

INQUIRY INTO THE REGULATION OF BROTHELS

Organisation: Queensland Government Prostitution Licensing Authority
Name: Mr Marshall Irwin
Position: Chairperson
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25 August 2015

Mr Alister Henskens SC, MP
Chair
Select Committee on the Regulation of Brothels
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Mr Henskens

Thank you for your correspondence seeking a submission from the Prostitution Licensing Authority in the context of the Select Committee on the Regulation of Brothels inquiry into the regulation of brothels in New South Wales (NSW).

On 15 October 2012, my predecessor as Chairperson, Mr Manus Boyce QC, provided a submission on options for sex industry law reform in NSW, with particular regard to the issues paper, *Regulation of Brothels in NSW*, published by the Better Regulation Office, at the request of Mr Stephen Brady, Deputy Director General (Strategic Initiatives and Performance), NSW Government Department of Premier and Cabinet.


This submission is attached for the information of your committee. As the new Chairperson of the Authority, I endorse the remarks of my predecessor, which remain relevant.

At the time that Mr Boyce made his submission, there were 23 licensed brothels in Queensland. The sector reached its peak on 4 July 2014, with the opening of the 27th brothel. The size of the sector has since declined, so that there are currently 24 licensed brothels, clustered mainly in south-east Queensland. There is the prospect that brothel numbers may further decline in 2014-15. However, the continued operation of brothels is a matter for individual licensees.

Brothel licences are valid for a period of three years, unless sooner surrendered, suspended or cancelled. They may be renewed at the end of this period. Fees must be paid annually. For a five-room brothel (the maximum number of rooms permitted by the *Prostitution Act 1999* and the most common) the initial brothel licence fees are \$34,060, then \$31,535 at the end of each of the first and second years.

I trust that this information is of use to your committee. Please do not hesitate to contact me if I can be of further assistance.

Kind regards



Marshall Irwin
Chairperson



**Prostitution Licensing
Authority**

15 October 2012

Mr Stephen Brady
Deputy Director General (Strategic Initiatives and Performance)
NSW Government Department of Premier and Cabinet
GPO Box 5341
SYDNEY NSW 2001

Dear Mr Brady

I appreciate your correspondence of 20 September 2012 inviting the Prostitution Licensing Authority (PLA) to provide a submission on options for sex industry law reform in New South Wales (NSW), with particular regard to the issues paper, *Regulation of Brothels in NSW*, published by the Better Regulation Office. A submission is attached.

Yours sincerely

A black rectangular box used to redact the signature of Manus Boyce.

Manus Boyce
Chair



**Prostitution Licensing
Authority**

SUBMISSION TO THE NEW SOUTH WALES GOVERNMENT REVIEW OF THE REGULATORY FRAMEWORK FOR SEX SERVICES PREMISES

By way of background, the PLA is a Statutory Authority, and has been in existence for 12 years. I have been Chair of the PLA for seven years. With legalisation of brothels in Queensland, the PLA was established to regulate brothels, primarily by deciding applications from individuals for a brothel licence or an approved manager's certificate (probity function) and by monitoring the provision of prostitution (compliance function) in those brothels. The PLA can offer a unique perspective on sex industry regulation, and I am pleased to make this submission. I do not propose to respond to each question in the issues paper (some of which are not relevant to the expertise or knowledge of the PLA) but to make some observations in key areas.

Licensing framework

Whilst decriminalisation of the sex industry is generally laudable, it ignores the fact that sex industry businesses are very attractive to organised crime, and may result in official corruption. The problems of organised crime and official corruption provided the impetus for the legalisation of brothels in Queensland. The Fitzgerald Inquiry had revealed police corruption and the involvement of criminals in the operation of brothels. The Inquiry uncovered apparent inaction by Queensland police in enforcing prostitution laws. Amongst other things, it was found that drug dealers were involved in the operation of Brisbane brothels. These drug dealers had links with senior officers in Queensland police, and the police were paid protection money by brothel owners and accepted sexual favours. Several former Licensing Branch officers were subsequently convicted of corruption.

A licensing framework provides a barrier to the involvement of organised crime and the incidence of official corruption by ensuring, as far as reasonably possible, that only fit and proper persons are involved in the operation of brothels (in terms of ownership and management). As far as is reasonably possible, criminals should be prevented from controlling brothels by stringent probity checks (including associates of the applicant), regular inspections (announced and unannounced), and close scrutiny of financial statements. If there are sufficient grounds, the PLA has the option of disciplining brothel licensees and approved managers. In serious cases this may result in the suspension or cancellation of the brothel licence or approved manager's certificate. The framework in Queensland also minimises the scope for police corruption by limiting the entry of police officers to brothels and by giving the PLA the function of monitoring the compliance of brothels with regulatory obligations. The *Prostitution Act 1999* has been successful in quarantining brothels from organised crime and official corruption. The Prostitution Act has

been subject to two reviews by the Crime and Misconduct Commission (CMC), most recently in 2010-11. On each occasion, the CMC has found no evidence of organised crime or official corruption.

Care must be taken in setting licensing fees. If they are too high they may both inhibit entry and be a disincentive to a brothel remaining in operation. The result may be that individuals choose to operate a brothel whilst unlicensed. Licence conditions for brothels must not make the compliance burden unreasonable. Operators of sex industry businesses, just like operators of other businesses, aim to make a profit. If the incentives for operating outside the licensing framework are greater than for operating inside, the greater the likelihood that individuals will choose to operate without a licence. In any case, the focus of regulation should be on harm minimisation. Since inception, the PLA has given priority to the health, safety, and welfare of sex workers and clients. In this regard, it has imposed a range of relevant licence conditions.

Criticism of licensing regimes usually suggests that individual sex workers are subject to licensing or registration. This is not an element of the regime in Queensland, which does not include any form of sex worker licensing or registration. The PLA is opposed to any form of sex worker licensing or registration. Sex worker licensing or registration is draconian and unsupported by any compelling public policy rationale. These measures tend to brand sex workers for life and for no good reason. It is accepted that the purpose of occupational licensing is to restrict entry to a class of persons who meet stipulated requirements in order to minimise the risk of harm to the public. In order to hold a licence a person must first demonstrate that they meet competency requirements. From what risk of harm will licensing or registration of sex workers protect the public? No particular qualifications or skills are required by sex workers which would justify the requirement to hold a licence or be registered. Indeed, this fact, in combination with high remuneration, is what makes sex work an attractive option for those women and men who choose to engage in it. Moreover, licensing or registration of sex workers will not enhance their health and safety, nor will it enhance the health and safety of their clients. I note that the Australian sex workers association, Scarlet Alliance, is implacably opposed to any licensing or registration scheme for sex workers.

