



Regulation of brothels: an update

by Lenny Roth

1. Introduction

The NSW Government is proposing to introduce a licensing system for brothels. In the lead up to the 2011 election, the NSW Coalition released [a plan](#) stating that it would:

- Ensure all brothels are licensed, with stringent vetting of brothel licence applicants to clampdown on the use of brothels by organised crime groups and unsuitable persons;
- Institute annual brothel licence fees administered by a Brothel Licensing Authority to ensure legal brothels comply with the law and to eliminate illegal brothels. Brothel licensing fees will be introduced to pay for enhanced compliance activity by council inspectors;
- Improve the co-ordination of councils' compliance officers with authorities such as WorkCover NSW and NSW Health – the best weapon for disrupting and dismantling illegal operations and forcing compliance by licensed operators.¹

An [article](#) in the *Sydney Morning Herald* on 11 October 2011 quoted a Government spokesperson stating:

The government is currently developing options for the delivery of its commitment to close down illegal brothels and properly regulate approved operations through the creation of a Brothel Licensing Authority, and will progress these matters in the near future.²

The article also quoted a "government source" as saying:

We're very concerned about issues in brothels; whether that be trafficking, girls held in debt bondage or those being forced to have unprotected sex with clients. One of the main aspects of this legislation will be to try and tighten up who is running these places and prevent criminals, or those known to associate with criminals, from being in charge.

This followed an [article](#) in the *Sydney Morning Herald* on the previous day which reported:

Two federal police investigations, Operations Elixation and Raspberry, have identified at least two Sydney brothels and three Melbourne ones linked to an international human trafficking and sex slavery ring. The syndicate allegedly convinces Asian women to come to Australia to study. They are then forced to work as sex slaves in brothels.

But the state and local authorities responsible for approving legal brothels have taken no action, despite court documents in August detailing federal police allegations of the brothels' – or their managers' – involvement in organised crime.³

This e-brief updates a 2003 [briefing paper](#) on the control of prostitution.⁴ It outlines the regulatory regime in NSW and the models adopted and proposed in other Australian jurisdictions.⁵ The paper also refers to recent reports that have discussed the regulation of

brothels. Finally, some published stakeholder views are noted.

2. Regulation of brothels in NSW

2.1 Historical note: As outlined in the earlier briefing paper, brothels were legalised in NSW in the mid 1990s:

In mid 1995 the Government, in light of the findings of the Royal Commission into the NSW Police Service, announced that reform of prostitution laws in NSW would be undertaken. Subsequently, legislation was passed to legalise brothels. Local councils became the determining authority for where a brothel was to be located, according to normal planning legislation, and brothels were no longer the concern of the police force.⁶

The Wood Royal Commission into the police force found evidence "showing a clear nexus between police corruption and the operation of brothels".⁷

2.2 Overview: Brothels are now regulated under planning laws. In addition, the *Restricted Premises Act 1943* (formerly, the *Disorderly Houses Act*) allows councils to apply to the court for a brothel closure order. Some criminal laws are also relevant. The various laws are outlined below.

Since 1995, there have been two significant legislative reforms:

- In 2001, the *Disorderly Houses Act* was amended to make it clear that a Court could rely on circumstantial evidence to establish that premises were operating as a brothel.⁸
- In 2007, the provisions in the *Disorderly Houses Act* were strengthened, as were the provisions in planning laws to take action against brothels operating without consent.⁹

2.3 Planning laws and policies: The use of premises as brothels is regulated by councils under the development control provisions of the *Environmental Planning and Assessment Act 1979*.

Under those provisions, councils are the consent authority for development which requires consent. Councils can regulate brothels through Local Environmental Plans (LEPs) and Development Control Plans (DCPs), made in accordance with the Act. Councils can prohibit brothels from being located in certain areas (e.g. in residential zones); and they can specify the standards that apply to development applications for the use of premises as brothels in other areas.

LEPs must be approved by the Minister. In 1995, councils were advised that the Minister would not support an LEP which imposed a blanket prohibition of brothels.¹⁰ However, in 1996, councils were advised that the Minister would not object to an LEP which limited permissible sites for brothels to those zoned for industrial purposes. This advice came in response to concerns about the possibility of brothels being located in shopping centres.¹¹

Writing in 2006, Penny Crofts reported that about half of the councils in NSW had developed planning principles (in LEPs or DCPs) that were specific to brothels. Crofts stated that "the majority of these councils tend to rely upon locational restrictions limiting brothels to commercial and/or industrial areas".¹² The remaining councils, which have not developed any specific policies, have relied on general planning principles.¹³

In 2004, the Sex Services Premises Planning Advisory Panel published

[guidelines](#) "to assist local government in decisions they make in regard to sex services premises in their areas and to outline what constitutes best practice".¹⁴ The Panel analysed current practice and concluded that "in the majority of cases, effective regulation has not been realised".¹⁵ Planning controls did not distinguish between different types and scale of brothels, and they were overly restrictive.¹⁶ The Panel noted that this impacts on the level of compliance with council controls, and the delivery of health and outreach services to the industry.¹⁷

There is currently no requirement for councils to consider the suitability of potential owners or operators when determining a development application for a brothel. It is not known if it is standard practice for councils to do so. A recent article quoted Willoughby Council's environmental services director, Greg Woodhams, as saying:

