

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Inquiry into the Prostitution Act 1992

FEBRUARY 2012

Report 9

Committee membership

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Resolution of appointment

On 9 December 2008 the Legislative Assembly appointed a Standing Committee on Justice and Community Safety to perform the duties of a scrutiny of bills and subordinate legislation committee and to examine matters related to: community and individual rights; consumer rights; courts; police and emergency services; corrections including a prison; governance and industrial relations; administrative law; civil liberties and human rights; censorship; company law; law and order; criminal law; consumer affairs; and regulatory services.¹

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 9 December 2008, pp.12–15

Terms of reference

On 28 October 2010, the Legislative Assembly of the ACT resolved:

That this Assembly refers to the Standing Committee on Justice and Community Safety a review into the operation of the *Prostitution Act 1992* for inquiry and report to the Assembly by the end of 2011.

In reviewing the operation of the Act the Committee have regard to a range of issues including but not limited to:

- (1) the form and operation of the Act;
- (2) the regulation, enforcement and monitoring of commercially operated brothels;
- (3) identifying regulatory options, including the desirability of requiring commercially operated brothels to maintain records of workers and relevant proof of age, to ensure that all sex workers are over the age of 18 years;
- (4) the adequacy of, and compliance with, occupational health and safety requirements for sex workers;
- (5) any links with criminal activity;
- (6) the extent to which unlicensed operators exist within the ACT; and
- (7) any other relevant matter.

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RECOMMENDATIONS

RECOMMENDATION 1

3.122 A majority of the Committee recommends that the sex industry be recognised in the community as an occupation and that the legislation reflect this in its approach to occupational health hazards.

RECOMMENDATION 2

3.123 A majority of the Committee recommends that the sex industry be treated by regulatory regimes in a similar fashion to other industries.

RECOMMENDATION 3

3.126 A majority of the Committee recommends that the name of the Act be changed to the *Commercial Sexual Services Act 1992*. References to 'prostitute' in the Act should be changed to 'sex worker', and references to 'prostitution' should be changed to 'sex work'.

RECOMMENDATION 4

4.42 The Committee recommends that the ACT Government develop a protocol for inspections of brothels, to be reported against in each Justice and Community Safety Directorate Annual Report.

RECOMMENDATION 5

5.44 The Committee recommends that an offence under section 20 of the *Prostitution Act 1992* should apply to children and young people up to the age of 18 years, and should be an absolute liability offence. Sections 20 and 22 of the Act should be amended to reflect this.

RECOMMENDATION 6

7.103 A majority of the Committee recommends that sections 24 and 25 of the *Prostitution Act 1992* be removed and a cross-reference to section 21 of the *Public Health Regulation 2000* be inserted in the *Prostitution Act*.

RECOMMENDATION 7

7.105 The Committee recommends that section 27 of the *Prostitution Act 1992* be amended such that operators of brothels are required to provide safety equipment, including prophylactics, to sex workers in brothels under their management.

RECOMMENDATION 8

8.42 The Committee recommends that the ACT Government and ACT Policing ensure an appropriate level of focus and resourcing to manage risk from organised crime, including in the sexual services industry, in the ACT. This should be included in purchase agreements between the ACT Government and ACT Policing.

RECOMMENDATION 9

9.61 The Committee recommends that offences under section 17 of the *Prostitution Act* be re-cast to reflect Section 13, Freedom of Movement, and Section 26, Freedom from forced work, of the *Human Rights Act 2004*. Penalties for offences under section 17 should be consistent with those offences under the *Human Rights Act*.

RECOMMENDATION 10

9.63 The Committee recommends that programs to assist people wishing to cease working in the sexual services industry be supported, at an adequate level, by the ACT Government. The ACT Government should ensure that sex workers are aware of the existence of these programs.

RECOMMENDATION 11

9.65 The Committee recommends that the ACT Government amend legislation so as to require that ACT brothels display multi-lingual signage in ACT brothels, advising clients and workers that trafficking is a criminal offence and providing a contact through which reports may be made. The contact should be available 24 hours, 7 days a week.

RECOMMENDATION 12

9.67 The Committee recommends that the ACT Government fund a Culturally and Linguistically Diverse (CALD) outreach program for sex workers in the ACT.

RECOMMENDATION 13

10.98 A majority of the Committee recommends that sole operators no longer be required to register with the Office of Regulatory Services.

RECOMMENDATION 14

10.102 A majority of the Committee recommends that up to two sex workers who are sole operators may work from a residential premises, where neither are in the employ of the other.

RECOMMENDATION 15

10.112 The Committee recommends that persons holding the personal information of sex workers be required to do so in accordance with the *Privacy Act 1988* (Cwth).

RECOMMENDATION 16

10.114 The Committee recommends that if personal information for sex workers is held by ORS, that this information only be disclosed to police investigating a crime, on presentation of a warrant.

RECOMMENDATION 17

10.116 The Committee recommends that any changes to the Prostitution Act 1992 arising from this inquiry be reviewed in five years time.

1 INTRODUCTION

Events leading to the inquiry

- 1.1 On 15 September 2008, a young woman died in a Canberra brothel from an overdose of drugs. Subsequent inquiry found that she was, at 17 years of age, younger than the minimum age—eighteen—set for providers of sexual services under the *Prostitution Act 1992* (ACT).²
- 1.2 The concerns which the death raised were evident in contributions to the inquiry. Eighteen submissions make direct reference to it,³ and were on five occasions also referenced in the Committee's public hearings.⁴
- 1.3 In his contribution to the inquiry, the Attorney-General Mr Corbell MLA stated that the Act was 'now 20 years old and [was] worthy of review'.⁵ This was also a significant rationale for the inquiry.
- 1.4 On 24 February 2011 the Committee wrote to the family of the deceased young woman, and received no reply.

² Noel Towell and Victor Violante, 'Death of innocence', *Canberra Times*, 1 November 2008, <http://www.canberratimes.com.au/news/local/news/general/death-of-innocence-janin-17-lost-to-the-night/1349314.aspx>, viewed 24/01/2012.

³ The death was referred to in the following submissions by: Ms Jane Reeves, Submission No.2; Mr Alex Beard, Submission No.3; Ms Shelle Mulvay, Submission No.6, p.4; Scarlet Alliance, Submission No.9, p.1; ACT Policing, Submission No.15, p.2; Australian Federal Police Association, Submission No.18, p.2; [Name Withheld], Submission No.19, p.1; Ms Sandra MacDonald, Submission No. 23; Mr Peter MacDonald, Submission No.27; CATWA, Submission No.28, p.3; ACT Government, Submission No.34, p.4. ACT Human Rights Commission, Submission No.37, p.5; Mr Patrick Cole, Submission No.41, p.1; Australian Christian Lobby, Submission No.42, p.1; Collective Shout, Submission No.43, p.5; FamilyVoice, Submission No.50, p.2; Ms Christine Carden, Submission No.52, p.2; and Mr Craig Charlton, Submission No.58.

⁴ The death was referred to by the following witnesses: Mr Simon Corbell MLA in *Transcript of Evidence*, 23/03/11, pp.2-3, 10; Ms Jane Green in *Transcript of Evidence*, 20/04/11, p.39; Mrs Michelle Pearse in *Transcript of Evidence*, 11/05/11, pp.60, 61; Mr Nick Jensen in *Transcript of Evidence*, 11/05/11, p.63; and Ms Melinda Tankard-Reist in *Transcript of Evidence*, 11/05/11, p.69.

⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.3.

Conduct of the inquiry

- 1.5 The Assembly referred the inquiry to the Committee on 28 October 2010. The Committee advertised the inquiry seeking contributions, and received 58 submissions in all. It held four public hearings and deliberated on the inquiry at 23 private meetings.

Structure of the report

- 1.6 The structure of this report for the most part follows the terms of reference for the inquiry, as follows:
- This introduction, Chapter 1, which provides background on the reason for the inquiry, describes its the conduct and gives this overview of the structure of the report;
 - Chapter 2, which provides a summary of the form and provisions of the Act;
 - Chapter 3, which considers the arguments offered by contributors for and against the legalisation of sex work, as adopted in the ACT; and considers general comment about the Act by those for and against its approach, responding to Term of Reference 1 for the inquiry.
 - Chapter 4, which considers regulation, enforcement and monitoring for brothels, responding to Term of Reference 2 for the inquiry.
 - Chapter 5, which considers ways to prevent underage people from providing sexual services in ACT brothels, responding to Term of Reference 3 for the inquiry;
 - Chapter 6, which considers occupational health and safety, and relevant health matters in general, responding to Term of Reference 4 for the inquiry
 - Chapter 7, which considers other health-related matters in the Act, specifically sections 24, 25 and 27;
 - Chapter 8, which considers the matter of links with criminal activity, in general, responding to Term of Reference 5 for the inquiry; and
 - Chapter 9, which considers human trafficking in particular, also responding to Term of Reference 5;

- Chapter 10, which considers the extent to which unlicensed operators exist within the ACT, responding to Term of Reference 6 for the inquiry; and
- Dissenting comment regarding the inquiry report from Vicki Dunne MLA.

Unanimous and majority views of the Committee

- 1.7 On certain matters in this inquiry the members of the Committee were not unanimous in their view.
- 1.8 The Committee wishes it to be understood that in those parts of the report where the text reads ‘the Committee notes’, ‘the Committee takes the view’, or ‘the Committee recommends’, this refers to a unanimous view of the Committee.
- 1.9 In those parts of the report where the text states that a *majority* of the Committee notes, takes the view, or recommends a view or action, this refers to a view that is not unanimous, which attracted the agreement of more than half the members of the Committee, with one member taking another view.

Role of the Chair

- 1.10 The Committee also wishes to indicate Standing Order 252, ‘Signing of report’ and Standing Order 253, ‘Presentation of report’. These provide that the Chair of a committee will sign and present reports of the Committee to the Assembly, irrespective of his or her own view of the content of the report.⁶

⁶ Legislative Assembly for the Australian Capital Territory, *Standing and Temporary Orders and continuing resolutions of the Assembly*, as at December 2011, Standing Orders 252 and 253.

2 SUMMARY OF THE *PROSTITUTION ACT 1992*

2.1 The *Prostitution Act 1992* legalises prostitution in the ACT.

2.2 The Act creates:

- Disqualifying offences;
- Obligations and the means to register operators of brothels;
- Offences regarding
 - coercion and soliciting;
 - the sexual exploitation of children;
 - the transmission of sexually transmitted diseases;
- Obligations to provide prophylactics; and
- Miscellaneous provisions which allow the Government to issue regulations regarding sex work and the sex industry.

2.3 These are considered below.

Linkages to other legislation

2.4 Part 1 of the Act is a 'preliminary' that provides linkages to other legislation, notably the *Criminal Code 2002*, regarding certain offences, and the *Legislation Act 2001* regarding penalties expressed as penalty points.

Disqualifying offences

2.5 Disqualifying offences, which prevent persons from being deemed acceptable to have an interest in a brothel, are specified in section 6. This section references disqualifying offences created by the Criminal Code, listed in Schedule 1, and those created by the *Prostitution Act 1992*, listed in Schedule 2.

2.6 Other disqualifying offences are listed in section 6, including money laundering; serious drug offences; offences from other Australian jurisdictions similar to those listed in Schedules 1 and 2; specific offences

under the *Commonwealth Migration Act 1958* section 232A (Organising bringing groups of non-citizens into Australia); and offences against the laws of foreign countries as listed in Schedule 3 of the Act.

- 2.7 These sections are discussed in particular in Chapter 6, 'Links with criminal activity', which corresponds to Term of Reference 5 for the inquiry.

Registration

- 2.8 'Registration notices' and 'annual notices', which the operators of brothels or escort agencies are obliged to provide, are defined under sections 7 and 8. The obligation to provide such notices is created in sections 12 and 13. They are given to the Registrar of Brothels and Escort Agencies created in section 9, and the functions of the registrar are created in section 10. The form of the information provided by operators of brothels and escort agencies, to be maintained by the Registrar, is set out in section 11, as are conditions and restrictions on public access to the register. Operators are obliged, under section 14, to advise the Registrar of any changes to 'particulars', within 7 days of them occurring.
- 2.9 These sections are discussed in particular in Chapter 7, 'Unlicensed operators', which corresponds to Term of Reference 6 for the inquiry.

Further on disqualifying offences

- 2.10 Disqualifying offences are again taken up in sections 15 and 16. It is an offence under section 15(1) to be 'an interested person' in a brothel or escort agency a person 'convicted or found guilty of a disqualifying offence' or, at section 15(2), for a person to become an interested person knowing that ('or is reckless as to whether') another interested person is disqualified. A person must, under section 16, provide the Registrar with a police report at least 7 days before they become an interested person in a brothel or escort agency.
- 2.11 As noted for section 6 of the Act, these sections are discussed in particular in Chapter 6, 'Links with criminal activity', which corresponds to Term of Reference 5 for the inquiry.

Coercion and soliciting offences

- 2.12 Part 3 of the Act identifies other offences under the Act. Section 17 makes it an offence to induce a person to provide commercial sexual services through threats, intimidation or assault, by supplying a ‘controlled medicine or prohibited substance’, or by making false representations. Section 18 makes it an offence to operate a brothel in any other place than a prescribed location (defined in section 4 of *Prostitution Regulation 1993*). Section 19 defines soliciting offences: either offering or procuring commercial sexual services in a public place (section 19(1), or accosting a child in order to offer or procure commercial sexual services in a public place (section 19(2)).
- 2.13 These sections are discussed in particular in Chapter 6 of this report, ‘Links with criminal activity’, which corresponds to Term of Reference 5 for the inquiry.