The stigma and discrimination associated with sex work is so extreme that many workers keep their involvement secret, even from close friends and family. One of the ways sex workers separate their working lives from their personal lives is by the use of pseudonyms. The last thing they want is to have to identify themselves and hand over sensitive personal information to a government agency. Obviously, they do not need to display a licence to clients, who have no interest in a licence. They do not want to be branded as sex workers for life. That is an inevitable consequence of licensing or registration. Moreover, the integrity of a register of sex workers licences cannot be guaranteed. There will always be the risk that details on the register are leaked.

The inevitable result is that many sex workers will choose not to be licensed or registered and will be forced underground. Workers driven underground are more vulnerable to violence, coercion, and pressure to have unsafe sex. Clients are likely to perceive that sex workers may well not be licensed or registered and therefore reluctant to complain to the police if they are subjected to violence. The reluctance of sex workers to seek police assistance may intensify their vulnerability. Because a person without a licence or registration may be reluctant to identify as a sex worker, they may be reluctant to attend sexual health clinics or to see their General Practitioner for sexual health checks. This will be to the detriment of the sexual health of workers, clients, and the wider community. When workers are driven underground it also makes it far more difficult for support services to access them.

Local government planning and brothel location restrictions

It is submitted that local councils should not be able to impose blanket bans on brothel development applications. This would frustrate the worthy objectives of sex industry law reform. Development applications should be assessed objectively, based on consistent criteria, and divorced from moral considerations. The issues paper, at pages 31 – 32, would seem to suggest this has not been the case in all local government areas of NSW. In the early days of the legalisation of brothels in Queensland, there were some local councils that were determined to reject every development application for a brothel, even if the development would have been lawful under the relevant planning legislation. Appeals to the Planning and Environment Court were a costly and lengthy process for applicants. In response, the Government of the day established the office of the Independent Assessor to expeditiously hear appeals on brothel development applications. This was to ensure speedy decisions, and to minimise the cost to appellants. The new system worked very well. The functions of the Independent Assessor have since been absorbed by the Queensland Civil and Administrative Tribunal. Over the years, as it became apparent that brothels were not associated with the problems predicted, local government opposition declined, and with it the work of the Independent Assessor. Brothels now seem to be accepted, or at least tolerated, by local government.

The issues paper says that 21 per cent of brothels in the City of Sydney and Marrickville were approved by the Land and Environment Court, and 50 per cent in the other local council areas (p. 32). It is submitted that consideration could be given to establishing an alternate body to hear appeals on brothel development applications, with an emphasis on speedy resolution and inexpensive proceedings. If development approvals for brothels are not granted by local councils, even though they would be lawful under the relevant planning instrument, the likely result would be that individuals would choose to operate illegally in those local government areas. Sex industry businesses are likely to operate even in those local government areas that object to them.

Amongst other considerations, opposition to brothels is often rooted in common misconceptions about the sex industry. Sex workers may be perceived as drug dependent, diseased, and coerced, and clients may be

perceived as unsavoury persons. This is likely to lead to concerns about the impact of brothels on community amenity. In practice, it has been the experience of the PLA that licensed brothels have no appreciable impact on community amenity. It is telling that in over 12 years, the PLA has not received a single amenity-related complaint as to the operation of a licensed brothel. The two reviews by the CMC have also confirmed that brothels have no significant impact on community amenity. Brothels usually operate discreetly. Given the stigma associated with prostitution, operators are usually not interested in drawing unwarranted community attention to their enterprise. Nor are sex workers. Clients do not usually want it to be obvious to all and sundry that they are entering a brothel. They are not usually interested in loitering outside, or in accosting passers-by.

There has been a recent survey of "Effects of sex premises on neighbourhoods" by J. Prior and P. Crofts (*New Zealand Geographer* (2012) 68, 130-140). There was a random survey of 401 residents who resided within 400 metres of one or more operating sex premises in either City of Sydney Council or Parramatta City Council. The survey found that 72.3 per cent of the total survey experienced no negative effects as a consequence of the nearby sex premises.

Given this minimal level of impact on community amenity, it brings into question the need for sweeping restrictions on the location of brothels. It is acknowledged that community perceptions about brothels make location restrictions important. Moreover, the location of brothels in residential areas, or near to schools, kindergartens, churches, or hospitals would usually be considered an incompatible land use. Restrictions on the location of brothels in Queensland have meant that they have been confined to light industrial areas. There are no legal brothels in the Brisbane CBD or in Fortitude Valley (historically, pre-legalisation, the centre of Brisbane's sex industry). Some brothels may be thought to be in unappealing, out of the way, and in difficult to find locations. This may limit their appeal to clients. It is no accident that the most successful brothels are the most favourably and conveniently located.

The issues paper makes clear that under current arrangements in NSW, it is left up to individual local councils to determine the location of brothels. It is submitted that location restrictions should be uniform across the State. It is further submitted that brothels should not be restricted from operating in commercial areas. It is no accident that the LASH study referred to on page ten of the issues paper found that two-thirds of brothels were located in commercial or mixed-use zones. Restrictions can be placed on brothels to ensure that they blend in with surrounding businesses. For example, restrictions on signage, by requiring static lighting, and ensuring that they are unobtrusive in appearance, and are compatible with the character of the locality. Most people would pass by without the slightest idea that the premises are a brothel. The impact of any location restrictions should be carefully considered. If they are too restrictive, individuals will operate brothels in those locations without development consent, and so undermine the objectives of sex industry law reform.

Self-employed sex workers

In Queensland, one sole operator sex worker may work from premises in a residential area. As with brothels, there is generally no appreciable impact on community amenity. By ensuring that only one sex worker may operate from the premises, the potential for disruption to other neighbourhood residents is limited because there will be fewer clients and less vehicle traffic than with multiple sex workers operating from the same residence. Self-employed sex workers in residential areas usually operate discreetly. They are not interested in drawing the unwelcome attention of neighbours to their activities. Similarly, the clients of sex workers are usually discreet. They do not usually want all and sundry in the neighbourhood to know they are visiting a sex worker. These activities generally occur so discreetly that residents of the neighbourhood are unaware of their presence. The PLA has received very few complaints about the activities of sole operator sex workers operating in residential areas. If the activities of these sex workers or their clients do cause a nuisance, there are already relevant laws to deal with the problem.

