, p 4.

These figures are substantially higher than for the general population,<sup>118</sup> with only 26 per cent of Australians in 2008 born in any overseas country, mostly UK or New Zealand. The discrepancy should at least raise concerns that this is due to the known sex trafficking problem connected to Asia.

Compared to Sydney, Donovan (2010) found less than a quarter of prostituted women in Perth brothels were Asian-born, a similar figure to Melbourne, further highlighting the disproportionate number of Asian-born women in Sydney brothels.

### ***The connection between legal prostitution and human trafficking***

Despite the fact prostitution has been regulated for many years, sex trafficking remains a problem in New South Wales. There is good reason to believe that decriminalising prostitution not only fails to combat sex trafficking but actually increases it. As the Queensland Crime and Misconduct Commission has said, “sex trafficking appears to be one of the unfortunate consequences of an industry driven by excessive demand for services with insufficient safeguards to protect vulnerable people”.<sup>119</sup>

Gunilla Ekberg, the Co-Executive Director of the Coalition Against Trafficking in Women, also argues that prostitution and human trafficking are intrinsically linked.<sup>120</sup> This is evidenced by the decrease in trafficking since Sweden introduced its approach to prostitution.

The Swedish laws have led to a “concrete decrease in the number of victims” of human trafficking.<sup>121</sup> According to the European Parliament “traffickers have had problems finding enough sex buyers in Sweden, the demand has been much lower than expected.”<sup>122</sup> Police wiretaps have confirmed that criminal groups view Sweden as a poor market, and the illegal brothels that do exist are small in scope.<sup>123</sup> The National Rapporteur on Trafficking in Human Beings has estimated that around 400-600 women were trafficked into Sweden, a considerably smaller number than in surrounding countries, and the law has had “direct and positive effects on the trafficking of human beings for sexual purposes to Sweden and that Sweden is no longer an attractive market for traffickers”.<sup>124</sup>

The University of Goettingen study supports these arguments. The study analysed data from 150 countries and concluded that “countries with legalized prostitution have a statistically significantly larger incidence of human trafficking inflows”.<sup>125</sup>

When prostitution is legalised, even with some reduction in demand for trafficked women *compared to legal prostitutes*, the expansion of the prostitution market leads to an increase in human trafficking overall.<sup>126</sup>

<sup>118</sup> Australian Bureau of Statistics (2010), *1301.0 - Year Book Australia*, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/92C0101965E7DC14CA25773700169C63>.

<sup>119</sup> CMC (2004), *Regulating Prostitution*, p. 27

<sup>120</sup> Ekberg (2007), *Update on Swedish Model of Sex Industry Reform*, p. 3

<sup>121</sup> European Parliament (2005), *Study on National Legislation on Prostitution and the Trafficking in Women and Children*, [http://ec.europa.eu/anti-trafficking/download.action;jsessionid=h932NJLT8bGTNJKlpWq3vpfs2vJD1ZsvZmtkJdhKNPD5Sw4txpVl-285985297?nodeId=94d50494-83a2-4787-8f70-7e55ae564ba2&fileName=Study+on+National+Legislation+and+Prostitution\\_en.pdf&fileType=pdf](http://ec.europa.eu/anti-trafficking/download.action;jsessionid=h932NJLT8bGTNJKlpWq3vpfs2vJD1ZsvZmtkJdhKNPD5Sw4txpVl-285985297?nodeId=94d50494-83a2-4787-8f70-7e55ae564ba2&fileName=Study+on+National+Legislation+and+Prostitution_en.pdf&fileType=pdf), p 133.

<sup>122</sup> Ibid. p 133.

<sup>123</sup> Ministry of Justice (2010), *Selected extracts of the Swedish government report SOU 2010:49: The Ban against the Purchase of Sexual Services. An evaluation 1999-2008*, p. 29.

<sup>124</sup> Ekberg (2007), *Update on Swedish Model of Sex Industry Reform*, p. 5

<sup>125</sup> Cho (2012), *Does Legalized Prostitution Increase Human Trafficking?*, p 1.

<sup>126</sup> Ibid. p 17.

In order to allow for the limitations of their cross-sectional study, Cho et al examined three case studies – Germany, Denmark, and Sweden, each with different prostitution regimes.