When we receive a development application for a brothel we go to the local police and ask if there are any issues with the person making the application..."But this is far from foolproof as sometimes it's an architect making that application."¹⁸

If premises are being used as a brothel without development consent, or contrary to the conditions of consent, there is a breach of the Act and (as with other breaches of the Act) any person including a council can seek an order from the Land and Environment Court.¹⁹ The court has broad powers to restrain a breach of the Act.²⁰

Councils also have the power to issue an owner or occupier with an order to cease using premises as a brothel.²¹ If they fail to comply with the order (and they do not appeal), the council can institute criminal action, and this can result in a fine of up to \$1.1 million.²² The council can also apply to the court

for an order that a provider of water, electricity or gas to the premises cease providing those services.²³

2.4 Restricted Premises Act: Section 17 of the *Restricted Premises Act 1943* allows the Land and Environment Court, on application by a local council, to make an order that an owner or occupier of premises that are a brothel is not to use or allow the use of the premises as a brothel. The Court can also make an order suspending or varying, for up to 6 months, the operation of any development consent relating to the use of the premises as a brothel.

The local council must not apply for such an order unless it is satisfied that it has received sufficient complaints about the brothel to warrant the making of the application. However, one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used by two or more prostitutes. In making an order, the Court is to take into account a number of matters specified in the Act: e.g. whether the operation of the brothel interferes with the amenity of the neighbourhood.

For the purposes of the Act, brothel is defined to mean premises:

- (a) habitually used for the purposes of prostitution, or
- (b) that have been used for the purposes of prostitution and are likely to be used again for that purpose, or
- (c) that have been expressly or implicitly [advertised or represented] as being used for the purposes of prostitution, and that are likely to be used for the purposes of prostitution.

Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.²⁴

2.5 Criminal laws: Some criminal laws are also relevant to brothels. It is an offence to advertise that premises are used for the purposes of prostitution.²⁵ It is also an offence to use, for the purposes of prostitution, premises held out as being available for massage services.²⁶

In 2001, new offences for sexual servitude were introduced.²⁷ Sexual servitude is defined as:

the condition of a person who provides sexual services and who, because of the use of force or threats:

- (a) is not free to cease providing sexual services, or
- (b) is not free to leave the place or area where the person provides sexual services.²⁸

There are also Commonwealth offences relating to sexual servitude, people trafficking and debt bondage.²⁹

3. Key reports on brothels in NSW

3.1 Taskforce report (2001): The 2001 Brothels Taskforce Report is discussed in the 2003 briefing paper. For the purposes of this e-brief, it is sufficient to note the minority statement to the report by the Local Government and Shires Association.

The Association argued for the introduction of a licensing regime which would "separate the planning issues, which are the responsibility of councils, from the other issues associated with these land uses".³⁰ It proposed establishing a new licensing body and argued that it would:

Potentially lead to a reduction in criminal involvement in the industry, maximise safety and employment conditions and access to health services for workers. This may reduce community concerns and reduce conflict in the obtaining of planning approval.³¹

However, the Association recognised that the changes proposed in the report needed to be tested "to see if any real changes arise which assist Local Government's concerns".

The Carr Government did not support the Association's proposal. It stated:

...Similar licensing schemes in other States have not worked. Sex workers avoid licensing to protect their privacy. Unlicensed workers are less likely to participate in occupational health and safety programs, and this has impacts on public health. Unlicensed workers would also be vulnerable to corrupt conduct on the part of licensing authorities.³²

This response refers to "workers" whereas it is likely that the proposal was directed at licensing the owners and operators of brothels.

3.2 ICAC report (2007): In September 2007, the Independent Commission Against Corruption published its [report](#) on an investigation into corrupt conduct associated with the regulation of brothels in Parramatta. The Commission's investigation:

...arose from information received by the Commission in October 2006 alleging that Mr Fryar [team leader of Compliance Services at Parramatta Council] had corruptly solicited and received cash payments and sexual services from brothel owners and prostitutes in return for not taking action on behalf of the Council to prevent unauthorised use of premises for prostitution.³³

The Commission made a finding of corrupt conduct against Mr Fryar and 10 brothel operators and prostitutes. It also made recommendations aimed at preventing corruption. Three of these were directed to the NSW Government, namely that it:

- Commission a review of the corruption risks attached to the regulation of brothels by local

councils, and develop a strategy to deal with those risks.

- Consider adopting a system to prevent unsuitable persons operating brothels.
- Introduce legislation to require sex industry advertisements to show the relevant development approval number.

In relation to the second of these recommendations, the Commission referred to the licensing systems for brothels in Victoria and Queensland and then commented:

Not taking steps to keep criminal elements out of the industry is conducive to corruption. The Commission has not undertaken a detailed review of the effects and effectiveness of alternative approaches taken in other States, and so does not make any specific recommendations. The Commission does, however, recommend that the issue be reconsidered by the Government in the light of this investigation. Consideration should then be given to whether there are alternative approaches to a licensing system, such as "reverse licensing", where a person can operate a brothel unless they are within a prohibited category (e.g. they have convictions for certain kinds of offences...)³⁴

3.3 Taskforce report (2010): The then NSW Government formed an interagency taskforce to address the ICAC's recommendations.³⁵ As part of its work, the taskforce examined how brothels were regulated in NSW compared to Queensland and Victoria. The taskforce reported to the Keneally Government in November 2010 but the report has not been made public.³⁶

4. Regulation in other States

4.1 Overview: The only other jurisdictions to have legalised brothels are Victoria, Queensland and the

Australian Capital Territory. In Victoria and Queensland, there is a licensing system for brothels, while in the ACT, brothels need to be registered. In all three jurisdictions, planning approval is also required. The West Australian Government has recently proposed introducing a licensing scheme. The Northern Territory has a licensing system for escort agencies but not for brothels (which are illegal).³⁷

4.2 Victoria & Queensland: Outlined below is a brief description of the regulation of brothels in both of these States including planning restrictions, licensing schemes, and offences relating to brothels (not including sexual servitude offences).