Escort agencies

The issues paper focuses only on, “sex service premises, which are defined as premises where ‘sex work’ occurs habitually or has been used for that purpose and is likely again to be used for that purpose” (p. 9). This definition does not appear to encompass escort agencies. It is submitted that the review should also consider what regulatory arrangements should apply to escort agencies. The mobile phone and the internet have revolutionised the sex industry. Escorts are a major component of the sex industry. If it were determined that a licensing framework should apply to the operators of brothels, it would seem incongruous that it would not also apply to the operators of escort agencies. There is the same potential for the involvement of organised crime and official corruption. Moreover, individuals not granted a brothel licence because they are not fit and proper persons for involvement in the sex industry might instead establish an escort agency.

Advertising of sexual services

The issues paper makes clear that sexual services advertising is technically illegal in NSW but a policy of toleration applies (pp. 35 – 36). In Queensland, the PLA has the function of regulating prostitution advertising so that advertisements must be in the approved form.

Swedish model

The issues paper mentions the Swedish model on pages 20 – 21. This is founded on the oppression paradigm whereby sex work is considered to be inherently violent and abusive, and all sex workers are regarded as victims. By criminalising the client, the Swedish model aims to eliminate prostitution. There are wildly extravagant claims for the success of the Swedish model. Available evidence indicates that the law has been ineffective. The level of prostitution is unchanged and there has been a spatial shift of prostitution

from the street to indoors. Prostitution has been driven underground, to the detriment of the health and safety of sex workers in Sweden. The many centuries of human experience show that it is impossible to eliminate prostitution, and that regulation is the best solution. In July 2012, the Global Commission on HIV and the Law (the Commission) published a report, *Risks, Rights and Health*. The United Nations Development Programme established the Commission as an independent body, consisting of 14 eminent individuals from around the world. The Commission is chaired by Fernando Henrique Cardoso, former president of Brazil, and includes former High Court Justice Michael Kirby from Australia. Part of the report focuses on sex work and argues that criminalisation, in tandem with stigma, makes sex work more dangerous. The Commission singled out the Swedish model or what it called the “Swedish approach” for particular criticism, labelling it, “Victimising the ‘victim’” (p. 38). Academic Ronald Weitzer has written a number of journal articles critical of the oppression paradigm and the treatment of all sex workers as victims. See also Ann Jordan, *The Swedish law to criminalize clients: a failed experiment in social engineering* (April 2012).

Sex trafficking

The United Nations Special Rapporteur on Trafficking has warned of the danger of identifying human trafficking with prostitution and said that there is no conclusive link between the legalisation of sex work and trafficking for sexual exploitation. Where sex work can be scrutinised (as in licensed brothels), the danger of trafficking for sexual exploitation is significantly reduced and much more likely to be discovered. Conversely, when sex work is criminalised and driven underground it creates an environment more conducive to trafficking for sexual exploitation, and it is much less likely to be discovered. Clients may be an important source of information about trafficking but under a criminalised model are less likely to convey this information to authorities.

In the 12 year history of licensed brothels in Queensland, there has been no established instance of trafficking for sexual exploitation. The licensing of operators, in conjunction with announced and unannounced inspections of brothels means that there is a low likelihood of trafficking, and a high probability that it would be discovered. It is improbable that operators would jeopardise their substantial business investment by being involved in trafficking.

Appendix C of the issues paper

I would also like to correct some inaccuracies in Appendix C of the issues paper regarding sex industry laws in Queensland. The paper says that brothels must hold a licence from the PLA. Individuals (who must be natural persons) must hold a licence to operate a brothel. The licence attaches to a person, not to a brothel, and is non-transferrable. The paper says that licences and planning approvals need to be renewed annually. Planning approvals are a matter for local government but they do not need to be renewed annually. Brothel licences are issued by the PLA for a period of three

years, and may be renewed at the end of that period. The paper says that brothels may have no more than five rooms and no more than five sex workers on premises at any one time. A five room brothel may have up to eight sex workers on premises at any one time. The paper says that escorts are illegal, which may be thought to be ambiguous. Escort agencies are illegal in Queensland. Brothels are prohibited from providing escorts (more commonly referred to as outcalls). However, sole operator sex workers may lawfully provide both incalls (working from premises) and outcalls (escort work). Finally, the paper states that prostitution advertising is illegal. Prostitution advertising is permitted in Queensland but is regulated. Any prostitution advertising not in the approved form is illegal.

Attachments

I have attached a number of documents that may be of assistance to this review:

1. PLA submission to 2010-11 CMC review of the Prostitution Act
2. Bob Wallace, Principal Policy Officer, Office of the PLA, *The Ban on Purchasing Sex in Sweden: the so called 'Swedish model'*
3. PLA, *In Touch*, Issue 70, August 2012
4. Correspondence from Chair of PLA to Professor Basil Donovan, re *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*, 16 April 2012.



Prostitution
Licensing Authority
Queensland Government

30 November 2010

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

Dear Mr Moynihan

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

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

Yours sincerely

A large black rectangular box redacting the signature of Manus Boyce.

Manus Boyce
Chairman

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

Risk of policy failure

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

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

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

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

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

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

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

Outcalls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³³ p. 22.

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

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

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

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

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

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

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

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

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

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

³⁸ email correspondence, 19 November 2010.

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

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

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

Room numbers at brothels

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

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

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

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

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

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

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

Brothel licence fees

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

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

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

⁴³ QABA RIS response, p. 10.

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

⁴⁵ p. 4.

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

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

Licensed brothel location and community amenity

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

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

⁴⁶ QABA RIS response, p. 8.

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

Registration of sex workers

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

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

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

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

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

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

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

Sex worker health and safety

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

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

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

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

Quadara has said that:

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

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

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

Sullivan has asserted that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sex trafficking

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

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

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

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

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

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

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

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

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

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

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

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

- debt bondage (up to 12 months).

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

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

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

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

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

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

⁶⁴ p. 29.

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

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

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

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

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

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

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

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

⁶⁷ *Migrant Workers in the UK sex industry*.