Denmark, which allows sole prostitution but prohibits brothels, has about four times the number of prostitutes overall, and four times the number of trafficking victims as Sweden. This is despite the fact that Sweden has a 40% larger population. Germany, in which prostitution is regulated as though it were a normal occupation, has about 150,000 prostitutes, or 60 times the number in Sweden, and about 33,000 sex trafficking victims, again about 60 times the number in Sweden. Germany's population is only about ten times Sweden's.<sup>127</sup>

When looking at the annual estimates of sex trafficking victims in Germany from 1996 to 2004, the number of victims decreased until 2001 when it hit a minimum, and increased after legalisation of prostitution in 2002. The authors state that this trend is “consistent with our result from the quantitative analysis indicating that the legalization of prostitution leads to an increase in inward trafficking”.<sup>128</sup>

The United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, to which Australia is a signatory, requires States Parties to “take or strengthen measures . . . to alleviate the factors that make persons, especially women and children, vulnerable to trafficking”.<sup>129</sup> This refers to factors such as “poverty, underdevelopment and lack of equal opportunity”.<sup>130</sup> Collateral factors which contribute to making women and children vulnerable to trafficking include the inherent inequality of prostitution, an industry dominated by female supply and male demand, as well as other factors such as greater susceptibility among women and children to abuse, intimidation, coercion, and so on. Poverty is often a contributing factor to a woman's “choice” to work as a prostitute and increases her vulnerability to debt bondage and trafficking.

Clearly prostitution is a factor which makes women and children vulnerable to trafficking. As noted above, the United Nations also urges States Parties to take measures to discourage the demand that fosters exploitation which may in turn lead to trafficking.<sup>131</sup> The Community Relations Commission inquired into the exploitation of women through trafficking. This inquiry into brothel regulation must recognise the inherent link between legal prostitution and trafficking. The NSW Government must acknowledge that the current prostitution laws are driving the sex trafficking industry and must take measures to address the demand for prostitution that drives this trafficking.

### **Ongoing reporting in the media shows that Sydney councils need more support to tackle this issue**

In 2010, Parramatta City Council attempted to ban brothels from the Parramatta Local Government Area, passing a resolution to this effect. The resolution was a joint effort with support from Liberal, Labor, and independent councillors, but was ineffective because the Court was able to continue to

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<sup>127</sup> Ibid. p 19.

<sup>128</sup> Ibid. p 20.

<sup>129</sup> United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, Article 9.4.

<sup>130</sup> Ibid. Article 9.4.

<sup>131</sup> Ibid. Article 9.5



approve brothel applications. In the previous year, the Council had fought eight brothel applications in the Land and Environment Court and lost seven.<sup>132</sup>

The Hills Shire Council, an area which has a high number of families and large faith communities, has also attempted unsuccessfully to ban brothels.<sup>133</sup>

In 2011, the Independent Commission against Corruption found Willoughby Council building inspector Edward Karkowski had been accepting sexual services in return for turning a blind eye to the operation of a Chatswood brothel. Despite court orders shutting down the site, the council continued to have troubles after another brothel opened on the same location.<sup>134</sup>

The largest brothel in Australia, planned for Camperdown, was initially refused by Sydney City Council in 2012, but the Council's decision was overturned by the Land and Environment Court.<sup>135</sup> Sydney City Council, unlike some other councils, is not consistently opposed to the development of any brothels within the area, but objected to what one Liberal Councillor referred to as the "Westfield of brothels".<sup>136</sup> Last year it was revealed that Sydney Council spent an average of \$10,000 per year on private investigators.<sup>137</sup>

Central Park, the recently built high rise complex in Chippendale, has had issues this year as some tenants have been operating their apartments as brothels, according to media reports. Some of the offending tenants were evicted but council has reportedly told residents that they would have to pay for private investigators themselves if they wanted anything done.<sup>138</sup>

Brothel owners in Sydney are not always responsible members of the community. In 2009, two women Suellen Domingues Zaupa and Victoria McIntyre were killed in Elizabeth Bay after Suresh Nair, a customer, overdosed the women on cocaine. It has been reported that the brothel from which the women worked, knew that Suresh was dangerous and ignored the warnings.<sup>139</sup> Another alarming example is the media report from 2014 that Brothel owners banned from Victoria for employing under age prostitutes, have been setting up shop in Sydney.<sup>140</sup>

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<sup>132</sup> Di Bartok and Steven Deare (November 23, 2010), '10 per cent of Sydney brothels in Parramatta and Holroyd', *Parramatta Advertiser*, <http://parramatta-advertiser.whereilive.com.au/news/story/ten-percent-of-sydney-brothels-in-parramatta-and-holroyd/>.