Planning restrictions: In Victoria, the consent authority must refuse to grant a permit for the use of premises as a brothel in certain circumstances: for example, if the land is zoned by a planning scheme as being primarily for residential use; or if more than 6 rooms are to be used for sex work.³⁸ Similar restrictions apply under Queensland's planning laws.³⁹

Licensing: In Victoria, the licensing authority for sex work services (which includes brothels and escort agencies) is the [Business Licensing Authority](#) within Consumer Affairs Victoria. In Queensland, the licensing authority for brothels is the [Prostitution Licensing Authority](#). Key elements of the schemes in both States include:

- A brothel can only be operated with a licence issued by the licensing authority. Small owner-operators are exempt but in Victoria they need to be registered with the authority;
- Certain persons are not eligible to apply for a licence or should not

be granted a licence: e.g. persons who have been convicted of certain offences. In addition, the licensing authority is to refuse an application if the person is not a suitable person to operate a brothel. The Act lists a number of matters to be considered in determining if an applicant is a suitable person.

- In Queensland, a licence cannot authorise a person to operate a brothel at more than one premises. In Victoria, there is no such statutory restriction, but the licensing authority usually imposes a condition on a licence tying it to specified premises.
- In certain circumstances, cancellation of a licence is automatic: e.g. if the licensee is convicted of certain offences. In other specified circumstances, disciplinary action can be taken against the licensee: e.g. reprimand, requiring the licensee to comply with a requirement, or suspending or cancelling the licence. In Queensland, the licensing authority can take this action whereas in Victoria, these powers are vested in the Civil and Administrative Tribunal;
- Managers of brothels also need to be approved by the licensing authority. Similar provisions apply to managers as those dealing with the determination of licence applications, and those providing for automatic cancellation of licences and disciplinary action.⁴⁰

Offences: In Victoria, it is an offence to operate a brothel without a licence and the maximum penalty is 5 years imprisonment and/or a fine of \$146,568.⁴¹ In Queensland, if a court has

made a declaration that premises are a prohibited brothel (being unlicensed or in breach of planning laws), it is an offence to use the premises as a brothel and the maximum penalty is 3 years imprisonment and/or a fine of \$20,000.⁴² In both States, it is also an offence for a person to be in, enter or leave an unlicensed brothel/prohibited brothel.⁴³ Some other offences are:

- Operating a brothel in partnership with an unlicensed person.⁴⁴
- Failure by the licensee/manager to supervise the brothel.⁴⁵
- Having more than 13 staff at the brothel at any time (Qld only).⁴⁶
- Permitting liquor to be consumed in a brothel.⁴⁷
- Advertising for prostitution that is not in the approved form.⁴⁸
- Advertising prostitution as massage services.⁴⁹

4.3 Recent report in Victoria and proposed reforms: In June 2010, the Drugs and Crime Prevention Committee in the Victorian Parliament published a [report](#) on people trafficking for sex work.⁵⁰ The Committee discussed a range of issues and made a broad set of recommendations. This e-brief focuses on the findings relating to the regulation of the sex industry.

A key recommendation in the report was that the Government establish a whole of government Sex Industry Regulation, Policy and Coordination Unit, under the responsibility of the Attorney General and Department of Justice.⁵¹ The Committee stated:

The Committee believes there is a clear and close connection between sex trafficking and the legal and the unregulated sex industry. As such, it is the Committee's view that a specialist unit should be established which will have the responsibility for monitoring sex trafficking

as part of its wider oversight role of the Victorian sex industry.⁵²

The regulatory regime in Victoria is discussed in Chapters 11 and 12 of the report. In Chapter 11, the Committee refers to criticisms of the Victorian model of regulation. For example, the peak body representing sex workers argued that the Victorian regulatory model had failed sex workers (it argued that the NSW model was better); and anti-trafficking advocates argued that there was inadequate supervision of licensees.