Offences regarding children

- 2.14 Sections 20 and 21 create offences for exploiting children in the context of prostitution. Section 20 makes it an offence if a person ‘causes, permits, offers or procures’ a child for commercial sexual services, and provides different levels of penalty depending on the age of the child (either in section 20(1) & (2), under 12 years of age, or section 20(3) & (4), over 12 years of age). Absolute liability and strict liability apply, respectively, to the fact of the child being under or over 12 years of age.⁷ The maximum penalties are 15 and 10 years imprisonment respectively.
- 2.15 Section 21 makes it an offence to receive a payment that a person knows, or could reasonably be expected to know, derives from commercial sexual services provided by a child, with a maximum penalty of 7 years. Section 22 makes it a defence against prosecution if a person ‘took reasonable steps’ to ascertain the child’s age, or ‘believed on reasonable grounds that the child

⁷ ‘Absolute liability’ means that there is no defence available if the action was done in error; ‘strict liability’ means that *mens reus*—deliberate intent or guilty mind—need not be established to obtain a conviction.

had attained 18 years of age'. Section 23 makes it an offence for an operator of a brothel or escort agency to 'permit a child to be on the premises'.

- 2.16 These sections are discussed in particular in Chapter 4 of the report, 'Ensuring workers are over 18', which corresponds to Term of Reference 3 for the inquiry.

Sexually transmitted infections

- 2.17 The balance of Part 3, sections 24-27, is concerned with Sexually Transmitted Infection (STI) control.
- 2.18 Under section 24 the operator and owner of a brothel or escort agency must take 'reasonable steps' to ensure that a prostitute does not provide sexual services while infected with a sexually transmissible infection. Section 25 makes it an offence to provide or receive commercial sexual services while knowingly infected with an STI. Section 26 makes it an offence to make false representations about medical tests, where a brothel operator (section 26(1)) or a prostitute (section 26(2)) intends the person to believe that the prostitute is not infected with an STI, or is reckless about the matter.
- 2.19 These sections are discussed in particular in Chapter 5 of the report, 'Occupational health and safety', along with other health-related matters, which corresponds to Term of Reference 4 for the inquiry.

Provision of prophylactics

- 2.20 Section 27 deals with the provision of prophylactics. It provides that:
- operators of brothels and escort agencies take 'reasonable steps' to ensure that no person provides or receives commercial sexual services unless a prophylactic is used;
 - that no operator or owner discourage the use of prophylactics;
 - that no person, at a brothel or elsewhere, shall provide or receive commercial sexual services without a prophylactic being used; and

- that no person shall ‘misuse, damage or interfere with the efficacy of any prophylactic used, or continues to use a prophylactic knowing that it is damaged’.

2.21 This section is also discussed in Chapter 5 of the report, ‘Occupational health and safety’, along with other health-related matters, which corresponds to Term of Reference 4 for the inquiry.

Miscellaneous

2.22 Part 4 of the Act deals with ‘miscellaneous’ matters. These include:

- conditions under which a police officer may enter a brothel or escort agency (section 28);
- the power of the Minister to make determinations on fees (section 29); and
- the power of the registrar to approve forms (section 30).

2.23 Part 4 of the Act also contains section 32, which creates powers for the Executive to make regulations for the Act. Regulations can be made, in relation to, among other things:

- the ‘cleanliness of brothels’;
- laundering and linen;
- hygiene standards;
- disposal of prophylactics;
- inspections of brothels and escort agencies;
- ‘provision of information relating to sexually transmissible infections to prostitutes and clients’;
- the health of clients and prostitutes;
- provision of assistance to prostitutes to prepare for alternative occupations; and
- the ‘size, form and content’ of advertisements for brothels and escort agencies (section 32).

2.24 These sections are discussed in particular in Chapter 3, ‘Regulation of commercial brothels’, which corresponds to Term of Reference 2 for the inquiry.

Other legislation

- 2.25 In addition to the *Prostitution Act 1992* there is other legislation which regulates the sexual services industry in the ACT. This comprises the:
- Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010, which regulates occupational health and safety in the sexual services industry;
 - *Work Safety Regulations 2009*, which regulates occupational health and safety in all occupations in the ACT;
 - *Public Health Regulations 2000*, which in section 21(1) makes it illegal to transmit certain diseases by intent or neglect; and
 - *Prostitution Regulation 1993*, which provides that commercial brothels must be situated in prescribed areas in Fyshwick and Mitchell.

3 FORM AND OPERATION OF THE ACT

- 3.1 Term of Reference 1 for the inquiry requires the Committee to inquire into the ‘form and operation of the Act’. This is considered below.

Main views

- 3.2 The *Prostitution Act 1992* legalised sex work in the ACT, and made it a regulated activity, with obligations for brothel operators and independent individual sex workers to register and pay registration fees, among other obligations which are described below.
- 3.3 For the most part, contributions to the inquiry either supported or opposed the underlying approach and philosophy of the *Prostitution Act 1992*. In this report these two groups are referred to as ‘proponents’ and ‘opponents’ of the Act as it currently stands, with the ACT Government as a special kind of proponent.
- 3.4 Each of these positions adopts a characteristic stance on key aspects of the law and policy of sex work in the ACT. Below, these two broad positions are described in terms of their views on regulation; whether sex work is a valid choice of work; the so-called ‘Swedish Model’, demand reduction and exit programs; and human trafficking.

Proponents

Regulation versus criminalisation

ACT Government

- 3.5 The Attorney-General told the Committee that the ACT Government was in favour of continuing with ‘a regulated and legal sex industry in the ACT’.

This, it believed, was ‘the most progressive and socially responsible course of action to take’.⁸

3.6 The alternative—re-criminalising sex work—would ‘force the industry underground’. This would ‘be detrimental to the public interest, would create an unsafe environment for both sex workers and their clients’. Moreover, it would ‘potentially lead to the exploitation of the industry by criminal elements’.⁹

3.7 For these reasons, the Government affirmed ‘the importance of a regulated industry that provides a safe environment for both workers and their clients’.¹⁰

3.8 The Attorney-General stated the Government’s view that regulating, rather than criminalising, sex work had allowed the ACT to minimise links between sex work and criminality:

The very clear advice that this government and previous governments ever since the early 1990s has received from the police is that if the market is visible you can monitor it better, you can detect criminality more effectively and you can minimise criminality ... It is not to say that criminality does not exist. It does but perhaps to a significantly less degree than it would if we sought to impose a more severe regime such as that in Sweden or return to the pre-1992 reforms.¹¹

3.9 The Attorney also expressed doubts over increasing the level of mandatory regulation in the sex industry, such as in the case of health testing for sex workers. Rather, it preferred to take a ‘preventative and educative approach’ to preventing Sexually Transmitted Diseases (STIs) in sex workers.¹²

⁸ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.1.

⁹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.1-2.

¹⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.1-2.

¹¹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.16-17.

¹² Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.18.

Eros Foundation

- 3.10 The Eros Foundation argued that regulation, in its view, had been shown to be a superior approach because in the context of 'local, national and global debates about the sex industry':

Criminalisation of buying and selling sex has been shown in a wide range of literature to cause harm to both workers and the community ... and doesn't have the desired effect of reducing demand, trafficking or violence.¹³

- 3.11 As part of their position on advocacy of regulation over criminalisation, proponents of the Act argued that the stigma attached to sex work was a significant harm in its own right. In their view, regulation was more effective than criminalisation in reducing this aspect of harm arising from sex work.

Stigma associated with sex work

- 3.12 The ACT Government also advised the Committee that it considered the stigmatisation of sex work a significant harm. This constituted an obstacle to providing conditions consistent with the 'ordinary principles of employee protection, safe workplace practices, and other standards appropriate to commercial activity' for 'businesses and workplaces which provide commercial sex services'. In connection with this, the Government noted national policy to reduce 'stigma and discrimination' in this area, as part of the Second National Sexually Transmissible Infections Strategy 2010-2013.¹⁴
- 3.13 This was echoed by other proponents of the ACT's current stance on sex work. The AIDS Action Council of the ACT told the Committee that it too saw the stigma attached to sex work as a significant harm, but told the Committee that 'treating it as a valid occupation and as a valid industry [would] go a long way to addressing' this.¹⁵
- 3.14 The Eros Foundation advised the Committee that the United Nations had recommended that 'decriminalisation of sex work [was] necessary as part of a

¹³ Eros Foundation, Submission No.13, p.4.

¹⁴ ACT Government, Submission No.34, pp.7-8.

¹⁵ Mr David Mills, *Transcript of Evidence*, 20 April 2011, p.49.

comprehensive right-to-health approach'; that 'efforts to reduce stigma and discrimination should also be considered'; and that there 'should be no provision in law that prevents safe, sane, private and consensual adult sexual behaviour'.¹⁶

Sex work as work

- 3.15 Proponents of the present Act took the view that people made an active choice to engage in sex work, as they did in other occupations. This contrasted with the views of opponents of the Act, who saw sex work as resulting from either constrained choices, or from outright coercion.
- 3.16 The Attorney-General told the Committee that sex work was 'a valid occupational choice', and that as such it deserved 'recognition of personal and occupational health and safety welfare rights in the same way as these rights are recognised in relation to other occupations'.¹⁷
- 3.17 Scarlet Alliance told the Committee that 'sex workers consider sex work as work'. It considered this 'a very important point' with regard to perceptions of sex work.¹⁸

AIDS Action Council

- 3.18 The AIDS Action Council also asserted that participation in sex work was the result of active choice:

While women are usually motivated to enter the sex industry for financial reward ... women may also choose to work in the sex industry for a range of reasons based on variables including relatively high pay for short hours, flexible working times, considerable autonomy, varied and interesting work, camaraderie, and being tired of or bored in a previous job. Some women choose sex work because it fits around their childcare responsibilities in terms of school hours/paid childcare. It can provide 'quick' income at times of increased expenses such as Christmas or the beginning of the school year, or 'emergency' income at times of

¹⁶ Eros Foundation, Submission No.13, p.5.

¹⁷ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

¹⁸ Ms Jane Green, *Transcript of Evidence*, 20 April 2011, p.36.

relationship breakdown and becoming a sole parent. A significant percentage of women undertake sex work with a particular financial goal in mind...¹⁹

- 3.19 The Council went on to suggest that this sense of agency by sex workers was confirmed by a sense of satisfaction with their occupation:

Accounts by many female sex workers reveal a high degree of personal satisfaction with their choice of work, with key benefits including greater confidence and assertiveness, financial security, independence, and a better understanding of men and women. Research by Woodward et al recorded approximately half of the private and brothel based sex workers agreeing that 'work is a major source of satisfaction in life', with few strongly disagreeing. Approximately two-thirds of private and brothel based workers agreed or strongly agreed that they would definitely choose sex work if they had to 'do it over again'.²⁰

- 3.20 These views were consistent with those put forward by an independent sex worker from the ACT who advised the Committee that:

I am not a victim of a patriarchal society and I am not a 'prostituted woman'. I choose to exchange sex for money and I enjoy the sexual experiences that I have. I also receive emotional satisfaction from helping people with their sexual and emotional needs. I have several clients who attribute our relationship to preventing their suicides, disabled clients and men and women who have no other sensual outlets. I do not need to be rescued from my chosen profession and I can stop working at any time that I choose. And furthermore, every 'Ho' I know, says the same.²¹

Swedish Model

- 3.21 Those in favour of the philosophy of the *Prostitution Act 1992* are critical of the Swedish Model. These views are considered below. The Model is described in greater detail in Appendix B of this report

¹⁹ AIDS Action Council, Submission No.12, p.5.

²⁰ AIDS Action Council, Submission No.12, p.5.

²¹ Name withheld, Submission No.8, p.2.

ACT Government

3.22 The Attorney-General told the Committee that the ACT Government did not support calls to adopt the Swedish Model because it had in Sweden ‘driven the industry underground’, resulting in ‘less societal control, less access to social aid programs for sex workers seeking to leave the industry and a greater dependence on pimps’. He told the Committee that this was contrary to the Government’s policy of regulating the sex industry ‘in order to protect the health and safety of workers and clients and to ensure that minors are not employed in the industry’.²²

3.23 The Attorney-General went on to say that:

... in Sweden, as I understand it, sexual services are still provided. It is not as though prostitution does not exist. It does exist. The fact is that because the purchase of those services is illegal, you create an environment where the provision of those services goes underground because the providers of those services—the sex workers—will not want to compromise their clients. So you immediately create a different type of black market which, of course, is contrary to the overall thrust of our legislation, which is to have a market which is visible.²³

Scarlet Alliance

3.24 The Scarlet Alliance spoke in similar terms, saying that:

... it is unrealistic to expect the market for sexual services to cease to exist, regardless of government intervention or regulation. Strict regulation and/or criminalisation only serve to create an environment where the sex industry is forced to operate on a semi or fully illegal basis, with significant impacts for sex workers’ rights, occupational health and safety, stigma, police corruption et cetera.²⁴

²² Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.3.

²³ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.16.

²⁴ Ms Janelle Fawkes, *Transcript of Evidence*, 20 April 2011, p.40.

- 3.25 Scarlet Alliance went on to speak about what it considered ‘significant impacts’ of the Swedish Model, that have ‘resulted in a change to the culture of the industry or how sex workers do sex work’:

A client will no longer go to an established premise. A private worker who has her own workplace established, with her own occupational health and safety issues in mind, a client will not go to that venue for risk of being detected. Of course some of the policing approaches have been to identify sex workers’ places of work and stake them out, so to speak. It has caused sex workers to meet prospective clients in other locations—public places et cetera.²⁵

- 3.26 Overall, this was regarded as the most important impact of arrangements in Sweden, that:

... it has shifted interactions about what is provided, what the cost is—that negotiation—out of the purpose-built venue, prepared with occupational health and safety in mind, to a public space. Of course that raises all kinds of safety concerns for sex workers.²⁶

ACT Policing

- 3.27 ACT Policing also expressed concern at the effect of these arrangements in ‘driving [sex work] underground’ in Sweden. The Chief Police Officer told the Committee that there had been a displacement of sex work from Sweden to ‘surrounding countries’, indicating that the Swedish Model was not a truly effective policy instrument.²⁷ Conversely, he told the Committee that he was ‘quite comfortable’ with ‘the regulated sex industry in the ACT’ where ACT Policing had ‘a strong visibility in terms of how that is operated’. He commented that there was ‘fringe criminality and ... the odd issue of concern, but it is visible to us and we can address it’.²⁸
- 3.28 In summary, this encapsulates the views of proponents of legalisation: that sex work is a fact of life, and that criminalisation and / or high levels of

²⁵ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.40.