<sup>133</sup> Josephine Tovey (June 3, 2010), 'Hills folk reject oldest profession', *Sydney Morning Herald*, <http://www.smh.com.au/nsw/hills-folk-reject-oldest-profession-20100602-wzul.html>. Also, Josephine Tovey (October 27, 2010), 'Family values' shire loses brothel ban bid', *Sydney Morning Herald*, <http://www.smh.com.au/nsw/family-values-shire-loses-brothel-ban-bid-20101026-172ef.html>.

<sup>134</sup> Eamonn Duff, (September 28, 2014) 'Brothel operates on site shut by court', *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/brothel-operates-on-site-shut-by-court-20140926-10ml9p.html>

<sup>135</sup> Leasha McKenny (June 20, 2012), 'Brothel to expand, but with new limits', *Sydney Morning Herald*, <http://www.smh.com.au/nsw/brothel-to-expand-but-with-new-limits-20120619-20m5q.html>.

<sup>136</sup> AAP (September 20, 2011), 'Scheme to create the 'Westfield of brothels' is rejected', *Sydney Morning Herald*, <http://www.smh.com.au/nsw/scheme-to-create-the-westfield-of-brothels-is-rejected-20110919-1ki1k.html>.

<sup>137</sup> Eamonn Duff, (September 21, 2014) 'Councils hire sex spies to catch parlours in the act', *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/councils-hire-sex-spies-to-catch-parlours-in-the-act-20140920-10jigg.html>

<sup>138</sup> Frank Chung, (February 27, 2015) 'High-rise happy endings: Illegal prostitution thriving at swanky Central Park complex', *News.com.au*, <http://www.news.com.au/finance/real-estate/high-rise-happy-endings-illegal-prostitution-thriving-at-swanky-central-park-complex/story-fncq3era-1227239483540>

<sup>139</sup> Eamonn Duff, (May 25, 2014) 'Brothels ignored warning on neurosurgeon Suresh Nair' *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/brothels-ignored-warning-on-neurosurgeon-suresh-nair-20140524-38vk9.html>

<sup>140</sup> Matthew Benns (March 08, 2014), 'Brothel owners banned in Victoria for employing underage prostitutes now running big brothels in Sydney', *The Daily Telegraph*, <http://www.dailytelegraph.com.au/news/nsw/brothel-owners-banned-in-victoria-for-employed-underage-prostitutes-now-running-big-brothels-in-sydney/story-fni0cx12-1226848537447>.

North Sydney Council made multiple attempts to shut down the White Cat massage parlour premise in Crow's Nest with multiple closure orders being served.<sup>141</sup> It was also revealed in October last year that this premises was paying Australian and Asian prostitutes at different rates.<sup>142</sup> North Sydney council has also had issues with private residential complexes being used as brothels.<sup>143</sup>

Hornsby Council fought and lost a landmark legal battle in March this year to shut down a massage parlour that it alleged was operating an illegal brothel 50 meters from Hornsby Girl's High School. The council spent more than \$100,000 fighting the case. This case has been a significant blow to council's efforts to shut down brothels. In dismissing the case, the judge ruled that the evidence of sex being sold on the premises fell short of satisfying the definition of brothel under law. According to one report, the outcome means that councils would have to pay investigators to visit brothels multiple times to collect evidence,<sup>144</sup> presumably adding significant costs to council's efforts to shut down brothels.

Brothel Busters owner Chris Seage's decision to close his private investigation company in April this year was attributed by Seage to the outcome of the case, describing it as "the straw that broke the camel's back". Mr Seage has indicated that he believes it would be wrong to continue accepting work from councils when there is no legal framework to use the evidence. Seage has argued that the decision of the court means that brothels now feel safe they will not be prosecuted for operating in breach of council regulations.<sup>145</sup>

A report by the Kirby Institute provides data on brothels approved since 1996 in 27 Sydney councils. Of 113 brothels approved, 76 have been in either Sydney City or Marrickville. A number of councils, including Ashfield, Burwood, and Kogarah, did not approve any brothels but had court-approved brothels in their LGAs.<sup>146</sup> The 2012 Issues Paper from the Better Regulation Office, *Regulation of Brothels in NSW* states that about 50 per cent of brothels in these Sydney councils excluding Sydney City and Marrickville had not been approved by the local council but by the Land and Environment Court.<sup>147</sup>

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<sup>141</sup> Eamonn Duff, (May 24) 2015) 'North Sydney Council launches legal action against brothel that charges one fee for Asian workers and other for the rest', *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/north-sydney-council-launches-legal-action-against-brothel-that-charges-one-fee-for-asian-workers-and-another-for-the-rest-20150521-gh6s2k.html>