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

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

Sex worker exit programs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prostitution advertising

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

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

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

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

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

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

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

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

Youth involvement in prostitution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendices

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

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

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

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

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

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

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

by Bob Wallace, Principal Policy Officer, Office of the PLA

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

Nyamko Sabuni

Swedish Minister for Integration and Gender Equality¹

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

Pye Jacobsson

Swedish sex worker and activist²

The law in Sweden and its rationale

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

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

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

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

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

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

therefore not only harmful to individuals but to society at large.⁵ It normalises that it is acceptable for men to buy and sexually exploit all women.⁶ Probably the most prominent international advocate of the Swedish model is Gunilla Ekberg, Co-Executive Director, Coalition Against Trafficking in Women and former Special Advisor to the Swedish Government. She has explained the genesis of the Swedish law:

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

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

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

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

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

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

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

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

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

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

human rights perspective ... the distinction between voluntary and non-voluntary prostitution is not relevant".¹¹

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

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

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

In January 2008, a number of UK Government Ministers visited Sweden on a fact finding mission as part of a six month review exploring what more could be done in respect of tackling demand for prostitution.¹⁶ The review rejected decriminalisation or a licensing system on the basis that it would not reduce overall demand for prostitution.¹⁷ The review concluded that the Swedish model was superior because it sent an appropriate message about paying for sex but conceded that it was not practical because of the sheer number of women selling sex in the United Kingdom and the lack of public support for the measure.¹⁸ It recommended that, rather than

¹¹ Summary (in English), p. 31.

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

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

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

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

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

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

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

criminalising all buyers of sex, those people paying for sex with a person who is being controlled for someone else's gain (such as a pimp or a trafficker) should be criminalised. Moreover, the offence should be one of strict liability so that it would be irrelevant whether the purchaser of sex knew if the woman was being controlled or not.¹⁹ According to the review, such a measure would have a positive impact on reducing demand for prostitution:

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

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

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

In Australia, probably the most high profile advocate of the Swedish model is Professor Sheila Jeffreys, public officer of the Coalition Against Trafficking in Women Australia (CATWA). In her book, *The Idea of Prostitution*, she argued that "prostitution is a form of male sexual violence against women, consistent in its effects upon the abused woman with other forms of violence, particularly child abuse ...".²³ Jeffreys contends that clients of sex workers (or in her terminology 'prostituted women') are more accurately described as 'batterers', 'rapists', and 'prostitution abusers'. In the same book, Jeffreys made the quite startling claim that: "The act which men commonly perform on prostituted women is penis-in-vagina sexual intercourse. There is nothing 'natural' about that act".²⁴ This is consistent with, "her firm belief that men maintain power over women by the act of sexual intercourse, and that heterosexuality is therefore bad for women".²⁵ In 1979, she stated that feminists who sleep with men are enemy collaborationists and to her sexuality is the basis of oppression of women by men.²⁶ Consistent with this belief, Jeffreys has described marriage as a form of prostitution, whereby women guarantee men sex in return for

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

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

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

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

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

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

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

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

subsistence.²⁷ Even in today's society, in which women are better educated and hold professional employment, Jeffreys contends that, "the right of men to women's bodies for sexual use has not gone but remains an assumption at the basis of heterosexual relationships".²⁸ In essence, Jeffreys regards every married woman as a prostitute. In 1973, Jeffreys decided to abandon both her heterosexuality and femininity. She has said:

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

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

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

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

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

A liberal feminist or 'agency' perspective

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

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

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

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

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

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

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

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

with, and the form that sex will take. As free agents, they enter into a contract with a client for the supply of a sexual service.

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

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

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

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

Or, as Ekberg has put it:

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

This ignores that there are women (and men) in sex work from a wide variety of backgrounds who have consciously chosen to enter the sex industry after considering a range of options, and who have diverse motivations for selling sex. High earnings (without requiring formal qualifications) in combination with flexible

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

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

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

working hours are generally cited as the predominant reasons for sex work.³⁷ As Scarlet Alliance, the Australian sex worker organisation has said:

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

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

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

And the fact of the matter is that most people in the sex industry chose it for whatever reason. It maybe suits their purposes, their way of living, or the money, or for whatever reason. And then you will also get, especially here in Sweden, people will challenge you and say: ‘so what’s a free choice?’ Yeah, but ask someone working as an assistant in a hospital, working with old people, cleaning the faeces the whole day,

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

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

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

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

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

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

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

if that was a free choice. She probably wanted to pay her rent. There are a lot of occupations that we take because we need to survive.⁴⁴

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

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

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

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

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

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

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

the right to make their own choices or to be believed, is oppressive and a fundamentalist attitude.⁴⁷

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

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

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

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

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

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

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

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

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

The impact of the 'Swedish model'

The Swedish law prohibiting the purchase of sex is intended to send a message to men that prostitution is inherently degrading, abusive and exploitative of women. The aim is to get men to change their behaviour, so that those men who purchase sex stop and so that other men never purchase sex in the first place. It is intended to have a normative impact. The rationale is, if you can wipe out the demand for prostitution, there will be no basis for supply. In other words, if there are no men purchasing sex, there will be no sellers of it. If there are no clients, there will be no sex workers. As Ekberg describes it:

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

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

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

The Skarhed Report was somewhat more muted. It said that the ban on purchasing sex was an important instrument to prevent people trafficking and combat prostitution.⁵⁵ Whilst claiming that street prostitution has halved, the best that could be said is that, unlike neighbouring Nordic countries, there has been no increase in prostitution in Sweden.⁵⁶ This should be seen alongside an October 2009 Swedish Government publication, which stated that it is very difficult to monitor the extent of prostitution in Sweden because it is practised discreetly and that existing figures "are very uncertain".⁵⁷ The Swedish National Board of Health and Welfare was just as circumspect when it said in a 2007 report that, "it is impossible to form a precise

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

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

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

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

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

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

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

picture of prostitution and its extent, regardless of the chosen method".⁵⁸ Similarly, the Swedish Government publication says that Kasja Wahlberg, the national rapporteur at the National Police Board, has acknowledged in her reports that there is, "a general lack of knowledge concerning the extent of trafficking for sexual purposes in Sweden" and once again there are no exact figures.⁵⁹ Given these admissions from the Swedish Government, it is very difficult to see how Ekberg and other proponents of the Swedish model could possibly claim that the law has been successful in reducing the number of women involved in prostitution and the incidence of trafficking.