²⁶ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.40.

²⁷ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.30.

²⁸ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.30.

control are destined to drive this activity underground. If so, the activity cannot be regulated, nor harms ameliorated. A further argument is that public health concerns are better addressed by education and voluntary compliance than by legal coercion. These matters are considered in greater detail in Chapter 5 below.

Opponents

- 3.29 Opponents of the current legislative regime for sex work in the ACT draw quite different deductions from the experience of regulated (that is, legalised) sex work. A key assertion is that regulation does not achieve its stated aims.

Australian Christian Lobby

- 3.30 The Australian Christian Lobby (ACL) argued along these lines when it advised the Committee 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.²⁹

- 3.31 ACL went on to argue that in Victoria and Queensland legalisation had resulted in an increase in sex work overall, and illegal and unregulated sectors that were far greater in size than the legal one, saying that unregulated prostitution comprised 'up to 90%' of sex work in Queensland, and 50% in Victoria.³⁰
- 3.32 From this point of view, regulation (that is to say decriminalisation or legalisation) leads to a series of harms. First, it is argued that sex work is inherently damaging to the providers of sexual services. Ms Melinda Tankard-Reist told the Committee that the 'further exploitation of these

²⁹ Australian Christian Lobby, Submission No.42, p.6.

³⁰ Australian Christian Lobby, Submission No.42, p.7.

women' subjects them to 'significantly higher rates of drug addiction, mental and physical abuse and mental and physical health problems'.³¹

3.33 Second, it is argued that various forms of non-consensual and illegal sex work are fostered by legalisation. Ms Tankard-Reist argued in these terms when she told the Committee that child prostitution had 'significantly increased in countries where prostitution has been legalised'.³² Similarly, ACL argued, in the context of Queensland, that 'sex trafficking appears to be one of the unfortunate consequences of an industry driven by excessive demand for services with insufficient safeguards to protect vulnerable people'.³³

3.34 Opponents of legalisation argue that this occurs for two reasons. First, legalising sex work creates a significant increase in demand for sexual services. ACL argued in these terms this when it advised the Committee that:

In a capitalist regime where citizens are driven by profit, the prostitution market will only continue to increase. This is what has happened in every Australian state and in every nation in the world where the purchase of sex is legalised or decriminalised.³⁴

3.35 As a result, ACL argued, if sex work is not 'hindered in its growth and if sex continues to be accepted as a commodity, it will become an increasingly popular commodity ... and continue to grow'.³⁵ The result of this 'commodification of sex' had been the creation of a 'global sex trafficking phenomenon'. This was driven by an expansion in demand fostered, in turn, by more liberal legislative regimes on sex work.³⁶ This was, ACL argued, a form of 'exploitation [which] only exists because of the wide acceptance of sex as a commodity and as a right to be purchased'.³⁷ In general:

³¹ Ms Melinda Tankard Reist, *Transcript of Evidence*, 11 May 2011, p.68.

³² Ms Tankard Reist, *Transcript of Evidence*, 11 May 2011, p.69.

³³ Australian Christian Lobby, Submission No.42, p.6.

³⁴ Mrs Michelle Pearse, *Transcript of Evidence*, 11 May 2011, p.58.

³⁵ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.57.

³⁶ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.59.

³⁷ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.59.

[the] legalisation of brothels may be motivated by the desire to control, contain, and police the industry, but it has led to an encroachment of the industry into the popular cultural psyche.³⁸

3.36 From this standpoint, this explains the relationship between legal and illegal sectors in jurisdictions where sex work has been legalised. The Coalition Against Trafficking in Women told the Committee that ‘when they legalise prostitution that gives licence to an unregulated sex industry sector to balloon’ because, as a result of ‘social permissiveness’, among other reasons, the illegal sector expands. From that point, it provided ‘the front for the illegal industry’. Moreover, this illegal industry was ‘more profitable’ than the legalised sector, because registration fees are not paid and there was no cost of compliance, thus providing a cost incentive to operate outside of the regulatory framework.³⁹

3.37 Second, this view holds that the illegal sector expands under legalisation because the premise of legalisation—that legalisation provides for openness and therefore creates a foundation for effective regulation—is invalid. ACL told the Committee that this was because ‘the very nature of the industry is underground’.⁴⁰ That is: sex work is inherently secretive, and as a result is not amenable to regulation. For ACL, this explained the observed result of legalisation in the Netherlands, where there had been an increase of the illegal (and thus unregulated) sector after legalisation. ACL argued that some unregulated component would always be present whether activities around sex work were legal or illegal, but that where there were criminal sanctions,⁴¹ the ‘underground industry [would] ... be a lot less than somewhere like the Netherlands’.⁴²

³⁸ Australian Christian Lobby, Submission No.42, p.2.

³⁹ Dr Caroline Norma, *Transcript of Evidence*, 11 May 2011, p.72.

⁴⁰ Mrs Pearce, *Transcript of Evidence*, 11 May 2011, p.63.

⁴¹ At this point Mr Jensen referred to ‘the purchase of sex and the johns are criminalised’, as under the Swedish Model, discussed below. Mr Jensen, *Transcript of Evidence*, 11 May 2011, p.63.

⁴² Mr Nick Jensen, *Transcript of Evidence*, 11 May 2011, p.63.

3.38 In the broader picture, ACL advised the Committee:

Decriminalisation or legalisation of prostitution promotes a culture of acceptance among the men who create the demand for paid sex as well as in the wider community. Prostitution becomes something which is legally acceptable and therefore socially acceptable; it is just another 'job' for the women who 'choose' it and provides a necessary 'service' to the men who 'need' it.⁴³

3.39 In summary, opponents of the current Act argue that liberalised laws do not produce the stated intent of exposing sex work to regulation, because it is an inherently secret and coercive area of activity, and because greater levels of tolerance, instanced in laws that legalise sex work, change social attitudes and increase the demand for sexual services. This in turn increases demand for human trafficking and the exploitation of children in the context of prostitution. All of these effects increase levels of harm from sex work.

Choice and 'sex work as work'

3.40 Opponents of the Act see sex work as taking place in a context that negates choice. Consequently they take the view that it is not possible to speak of a person making a choice to do sex work in any true sense.

Australian Christian Lobby

3.41 ACL spoke in these terms when it advised the Committee that:

Prostitution exists primarily to provide sexual pleasure on demand for men. Many of those who 'choose' prostitution do so out of financial desperation, drug dependency, or due to coercion.⁴⁴

3.42 A second part of this argument was that the effects of sex work were so *harmful* to the provider as to negate any sense of sex work as a true or valid choice of occupation: ACL argued in these terms, when it advised the Committee that '[regardless] of the reasons for choosing it, the choice is one

⁴³ Australian Christian Lobby, Submission No.42, p.1

⁴⁴ Australian Christian Lobby, Submission No.42, p.2.

that will be harmful to a woman's physical and mental health, and detrimental to communities'.⁴⁵

Coalition Against Trafficking in Women

3.43 The Coalition Against Trafficking in Women (CATWA) spoke in similar terms, stating that empirical research had shown that sex work was inherently harmful to sex workers, who were 'victims of sexual violence' who suffered 'physical, psychological and post-traumatic stress disorder, as a result of the ongoing and relentless use of their bodies for the sexual gratification of groups of men'.⁴⁶ Other opponents of the Act took a similar view. Ms Tankard-Reist cited studies which indicated that 'prostituted women have post-traumatic stress disorder symptoms at similar levels to war veterans'.⁴⁷ Similar studies were referenced by ACL.⁴⁸

3.44 A second reason, CATWA argued, as to why concepts of 'choice' were not applicable to sex work was that the role of money in sex work was inherently coercive:

The very existence of money alone, I think, is not enough to call something "work". Money is inherently coercive, so when a socially vulnerable population of women and children are brought into an industry with the lure of money, and there are pimps, threats, debt, drugs, former histories of child sexual abuse—when those things are present—the fact that women or children might be paid to be prostituted I think does not make the activity work. That just makes it a form of sexual violence that is facilitated by money.⁴⁹

3.45 A third reason, CATWA argued, was that at any given time most workers wanted to leave the sex industry, according to quoted research, and this made it a doubtful proposition that sex workers freely chose to pursue sex

⁴⁵ Australian Christian Lobby, Submission No.42, p.2.

⁴⁶ Dr Norma, *Transcript of Evidence*, 11 May 2011, pp.66-67.

⁴⁷ Ms Tankard Reist, *Transcript of Evidence*, 11 May 2011, p.69.

⁴⁸ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, pp.57-58.

⁴⁹ Dr Norma, *Transcript of Evidence*, 11 May 2011, p.70.

work.⁵⁰ Ms Tankard-Reist took a similar view, telling the Committee that, ‘89 per cent of prostituted women wanted to leave the industry but were forced to stay as they could not see any other options for survival’.⁵¹

- 3.46 In light of this, CATWA argued that sex work should be seen in similar terms to domestic violence. Just as there were structures to house and protect the victims of domestic violence, there should be comprehensive structures to assist and provide shelter to women trying to leave prostitution.⁵²

Project Respect

- 3.47 Project Respect spoke on this matter on the basis of outreach to sex workers in Melbourne. In their view, about ‘10 per cent’ of sex workers with whom it came in contact were ‘trouble free’.⁵³ Some sex workers found their occupation ‘empowering’ and who were ‘quite happy’.⁵⁴ But for the majority there was ‘something going on outside of work that [had] pushed them in there or [was] keeping them in there’.⁵⁵

- 3.48 In the view of Project Respect, this was validated by experiences of helping women leave sex work:

What I have found over the last seven years is that if you can help women with whatever the issue is—let us say for example it is a domestic violence issue that is happening for them—and you can support them through that and they can get away from that situation and get rehoused and settled, they will often then say, “I want to leave the industry now.” So it is often about whatever the problem is that is kind of keeping women there, and if that problem can be addressed they eventually say, “Hey, thanks for helping me with that and now I’d really like to start doing a course.”⁵⁶

⁵⁰ Dr Norma, *Transcript of Evidence*, 11 May 2011, pp.66-67.

⁵¹ Ms Tankard Reist, *Transcript of Evidence*, 11 May 2011, p.69.

⁵² Dr Norma, *Transcript of Evidence*, 11 May 2011, p.71.

⁵³ Ms Shirley Woods, *Transcript of Evidence*, 13 July 2011, p.85.

⁵⁴ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.86.

⁵⁵ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.85.

⁵⁶ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.86.

3.49 Project Respect estimated that at any one time about half of women sex workers with whom it came into contact through outreach work wanted to leave the industry. It said that it came into contact with women ‘who would actually like to get out of the industry and express that they do not like it’ but who were ‘not actually looking at getting out of the industry at that time’, because there were ‘just unable to leave, generally due to finances at that time’.⁵⁷

3.50 Project Respect went on to say that:

The majority of women that I meet are looking at getting out of the industry. I help a lot of women get into courses. I will go to open days at universities and TAFE with women, take in a TAFE guide and go through it with them and talk to them about what courses they might like to do. I do not know too many women—I have met a handful of women who have gone in with a plan to save perhaps for a deposit for a house and they have done that and got out, but it is a big minority.⁵⁸

3.51 Project Respect also made specific comments on the related question of whether sex work could be considered to be ‘work’. In its view, although it was ‘very hard work’ in terms of ‘putting some energy into something’, sex work could not be considered ‘viable employment’ because ‘women in prostitution’ were not valued in the same way as other workers. Nor were sex workers accorded adequate occupational health and safety, superannuation, holiday pay or sick pay.⁵⁹

3.52 In light of this, Project Respect doubted whether sex work could ever be considered a valid choice of occupation:

It all comes down to how you look at choice. People say that women choose to do prostitution, and I guess there is some truth in that. But we look at that as a choice that is made when there are no other choices or people are not aware that there are other choices.⁶⁰

⁵⁷ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.86.

⁵⁸ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.85.

⁵⁹ Ms Woods, *Transcript of Evidence*, 13 July 2011, pp.86-87.

⁶⁰ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.85.

Exit programs

- 3.53 Advocacy of programs to assist sex workers to leave the industry, termed 'exit programs', was a common element in contributions by opponents of the current Act. This was a further part of the model implemented in Sweden.

Project Respect

- 3.54 Project Respect told the Committee that:
- ... with the Swedish model there is ... a lot of support for women. They do not just make prostitution illegal, punish the clients and then not help the women. They have quite a good system set up to help women with housing, education and moving on.⁶¹
- 3.55 Project Respect told the Committee that this was similar to an exit program that had formerly been run by the organisation in Melbourne. This had comprised discussion about skills that were 'transferable into other types of work'; advice on post-traumatic stress disorder and legal issues; and how to 'cover your tracks' after leaving the industry. Although the program had been de-funded, there was continuing demand from women for assistance in exploring options for study and for other forms of support for leaving the industry.⁶²

Coalition Against Trafficking in Women Australia

- 3.56 CATWA told the Committee that in South Korea exit programs had been established which integrated 'emergency support, medical and legal counselling, outreach programs, counselling officers and shelters'. There were 26 of these located throughout Korea, and women leaving the sex industry were eligible to stay in them 'with a subsidy of \$300 a week for one year with a possible extension of six months'. They were then 'eligible to go on to what the Koreans call group homes, which are essentially supported residential homes to assist their exit from the sex industry'.⁶³ Alcohol and

⁶¹ Ms Woods, *Transcript of Evidence*, 13 July 2011, p.92.

⁶² Ms Woods, *Transcript of Evidence*, 13 July 2011, p.90.