<sup>142</sup> Eamonn Duff, (October 26, 2014) 'Fears of exploitation after low fees for Asian sex workers revealed', *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/fears-of-exploitation-after-low-fees-for-asian-sex-workers-revealed-20141025-11b0td.html>

<sup>143</sup> Eamonn Duff (April 20, 2014) 'Brothels muscle in on North Sydney residential tower' *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/brothels-muscle-in-on-north-sydney-residential-tower-20140419-36xgo.html>

<sup>144</sup> Eamonn Duff, (March 8, 2015) 'Show me more sex, judge tells council in landmark legal case', *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/show-me-more-sex-judge-tells-council-in-landmark-legal-case-20150305-13vx7g.html>

<sup>145</sup> Eamonn Duff, (April 9, 2015), 'I give up: Lawless sex industry prompts brothel buster to call it quits', *The Sydney Morning Herald*, <http://www.smh.com.au/nsw/i-give-up-lawless-sex-industry-prompts-brothel-buster-to-call-it-quits-20150401-1mcswx.html>

<sup>146</sup> The Kirby Institute (2012), 'The Sex Industry in New South Wales: A report to the NSW Ministry of Health', <http://www.kirby.unsw.edu.au/sites/hiv.cms.med.unsw.edu.au/files/hiv/attachment/NSWSexIndustryReportV4.pdf>, p 42.

<sup>147</sup> NSW Government (September 2012), *Regulation of Brothels in NSW*, [http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0006/145077/Issues\\_Paper\\_Regulation\\_of\\_Brothels.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0006/145077/Issues_Paper_Regulation_of_Brothels.pdf), p 32.

### **The reality of prostitution – summary**

Prostitution is a hazardous industry. No young girl aspires to being a prostitute. No parent hopes their daughter will become a prostitute when she grows up. The stigma around prostitution exists not because it is illegal, but because it is unhealthy and unjust. Legalising or decriminalising prostitution cannot remove the stigma in the community, but will increase social acceptance of the industry, and with it the demand. Although legal prostitution may be safer in comparison to illegal prostitution, it is still unacceptably unsafe, and as demonstrated above, the unsafe illegal prostitution industry grows wherever legal prostitution exists.

### **Options for reform**

It may be that the state is unwilling to acknowledge and respond to the harms of prostitution by criminalising the purchase of sex. If this is the case, ACL believes that licencing or registration is not the right alternative solution.

The licensing system in Queensland has failed and many brothels continue to operate unlicensed. Furthermore, the legal status of some brothels increases demand for prostitution, which leads to a growth both in legal and illegal prostitution.

### **Local Government**

Local councils are better placed than the State Government to understand the particular makeup and character of their own areas with greater knowledge of their communities and what is acceptable to them. For this reason they should retain regulatory control of brothels.

To assist in this end, councils should be given greater flexibility than they currently have to determine whether brothels are allowed within their local government area.

The state government should adopt the goal of empowering local government to get on with the job of regulating brothels and remove barriers that frustrate the process. This could be done through legislative change. Councils are spending far too much money and time regulating brothels because planning laws set too high a bar on legal action and do not provide enough flexibility to councils who want to shut non-compliant brothels down. Hornsby Council alone recently paid \$100,000 to fight brothels in its community.<sup>148</sup>

The evidentiary burden and legal costs of shutting down unapproved brothels is placing a strain on councils. Changes to *Environmental Planning and Assessment Act 1979* and the *Planning and Assessment Act 1979* could reduce the hurdles that councils have to jump through to get courts to issue brothel closure orders.

Councils may use advertising of sexual services as evidence that a brothel is operating. This is helpful to councils as it reduces the evidentiary burden of having to obtain actual evidence of the supply of sexual services. Sometimes, however, in order to satisfy the evidentiary burden, councils are compelled to pay private investigators to obtain sexual services from prostitutes in these brothels.

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<sup>148</sup> Eamonn Duff, (March 8, 2015) 'Show me more sex, judge tells council in landmark legal case', *The Sydney Morning Herald*. <http://www.smh.com.au/nsw/show-me-more-sex-judge-tells-council-in-landmark-legal-case-20150305-13vx7q.html>

As a result, costs pile up for councils as they collect this expensive kind of evidence and pay for legal services.

One way to reduce the evidentiary requirements placed on councils might be to relax the kind of complaints required before council can approach the court. Currently, local council must not make an application in relation to a brothel unless it is satisfied that it has received “sufficient complaints” about the brothel. The requirement means that councils must wait for communities to react before initiating court action. Changing requirements within the act could give councils more flexibility to do their job.