In Chapter 12, the Committee noted criticisms from various stakeholders in relation to the enforcement of the regulatory regime. Sex industry representatives criticised the heavy-handed approach in enforcing compliance with the obligations of licensed brothels, and the lack of enforcement activity against unlicensed brothels. Conversely, a sex industry support agency suggested that there was inadequate supervision of licensed brothels, noting that "the three court cases for sexual servitude in Victoria to date have concerned trafficking into legal brothels".⁵³

The Committee ultimately concluded this section of the report by stating:

Commentators have observed that the *Prostitution Control Act* was never drafted or enacted with trafficking in mind and as such its usefulness as a mechanism to investigate and prosecute traffickers is limited. Nonetheless, amendments to the legislation [in 2010] have now provided a compliance and inspection framework that may increase the possibility of trafficking being detected. Whether such a system strikes a correct balance between tracking down cases of sex trafficking and bringing the perpetrators to justice; the protection of safety and health of workers and clients and the safeguarding the rights of both sex

workers and brothel owners on the other is still an issue open to debate.⁵⁴

The Committee's recommendations in Chapter 12 included that:

- Clear protocols be developed outlining areas of responsibilities and methods of collaboration between State agencies including local councils, police, Consumer Affairs, and health inspectors.
- Sanctions be introduced against brothel owners who have intentionally, knowingly or recklessly allowed trafficked women to work in their premises;
- Police have a more flexible right of entry to brothels (legal or illegal) for monitoring purposes, i.e. the ability to do spot-checks;
- Licence conditions for sex work service providers include granting access to gazetted or nominated support agencies.⁵⁵

The Act has not been amended to implement those recommendations requiring legislative amendment. However, on 12 October 2011, the Baillieu Government introduced into Parliament a bill which would:

- Clarify the division of enforcement responsibilities between Consumer Affairs Victoria and Victoria Police;
- Improve the powers of Victoria police to investigate and enforce breaches of the Sex Work Act 1994 and planning laws.⁵⁶

The Government also recently set up an illegal brothel taskforce involving a number of government agencies.⁵⁷

A 2006 [study](#) by several academics attempted to estimate the number of unlicensed brothels in Melbourne.⁵⁸ The study was based on a review of advertisements in newspapers and magazines, and visits to premises on a short list. It estimated that there were between 13 and 70 unlicensed brothels in Melbourne (a smaller number than generally believed).

4.4 Recent reports in Queensland:

In September 2009, the University of Queensland's School of Law, Human Trafficking Working Group published a [report](#) on ten years of prostitution regulation in Queensland.⁵⁹

The report concluded that the Act had improved the health and safety of sex workers and had introduced transparency and oversight into the industry.⁶⁰ However, it also stated that:

The current regulatory regime...leaves most aspects of prostitution in Queensland unaddressed. Several sources confirm that licensed brothels constitute only 10% of the state's prostitution industry.⁶¹

The report added:

The most significant and most profitable part of this industry, escort services, remains unregulated and earlier analysis has shown that most escort services involve practices that are currently illegal. The criminalisation of escort agencies is ineffective and also places licensed brothels at a disadvantage as they offer a service that responds to only a fraction of the demand. Calls from within and outside the industry are growing to allow licensed brothels in Queensland to offer outcall prostitution or to otherwise decriminalise escort services...⁶²

The Working Group also considered the issue of the safety of sole-operator sex workers, which are legal under the Act. The report stated that "a small step towards improving the safety of

sex workers would be to allow them to work from shared premises".⁶³

In relation to the Working Group's comments about escort services, it should be noted that a 2006 [report](#) by the Queensland Crime and Misconduct Commission examined the issue of outcall prostitution and recommended that it not be legalised.⁶⁴ This report followed the Commission's 2004 review of the *Prostitution Act 1999*.

In June 2011, the Crime and Misconduct Commission published a follow-up [review](#) of the *Prostitution Act 1999*.⁶⁵ In summary, it concluded:

1. There has been a satisfactory implementation by the Queensland Government of the vast majority of recommendations from our previous evaluation, apart from in two respects.
2. The underlying principles of the Act are generally being achieved.
3. There have been no significant changes in the industry since our previous evaluation.

In relation to the first point, the two recommendations that had not been implemented were to amend the Act to ensure that all advertisements for prostitution were covered (however prostitution is described); and that a whole of government approach for addressing prostitution-related issues be formalised through establishment of an inter-agency committee.⁶⁶

In relation to the second point, the report found that licensed brothels:

- Have minimal impact on community amenity
- Show no evidence of corruption and organised crime (other than illegal prostitution)
- Facilitate access to exit and retraining programs for sex workers who may wish to leave the industry

- Provide a healthy environment in which prostitution takes place
- Provide a safe workplace.⁶⁷

Commenting on the size of the industry, the Commission stated:

...the regulated licensed brothel sector remains relatively small (currently 23 licensed brothels) although it has increased in size since our last review. It continues to operate alongside the unregulated legal sole operator sector and the illegal prostitution industry. There is no consensus on the size and nature of the illegal industry except to say that: it is likely to be larger than the legal prostitution industry; illegal operations tend to be smaller in Queensland than in other States; many illegal operators masquerade as sole operators in their advertising; and there is an increasing number of migrant sex worker and migrant organisers operating in this industry...⁶⁸

In terms of future directions, the report recommended the establishment of a Ministerial Advisory Committee, which would have a number of general functions including reporting to the Minister annually on issues relating to the prostitution industry. Two specific tasks that the report identified for the Committee would be to monitor the effectiveness of recent reforms; and to identify other strategies to address the illegal sector, if necessary.⁶⁹

4.5 Western Australia: Brothels are currently illegal in Western Australia. In 2007, the Labor Government attempted to introduce a certification scheme for the operators of sexual services premises. The bill was based on a 2007 Working Group [report](#), which recommended that:

A minimalist model, based on the New Zealand model be adopted, whereby operators and managers of sexual services businesses (ie. a brothel operator or an escort service operator) be required to be certificated, rather than particular premises licensed.⁷⁰

The bill was passed in 2008 (despite opposition from the Liberal Party) but was not proclaimed to commence prior to the 2008 State election when there was a change in Government.