⁶³ Dr Norma, *Transcript of Evidence*, 11 May 2011, pp.67-68.

drug programs formed a significant component of the overall support for people leaving the industry.⁶⁴

- 3.57 CATWA told the Committee that, as a minimum, exit programs should provide ‘some kind of financial subsidy for living and housing’ so that sex workers would not have to rely on ‘brothel managers or pimps or their buyers for an income’.⁶⁵

Trafficking

- 3.58 As noted above, opponents of the approach taken in the *Prostitution Act 1992* consider that the circumstances of sex work are inherently coercive and that it cannot be said that any person makes a genuine, unconstrained choice to do sex work. This way of seeing sex work means that a person’s involvement in the sex industry must always be seen as involuntary, and is hence by definition a form of human trafficking.
- 3.59 Opponents of the Act cited examples to support the perceived association between sex work and human trafficking. The Catholic Archdiocese told the Committee that while research on this was ‘fairly thin’, ‘what there is supports the notion that prostitution, trafficking and organised crime are inevitably linked’.⁶⁶ ACL found confirmation of this in Sweden where, it suggested, since the implementation of the new Model, criminal organisations involved in human trafficking had come to consider it ‘a poor market’, resulting in ‘a considerably smaller number’ of women being trafficked into Sweden when compared with ‘surrounding countries’.⁶⁷
- 3.60 Human trafficking in the sex industry is discussed further below, in sections addressing Term of Reference 5, regarding ‘links with criminal activity’.

Swedish Model

- 3.61 To opponents of the current legislative model for sex work in the ACT, its chief flaw is that it normalises activities that are inherently unacceptable and,

⁶⁴ Dr Norma, *Transcript of Evidence*, 11 May 2011, p.71.

⁶⁵ Dr Norma, *Transcript of Evidence*, 11 May 2011, p.70.

⁶⁶ Mr Matthew Casey, *Transcript of Evidence*, 11 May 2011, p.77.

⁶⁷ Australian Christian Lobby, Submission No.42, p.4.

by doing this, increases them. Contributors with this point of view favour the Swedish Model which, as stated above, is described in greater detail in Appendix B of this report.

Australian Christian Lobby

- 3.62 This is reflected in ACL's view that 'the best way of tackling the problems of prostitution is to cut off demand', and that 'the best way to do this is to criminalise the purchase of sex, rather than the selling of sex'.⁶⁸
- 3.63 This amounts to the Swedish Model, which ACL and other contributors from this point of view see as a practicable response to harms created by the increasing demand for sexual services under legalisation regimes. ACL told the Committee that:

In 1999, Sweden passed the Act Prohibiting the Purchase of Sexual Services. Sweden recognises prostitution as a "serious form of male violence against women and children" and, in keeping with the country's commitment to gender equality, sought ways to protect women from prostitution by focusing on the core cause - the demand for women to provide sexual pleasure, without which prostitution would not be able to flourish and expand. The women's movement played a pivotal role in the country introducing the laws, highlighting the fact that prostitution is at its core an issue of respect for women and gender equality.⁶⁹

- 3.64 This had, ACL claimed, produced a significant change in behaviour:

The new law has been remarkably effective. Sweden's National Board of Health and Welfare has reported significant decreases in the number of women in street prostitution and the number of men buying sex. Stockholm, with a population of 1.3 million, has about 200 people in street prostitution. By comparison, prostitution hot-spot Amsterdam (population 750,000) has tens of thousands of prostitutes.⁷⁰

⁶⁸ Australian Christian Lobby, Submission No.42, p.3.

⁶⁹ Australian Christian Lobby, Submission No.42, p.3.

⁷⁰ Australian Christian Lobby, Submission No.42, pp.3-4.

- 3.65 ACL suggested that this was due to a reduction 'of over 40 per cent' in the demand for sexual services brought about by the Swedish legislation.⁷¹ This was not achieved, said ACL, by legislation alone. Rather, it was the result of a combination of the legislation and education measures, aimed at both service providers and the general public:

... in Sweden, in the first year when the law passed, there were hardly any arrests. They realised this was because the police did not have ownership of the law. They did not see the purchase of sex as exploitation. So the Swedish government ran programs to educate the police and educate social services about why the purchase of sex is exploitation and why it is linked to human trafficking.⁷²

- 3.66 The result of this was that:

After educating the police and social services, they saw the amount of arrests actually increase. So it is a holistic approach. It is about re-educating the community. They also did an advertising campaign on buses and bus shelters, with posters all over the community, sending this message to the community that the purchase of sex is exploitation. So it was a re-education of the community.⁷³

- 3.67 ACL told the Committee that if the ACT government were to consider targeting demand, it would have to adopt a similarly 'holistic approach'.⁷⁴

Catholic Archdiocese of Canberra and Goulburn

- 3.68 The Catholic Archdiocese of Canberra and Goulburn paid particular attention to this aspect of the Swedish Model. It told the Committee that if similar arrangements to those in Sweden were imposed in the ACT there should be an education program 'for police, for prosecutors, for magistrates and judges and for everyone involved at every level'. It also told the Committee that 'straight-out picking it up and moving' such a model from Sweden to the ACT would not be effective, and that the Model would need to

⁷¹ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.59.

⁷² Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.64.

⁷³ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.64.

⁷⁴ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.64.

be acculturated for local conditions if it were to be given a chance of success.⁷⁵

- 3.69 In addressing this aspect of cultural change, the Archdiocese said that the ACT could 'borrow from successful models' in Australia of regulatory and educational campaigns which had focused on traffic matters, drink driving, speeding, smoking and domestic violence. These, it said, should be a template for attempts to change attitudes on the purchase of sexual services, so that the campaign could be 'comprehensive and multifaceted'.⁷⁶ This was necessary because there was 'no evidence from anywhere in the world that you solve problems by simply prosecuting people'.⁷⁷

Ms Melinda Tankard-Reist

- 3.70 Ms Melinda Tankard-Reist stated, referring to the ACT's Act, that the 'only sex industry regulatory model that is consistent with international law is the Swedish model'. Moreover, the Swedish Model had 'been demonstrated to reduce violence against prostituted women' and had been 'adopted in Sweden, Iceland, South Korea and Norway'.⁷⁸

Coalition Against Trafficking in Women Australia

- 3.71 CATWA also supported the Swedish Model, saying that:
- ... we think the focus needs to be on men who think it is appropriate to purchase women as receptacles, who see women as essentially holes to penetrate. We support anything that would put the focus on men and that would criminalise the buyer rather than marginalise and discriminate against the women who we believe are the victims in this whole industry.⁷⁹
- 3.72 CATWA also asserted also the effectiveness of the Swedish Model, showing that it was effective 'in terms of reducing the size of the sex industry overall

⁷⁵ Mr Casey, *Transcript of Evidence*, 11 May 2011, p.81.

⁷⁶ Mr Casey, *Transcript of Evidence*, 11 May 2011, p.80.

⁷⁷ Mr Casey, *Transcript of Evidence*, 11 May 2011, p.77.

⁷⁸ Ms Tankard Reist, *Transcript of Evidence*, 11 May 2011, p.69.

⁷⁹ Dr Norma, *Transcript of Evidence*, 11 May 2011, p.75.

in Sweden’ and ‘reducing the level of demand that emanates from Swedish men as a population’.⁸⁰

- 3.73 Voices on this side of the debate sought to defend the Model against the charge that it simply displaced sex work from one place to another. ACL said that it was ‘unlikely that all of [the reduced] demand has spilled over borders’. Rather than ‘transferring the problem’, Swedish legislation had resulted in similar approaches being taken-up in neighbouring countries, in particular Norway, Iceland, and South Korea.⁸¹
- 3.74 CATWA addressed this ‘transfer’ issue in the context of internet-based activity, saying that increases in the availability of sexual services made available via the internet had not increased in Sweden to the same degree as the reduction in demand caused by legislation. In view of this, there was no evidence of a displacement from street and indoor sex work to internet-based activity within Sweden. Rather, increases in sexual services accessible through the internet, said CATWA, were due to international trends in that direction.⁸²
- 3.75 As noted above, CATWA also spoke on exit programs associated with the Swedish Model, in particular in South Korea.⁸³

Views on the Act as a whole

Proponents

ACT Government

- 3.76 The Attorney-General told the Committee that it was the ACT Government’s view that ‘the overall operation of the act has proven to be effective’ since its enactment 20 years ago,⁸⁴ and that ‘the current legal and regulatory

⁸⁰ Dr Norma, *Transcript of Evidence*, 11 May 2011, p.67.

⁸¹ Australian Christian Lobby, Submission No.42, p.4.

⁸² Dr Norma, *Transcript of Evidence*, 11 May 2011, pp.72-73.

⁸³ Dr Norma, *Transcript of Evidence*, 11 May 2011, pp.67-68.

⁸⁴ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.3.

environment [continued] to reflect a progressive and socially responsible approach to the commercial sex industry'.⁸⁵

AIDS Action Council of the ACT

3.77 The AIDS Action Council of the ACT also spoke in positive terms about the Act, saying that it considered that the Act had 'been effective as a legislative framework' and that it had 'on balance, provided a safe environment for sex workers whilst being sensitive to community attitudes in relation to the sex industry'.⁸⁶ It suggested that the 'goal' of the Act was to achieve a balance between the 'safety and wellbeing' of sex workers and the 'rights' of operators to 'run a profitable business within the spirit and meaning of relevant laws'.⁸⁷

3.78 The Council particularly approved of the recognition the Act accorded sex work as 'legitimate employment':

Implicit in the legalisation of the sex industry is the sanctioning of sex work by government, acknowledging sex work as legitimate employment and sex workers as legitimate clients of government, health and community services.⁸⁸

Scarlet Alliance

3.79 Scarlet Alliance also spoke in favour of the current Act, saying that:

The ACT legislation is short, simple and clear in its intention - the sex industry is to be treated like any other industry; subject to industrial relations law, occupational health and safety law, taxation law, and criminal law (State and Federal).⁸⁹

3.80 Scarlet Alliance described the Act as part of a wider framework of regulation for the sexual services industry in the ACT. Within this, the Act was 'not intended to regulate every facet of the sex industry': rather it was 'an outline

⁸⁵ ACT Government, Submission No.34, p.14.

⁸⁶ AIDS Action Council of the ACT, Submission No.12, p.7.

⁸⁷ AIDS Action Council of the ACT, Submission No.12, p.7.

⁸⁸ AIDS Action Council of the ACT, Submission No.12, p.7.

⁸⁹ Scarlet Alliance Submission No.9, p.5.

for the legality of the work - to define how to work legally in the ACT'.⁹⁰ An illustration of how the Act functioned in this regard was that it did not 'make compulsory the taking of ID or names at a brothel'. As a result, sex workers had 'privacy and confidentiality assured when working in a brothel environment', where business owners could 'ask for ID at their own discretion'.⁹¹

Proposed directions for change

- 3.81 Contributors in favour of the present Act proposed ways in which the Act could be revised to refine its operation.

ACT Government

- 3.82 The ACT Government advised the Committee that 'as it [was] almost 20 years since its commencement' it was 'appropriate to bring the *Prostitution Act* up to date'.⁹² While the Government it did not support 'additional regulatory requirements', such as 'an increase in the frequency of sexual health testing for sex workers', it proposed other changes including, among other things:
- removal of pejorative terms from the Act -for example, the word "prostitute" should be replaced with "sex worker";
 - amendments to the *Prostitution Act* to make it compulsory for all brothels in the ACT to have multilingual signs on display in prominent places, clearly stating that slavery is a serious crime;
 - consideration of the *Prostitution Act* in conjunction with the *Code of Practice-the Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010*;
 - reviewing sections 24 and 25 of the *Prostitution Act 1992* in light of the requirements of section 21 of the *Public Health Regulation 2000*, with a view to maintaining an appropriate level of protection of sex workers and their clients from transmission of infection, while recognising the right of people

⁹⁰ Scarlet Alliance, Submission No.9, p.5.

⁹¹ Scarlet Alliance, Submission No.9, p.5.

⁹² ACT Government, Submission No.34, p.14.

to engage in commercial sex work in parity with other commercial activities; and

- defining what amounts to “reasonable steps” for the purposes of section 22 of the *Prostitution Act*.⁹³

AIDS Action Council

- 3.83 The AIDS Action Council also raised concerns over replication of offences between the Act and other legislation, suggesting that:

The Act includes a number of sections that criminalise behaviour that is already criminalised elsewhere. For example, commercial exploitation of children for sexual purposes is already a crime, so to include specific references in the *Prostitution Act* suggests that it is a particular concern in this industry, when there is no evidence that it is.⁹⁴

- 3.84 The Council went on to say that similar comments could be made regarding sections 24 and 25 of the Act, ‘engaging in sexual activity while knowing or reasonably being expected to know that the person has a notifiable transmissible condition’.⁹⁵

Scarlet Alliance

- 3.85 Scarlet Alliance made further recommendations on the form of the Act. In particular, the Alliance indicated what it considered anomalous registration requirements for ‘individual private workers’ in the ACT, who were required to register under the Act but did not because they ‘do not want to compromise their confidentiality and privacy’.⁹⁶

- 3.86 The Alliance also recommended changes to constraints on sex workers operating from private residences:

The Act only allows for individual private sex workers to work alone (if not working for a brothel in Fyshwick or Mitchell). For optimum

⁹³ ACT Government, Submission No.34, p.14.

⁹⁴ AIDS Action Council of the ACT, Submission No.12, p.8.

⁹⁵ AIDS Action Council of the ACT, Submission No.12, p.8. A similar offence is created by *Public Health Regulations 2000* (ACT).

⁹⁶ Scarlet Alliance Submission No.9, p.5.

occupational health and safety, camaraderie and economic reasons, it is beneficial for private sex workers to have the option to work with other sex workers.⁹⁷

3.87 This matter is discussed in greater detail in Chapter 9 of this report.

Name and terminology of the Act

3.88 A number of contributors to the inquiry recommended that the name of the Act and its terminology be changed. These contributions are considered below.