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

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

According to both police officers and prosecutors with whom the Inquiry has spoken, considerably larger numbers of purchasers of sexual services could be prosecuted if priority had been given to this type of crime in day-to-day activities. One reason why priority is not given to sexual purchases offences is the low penal value of this type of offence.⁶³

A perceived lack of enforcement will mean that there is no real deterrence to the purchase of sex. According to Ekberg, between January 1999 and December 2007, 1,648 males were reported for purchasing sex and between 1999 and 2006, more than 500 males have been convicted and fined.⁶⁴ Not a single person has been jailed.⁶⁵ Interestingly, four judges have been arrested and convicted for the purchase of sex.⁶⁶ There are also obvious evidentiary issues with enforcing the law. A client is unlikely to admit to purchasing sex. A sex worker, fearful of losing her client base, is unlikely to admit that she was providing the person with a sexual service. According to the Skarhed Report, in eight out of ten cases which are prosecuted, the offence has been admitted to, highlighting the importance of the client or sex worker making

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

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

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

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

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

⁶³ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 39 (English Summary).

⁶⁴ Gunilla Ekberg, "Update on Swedish Model of Sex Industry Reform", *Debate*, Issue 3, September 2008, p. 27.

⁶⁵ Tom Sullivan, "Sweden revisits prostitution law", *The Christian Science Monitor*, 30 June 2009.

⁶⁶ Gunilla Ekberg, "Update on Swedish Model of Sex Industry Reform", *Debate*, Issue 3, September 2008, p. 27.

admissions.⁶⁷ Moreover, proving attempted crimes is so difficult that when it comes to street prostitution, “the police deliberately wait until the sexual act has begun before intervening, and the offence has thus been committed in full”.⁶⁸ All of this indicates that a significant amount of resources would be required for the law to have a deterrent effect. In Australia, many in the community would likely regard prostitution as a victimless crime. Accordingly, it would be difficult to justify committing significant resources to enforcing such a law. This would be doubly the case when it is understood that resources would need to be redirected from areas which would be regarded as much higher priorities by the community.

There seems to be a general consensus that there has been a reduction in street prostitution in Sweden. There was a 30 to 50 per cent reduction in street workers following the introduction of the law.⁶⁹ According to a report by the Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, whilst street prostitution declined following the introduction of the ban it gradually returned, although not on the same scale.⁷⁰ The Skarhed Report has said that street prostitution in Sweden has been halved as a direct result of the ban on purchasing sexual services.⁷¹ Whether the reduction can be attributed entirely to the Swedish law is debatable. It has been noted that the law prohibiting the purchase of sex has coincided with the increasing availability of the internet and mobile telephones, which are a less visible form of soliciting than working on the street.⁷² It is worth noting here that in Queensland, the incidence of street prostitution is only very minor. There are not many individuals involved in selling sex on the street. The Crime and Misconduct Commission has said that street prostitution constitutes only about two per cent of the sex industry.⁷³ Accordingly, street prostitution does not tend to be an issue of significant concern in this state.

The Skarhed Report denies that there has been any element of displacement from street work to other avenues of sex work such as the internet. The report claims that the halving of street prostitution has represented, “a real reduction in prostitution”.⁷⁴ According to the report, because there has been “nothing to indicate” a greater increase in internet based prostitution in Sweden than in neighbouring countries, there must have been no shift to the internet by street workers.⁷⁵ The report also claims that there is no, “information that suggests that prostitutes formerly exploited on the streets are now involved in indoor prostitution”.⁷⁶ The report also rejects that

⁶⁷ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 39 (English Summary).

⁶⁸ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 40 (English Summary).

⁶⁹ Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, p. 41.

⁷⁰ p. 46.

⁷¹ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 34 (English Summary).

⁷² Norway Ministry of Justice and the Police, *Purchasing Sexual Services in Sweden and the Netherlands*, 2004, p. 11, Vincent Clausen, *An assessment of Gunilla Ekberg's account of Swedish prostitution policy*, January 2007, p. 5, and Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, p. 28.

⁷³ CMC, *Regulating Prostitution*, December 2004, p. xiii.

⁷⁴ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 35-36 (English Summary).

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

⁷⁶ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 36 (English Summary).

the ban on the purchase of sexual services has driven prostitution underground.⁷⁷ It should be mentioned that the report has been criticised, especially for its questionable objectivity and lack of an evidence base.⁷⁸ Louise Persson, author of *Klassisk Feminism*, has pointed out that Skarhed had already made up her mind about the effect of the law and went about gathering the evidence to support her case. Persson has quoted Skarhed as saying at the press conference launching the report: "I think that these are quite obvious conclusions. But the important thing for the inquiry has been to try to, so to speak, get the basis for being able to draw them. And this is how we have worked".⁷⁹ Persson has also criticised the inquiry's terms of reference which said that, "the inquiry could not suggest, or point in any direction other than, that buying of sex should be criminalised".⁸⁰

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

It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the 'hidden prostitution' – we are even less able to make any statements.⁸¹

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

Irrespective of the reason for the reduction in street prostitution it has not been possible for the working group to find an answer to the question as to what happened to the women who disappeared from the street.⁸²

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

Reviewing most sources, it appears the most direct impact of the law has been a spatial switching from street to off-street, with much more sex work now occurring in

⁷⁷ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, pp. 37-38 (English Summary).

⁷⁸ Louise Persson, "Behind the happy face of the Swedish anti-prostitution law", 3 July 2010, cited in, Laura Agustin, *Border Thinking on Migration, Trafficking and Commercial Sex*, www.lauraagustin.com

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

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

⁸¹ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, p. 63.

⁸² Norwegian Ministry of Justice and the Police, *Purchasing Sexual Services in Sweden and the Netherlands*, p. 52.

hidden sectors which are not monitored by the police ... Widespread claims that the law has resulted in an overall decline in sex work ... are unsubstantiated, and appear to be based on the assumption that a decline in visible street working equates to an overall decline in the sex industry ... In fact, the decline in street work appears to be matched by a rise in Internet working, flat working, bar work and work in sex clubs, and numbers of prostitutes today appear roughly equivalent to the numbers existing in the 1990s.⁸³

The Skarhed Report contends that the ban on purchasing sexual services has not driven prostitution underground, has not made it harder for support services to access sex workers, and has not increased the risk of abuse of women or created worse living conditions for sex workers.⁸⁴ These were all problems raised with the law by its detractors at the time of its introduction and since. Likewise, Ekberg has dismissed these as genuine problems, saying that there is no evidence, and described these as myths promoted by the pro-prostitution lobby.⁸⁵

The effects of driving prostitution underground are well known, especially in terms of their impact on the health and wellbeing of sex workers. They are marginalised, isolated and more vulnerable to exploitation, abuse, violence, coercion, and unsafe sex practises. Sex workers may be more reluctant to seek police assistance in response to an abusive client. It makes it more difficult for social and health services to access sex workers. There is also the danger of the involvement of third parties, such as 'pimps'. Some informants to the Swedish National Board of Health and Welfare have claimed that the law banning the purchase of sexual services has acted as a conduit to the involvement of pimps.⁸⁶ The report says that:

According to one informant in Goteborg, there are probably more pimps involved in prostitution nowadays. The informant says the law against purchasing sexual services has resulted in a larger role and market for pimps, since prostitution cannot take place as openly ... Informants from the Stockholm Prostitution Centre also mention that the law has opened the door to middlemen (pimps), because it has become more difficult for sellers and buyers of sexual services to make direct contact with one another.⁸⁷

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

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

The likelihood of ending up with a dangerous client is thereby greater. Due to the law, sex workers feel hunted by the police, social workers, media and sometimes even anti-prostitution activists on the streets. They find this unacceptable. One sex worker

⁸³ Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, pp. 20 and 42.