On 3 November 2011, the Coalition Government introduced into Parliament the [Prostitution Bill 2011](#), which contains a new regulatory scheme.⁷¹ The key elements of the proposed new scheme include:

- Brothels (and other prostitution businesses) will be legalised but will be regulated under a licensing scheme that is administered by the Department of Racing, Gaming and Liquor;
- It will be necessary for the operator and manager of a brothel to be licensed. Operating or managing a brothel without a licence will be an offence with a maximum penalty of 3 years imprisonment or a \$50,000 fine;
- Self-employed prostitutes will also need to be licensed. Prostitutes working in brothels will need to have a licence or have their identity, age and Australian citizenship or residency status verified by the operator of the brothel.
- Brothels will not be lawful in areas zoned for residential or mixed residential use; or where residential dwellings are a permitted use under local government planning schemes.
- There will be a number of new offences relating to prostitution businesses, including advertising for prostitution that is not in the approved form. There will also be a requirement for operators of

brothels to provide prostitutes and clients with condoms.

- The police will be responsible for dealing with unlawful prostitution and investigating offences. The police will be able to issue premises with a closure notice where there are reasonable grounds for believing that the premises were used for activities related to specified offences. The police will then be able to apply to the court for a closure order.

The proposed licensing scheme goes against a recommendation by the Law and Sex Worker Health (LASH) Team at the National Centre in HIV Epidemiology and Clinical Research. In a 2010 [report](#) commissioned by the West Australian Department of Health, the LASH Team concluded:

Licensing of sex work ('legalisation') should not be regarded as a viable legislative response. For over a century systems that require licensing of sex workers or brothels have consistently failed. Most sex workers remain unlicensed, so criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services. Thus licensing represents a potential threat to public health – most jurisdictions that once had licensing systems abandoned them long ago.⁷²

4.6 Australian Capital Territory: In the ACT, brothels (and escort agencies) are legal but they must be registered with the Office of Regulatory Services and they can only exist in a prescribed location.⁷³ The prescribed locations are Fyshwick in the CBD, and Mitchell in the Gungahlin district.

Persons who have been convicted of certain types of offences are prohibited from owning or operating a brothel: the maximum penalty for this offence is imprisonment for one year and/or a fine of \$11,000.⁷⁴ Persons must give the Registrar a copy of a police report about their criminal record at least seven days before they become the owner or operator of a brothel.⁷⁵

In October 2010, a Legislative Assembly Committee commenced an [inquiry](#) into the operation of the *Prostitution Act 1992*. Hearings were held between March and July 2011 and the Committee is due to report by the end of 2011. The ACT Government's [submission](#) to the inquiry supported the existing regulatory scheme but made a number of recommendations including that it be compulsory for all brothels to have multilingual signs on display clearly stating that sexual slavery is a crime.

4.7 Tasmania: It is illegal to operate a sexual services business but there is an exception for self-employed sex workers: i.e. a sex worker who solely owns and operates a business, or a sex worker who, together with not more than one other sex worker, owns and operates a business.⁷⁶

In 2009, the Department of Justice published a [review](#) of the *Sex Industry Offences Act 2005*. It concluded:

There are no easy answers in respect of dealing with the sex industry. The legislative options range from legalising and deregulating the industry to making it completely illegal. The current...Act is a half-way option that supports neither of the two fundamental positions and is therefore roundly criticised by both.⁷⁷

One of the review's recommendations was to "consider the suitability of alternative legislative models for adoption in Tasmania".⁷⁸ In June 2010,

then Attorney-General, Lara Giddings, [announced](#) that one of her priorities for the coming year would be to reform sex industry laws.⁷⁹ However, there have been no further developments.

4.8 South Australia: Brothels are illegal in South Australia. There have been a number of unsuccessful attempts to introduce reforms over the years. On 27 September 2011, it was [reported](#) that Steph Key MP, from the Labor Party, is planning to introduce a Private Member's Bill to decriminalise all forms of prostitution.⁸⁰ The bill has not yet been introduced.

5. Differences in licensing models

In a 2008 article, Thomas Crofts and Tracey Summerfield (law lecturers in Western Australia) discussed the 2008 Act in Western Australia, which included a licensing scheme for sex work (as noted above, the Act was not proclaimed). They argued that the effectiveness of a licensing model rests in the detail of the legislation.⁸¹

They distinguished between two models: the 'pure licensing model', which licences the sex industry in a similar way to other businesses; and the 'social control model', which they described and criticised in these terms:

Under a social control model, such as those proposed in the 2002 and 2003 WA Bills, the goal of eliminating or reducing the incidence of sex work underlies the system and pervades the whole licensing process. Separate industry-specific licensing bodies are created which have functions that go beyond merely issuing licences, such as policy formation, control and disciplinary powers. Methods of applying for licences tend to be complex and licensing bodies tend to have wide discretionary powers, such that they can require invasive information. Generally there can be no expectation of receiving a licence even if all conditions of application are satisfied and even when licences are

issued they may contain restrictive conditions. Such systems tend to perpetuate the problems associated with criminalisation because licensing is made so onerous in pursuit of the goal of elimination of the industry that many workers operate outside the system, thus defeating the regulatory goal.⁸²