ACT Government

3.89 The ACT Government recommended that:

pejorative terms be avoided in the wording of the *Prostitution Act*. In particular, the terms “prostitute” and “prostitution” can be value laden and are not appropriate for use in the 2011 context. They should be replaced in the *Prostitution Act* by “sex worker” and “sex work” or “commercial sex services” respectively. This would also require amendment to the title of the *Prostitution Act*.⁹⁸

3.90 The Government noted that a similar process had been performed on legislation in Victoria in 2010, where the title of the *Prostitution Control Act 1994* was changed to the *Sex Work Act 1994*.⁹⁹

Human Rights Commission

3.91 The ACT Human Rights Commission expressed a similar view, that the ‘name of the Act itself is problematic from this perspective as the terms “prostitution” and “prostitutes” imbue stigma, negative attributes and poorly affects reputation.’¹⁰⁰

⁹⁷ Scarlet Alliance Submission No.9, p.5.

⁹⁸ ACT Government, Submission No.34, p.8.

⁹⁹ ACT Government, Submission No.34, p.8

¹⁰⁰ Human Rights Commission, Submission No.37, p.3.

AIDS Action Council

- 3.92 The AIDS Action Council also made representations on the name and terminology of the Act, suggesting that these were stigmatising, 'potentially discriminatory', and did not 'reflect current standards'.¹⁰¹

Eros Foundation

- 3.93 This was mirrored in the submission of the Eros Foundation, which wrote:

The word prostitution means both to sell sex for money and to compromise ones values. These meanings are not synonymous to sex workers who largely take pride in their work and have well defined morals and ethics ... [to] refer to sex workers as prostitutes is demoralising, stigmatising, and discriminatory.¹⁰²

- 3.94 These recommendations on changes in the name and the terminology of the Act were consistent with concerns, considered above, over social stigma toward sex workers as a significant harm.

Opponents

- 3.95 As noted above, a number of contributors took the view that the 'harm minimisation' approach of the *Prostitution Act 1992* had increased harms from sex work in the ACT.

Collective Shout

- 3.96 Collective Shout argued that a significant result of this approach had been a 'social normalisation' that had 'benefited the sexual industry business people to a great extent'.¹⁰³

Catholic Archdiocese of Canberra and Goulburn

- 3.97 The Catholic Archdiocese of Canberra and Goulburn also expressed concern at this, saying that when sex work was 'legalised or decriminalised', a

¹⁰¹ AIDS Action Council of the ACT, Submission No.12, p.8.

¹⁰² Eros Foundation, Submission No.13, p.5.

¹⁰³ Collective Shout, Submission No.43, pp.3-4.

‘culture of prostitution is created which has harmful effects upon the lives not just of the prostituted women but of all women who live within that culture’.

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3.98 According to the Archdiocese, this took place when sex work became ‘normalised’ through a process in which:

- brothels are allowed to be present on many streets;
- children may walk past brothels on their way to school;
- the prostitution industry grows;
- new groups of young men are introduced to the prostitution industry and its dehumanising attitude to women.¹⁰⁵

3.99 The Archdiocese went on to argue that this corrosive of family and civic values and threatened a loss of ‘social confidence’. As a result it was ‘essential’ that the sexual services industry ‘not be recognised by the Government of the Territory as a “respectable business”’.¹⁰⁶

Proposed directions for change

3.100 In response to what they saw as the failings of the current regime, Collective Shout, the Catholic Archdiocese, the Australian Christian Lobby, and CATWA all recommended adopting the ‘Swedish Model’.

3.101 They were consistent in recommending the termination of legalisation of sex work in the ACT, and in proposing that the ACT follow developments in Sweden, including criminalising the purchase of sexual services, pandering or pimping; providing education to discourage sex work; and by providing exit programs for people who wish to leave sex work.

Campaign submissions

3.102 Amongst the submissions received by the Committee for the inquiry were 23 short submissions which opposed the basic approach of the *Prostitution Act 1992* and contained, for the most part, a common set of elements.

¹⁰⁴ Catholic Archdiocese of Canberra and Goulburn, Submission No.35, pp.26-27.

¹⁰⁵ Catholic Archdiocese of Canberra and Goulburn, Submission No.35, pp.26-27.

¹⁰⁶ Catholic Archdiocese of Canberra and Goulburn, Submission No.35, p.32.

3.103 These submissions referenced the death of the sex worker in Fyshwick in September 2008, and presented arguments that:

- legalisation increased demand for sexual services, reduced the safety and human rights of women;
- legalisation increased human trafficking and the sexual exploitation of children;
- the Act had failed adequately to regulate the sexual services industry in the ACT, and that the unregulated component of sex work in the ACT was greater than the regulated component;
- abuse was inherent in the sexual services industry;
- there was a need for research on the impacts of sex work on sex workers and their clients;
- there was a need for exit programs; and
- that the purchase of sexual services should be criminalised, consistent with the Swedish Model.¹⁰⁷

3.104 All of these arguments were consistent with those, discussed above, that were made by other opponents of the *Prostitution Act 1992*, considered below in this report.

Other contributors

3.105 General comments on the Act were also made by two other contributors who cannot easily be classified as proponents or opponents of the current Act. These highlighted different aspects of sex industry regulation to those considered above.

¹⁰⁷ These were: Ms Jane Reeve, Submission No.2; Mr Alex Beard, Submission No.3; Ms Elizabeth Lolohea, Submission No.11; Mr Mark Sheppard, Submission No.15; Mr W and Mrs D Vardos, Submission No.21; Ms Fiona Peterson, Submission No.22; Ms Sandra MacDonald, Submission No.23; Ms Delizia Costa, Submission No.24; Ms Alissa Holden, Submission No.25; Elskien Eschauzier, Submission No.26; Ms Judy Seach, Submission No.29; Mr Thomas Bielenberg, Submission No.30; Ms Rebecca Andersen, Submission No.31; Ms Patricia McKay, Submission No.33; Mr Patrick Cole, Submission No.41; Ms Leah Ashman, Submission No.44; Mr Peter Mullins, Submission No.45; Ms Johanna Haavisto, Submission No.47; Ms Sue Mitchell, Submission No.48; Ms Sarah Wilson, Submission No.49; FamilyVoice Australia, Submission No.50; Ms Louise Rolley, Submission No.51; and Ms Rosa Ingram, Submission No.57.

Dr Gordon White

- 3.106 Dr Gordon White advised the Committee of his professional experience in sexual health, including that of sex workers, in Canberra before the enactment of the *Prostitution Act 1992*. In brief, he told the Committee that in his view there had been a better level of oversight of work during this period due to good working relationships between police, brothels, and professionals in the sexual health area. Dr White commented on the prevalence of coercion and trafficking, which he considered an irredeemable part of the sex industry.¹⁰⁸
- 3.107 His contribution was one of the few made from a public health perspective that supported a strong role for police in regulating sex work.¹⁰⁹ Dr White's recommendations described a modified regime for regulating sex work which involved a higher level of 'control and supervision', including regular supervision of brothels by police and health inspectors; effective public health measures; central registration of sex workers; and 'regular and clearly defined' medical supervision.¹¹⁰

Human Rights Commission

- 3.108 The Human Rights Commission of the ACT advised the Committee as to its view of the Act from a human rights perspective.
- 3.109 In its submission, the Commission noted provisions of the *Human Rights Act 2004* (ACT) which were engaged by sex work, including:
- Section 10(1) - Prohibition against torture and cruel, inhumane or degrading treatment;
 - Section 11- Protection of Children;
 - Section 12 - Protection of Privacy and Reputation;
 - Section 13 - Freedom of Movement;
 - Section 17 - Right to Participate in public life;
 - Section 18 - Right to Liberty and Security of the person; and

¹⁰⁸ Dr Gordon White, Submission No.32, pp.1-3.

¹⁰⁹ Dr Gordon White, Submission No.32, pp.1, 3.

¹¹⁰ Dr Gordon White, Submission No.32, p.4.

▪ Section 26 - Freedom from Forced work.¹¹¹

3.110 The Commission also noted Australia's applicable international human rights treaty obligations, in particular the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, supplementing the *United Nations Convention Against Transnational Organized Crime*. The protocol, said the Commission, 'specifically targets sexual exploitation [and] has a particular focus on preventing sexual slavery and the international trafficking of women and children'.¹¹²

3.111 As regards the present Act, the Commission advised that it supported 'the continued decriminalisation of sex work' provided that:

adequate safe guards are enforced, to ensure no victimisation is involved; so that children and young people under the age of 18 years are protected; the health of workers is protected; and people are not subjected to coercion and trafficking.¹¹³

3.112 In the Commission's view, while it had been reported that 'many people providing commercial sexual services do so entirely as a matter of personal choice and report high degrees of job satisfaction', this was 'not the universal experience':

Sex work may not be undertaken voluntarily by the person providing the service for a number of reasons and particular groups are more vulnerable to exploitation, including children, young women and persons who are dependent upon illicit drugs.¹¹⁴

3.113 In relation to sex work in the ACT, the Commission noted evidence of exploitation in the sex industry in the ACT, citing an instance in 2010 in which overseas nationals were found by the Department of Immigration and Citizenship (DIAC) working illegally at registered brothels in Canberra.¹¹⁵

¹¹¹ Human Rights Commission, Submission No.37, pp.3-4.

¹¹² Human Rights Commission, Submission No.37, p.2.

¹¹³ Human Rights Commission, Submission No.37, p.2.

¹¹⁴ Human Rights Commission, Submission No.37, p.2.

¹¹⁵ Human Rights Commission, Submission No.37, p.3.

- 3.114 Overall, the Commission submitted that regarded the approach adopted under the *Prostitution Act 1992* should be continued, but there were also a number of matters of continuing concern with regard to human rights. It suggested that there were ‘risks of exploitation and to personal safety and well-being in the commercialisation of sexual services that the *Prostitution Act 1992* could better address’.¹¹⁶
- 3.115 The Commission made specific and detailed comment on particular human rights issues, including privacy, and these are discussed in relevant parts of the report below.¹¹⁷

Majority committee comment

- 3.116 The Committee recognises that there are two diametrically opposed views on the operation of the *Prostitution Act*. One supports the current regulated approach, which it sees as a type of harm minimisation. The other view is that prostitution is an essentially exploitative activity that has a detrimental effect on women.
- 3.117 A majority of the Committee considers that work in the sex industry is an occupation where services are provided by a provider to a client, as for a number of other industries.
- 3.118 These industries are governed in such a way as to protect the customer from harm, and to protect those involved in the industry from inappropriate practice, occupational health hazard and the inappropriate use of an underpaid and exploited workforce.
- 3.119 In all areas of direct human contact, whether for payment or otherwise, the health protection of both parties is paramount.
- 3.120 Further, the employment and exploitation of minors in these industries is not acceptable and governing legislation contains provisions for dealing with issues of underage and exploited persons.

¹¹⁶ Human Rights Commission, Submission No.37, p.2.

¹¹⁷ Human Rights Commission, Submission No.37, pp.3, 9-10.

- 3.121 The sex industry should be regarded in exactly the same way as these other industries and not subjected to more draconian regulation than the others.

RECOMMENDATION 1

- 3.122 A majority of the Committee recommends that the sex industry be recognised in the community as an occupation and that the legislation reflect this in its approach to occupational health hazards.

RECOMMENDATION 2

- 3.123 A majority of the Committee recommends that the sex industry be treated by regulatory regimes in a similar fashion to other industries.

Name and terminology of the Act

- 3.124 In considering arguments regarding the current form of the *Prostitution Act 1992*, a majority of the Committee agreed with those contributors who identify a need to change the name and terminology of the Act.¹¹⁸ The name of the Act should be changed to the *Commercial Sexual Services Act 1992*. References to 'prostitute' should be changed to 'sex worker' and those to 'prostitution' should be changed to 'sex work'.
- 3.125 This reflects the view that the stigma associated with sex work is a major contributor to harms, and that measures to reduce stigma will have a positive effect on other areas of risk, including aspects of Occupational Health and Safety (OH&S).

RECOMMENDATION 3

- 3.126 A majority of the Committee recommends that the name of the Act be changed to the *Commercial Sexual Services Act 1992*. References to 'prostitute' in the Act should be changed to 'sex worker', and references to 'prostitution' should be changed to 'sex work'.

¹¹⁸ ACT Government, Submission No.34, p.8; Human Rights Commission, Submission No.37, p.3; AIDS Action Council of the ACT, Submission No.12, p.8; Eros Foundation, Submission No.13, p.5.

Swedish Model

- 3.127 A majority of the Committee did not support the premise of the Swedish Model. The Model was discussed at length and was not considered suitable for the ACT. The Swedish model is based on the notion of a criminal activity and the notion of criminality in the exchange of sexual favours for money. It transfers the criminality from the service provider to the client, intending to dissuade the clients from engaging in the transaction of business.
- 3.128 A majority of the Committee rejects the notion of criminality in this industry and the community of the ACT has held this view for a number of decades. If an engagement in sexual activity by consenting adults, without the notion of payment, is not regarded as criminal then neither should an act as a business arrangement be so regarded. Any attempt to reintroduce criminality should be resisted strongly.
- 3.129 Violence, sexual servitude, undue pressure, blackmail and similar matters are covered by other legislation such as the *Crimes Act 1900* (ACT) and the *Criminal Code 1995* (Cth).

4 REGULATION OF BROTHELS

- 4.1 Term of Reference 2 for the inquiry requires the Committee to inquire into ‘the regulation, enforcement and monitoring of commercially operated brothels’. Considered below are the views of the ACT Government; other proponents of the current regime on sex work in the ACT; and opponents of the current regime.
- 4.2 Speaking to this Term of Reference, the ACT Government advised the Committee that, under the *Prostitution Act 1992*, regulation of brothels was conducted by the Office of Regulatory Services (ORS) and ACT Policing.¹¹⁹

The role of ORS and ACT Policing

- 4.3 The Government advised the Committee that the ORS, part of the Justice and Community Safety Directorate, had ‘regulatory responsibility’ in operational terms for the Act. However, despite its administrative responsibility for the Act, ORS had ‘no inspection or enforcement powers under the *Prostitution Act*’, only ‘its more general powers under the *Work Safety Act 2008*’.¹²⁰
- 4.4 Answers to the Committee’s questions in public hearings confirmed this. Inspections were conducted, for the most part, under the framework of the *Work Safety Act 2008*. The Work Safety Commissioner told the Committee that the responsibility of the work unit to which inspectors belonged, WorkSafe ACT, was ‘to regulate the *Work Safety Act*, not the *Prostitution Act*’, and so ‘although we would not administer the *Prostitution Act* as such, we would administer the broader health and safety aspect of this’.¹²¹
- 4.5 However, the Commissioner told the Committee that ‘this area crosses over’ because there was ‘overlap between the *Work Safety Act* and the *Prostitution Act*’. The instrument which created this overlap was, to a large extent, the

¹¹⁹ ACT Government, Submission No.34, pp.5-6.