Another way councils could have greater flexibility to regulate brothels is by allowing development applications for brothels to be treated differently to other development applications. Currently, councils may consider the “demonstrable social effect” but they may not consider the “offensiveness and morality” of brothels.<sup>149</sup>

The resources required to regulate brothels may also place burdens on councils because brothels may appeal a development application decision to the Land and Environment Court who may then overrule a council’s decision.

The scope of considerations the court may consider when deciding whether to shut down a brothel could also be widened. For example, whether the operation of the brothel interferes with the amenity of the neighbourhood may already be considered by the court, but the amenity impact of a brothel by itself does not encompass the full extent of community concerns with brothels. Other considerations such as the “offensiveness and morality” of the premises might also be appropriate considerations to include in the Act.

Restrictions such as distance from schools or other places frequented by children are important to protect the wellbeing of children. They are already taken into consideration by the courts, but could be given greater emphasis.

New South Wales is not the only Australian jurisdiction where local government is frustrated from doing its job. In 2000, the Local Government Association of Queensland carried a resolution requesting an amendment to the state’s *Prostitution Act*, later introduced by Nationals leader Mike Horan, which would allow councils with populations over 25,000 the right to veto legalised brothels in their area.<sup>150</sup> Although the bill failed in its second reading, it shows that local councils would like greater control over their local communities with regards to brothels. Similar legislation could be introduced in NSW to give councils the power of veto and thereby allow communities to have a stronger say about whether brothels are approved in their area.

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<sup>149</sup> Issues Paper, pp 16, 26-27.

<sup>150</sup> Local Government Association of Queensland (May 16, 2001), ‘Councils Support Horan Amendment to Prostitution Act’, News Release, [http://lgaq.asn.au/archive;jsessionid=ABB90183C84DB04A5F55E894D1011D5A?p\\_p\\_id=62\\_INSTANCE\\_Sq52&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=2&\\_62\\_INSTANCE\\_Sq52\\_struts\\_action=%2Fjournal\\_articles%2Fview&\\_62\\_INSTANCE\\_Sq52\\_groupId=10136&\\_62\\_INSTANCE\\_Sq52\\_articleId=2D51A2B0D2A43BE089BB09DB10ECF05F&\\_62\\_INSTANCE\\_Sq52\\_version=3.0](http://lgaq.asn.au/archive;jsessionid=ABB90183C84DB04A5F55E894D1011D5A?p_p_id=62_INSTANCE_Sq52&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&_62_INSTANCE_Sq52_struts_action=%2Fjournal_articles%2Fview&_62_INSTANCE_Sq52_groupId=10136&_62_INSTANCE_Sq52_articleId=2D51A2B0D2A43BE089BB09DB10ECF05F&_62_INSTANCE_Sq52_version=3.0).

## Conclusion

The various studies examined in this submission make several things clear about the prostitution industry. Firstly, prostitution is harmful to women. It is overwhelmingly purchased by men from women and is founded on inherent inequality between the sexes. Many prostituted women come from disadvantaged backgrounds including backgrounds of sexual abuse and drug use. Many are driven by poverty or, at times, by other people, usually men. There are serious health risks associated with prostitution, including everyday risk of STIs, violence and abuse, and drug use, as well as long term psychological health problems.

Secondly, legalising or regulating prostitution does not eliminate these risks and create a safe industry. It also fails to curb illegal prostitution or sex trafficking, which not only continues to exist but may actually grow in jurisdictions which allow prostitution in some form. The link between legal prostitution and sex trafficking is clearly demonstrated.

This is because legalising prostitution legitimises it and leads to an increased demand for it. It is contrary to a society which values women, and sends a message that it is acceptable for men to demand sexual services from women.

Prostitution is not inevitable. Like any social vice it may always exist in some small form, but as the experience in Sweden demonstrates, it is possible to minimise the harm done by prostitution. Sweden's successful prostitution laws show that focusing on the demand for sexual services is the most effective way of decreasing it and decreasing human trafficking.

Finally, if prostitution is to continue as a legal industry then councils should have the final authority to approve or reject brothels. The role of local councils should be respected and greater flexibility must be given to them to reduce the cost of regulating brothels. Local government should be empowered to regulate the character of their local community in light of the proven social impacts and community harms that come from prostitution.

This inquiry is an opportunity to introduce the Nordic approach to prostitution and criminalise the purchase of sex. This is an opportunity for New South Wales to lead the way with an important, progressive reform.



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**18 August 2015**