⁸⁴ Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 37 (English Summary).

⁸⁵ Gunilla Ekberg, cited in "Abolishing Prostitution: The Swedish Solution, An Interview with Gunilla Ekberg", *Rain and Thunder: A Radical Feminist Journal of Discussion and Activism*, Issue 41, Winter Solstice 2008, and Gunilla Ekberg cited in, "Transcript: Prostitution in WA", *Law Report on ABC Radio National*, 25 September 2007.

⁸⁶ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, pp. 47-48.

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

commented that no other vocational group would accept that the police 'patrolled their workplace'.

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

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

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

Women working on the streets in some bigger cities claim that there is now a greater percentage of 'perverted' customers and that the 'nice and kind' customers have disappeared. A 'perverted' customer is someone who demands more violent forms of sex, sex with faeces and urine and who is more prone to humiliate, degrade and violate the sex worker. He also more often refuses to use condoms. Since there are fewer customers on the streets many women who sell sex in order to finance a drug habit can no longer refuse these customers, as they were previously able to. These women say the 'kind' customers have either turned to the Internet to find sexual services or have been arrested by the police. On the contrary, the 'perverted' customers know what to do to not be arrested and fined - they just have to deny it since there is rarely hard evidence.⁸⁸

A number of other issues have also been identified. The police have used the possession of condoms as evidence of sex work.⁸⁹ This means that there is an obvious disincentive to the practise of safe sex by street workers. Because the clients of street sex workers are common targets for the police, and they fear discovery and arrest, sex workers are forced into more out of the way areas where they are more vulnerable to attack. This problem was described by a street sex worker in Norway, where it is also illegal to purchase sex: "Now the men drive us out of town to find an empty space with no one in sight. It often takes more than an hour before we're back. Before we would go down to the harbour and be done in 15 minutes".⁹⁰

The Norwegian Ministry of Justice and the Police, in its report into the Swedish ban on the purchase of sex concluded that: "There is no documentary evidence from the hospitals or the police that there is more or less violence directed towards prostitutes, but there is much evidence that there is a tougher market with more violence".⁹¹

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

⁸⁸ Petra Ostergren, *Sex Workers Critique of Swedish Prostitution Policy*, www.petraostergren.com

⁸⁹ Petra Boynton and Linda Cusick, "Sex workers to pay the price", *British Medical Journal* 2006; 332, p. 190 and Don Kulick, *Talk delivered at Beijing Plus Ten meetings on the 'Swedish model'*, www.salli.org

⁹⁰ 'Michelle', cited in, "Sex ban puts us at greater risk", *The Guardian*, 27 May 2009.

⁹¹ Norway Ministry of Justice and the Police, *Purchasing Sexual Services in Sweden and the Netherlands*, 2004, p. 30.

Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially smaller in scale than in other comparable countries. According to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden.⁹²

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

We know from our colleagues in Estonia who have eavesdropped on traffickers that they consider Sweden to be a bad market. They can no longer send the women on the streets, which was the easiest way to find clients. Now they have to find flats for the women, they must advertise on the internet, and clients are afraid of getting caught. [Traffickers] think it's not worth doing business in Sweden.⁹³

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

There are for instance people who believe that prostitution and human trafficking are synonymous, both with regard to organisation and content ... Some believe there is a misconception that all prostitution is synonymous with trafficking ... In our interviews, some women engaged in prostitution emphasise that they are opposed to human trafficking but not prostitution and that the two cannot be considered the same.⁹⁴

The conflation of prostitution with trafficking is particularly problematic in Sweden because there is no distinction made between voluntariness. All prostitution is regarded as violent and exploitative. Almost by definition, a migrant woman engaging in prostitution is regarded as a victim of trafficking. In other words, there is, "a failure to concede that migrants might gravitate towards sex work voluntarily".⁹⁵ As Vincent Clausen has remarked:

There is a strong tendency in Swedish debate towards the notion that prostitution generally speaking is violent and exploitative *per se*. From this perspective, prostitution across borders tends to be perceived as trafficking *per se*, regardless of the circumstances ... There is a gross difference between being of 'foreign descent' and being a 'victim of trafficking'.⁹⁶

Other consequences of this attitude in Sweden have also been identified. Jacobsson has argued that it is clients who are most likely to form a suspicion that a woman has been trafficked or is being forced to sell sex but that they are now unlikely to inform the police out of a fear of being arrested themselves.⁹⁷ According to Professor Kulick, a non-citizen or non-legal resident of Sweden found to be working in prostitution is

⁹² Anna Skarhed, *Prohibition on the purchase of sexual services: An evaluation 1999-2008*, p. 37 (English Summary).

⁹³ Kasja Wahlberg, cited in, "Sex ban puts us at greater risk", *The Guardian*, 27 May 2009.

⁹⁴ Swedish National Board of Health and Welfare, *Prostitution in Sweden 2007*, pp. 43 and 49-50.

⁹⁵ Phil Hubbard, et. al, *Regulation of sex work in Sweden – Working Paper*, p. 38.

⁹⁶ Vincent Clausen, *An assessment of Gunilla Ekberg's account of Swedish prostitution policy*, 2007, pp. 11 and 13.

⁹⁷ Pye Jacobsson, Sweden: "We want to save you. And if you don't appreciate it, we will punish you" – www.swannet.org/node/1512

immediately deported.⁹⁸ This would make it unlikely that a foreign sex worker abused by a client would report the matter to the police.