¹²⁰ ACT Government, Submission No.34, pp.5-6.

¹²¹ Mr Mark McCabe, *Transcript of Evidence*, 23 March 2011, pp.19-20.

Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010. This, the Commissioner told the Committee, was something that inspectors would ‘test against’ during their inspections of brothels.¹²²

- 4.6 An example of the regulatory role of the *Code of Practice* was that it provided a standard on “infectious diseases”:

that a person should not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows or could reasonably be expected to know that they are infected. We would expect the employer to have a process in place to be reasonably satisfied that that was the case.¹²³

- 4.7 This mirrored similar provisions within the *Prostitution Act 1992*. There were, the Commissioner told the Committee, also similar provisions in the *Work Safety Act 2008*. However the provisions in the *Prostitution Act* were ‘very specific’:

The *Work Safety Act* has a similar provision in that workers are prohibited from impacting on the health and safety of others—in other words, any person they come in contact with as a result of their work, and vice versa. However, that is a very broad provision, whereas what is here in sections 24 and 25 is a very specific instance of that. So, yes, there is a doubling up from the work safety point of view, but this is a very, very specific instance of how that could occur as opposed to the very broad provisions in the *Work Safety Act*.¹²⁴

- 4.8 For the most part, it appears that inspections of brothels were not done under the *Prostitution Act*. In practice, inspectors did double-duty, focusing on workplace safety, with links to specific sex work related matters provided by the *Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010*.

- 4.9 The Attorney told the Committee that in cases where inspectors suspected a breach of the *Prostitution Act* they referred matters to ACT Policing, which

¹²² Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.19.

¹²³ Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.19.

¹²⁴ Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.20.

would then investigate and determine ‘whether or not there had been a breach of the law under the *Prostitution Act*’. This, said the Attorney, was an example of how the ‘occupational health and safety regulatory agencies and the policing effort ... overlap’.¹²⁵

4.10 The Attorney said that this was necessary because:

these are very sensitive and difficult matters. We are talking about individuals’ private health status, and there is a complex interaction between privacy considerations and protecting public health. There is also the overlap of occupational health and safety law.¹²⁶

4.11 With regard to the role of ACT Policing, the Government advised the Committee that:

ACT Policing performs the enforcement role under the *Prostitution Act* in relation to sex workers and brothels, but its powers are generally not specific to the industry. The powers of entry and search are similar those held by ACT Policing in relation to other commercial enterprises.¹²⁷

4.12 Commenting on the effectiveness of this arrangement, the Attorney told the Committee that:

I think the way that these issues are managed works well in the ACT because we know that we have a highly educated work force when it comes to health matters. We have a very proactive range of services in place to educate and assist health workers in relation to health matters, particularly around STI. We have the overwhelming emphasis on this being managed through an occupational health and safety framework. It is about keeping people safe, both people in the industry and obviously the spread of disease more generally in the community.¹²⁸

4.13 The Government commented that the narrow scope of powers accorded ORS under the Act had given rise to ‘concerns ... about the powers of ORS to

¹²⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.19.

¹²⁶ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.19.

¹²⁷ ACT Government, Submission No.34, pp.5-6.

¹²⁸ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.19-20.

ensure a high level of compliance with the *Prostitution Act*'.¹²⁹ However, the Government went on to observe that 'if the commercial sex industry is to be treated as any other industry', it appeared unnecessary to increase such powers, because while there were 'risks inherent to the commercial sex industry, the same may be said of many other commercial activities that are not specifically regulated'.¹³⁰

- 4.14 The Committee also asked about the frequency and type of inspections of brothels conducted by the ORS over recent years. In relation to the frequency of inspections, the Committee was advised that in 2003 WorkCover had carried out an occupational health and safety inspection program of brothels, which included announced inspections. There was another inspection program conducted in 2004-05 to follow-up on the 2003 inspections, which was also an announced program.¹³¹ The Work Safety Commissioner told the Committee that in 2009 a program of unannounced inspections was conducted, in which 10 brothels were inspected.¹³²

- 4.15 In relation to the program of inspections, the Attorney advised the Committee that:

ACT WorkCover does not appear to have published a policy on announcing inspections. Whether an audit or inspection was announced was a matter for decision prior to each audit or inspection. The decision would be made following consideration of a range of factors such as, history of compliance, time period since last audit and other factors pertinent to the particular industry.¹³³

- 4.16 In relation to the type of inspection, the Committee asked the Commissioner about the effectiveness of unannounced compared with announced inspections. In particular it asked whether unannounced inspections 'may

¹²⁹ ACT Government, Submission No.34, pp.5-6.

¹³⁰ ACT Government, Submission No.34, pp.5-6.

¹³¹ Mr Corbell, Answer to Question on Notice, 27 April 2011.

¹³² Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.12.

¹³³ Mr Corbell, Answer to Question on Notice, 27 April 2011.

alienate workers' in relation to government officials and 'make them less likely to seek help when they really need it'.¹³⁴

- 4.17 In response, the Commissioner told the Committee that the 2009 program of unannounced inspections had resulted in a significant 'lift in compliance', and 'drop-off in the level of health and safety issues' found during inspections. While he acknowledged possible concerns over negative perceptions of unannounced inspections from within the industry, they had proved effective, and unannounced inspections continued to be a feature of the inspections regime.¹³⁵
- 4.18 The Commissioner told the Committee that the inspections regime was not only about finding shortfalls in compliance. It was also a means to take a 'more educative approach' although Work Safety would 'take the hard line' for important breaches in compliance. Both of these things came into play in the inspections program.¹³⁶
- 4.19 The Attorney also endorsed unannounced inspections, saying that they kept 'everybody honest'. He told the Committee that there was also a role 'for announced visits that are about education and further improvements in compliance', in line with the Commissioner's comments.¹³⁷

Views of contributors

- 4.20 Other contributors who were in favour of the general approach of the *Prostitution Act 1992* were not in favour of increased levels of regulation, and expressed concern that the current inspections regime may be perceived to be intrusive or arbitrary.

¹³⁴ *Transcript of Evidence*, 23 March 2011, pp.11-12.

¹³⁵ Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.12.

¹³⁶ Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.12.

¹³⁷ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.12.

Eros Foundation

- 4.21 The Eros Foundation advised that:

If a culture is created that gives powers to government officials or to police to regularly inspect brothels without cause, workers and clients alike will feel victimised and be at risk of police or official corruption.¹³⁸

- 4.22 For this reason the Eros Foundation recommended that the 'reasons for inspections should be transparent and in line with the laws of fair trading'.¹³⁹

Ms Shelle Mulvay

- 4.23 Another submitter, Ms Shelle Mulvay, also spoke in favour of a less intrusive inspection regime. She advised the Committee that brothels currently operating in the ACT had 'operated with minimal external monitoring', and maintained 'excellent compliance with the current legislation'. Perceptions to the contrary arose from when 'rare incidents where compliance has failed' resulted in 'inflammatory media coverage'. In her view, ACT brothels were 'very aware of their responsibilities' and practiced 'careful self-monitoring to comply with the regulations'.¹⁴⁰

Opponents

- 4.24 Opponents of the Act, consistent with views noted above in Chapter 2, expressed negative views of regulation and the regulatory framework.

Coalition Against the Trafficking of Women Australia

- 4.25 CATWA raised three main objections to the regulatory regime. First, referring to the September 15 2008 death of the sex worker in Fyshwick, CATWA suggested that the recruiting of under-age sex workers was normal practice in the sex industry in Australia, and that '[as] long as the sex

¹³⁸ Eros Foundation, Submission No.13, p.7.

¹³⁹ Eros Foundation, Submission No.13, p.7.

¹⁴⁰ Ms Mulvay, Submission No.6, p.3.

industry enjoys legal status in Australia, child prostitution will continue to be an activity that some operators will pursue for profit'.¹⁴¹

4.26 Second, CATWA suggested that:

No amount of 'regulation' will drive these practices from an industry that derives its profits from the sexual degradation and exploitation of society's most vulnerable people.¹⁴²

4.27 Third, it was 'inadvisable for Government to collect 'licensing fees from sex industry operators' in view of the vulnerability of the women who become sex workers, and the 'physical and psychological harm' that results from their participation in the industry. In so doing, the ACT Government risked:

abrogating its responsibility to protect the most vulnerable members of its community if it continues to support the activities of brothel operators/pimps by licensing them.¹⁴³

Collective Shout

4.28 Collective Shout also objected to the regulatory regime on grounds that sex workers were drawn from vulnerable populations, and that to 'accept licensing fees from money that has been obtained in such an unethical and harmful manner' compromised the ACT government and made it 'complicit'.¹⁴⁴

Perceptions of regulation

4.29 Further comments by other contributors showed perceptions of brothel regulation.

4.30 ACL advised the Committee that 'the Office of Regulatory Services had made only one visit in the five years up to August last year, with that visit flagged

¹⁴¹ CATWA, Submission No.28, pp.3-4.

¹⁴² CATWA, Submission No.28, p.4.

¹⁴³ CATWA, Submission No.28, p.4.

¹⁴⁴ Collective Shout, Submission No.43, pp.4-5.

weeks in advance'.¹⁴⁵

- 4.31 Mr Peter Hylands advised that professional contact with the Office of Regulatory Services had shown them to be 'helpful and professional', but stated that he had 'no idea what goes on behind the scenes at ORS', and that he was uncertain of the level of regulation directed at the sex industry in the ACT.¹⁴⁶
- 4.32 The Australian Federal Police Association noted that section 32 of the *Prostitution Act 1992* provided for powers to create regulatory powers with regard to 'sex-worker health, safety, advertising and education', but that 'to date no regulations relating to these areas appear to have been enacted'.¹⁴⁷

Committee comment

- 4.33 The Committee understands that the current framework for the regulation, enforcement and monitoring of brothels comprises announced and unannounced inspections, which are education and compliance oriented.
- 4.34 Work Safety inspectors, operating out of the Office of Regulatory Services, conduct these inspections and maintain a primary focus on Work Safety. If, in the process of their Work Safety inspections they see evidence of contraventions of the *Prostitution Act 1992*, or other signs of criminal actions, inspectors notify ACT Policing, which conducts a preliminary investigation. ACT Policing does not have rights to inspect brothels: it can only enter premises where it has reasonable grounds to believe that a crime may have been committed. A third and further part of this framework are educative and outreach functions, which are fulfilled both by Work Safe inspectors and by health workers and those of the Sex Workers Outreach Program (SWOP).
- 4.35 It appears that this combination of instruments is designed to strike a balance between enforcement and education, with a view to achieving compliance. Stronger enforcement can increase negative consequences of behaviour by

¹⁴⁵ Australian Christian Lobby, Submission No.42, p.9.

¹⁴⁶ Mr Peter Hylands, Submission No.20, p.1.

¹⁴⁷ Australian Federal Police Association, Submission No.18, p.2.

driving it underground. A combination of educative and compliance-oriented measures is likely to produce better outcomes.

- 4.36 This line of reasoning is consistent with views put forward by the proponents of the Act. The Committee notes that within this position there is a range of views. Those put by the Government favour maintaining the current regulatory regime. Those put by participants in the sex industry favour a lower level of regulation, stating that the industry has the ability to self-regulate, and that inspections run the risk of appearing to be arbitrary and, possibly, increasing the distance between sex workers and the support networks, sponsored by Government, that they might call upon in times of need.
- 4.37 While the above is a reasonable description of the aims of the current regulatory regime it is, in the Committee's view, undermined by uncertainty about, and interruptions to, the inspection program for brothels. In considering this, the Committee is concerned that no inspections were carried out between the inspections which, it had been advised, had occurred in 2004-05 and 2009.¹⁴⁸
- 4.38 As noted, opponents of the Act find fault with the basic premise of regulation, and the position in which it may place Government in relation to vulnerable and exploited populations.
- 4.39 It would seem that there is, in terms of ethics, a need for government to perform due diligence, within a regulatory regime, to ensure that these risks are managed effectively.
- 4.40 From a broader perspective, there also appears to be a need to establish a more clearly-understood framework on the regulation of brothels. While, in the Committee's view, the present approach appears to be based on sound principles in terms of reducing harms, there does not appear to be a clear image in the minds of persons outside government as to what this comprises. This is reflected in the comments indicated immediately before this *Committee comment*.

¹⁴⁸ Mr Corbell, Answer to Question on Notice, 27 April 2011; Mr McCabe, *Transcript of Evidence*, 23 March 2011, p.15.

- 4.41 It could appear, to these people, that the programming of inspections is to some degree *ad hoc* and that the reasons for conducting announced or unannounced inspections are similarly unclear. It would benefit all parties if this were more transparent, and it would help to assure residents of the ACT that government was in fact discharging its responsibilities under the Act with due diligence.

RECOMMENDATION 4

- 4.42 **The Committee recommends that the ACT Government develop a protocol for inspections of brothels, to be reported against in each Justice and Community Safety Directorate Annual Report.**

5 ENSURING WORKERS ARE OVER 18

- 5.1 As indicated in the beginning of this report, the death of a seventeen year-old sex worker in Fyshwick in 2008 was an important factor in the Assembly's referral of this inquiry to the Committee.
- 5.2 This chapter considers the third Term of Reference, regarding ways in which better measures could be put in place to prevent people less than 18 years old working in the sex industry.