According to Crofts and Summerfield, the 2008 Act in Western Australia and the New Zealand scheme (on which the Act was based) represent pure licensing models.⁸³ In their view, the Victorian, ACT, and Northern Territory regimes are also closer to the pure licensing model, whereas Queensland has adopted a social control model.⁸⁴

6. Growth of escort prostitution

As noted above, the 2009 report of the University of Queensland's School of Law, Human Trafficking Working Group pointed out that escort services are the most significant and profitable part of Queensland's prostitution industry. In a 2010 [article](#), Sheila Jeffreys, a lecturer in sexual politics and international feminist politics at the University of Melbourne, argued that the growing escort prostitution sector poses a problem for the legalisation of prostitution. Jeffreys states:

Policy-makers...need to consider how the industry is changing. Brothels with walls, which can be subjected to monitoring and the creation of OHS plans and panic buttons in rooms, are becoming a minority form of prostitution. In legalized regimes, this is because sex industrialists do not want the expense or the restrictions involved in becoming legal. Also, escort prostitution can easily be organized with new electronic technologies such as mobile phones and the Internet, and it can be staffed by the pimps with trafficked women without attracting the attention that might result from placing these women in brothels. Escort prostitution manifestly challenges the expressed aims of legalizing regimes, especially those which speak of reducing violence against women and organized crime...⁸⁵

7. Published stakeholder views

This review of stakeholder views on the licensing of brothels is limited to those in published form. Several stakeholders do not appear to have published views and are therefore not included here: these include (for example) the Adult Business Association of NSW, the NSW Police, and the NSW Crime Commission. As noted earlier, in 2001 the Local Government and Shires Association expressed support for a licensing system. The Association has not issued a response to the NSW Government's current proposal.

7.1 Scarlett Alliance: In a September 2010 [submission](#) to the NSW Government, Scarlett Alliance, the national peak sex worker organisation, stated that it "does not support the Queensland model of sex industry regulation for implementation in NSW".⁸⁶ The Alliance listed several reasons for this stance including the argument that the Queensland model:

Promotes the development of a two tier sex industry; the legal sector or those that can comply and the illegal sector made up of the majority who are unable to meet the excessive conditions of compliance.⁸⁷

The Alliance pointed out that in 2010, ten years after the Queensland model was adopted, there were only 25 legal brothels in Queensland.

The Alliance supports the current NSW model of decriminalisation. It noted that decriminalisation has resulted in a number of benefits including strong public health outcomes. It stated:

the state funded sex worker project has access to staff of businesses on outreach to deliver health promotion through peer education. An approach documented within the National HIV and STI Strategies as contributing to low rates of

HIV and STI's amongst sex workers and the effective implementation of safer sex practices by sex workers and their clients.⁸⁸

The Alliance also identified key areas which would improve on the current NSW regime including:

- Revoking the 1996 Ministerial Directive that declared that councils could restrict brothels to industrial zones only;
- Removing discriminatory provisions against sex workers within the Standard Local Environmental Plan;
- Repealing the offence in the *Summary Offences Act* of advertising that premises are used for prostitution.⁸⁹

7.2 Sex Workers Outreach Project: In a [media release](#) dated 11 October 2011, the Sex Workers Outreach Project (SWOP) stated its opposition to the NSW Government's plans to introduce a licensing scheme.⁹⁰ It said that such a scheme would be "likely to undermine the health and safety of sex workers and their clients". SWOP's general manager commented:

Proposals to add a centralised and costly licensing system to the existing local council registration process is a step backwards, potentially pushing many brothels back into the black market and wiping away the health and safety gains made over the last 15 years.

Protecting the health and dignity of sex workers is a challenging and long term job. So far, the evidence is that NSW has done better than almost anywhere else in the world. We need to be careful we protect this investment and continue to make the industry safer for everyone involved in it.

7.3 Coalition Against Trafficking in Women: The Coalition Against Trafficking in Women Australia

(CATWA) opposes legalisation of prostitution (i.e. a licensing model). It argues that legalisation in Victoria has not only failed to achieve its intended aims (e.g. contain the growth of prostitution, eliminate the involvement of organised crime, make women safer), it has made the situation worse in each of these cases, as well as creating some new problems.⁹¹

CATWA also opposes the decriminalisation model adopted in NSW.⁹² Instead, CATWA supports "the decriminalisation of all women in prostitution, and the penalising of buyers and pimps". According to CATWA, this is the Nordic model that has been adopted in Sweden, Finland, Iceland and South Korea.⁹³ CATWA argues that this is the only model:

...that is compatible with international law and has been empirically shown to reduce prostitution as a harmful practice of violence against women.⁹⁴

7.4 Australian Christian Lobby: In a [submission](#) to the current inquiry in the ACT, the Australian Christian Lobby argued that:

One of the main aims of decriminalisation or regulation of prostitution is to control illegal prostitution. Experience has shown, however, that the opposite outcomes usually occur – that legalising prostitution results in an increased demand for sexual services and in turn a growth in both the legal and illegal sectors.⁹⁵

The Australian Christian Lobby recommended that the Government give serious consideration to the Swedish model of regulation.⁹⁶

8. Conclusion

The regulation of prostitution continues to be a controversial issue. In 1995, the NSW Government decriminalised brothels and since then brothels have

primarily been regulated under planning laws. The NSW Government is now proposing to introduce a legalised (or licensing) model to address concerns about the links between brothels and organised crime, and concerns about sex trafficking.