The way to deal with human trafficking is by measures to directly address trafficking, not by the blunt instrument of a blanket ban on the purchase of all sexual services. Indeed, it has been pointed out that since 2002, Sweden has had specific legislation on human trafficking which was amended in 2004 to comply with the United Nations Palermo Protocol.⁹⁹

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

The trafficking rhetoric has gained momentum since the mid-1990s with reports worldwide of the millions of children and women trafficked both within and between countries ... Women who migrate voluntarily, with the full knowledge that they will be working in the sex industry, are conflated with helpless women and children, forced against their will to a life of slavery and sex work, both acquiring the label of trafficked victims.¹⁰⁰

Whilst especially problematic in Sweden, this is an issue by no means confined to that country and has been described as having the characteristics of a 'moral panic' or even a 'moral crusade'.¹⁰¹ Nick Davies, writing in *The Guardian*, has described a process in the United Kingdom where sex trafficking figures that are misleading are bandied about, repeated by others in pursuit of their cause, inflated further by others, or just made up entirely.¹⁰² One politician reportedly claimed in the House of Commons that the Home Office had estimated that there were 25,000 sex slaves in Britain. Apparently, there is no such Home Office statistic.¹⁰³ Another politician, Fiona Mactaggart, a former Home Office minister, has apparently claimed that, "something like 80% of women in prostitution are controlled". Davies has said that, "there is no known source for this".¹⁰⁴

As Davies has said: "Somewhere beneath all this, there is a reality. There have been real traffickers".¹⁰⁵ Part of the problem in the UK is that as far as some are concerned, it is sex trafficking even where a migrant is willingly working in the sex industry. This is not a situation which meets the definition under the UN Palermo Protocol, which involves the use of force, fraud or coercion to transport an unwilling

⁹⁸ Don Kulick, *Talk delivered at Beijing Plus Ten meetings on the 'Swedish model'*, www.salli.org

⁹⁹ Vincent Clausen, *An assessment of Gunilla Ekberg's account of Swedish prostitution policy*, 2007, p. 11.

¹⁰⁰ Gillian Abel, et. al, *Taking the Crime out of Sex Work*, 2010, p. 3.

¹⁰¹ Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

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

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

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

¹⁰⁵ Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009 and Weitzer, cited in, Gillian Abel, et. al, *Taking the Crime out of Sex Work*, 2010, p. 3.

victim into sexual exploitation. There is a vast difference between trafficking a person and smuggling a person (one is an unwilling victim, the other is a willing passenger).

Whilst there are undoubtedly women in Britain who have been trafficked for the purpose of sexual exploitation, it is unlikely that it is anywhere near the magnitude claimed by some of the more alarmist figures in the debate. As the UK Network of Sex Work Projects has stated: "It is undoubtedly the case that women are trafficked into the sex industry. However, the proportion of sex workers of whom this is true is relatively small ..."¹⁰⁶ The exaggeration of the sexual trafficking problem in Britain was given further credence by a *Guardian* investigation into the outcomes of Operation Pentameter Two. According to the *Guardian* report:

The UK's biggest ever investigation of sex trafficking failed to find a single person who had forced anybody into prostitution in spite of hundreds of raids on sex workers in a six-month campaign by government departments, specialist agencies and every police force in the country.¹⁰⁷

Dr Nick Mai from the London Metropolitan University conducted a study of 100 migrant male, female, and transgendered sex workers.¹⁰⁸ He found that only six per cent of female respondents, "felt that they had been deceived and forced into selling sex in circumstances within which they had no share of control or consent".¹⁰⁹ Other key findings revealed by the study were:

- Working in the sex industry is often a way for migrants to avoid the unrewarding and sometimes exploitative conditions they meet in non-sexual jobs
- By working in the sex industry, many interviewees are able to maintain dignified living standards in the UK while dramatically improving the living conditions of their families in the country of origin
- The stigmatisation of sex work is the main problem interviewees experienced while working in the sex industry and this impacted negatively on both their private and professional lives
- Interviewees generally describe relations with their employers and clients as characterised by mutual consent and respect, although some reported problematic clients and employers, who were disrespectful, aggressive or abusive
- Most interviewees feel that criminalisation of clients will not stop the sex industry and that it would be pushed underground, making it more difficult for migrants working in the UK sex industry to assert their rights in relation to both clients and employers.¹¹⁰

Finally, it should be noted that the Federal Government believes that the incidence of human trafficking to Australia is low in comparison to most other countries in the world.¹¹¹ This is attributed to, "our strong migration controls and geographic isolation".¹¹²

¹⁰⁶ cited in Nick Davies, "Prostitution and trafficking – the anatomy of a moral panic", *The Guardian*, 20 October 2009.

¹⁰⁷ Nick Davies, "Inquiry fails to find single trafficker who forced anybody into prostitution", *The Guardian*, 20 October 2009.

¹⁰⁸ *Migrant Workers in the UK sex industry*.

¹⁰⁹ Nick Mai, *Migrant Workers in the UK sex industry*, p. 4.

¹¹⁰ Nick Mai, *Migrant Workers in the UK sex industry*, p. 5.

¹¹¹ The Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response January 2004 – April 2009*, p. iii.

¹¹² The Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response January 2004 – April 2009*, p. 1.

Conclusion

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



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Eminent group criticises 'Swedish model'

In July 2012, the Global Commission on HIV and the Law (the Commission) published a report, *Risks, Rights and Health*. The United Nations Development Programme established the Commission as an independent body, consisting of 14 eminent individuals from around the world. The Commission is chaired by Fernando Henrique Cardoso, former president of Brazil, and includes former Justice Michael Kirby from Australia. Part of the report focuses on sex work and argues that criminalisation, in tandem with stigma, makes sex work more dangerous. Criminalisation drives sex work underground, where sex workers are more prone to violence and coercion; it is more difficult to negotiate with clients (including condom use); sex workers may be harassed or beaten by police; it is difficult to report rape or other violence because sex workers fear they will be arrested; "the threat of criminal sanctions [can be used] to control and exploit sex workers"; and it is more difficult or impossible for sex workers to access health services (pp. 36 – 37). Accordingly, the Commission recommends the decriminalisation of consensual adult sex work (p. 43).

The Commission singles out the "Swedish model" or what it calls the "Swedish approach" for particular criticism. This approach is much vaunted in some circles but the Commission has labelled it, "Victimising the 'victim'" (p. 38). The following is an extract from the Commission's report:

Lauded as a less punitive and more gender-sensitive legal strategy to reduce and ultimately eliminate sex work, the "Swedish approach"

criminalises the client and not the worker. Based on the premise that women in sex work need protection, it regards the sex worker as the "victim" and the client as the "exploiter". Since its enactment in 1999, the law has not improved – indeed, it has worsened – the lives of sex workers. The law's record so far:

Underground trade, more violence

Street-based sex work is halved in Sweden, according to the police, but the sex-trade remains at pre-law levels. It has simply moved further underground, to hotels and restaurants, as well as the Internet – and to Denmark. The Swedish State Criminal Department warns that the sex trade may now be more violent. Especially worrying is the trade in foreign women, who often fall entirely under the control of pimps.