ACT Government view

- 5.3 In presenting the ACT Government's view, the Attorney-General expressed concern over the 2008 death of the sex worker, and said that the Government agreed that there was a need to consider 'whether or not the regulations should be improved to properly identify, wherever possible, minors operating in the commercial sex industry'.¹⁴⁹
- 5.4 The Attorney told the Committee that the *Prostitution Act 1992* currently placed an onus on 'employers to satisfy themselves as to whether or not a person [was] over the age of 18'. He noted that it was a 'defence to a prosecution' if, under section 19(2) or section 20 of the Act, it could be established that the defendant 'took reasonable steps to ascertain the age of the child concerned' and 'believed on reasonable grounds that the child had attained 18 years of age'.¹⁵⁰
- 5.5 The Attorney also noted that in this case, identification had been presented that 'identified her as over the age of 18 but she was not over the age of 18'.¹⁵¹
- 5.6 Considering ways to provide better control over this aspect of the industry, the Attorney told the Committee that he did not believe that 'registration of all sex workers... would necessarily address [the] problem [of underage sex

¹⁴⁹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.2-3.

¹⁵⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.10.

¹⁵¹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.10.

workers]’. In the Attorney’s view, ‘the issue still [boiled] down to what evidentiary proof [was] provided to demonstrate that a person [was] over the age of 18’.¹⁵²

- 5.7 The ACT Government’s submission also sounded a further note of caution about further regulation through the Act, saying that there was ‘concern that the *Prostitution Act* could be used to provide a panacea for, or a complete regulation of, all of these issues’. It went on to say that:

If these issues were to be addressed too extensively in the Prostitution Act, there is a risk of unintended consequences. In particular, excessive detail in drafting may lead to inconsistent policy and practice, poor regulation and enforcement, and gaps in coverage of the Act.¹⁵³

- 5.8 As a result, the ACT Government suggested, these matters ‘may be better addressed in a holistic way in legislation respecting child protection and welfare’.¹⁵⁴

- 5.9 However, the Attorney identified what he regarded as a useful avenue for changing regulation, that is:

The further strengthening of these arrangements to ensure that there is a greater onus of responsibility on employers and operators of brothels and a tightening of the provisions around the applicable defences in relation to determining what was reasonable in ascertaining somebody’s proof of age.¹⁵⁵

- 5.10 Consistent with this, the ACT Government submission advised the Committee that the Government’s view was that:

it would be helpful if some guidance were given to the industry, and to the courts, about what amounts to “reasonable steps” in section 22 of the *Prostitution Act*.¹⁵⁶

¹⁵² Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.9-10.

¹⁵³ ACT Government, Submission No.34, p.12.

¹⁵⁴ ACT Government, Submission No.34, p.12.

¹⁵⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.3.

¹⁵⁶ ACT Government, Submission No.34, p.12.

- 5.11 The submission also noted that ‘the term “reasonable steps” was a phrase intended to ensure flexibility’, and that ‘care must be taken when providing guidance on its meaning.’¹⁵⁷
- 5.12 Neither the ACT Government’s submission nor the Attorney made further suggestions as to what form of this guidance might take.

Proponents

- 5.13 For the most part, other proponents of the Act also voiced concerns at any prospect of increased regulation in the area. As for the ACT Government, these concerns were largely directed at unintended consequences of tightening regulation, in particular the possibility that compliance might be reduced under a more exacting regime.

Eros Foundation

- 5.14 The Eros Foundation expressed this view in its submission to the inquiry, where it advised the Committee that ‘sex workers are reluctant to share their personal details even with their employers and co-workers’ due to the ‘highly stigmatised nature of being involved in the Sex industry’. The Foundation proposed that brothel owners be required to ‘sign a document to state that they are satisfied that they have sighted evidence of proof of age or visa status, without keeping any supporting documentation’. If, the Foundation advised the Committee, sex workers were ‘forced to disclose [further] personal information they [would be] likely to falsify documents even when over 18 and permanent residents of Australia’.¹⁵⁸ This would defeat the purpose of more stringent legislation.

Scarlet Alliance

- 5.15 Scarlet Alliance also spoke in favour of a less punitive approach to regulation in this area, on similar grounds. It told the Committee that it ‘strongly’ opposed ‘any move toward expanding the registration of individual sex

¹⁵⁷ ACT Government, Submission No.34, p.12.

¹⁵⁸ Eros Foundation, Submission No.13, pp.6-7.

workers', such as compulsory registration, 'would immediately create a major increase in non-compliance' and a negative impact on 'the health and safety of sex workers in the ACT'.¹⁵⁹ It went on to observe that:

Licensing and registration - placing one's involvement in the sex industry on the public record - is one of the primary causes of sex workers avoiding legalised frameworks and choosing to 'go underground'. This is not due to an unwillingness to comply, but is the result of an informed process of risk assessment where sex workers must choose between their legal status and their personal safety.¹⁶⁰

- 5.16 The Alliance advised the Committee that registration records were 'retained indefinitely, even after the worker has left the industry or is deceased' and that this had 'long term consequence'. As a result the:

The registration of all individual sex workers, would likely create a significant increase of unregistered, private sex workers and new workplaces where checking for ID was avoided (i.e. non-compliant premises). This is a result of demand; sex workers prefer to work without having to risk their privacy and confidentiality.¹⁶¹

- 5.17 In the Alliance's view, the current arrangements for checking the age of sex workers were adequate:

We believe that the current practice within the industry is that sex industry business operators have the option of checking a person's ID, and that does happen on many occasions; in fact we would say the majority of occasions. We believe that that is a significant opportunity for owners and operators to prove the person's age ...¹⁶²

- 5.18 The Alliance told the Committee, that 'what is currently in place is enough'.¹⁶³ While 'high-profile incidents may give rise to a public perception that crime is rife in the regulated sex industry', however' the evidence over

¹⁵⁹ Scarlet Alliance, Submission No.9, p.8.

¹⁶⁰ Scarlet Alliance, Submission No.9, p.8.

¹⁶¹ Scarlet Alliance, Submission No.9, p.8.

¹⁶² Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.39.

¹⁶³ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.39.

the last six years has not supported this hypothesis'.¹⁶⁴ If 'additional measures were put in place they would not prevent young people from providing false identification' and, moreover, there was no 'mechanism that [could] be put in place to address this' in any definitive sense.¹⁶⁵

- 5.19 The Alliance also told the Committee that in its view the offence of employing an under-age sex worker should be a civil rather than a criminal offence, 'in line with other businesses', such as those involved serving alcohol.¹⁶⁶

Ms Shelle Mulvay

- 5.20 Other proponents' submissions also attested to the adequacy of the present approach on underage sex workers and recommended its continuance. Ms Shelle Mulvay advised the Committee that:

During my fourteen years in the ACT sex industry I have known of only three instances of people under 18 working in the sex industry, two of whom presented fake ID to the brothel managers, which obviously would not have been prevented by a system of registration. In my experience brothel management is extremely cautious about the possibility of people under 18 working in their establishments and people under 18 working in the sex industry is extremely rare.¹⁶⁷

- 5.21 Regarding increased obligations to register, Ms Mulvay echoed the views of other proponents in saying that she could 'think of no better way to encourage the development of a culture of illegal brothels in the ACT than introducing compulsory registration of brothel work'¹⁶⁸. This was borne-out by the ACT's experience of attempting to register sole operators:

In light of the dismal failure of the system of registration relating to sole operators, and that one of the primary reasons for this is reluctance of sex

¹⁶⁴ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.39.

¹⁶⁵ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.39.

¹⁶⁶ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.39.

¹⁶⁷ Ms Mulvay, Submission No.6, p.3.

¹⁶⁸ Ms Mulvay, Submission No.6, p.4.

workers to be registered because of privacy concerns, I would strongly advise against any system requiring further registration of sex workers.¹⁶⁹

Mr Peter Hylands

- 5.22 Mr Peter Hylands also expressed confidence in the present system and concern at the prospect of increased obligations to register, on grounds of confidentiality:

Workers are concerned about records being maintained with perceived ramifications in their later lives. Many workers move on to professional or white collar careers and wish their privacy regarding their past to be respected. A link to the adult industry, whether legal or not can carry a stigma in the eyes of many in the general population.¹⁷⁰

AIDS Action Council

- 5.23 The AIDS Action Council of the ACT voiced similar views about the sensitivity of personal data collected in the event of heightened obligations for registration, and suggested that if:

relevant proof of age records were required to be maintained, there would also need to be a further offence of disclosing that information to any other party except under clearly specified and defined circumstances.¹⁷¹

Defences for section 22 of the Act

AIDS Action Council

- 5.24 One proponent of the current Act adopted a distinctive position on ways to prevent under-age sex workers in the industry. The AIDS Action Council of the ACT told the Committee that in its view there should be no defence to a charge of having a child provide sexual services:

¹⁶⁹ Ms Mulvay, Submission No.6, p.3.

¹⁷⁰ Mr Hylands, Submission No.20, p.1.

¹⁷¹ AIDS Action Council of the ACT, Submission No.12, p.9.

We do not agree that it can be a defence (section 22) to a failure to meet this obligation if it is established that the defendant took reasonable steps to ascertain the age of the child concerned, or believed on reasonable grounds that the child had attained 18 years of age.¹⁷²

- 5.25 Accordingly, the Council recommended that there ‘be no defence for causing, permitting, offering or procuring a child to provide commercial sexual services and that Section 22 be removed’. However, if section 22 were retained in its present form, the Council suggested, the Act should be made ‘very clear on what constitutes reasonable steps and reasonable grounds’.¹⁷³

Opponents

- 5.26 Opponents of the present Act disagreed with the premise of this Term of Reference.

Collective Shout

- 5.27 Collective Shout advised the Committee in these terms when it suggested that ‘being over 18 does not vaccinate a women against the harms of the sex industry’. It suggested that many of the women who wanted to leave the sex industry had ‘entered the industry as underage victims’, and that legalisation of the sex industry had fostered conditions in which children ‘sold sex’.¹⁷⁴
- 5.28 Collective Shout advised the Committee that ‘buyers of prostitution should be penalised while prostituted people are decriminalised, given the inherently harmful nature of prostitution’, but if this approach were not adopted, then:

then it must be recognised that the current system does not ensure all people in prostitution are over the age 18. This is because the onus is on the brothels to check the age of prostituted girls. This is an ineffective approach which enables the sexual exploitation of children. The ACT

¹⁷² AIDS Action Council of the ACT, Submission No.12, p.9.

¹⁷³ AIDS Action Council of the ACT, Submission No.12, p.9.

¹⁷⁴ Collective Shout, Submission No.43, pp.5-6.

government should severely penalise the buyers of underage girls across all areas of prostitution.¹⁷⁵

Coalition Against Trafficking of Women Australia

- 5.29 CATWA, in its submission to the inquiry, made similar arguments, attesting to the inherent harms of sex work and lack of choice in participating in the sex industry. Accordingly, it recommended that:

Placing the responsibility on brothels to police the age of prostituted girls is not sufficient to prevent child sexual exploitation. The ACT should, at a minimum, adopt legislation that severely penalises the buyers of underage girls, whether in brothel, escort or street prostitution.¹⁷⁶

Committee comment

- 5.30 The Committee has considered carefully the arguments put to it in this very important area of regulation for the sex industry. It considers it essential that Government perform due diligence in this area, considering the vulnerability of young people in a number of ways.
- 5.31 It notes that accepted definitions of human trafficking consider that people under 18 do not, for the purposes of the international legal protocols, have the capacity to exercise choice, and that any disposition of those people in a commercial sense therefore must be considered an instance of trafficking.
- 5.32 In considering the arguments of proponents of the present Act, the Committee notes the proposal by the ACT Government to issue new practice directions in relation to defences, for offences under sections 19(a) and 20, made available under section 22 of the Act.
- 5.33 Although it is receptive to arguments, by proponents, that significant increases in obligations to register would have negative consequences, and that for the most part the current regime has worked effectively, the Committee considers that a higher level of risk management must be applied

¹⁷⁵ Collective Shout, Submission No.43, p.6.

¹⁷⁶ CATWA, Submission No.28, pp.4-5.

in view of the 2008 death of the 17 year-old sex worker in Fyshwick. This episode indicates that there need to be better means to manage such risks.

- 5.34 The Committee considers that the proposal put by the AIDS Action Council, that no defence should be available under section 20, is worthy of further discussion. The prospect of an underage person rendering sexual services is abhorrent, and the community must be satisfied that there are effective mechanisms in place to protect minors. The existence of a criminal sanction should be a serious deterrent, and defences available under the Act must be carefully considered if this is to be the case.
- 5.35 In summary the Committee considers, taking all views into account, that the best way to deter offences under section 20 of the Act is to make them absolute liability offences. This would mean that courts considering offences under section 20 would not take into account intent or (as for strict liability offences) whether an error of fact had been made by the accused. In the Committee's view this would place an appropriate burden of responsibility upon brothel operators, and result in the lowest possible level of risk that children or young people could be employed to provide sexual services in the ACT sex industry.
- 5.36 In addition, the Committee notes the submission provided by the Human Rights Commission to the inquiry, in which it noted that there were inconsistencies between the *Crimes Act 1900* and the *Prostitution Act 1992* in regard to these matters. The Commission noted that:
- under sections 55 and 61 of the *Crimes Act 1900*, sexual offences against children distinguish between children 10 years of age (a higher penalty applies) and young people 16 years of age (being the legal age of consent). The Commission notes differential treatment in terms of age of the child exists, and recommends that the Committee seek specific advice on the existing inconsistency between the *Crimes Act* and the *Prostitution Act*.¹⁷⁷

¹⁷⁷ Human Rights Commission, Submission No.37, p.6.