This would bring NSW into line with the regulation of brothels in Victoria and Queensland, and a proposed scheme in Western Australia. The Victorian scheme has been criticised on a number of fronts including that licensed brothels have been involved in cases of sex trafficking. A review of the Queensland Act found that its underlying principles were generally being achieved for the licensed brothel sector. However, it noted that the unlicensed brothel sector was likely to be larger than the licensed sector.

In 2001, the Local Government and Shires Association of NSW expressed support for licensing scheme but a number of stakeholders oppose this approach. The Scarlett Alliance and the Sex Workers Outreach Project support the current system, arguing that it has strong health and safety benefits. The Coalition Against Trafficking in Women argues against the licensing model and in favour of the Swedish model which criminalises pimps and the buyers of prostitution. The Australian Christian Lobby has also advocated for this model.

¹ C Hartcher, 'NSW Libs and Nats to crack down on illegal brothels', *Media Release*, 22 December 2010.

² T Reilly and A Davies, 'Licensing law to tighten screws on brothel chiefs', *SMH*, 11 October 2011

³ N McKenzie et al, 'Legal brothels linked to international sex trafficking rings', *SMH*, 10 October 2011.

⁴ S Smith, *The Control of Prostitution: An Update*, Briefing paper 14/2003

- ⁵ For a discussion of regulatory regimes in other countries, see E Mossman, [International Approaches to Decriminalising or Legalising Prostitution](#), New Zealand Ministry of Justice, 2007
- ⁶ S Smith, note 4, p1
- ⁷ Wood Royal Commission Final Report quoted in Brothels Task Force, *Report of the Brothels Task Force*, NSW Government, 2001, p5
- ⁸ *Disorderly Houses Amendment (Brothels) Act 2001*
- ⁹ *Brothels Legislation Amendment Act 2007*. For a critique of the 2007 reforms, see P Crofts, 'Sex in the Dark: The Brothels Legislation Amendment Act 2007 (NSW) (2007) 19(2) *Current Issues in Criminal Justice* 183
- ¹⁰ Sex Services Premises Planning Advisory Council, *Sex Services Premises: Planning Guidelines*, 2004, p19.
- ¹¹ Planning Guidelines, note 10, p19
- ¹² P Crofts, note 9, p6-7
- ¹³ For a detailed analysis of council practices, see Planning Guidelines, note 10, Part 4
- ¹⁴ Planning Guidelines, note 10, 2004, p3
- ¹⁵ Planning Guidelines, note 10, p79
- ¹⁶ Planning Guidelines, note 10, p27
- ¹⁷ Planning Guidelines, note 10, p27
- ¹⁸ T Reilly and A Davies, 'Licensing law to tighten screws on brothel chiefs', *SMH*, 11 October 2011
- ¹⁹ EP&A Act 1979, s123
- ²⁰ EP&A Act 1979, s124
- ²¹ EP&A Act 1979, s121B(1) (Order No.1). See also s 121ZR
- ²² EP&A Act 1979, s125.
- ²³ EP&A Act 1979, s121ZS
- ²⁴ *Restricted Premises Act 1943*, s2
- ²⁵ *Summary Offences Act*, s18
- ²⁶ *Summary Offences Act 1988*, s16
- ²⁷ *Crimes Act 1900*, Part 3, Div 10A
- ²⁸ *Crimes Act 1900*, s80B
- ²⁹ *Criminal Code Act 1995*, Chapter 8, Divisions 270 and 271
- ³⁰ Brothels Task Force, *Report of the Brothels Task Force*, NSW Government, 2001, p31
- ³¹ Taskforce report, note 30, p32
- ³² T Stewart, [Hansard](#), *Legislative Assembly*, 30 November 2001.
- ³³ ICAC, *Report on an investigation into corrupt conduct associated with the regulation of brothels in Parramatta*, August 2007, p5
- ³⁴ ICAC report, note 33, p26
- ³⁵ [Hansard](#), Legislative Council, 1 September 2009, p16971
- ³⁶ Private communication with an officer in the Department of Premier and Cabinet, 9 November 2011
- ³⁷ *Prostitution Regulation Act (NT)*, Part 3
- ³⁸ *Sex Work Act 1994 (Vic)*, s 74
- ³⁹ *Sustainable Planning Act 2009 (Qld)*, Sch 1 (prohibited development).
- ⁴⁰ *Sex Work Act 1994 (Vic)*, Part 3; *Prostitution Act 1999 (Qld)*, Part 3
- ⁴¹ *Sex Work Act 1994 (Vic)*, s22. The maximum fine is 1200 penalty units (and one penalty unit is \$122.14)
- ⁴² *Prostitution Act 1999 (Qld)*, s70
- ⁴³ *Sex Work Act 1994 (Vic)*, s15; *Prostitution Act 1999 (Qld)*, s69
- ⁴⁴ *Sex Work Act 1994 (Vic)*, s 57; *Prostitution Act 1999 (Qld)*, s 81
- ⁴⁵ *Sex Work Act 1994 (Vic)*, s 49(3); *Prostitution Act 1999 (Qld)*, s 80
- ⁴⁶ *Prostitution Act 1999 (Qld)*, s78(1)(b)
- ⁴⁷ *Sex Work Act 1994 (Vic)*, s 21; *Prostitution Act 1999 (Qld)*, s 83
- ⁴⁸ *Sex Work Act 1994 (Vic)*, s 17; *Prostitution Act 1999 (Qld)* s 93(2)
- ⁴⁹ *Sex Work Act 1994 (Vic)*, s 17(4); *Prostitution Act 1999 (Qld)*, s 95
- ⁵⁰ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, Victorian Parliament, June 2010
- ⁵¹ Committee report, note 50, p221-222
- ⁵² Committee report, note 50, p220
- ⁵³ Committee report, note 50, p145
- ⁵⁴ Committee report, note 50, p153-154
- ⁵⁵ Committee report, note 50, p154-155
- ⁵⁶ Sex Work and Other Acts Amendment Bill 2011, Explanatory Memorandum, p1
- ⁵⁷ M O'Brien MP, 'Tougher laws against illegal brothels introduced into Parliament', [Media Release](#), 12 October 2011
- ⁵⁸ M Chen et al, 'Estimating the number of unlicensed brothels operating in Melbourne', (2010) 34(1) *Australian and New Zealand Journal of Public Health* 67
- ⁵⁹ The University of Queensland TC Beirne School of Law Human Trafficking Working Group, *Ten Years of Prostitution Regulation in Queensland*, 2009.
- ⁶⁰ Working Group report, note 59, p34
- ⁶¹ Working Group report, note 59, p34
- ⁶² Working Group report, note 59, p34
- ⁶³ Working Group report, note 59, p35
- ⁶⁴ Queensland Crime and Misconduct Commission, *Regulating outcall prostitution: should legal outcall prostitution services be extended to licensed brothels and independent escort agencies*, October 2006.
- ⁶⁵ Crime and Misconduct Commission Queensland, *Regulating Prostitution: A*