Few prosecutions and convictions

Sweden's Alliance of Counties says that resources for social work are scarce, as the money has been siphoned to policing. In spite of over 2,000 arrests, only 59 clients have been reported suspected of buying occasional sex. Only two have been convicted, after pleading guilty. No one has been jailed, and only low fines have been imposed, as per the law. Evidence to prove a crime is nearly unattainable. Workers do not consider themselves to be victims and are almost always unwilling to testify against their clients.

Criticism and organising

The law has given impetus to the formation of a sex workers' rights organisation in Sweden, which has argued strenuously against the law. Some Swedish authorities are demanding an evaluation of how the

new legislation is affecting the underground prostitution trade. (p. 38)

The Commission's report can be accessed here: www.hivlawcommission.org

Linking of prostitution with people trafficking

The PLA has previously referred to the international trend of recent years to conflate (link) prostitution with people trafficking, so that every migrant sex worker is immediately regarded as trafficked and exploited. Ms Joy Ngozi Ezeilo, the United Nations Special Rapporteur on Trafficking in Persons, visited Australia on a fact-finding mission between 17 to 30 November 2011. At the conclusion of her visit Ms Ezeilo issued a statement, which included a reflection on the conflation of people trafficking with prostitution:

I have observed that the issue of trafficking in persons in Australia is sexualized and often conflated with prostitution. As I have noted in the course of my work as Special Rapporteur, there remains no conclusive link between the legalization or criminalization of prostitution and the existence of trafficking for sexual exploitation. There is need to move away from over-sexualizing the discourse on trafficking, which invariably contributes to the common stereotype of victims of trafficking as being women and girls forced into prostitution or other forms of sexual exploitation. Furthermore, awareness is required to ensure that anti-trafficking policies do not have the unintended consequence of causing gender discrimination against women. For example, I have learnt that migrant workers from certain

countries and ethnicity who are considered vulnerable to sex trafficking may be denied visas or entry to Australia as part of the Government's border enforcement regime. I wish to reiterate that vulnerability to trafficking is exacerbated by lack of equal opportunity and gender inequalities. Government policies should not be reinforcing these unhelpful stereotypes.

The full text of Ms Ezeilo's statement can be found here:

www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664&LangID=E

Sexual health certificate requirements

Brothel licence condition 22.1 states that:

A licensee or an approved manager must ensure that each sex worker who is engaged at the brothel is not infective with a sexually transmissible disease. A licensee or manager must obtain proof that a sex worker had been medically examined or tested to ascertain if she/he was infective with a transmissible disease. The document of medical examination must establish:

- *the examination or test was about sexual health status; and*
- *the sex worker was not infective with a sexually transmissible disease.*

Note: *The interval between medical testing for sexual health status is not more than three months.*

This means that to be eligible to work at a licensed brothel a sex worker must first have undergone a sexual health examination and not be infective with a sexually transmissible disease. To continue to work at the brothel, sex workers must undergo sexual health testing at least every three months. Sex workers need to provide documentary proof to a licensee or manager showing that they have submitted to a sexual health examination AND that they were not infective with a sexually transmissible disease.

Queensland Health has published a Sexual Health Check Certificate of Attendance pro forma. It is preferable (but not mandatory) that sex workers obtain a Sexual Health Check Certificate of Attendance because it meets the requirements of brothel licence condition 22.1. It specifically states that the holder was screened for sexually transmissible infections and that at the time of the examination there was no evidence of a sexually transmissible infection. Queensland Health sexual health clinics issue sex workers with a Sexual Health Check Certificate of Attendance.

Sex workers may prefer to see a General Practitioner for a sexual health examination. As the Sexual Health Check Certificate of Attendance pro forma is available online, some General Practitioners may fill it out. Others might fill out a generic medical certificate. In the latter case, it is not sufficient that the certificate states that, "X is suitable for work". To comply with brothel licence condition 22.1 the certificate must clearly identify that person X presented for a sexual health examination and that at the time of examination there was nothing to suggest that person X had a sexually transmissible infection.

It may not be convenient for interstate sex workers to undergo a sexual health examination in Queensland, and they may instead undergo an examination in another state before coming here. Sexual health certificates from other jurisdictions may only be accepted if they comply with brothel licence condition 22.1. That is, they must clearly state that person X submitted to a sexual health examination and at the time of examination there was no evidence of a sexually transmissible infection. It is not sufficient if the certificate only says that person X underwent a sexual health examination.

It is the responsibility of brothel licensees and approved managers to ensure that certificates meet the requirements of brothel licence condition 22.1.

There are also record keeping requirements in respect of sexual health certificates. Brothel licence condition 22.2 states that:

A licensee or manager is required to sight the original document and retain, for a period of one year, a copy

of the original document endorsed with date and signature of the licensee or manager who sighted the original. Demonstration that this BLC is met may include:

- *due diligence*
- *application of procedures to assess documentation against standards*
- *systems to manage records and retrieval of documentation*
- *records of sex worker name changes to demonstrate accordance with sign-in registers.*

When conducting compliance checks of brothels, PLA compliance officers may check compliance with brothel licence conditions 22.1 and 22.2.

2012 PLA meeting dates

The PLA Board generally meets on the first Monday of each month. Meeting dates for 2012 are: 3 September, 8 October, 5 November, and 3 December. *Whilst current at the time of printing, these dates are tentative and subject to change without notice.*

Vacancies for approved manager positions

Montecito: Manager required for busy brothel. Phone 07 3852 2057.

LuvAsian: 1/29 Expansion St, Molendinar. Positions available: one full-time manager (night/midnight shift); one part-time manager (night/midnight shift). Excellent working conditions. Call 5564 5599.

Asian Star on Meadow: Busy brothel in Coopers Plains looking for an approved manager. Applicants must be of good character, honest, responsible, diligent, and available to work flexible shifts. Great conditions. Phone Carly on 0422023351 for details.

Please note that approved manager advertisements may be submitted at any time for inclusion in the next edition of the newsletter. They should be emailed to plaaadmin@iprimus.com.au.