- follow up review of the Prostitution Act 1999, June 2011.
- ⁶⁶ CMC report, note 65, pxii
- ⁶⁷ CMC report, note 65, pxii
- ⁶⁸ CMC report, note 65, pziii
- ⁶⁹ CMC report, note 65, p47
- ⁷⁰ Prostitution Law Reform Working Group, *Prostitution Law Reform for Western Australia*, January 2007, p5.
- ⁷¹ The development of these laws was [announced](#) in November 2010. On 14 June the Government [released](#) a [draft Prostitution Bill 2011](#) for public comment.
- ⁷² B Donovan et al, *The Sex Industry in Western Australia: A report to the Western Australian Government*, 2010, pviii
- ⁷³ *Prostitution Act 1992* (ACT), ss12,18
- ⁷⁴ *Prostitution Act 1992* (ACT), s 15
- ⁷⁵ *Prostitution Act 1992* (ACT), s 16
- ⁷⁶ *Sex Industry Offences Act 2005* (Tas), ss 3, 4
- ⁷⁷ Department of Justice (Tas), *Report on the Review of the Sex Industry Offences Act 2005*, 2009, p20
- ⁷⁸ Department of Justice, note 77, p21
- ⁷⁹ L Giddings MP, 'Attorney General outlines law reform agenda', *Media Release*, 22 June 2010.
- ⁸⁰ G Kelton, 'Round seven for South Australian prostitution laws', *The Advertiser*, 27 September 2011.
- ⁸¹ T Crofts and T Summerfield, 'Red Light on Sex Work in Western Australia' (2008) 33(4) *Alternative Law Journal* 209
- ⁸² T Crofts and T Summerfield, note 81, p212-213
- ⁸³ T Crofts and T Summerfield, note 81, p213
- ⁸⁴ T Crofts and T Summerfield, 'The Licensing of Sex Work: Regulating and Industry or Enforcing Public Morality' (2007) 33 *University of Western Australia Law Review* 289 at 296.
- ⁸⁵ S Jeffreys, '["Brothels without walls": The escort sector as a problem for the legalization of prostitution](#)' (2010) 17(2) *Social Politics* 210
- ⁸⁶ Scarlett Alliance, *Submission on Sex Industry Regulation in NSW*, 2010, p15
- ⁸⁷ Scarlett Alliance submission, note 86, p15
- ⁸⁸ Scarlett Alliance submission, note 86, p5
- ⁸⁹ Scarlett Alliance submission, note 86, p7-9
- ⁹⁰ SWOP, 'Health org says more laws will not make sex industry safer', *Media Release*, 11 October 2011.
- ⁹¹ CATWA [website](#). See also M Sullivan, [What happens when prostitution becomes work? An update on legalization of prostitution in Australia](#), CATWA, 2005
- ⁹² CATWA [website](#)

- ⁹³ CATWA, [Submission in response to the Standing Committee on Justice and Community Safety review of the operation of the Prostitution Act 1992](#), 2011, p3
- ⁹⁴ CATWA submission, note 94, p3
- ⁹⁵ Australian Christian Lobby, *Submission in response to the Standing Committee on Justice and Community Safety review of the operation of the Prostitution Act 1992*, 2011, p6
- ⁹⁶ Australian Christian Lobby submission, note 95, p19

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