5.37 In view of this, the Commission recommended that:

section 20 of the *Prostitution Act* should be amended to specify that it applies to children and young people up to the age of 18 years, to remove any ambiguity between this Act and the *Crimes Act*. The Commission also recommends the Committee consider extending absolute liability in section 20 to apply up until 16 years of age, and strict liability between 16 and 18 years of age.¹⁷⁸

Strict and Absolute Liability

5.38 The *Criminal Code 2002* (ACT) defines Strict Liability and Absolute Liability.

5.39 In section 23, Strict Liability, the *Code* provides that ‘there are no fault elements for any of the physical elements of the offence’ (section 23(1)(a)), and that the ‘defence of mistake of fact under section 36 (Mistake of fact — strict liability) is available’ (section 23(1)(b) & section 23(2)(b)).

5.40 The effect of this is to remove the need to establish ‘guilty mind’ or intent in order to convict a defendant accused of a strict liability offence, but the defendant may claim in their defence that they had acted on the basis of a reasonable but mistaken belief about facts that would, if true, prevent it from being an offence (the ‘mistake of fact’) (section 36).

5.41 In section 24, Absolute Liability, the *Code* provides that the defence of mistake of fact provided under section 36 of the *Code* is **not** available where a defendant is accused of an absolute liability offence (section 24(1)(b) & section 24(2)(b)).

5.42 The effect of this is not only to remove the need to establish ‘guilty mind’ or intent in order to convict a defendant accused of an absolute liability offence, but also to remove the defence of having acted in mistaken belief of facts which would prevent the action from satisfying the criteria for the offence (section 36).

5.43 The Committee accepts the recommendations of the Commission. However, it believes that, in view of the seriousness of these offences, absolute liability

¹⁷⁸ Human Rights Commission, Submission No.37, p.6.

should extend to offences involving children and young people up to 18 years of age. Amendments made on this basis would go some way toward satisfying the need, identified by the Commission, to harmonize the relevant provisions in this area of the *Prostitution Act 1992* and the *Crimes Act 1900*.

RECOMMENDATION 5

- 5.44 **The Committee recommends that an offence under section 20 of the *Prostitution Act 1992* should apply to children and young people up to the age of 18 years, and should be an absolute liability offence. Sections 20 and 22 of the Act should be amended to reflect this.**
- 5.45 In addition, the Committee wishes to raise its concern that there may be inconsistencies in relevant definitions in the *Prostitution Act 1992* and the *Criminal Code 1900*, which may need further consideration and clarification by Government.

6 OCCUPATIONAL HEALTH AND SAFETY

- 6.1 The fourth Term of Reference for the inquiry asks the Committee to inquire into ‘the adequacy of, and compliance with, occupational health and safety requirements for sex workers’.
- 6.2 This chapter addresses this Term of Reference, and considers other health-related provisions of the *Prostitution Act 1992*. These are sections 24 and 25, which hinge on the transmission of Sexually Transmitted Infections (STIs), either by sex workers or their clients, and section 27, regarding the provision and use of prophylactics in the sex industry.
- 6.3 Before considering these matters it is in the Committee’s view useful to reiterate the range of legislation with provisions in this area which, as noted by the Human Rights Commission, includes:
- *Public Health Regulations 2000*;
 - *Work Safety Regulations 2009*;
 - *Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010*; and
 - Commonwealth employment law standards and the *Fair Work Australia Act 2009*.¹⁷⁹
- 6.4 All of this statute comes into play with regard to health and safety matters in the sex industry.

ACT Government

- 6.5 As noted above, the Government’s position on sex work, stated by the Attorney-General and in its submission, was that sex work was ‘a valid occupational choice’. As such, the Government advised the Committee, it deserved:

¹⁷⁹ Human Rights Commission, Submission No.37, p.5.

recognition of personal and occupational health and safety welfare rights in the same way as these rights are recognised in relation to other occupations. As workers in a legal occupation, sex workers are entitled to a workplace that meets appropriate occupational health and safety standards.¹⁸⁰

6.6 The submission noted that:

Health and safety issues relating to the commercial sex industry are governed by the Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010 (Code of Practice). The Code is enforced by DRS Workcover (now WorkSafe ACT) formerly under the *Occupational Health and Safety Act 1989* and now under the *Work Safety Act 2008*.¹⁸¹

6.7 And suggested that the 'Code seeks to ensure high levels of workplace health and safety', in the areas of:

- the cleanliness of workplaces;
- the inspection of commercial sex services workplaces to ensure compliance with the *Prostitution Act*;
- the provision of information relating to sexually transmitted diseases to people employed at commercial sex services workplaces and to clients; and
- safeguarding the health of sex workers and their clients.¹⁸²

6.8 The submission then went on to report on inspections of brothels, saying that the findings of the unannounced inspection program by ORS Workcover in 2009 were that of 10 brothels inspected:

The majority of brothels rated well within the occupational health and safety framework. However, three Prohibition Notices and one Improvement Notice were issued to three licensed premises. Issues covered in the notices included trip hazards, fire safety, worker induction

¹⁸⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

¹⁸¹ ACT Government, Submission No.34, p.6.

¹⁸² ACT Government, Submission No.34, p.6.

and electrical maintenance. Some more serious matters were also identified requiring temporary closure of premises for cleaning and air quality testing.¹⁸³

6.9 There were also:

A small number of brothels [which] were identified as having minor work safety hazards, such as a lack of cleanliness, lack of material safety data sheets for laundry and kitchen products, and fire extinguisher mounting issues.¹⁸⁴

6.10 'In these cases', the submission suggested, 'WorkSafe ACT inspectors worked with brothel owners to achieve a high level of compliance'.¹⁸⁵

6.11 With regard to these results overall, the submission suggested that:

Considering that these were the first work safety inspections of areas with high risk, as they are a recent campaign for the industry, the high level of compliance found was a positive result for the Territory.¹⁸⁶

6.12 The Attorney suggested that, in view of this close relationship, in practice, between the *Prostitution Act 1992* and the *Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice 2010*, the present inquiry should consider the Code of Practice 'in conjunction' with the Act.¹⁸⁷

Proponents

6.13 Proponents of the *Prostitution Act* argued that there was a high level of compliance with occupational health and safety constraints within the ACT sexual services industry.

¹⁸³ ACT Government, Submission No.34, p.7.

¹⁸⁴ ACT Government, Submission No.34, p.7.

¹⁸⁵ ACT Government, Submission No.34, p.7.

¹⁸⁶ ACT Government, Submission No.34, p.7.

¹⁸⁷ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

Scarlet Alliance

- 6.14 Scarlet Alliance advised the Committee that in its view:

ACT sex industry businesses have shown a strong desire to operate within OH&S frameworks, and to a high standard. During service provision by SWOP ACT and Scarlet Alliance, all evidence has displayed an optimum level of OH&S, or aspiration to do so. It should be noted that sex workers were highly conscious of OH&S and self regulated their places of work to ensure compliance.¹⁸⁸

AIDS Action Council

- 6.15 This positive view was also put forward by the AIDS Action Council, which stated that although as in 'any other industries', workers in the commercial sex industry 'are exposed to a range of risks in the course of work that can be reduced through protective equipment and work practices'.¹⁸⁹

- 6.16 The Council emphasised that:

The use of condoms and other barrier protection is widespread in the industry and has been successful in reducing transmission of HIV and sexually transmitted infections. Studies in similar jurisdictions in Australia find near universal reports of consistent condom use, consistent with reports from our outreach services. Data from 'SWOP SHOP' sexual health clinics shows lower rates of sexually transmitted infections amongst sex workers compared to the general population.¹⁹⁰

- 6.17 The Council also noted that sexual health screenings 'are another important occupational health and safety requirement' and that the Council worked 'with sex workers and sexual health service providers to increase the rates of sexual health screening'.¹⁹¹

¹⁸⁸ Scarlet Alliance, Submission No.9, p.10.

¹⁸⁹ AIDS Action Council of the ACT, Submission No.12, p.9.

¹⁹⁰ AIDS Action Council of the ACT, Submission No.12, pp.9-10.

¹⁹¹ AIDS Action Council of the ACT, Submission No.12, p.10.

6.18 The Council went on to suggest that the ‘most commonly reported health and safety concerns from sex workers include overwork and security’. In particular, these issues were:

experienced particularly by sole operators, unable to share the rent of the premises with another worker or work together to provide support in the event of an emergency or aggressive client.

6.19 As a result, the Council suggested that the law should allow ‘two sex workers to operate from the same premises where neither worker is employed by the other’, as this would ‘provide occupational health and safety benefits’ while ‘also satisfying community concerns in relation to brothels operating in residential areas’.¹⁹²

6.20 This matter is considered further below, in Chapter 7.

Opponents

6.21 Opponents of the *Prostitution Act 1992* did not make specific reference to occupational health and safety in the sexual services industry. From this perspective the industry was considered inherently harmful to the well-being of the providers of those services, and does not make a distinction between ‘safe’ and ‘un-safe’ practices in the sexual services industry. These views are indicated in other parts of this report, particularly Chapters 2, 3, 6 and 7.

Committee comment

6.22 The matters raised in this chapter are dealt with by recommendations in other chapters including Recommendation 4, on protocols for inspections of brothels.

¹⁹² AIDS Action Council of the ACT, Submission No.12, p.10.

7 OTHER HEALTH-RELATED PROVISIONS OF THE ACT

- 7.1 As noted in its introduction this chapter considers, in addition to matters that lie within the conventional confines of occupational health and safety, matters which relate more broadly to health and the sexual services industry. Although these affect clients and providers, rather workers or providers alone, usually seen in occupational health and safety, in this instance these, clearly, may affect the health of providers. In view of this they are considered alongside more conventional concerns about the safety of work-places, equipment, and so on considered above.

Sections 24 and 25

- 7.2 Sections 24 and 25 of the Act address the transmission of Sexually Transmitted Infections (STIs) in the context of sex work.

Provisions

- 7.3 Section 24, 'Infected persons', provides that:
- Each operator and owner of a brothel or escort agency shall take reasonable steps to ensure that a prostitute does not provide commercial sexual services at the brothel or from the escort agency if the prostitute is infected with a sexually transmissible infection.
- 7.4 The maximum penalty for offences is '100 penalty units, imprisonment for 1 year or both' (section 24).
- 7.5 Section 25, 'Providing or receiving commercial sexual services if infected', provides that:
- A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows, or could reasonably be expected to know, that he or she is infected with a sexually transmissible infection.

- 7.6 The maximum penalty for offences is '50 penalty units, imprisonment for 6 months or both' (section 25).

Related provisions of the Public Health Regulation 2000

- 7.7 The *Public Health Regulation 2000* creates closely-related offences. Section 21 of the *Regulation*, 'People with transmissible notifiable conditions', provides that:

- (1) A person who knows or suspects that the person has a transmissible notifiable condition, or knows or suspects that the person is a contact of such a person, must take reasonable precautions (appropriate to that condition) against transmitting the condition. Maximum penalty: 10 penalty units.
- (2) If a person responsible (the responsible person) for another person (the other person) knows or suspects that the other person has a transmissible notifiable condition, or knows or suspects that the other person is a contact of such a person, the responsible person must take reasonable precautions (appropriate to the condition) to prevent the other person from transmitting the condition. Maximum penalty: 10 penalty units.
- 3) In this section: reasonable precautions includes precautions taken on the advice of a doctor (including an authorised medical officer) or an authorised officer (section 21 *Public Health Regulation 2000*).

- 7.8 The relationship between these offences and those created under sections 24 and 25 of the *Prostitution Act*, and whether these provisions of the *Prostitution Act* were necessary and constructive, was subject to considerable discussion during the inquiry. These matters are discussed further below.

ACT Government

- 7.9 The ACT Government's submission advised the Committee that sex workers formed 'a priority group in the context of public health policy', and that the 'Second National Sexually Transmissible Infections Strategy 2010-2013 lists

sex workers as a priority population “because of their significantly higher number of sexual encounters than other community members”¹⁹³

7.10 On the other hand, the Government acknowledged that:

sex workers have played an important role in the partnership that has been effective in containing increases in HIV and other STIs in the community. For example, sex workers have made an important contribution to public health outcomes by referring clients with possible STIs for a sexual health check-up.¹⁹⁴

7.11 In his comments to the Committee on sections 24 and 25 of the Act, the Attorney-General emphasised the reciprocal nature of the obligations created under the Act, describing them as ‘elements of the act that deal with reciprocal obligations placed on infected people and the clients of infected people’.¹⁹⁵

7.12 The Attorney went on to say that this ‘emphasis on reciprocal responsibility’ contrasted with ‘equivalent provisions in other jurisdictions’, and that the Government supported this reciprocal responsibility as it promoted ‘norms of behaviour consistent with treating the sex industry as an ordinary occupation within a regulated framework’. He also suggested that it could be constructive to consider ‘whether a further requirement for sections 24 and 25 should be that the infected person gives notice to the other person of their infection’.¹⁹⁶

7.13 In his comments, the Attorney acknowledged that ‘some members of the sex industry [wished] to see sections 24 and 25 removed from the *Prostitution Act*’, but affirmed the Government’s view that it must:

... recognise the balance that must exist between granting sex workers and clients’ autonomy and protecting theirs and the broader community’s health and safety.¹⁹⁷

¹⁹³ ACT Government, Submission No.34, p.7.

¹⁹⁴ ACT Government, Submission No.34, p.7.

¹⁹⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

¹⁹⁶ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

¹⁹⁷ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

- 7.14 Overall, the Attorney told the Committee, the Government's primary objective was 'to ensure that the act contains adequate harm minimisation strategies to protect all people involved in the commercial sex industry'. A continuing commitment to sections 24 and 25 was part of this.

Relationship between *Prostitution Act* and *Public Health Regulation*

- 7.15 With regard to the relationship between sections 24 and 25 and provisions of the *Public Health Regulation 2000*, the Attorney told the Committee that there were 'similarities in ... approach' between 'sections 24 and 25 of the *Prostitution Act* with sections of the *Public Health Regulations*'.¹⁹⁸ But there were differences 'in relation to certain exclusions of liability':

So, for example, under the public health regulations, knowingly transmitting is an offence, but only where reasonable precautions are not taken—that is, where what the doctor advises are reasonable precautions to prevent infection are not taken—whereas there is no such exclusion of liability under the *Prostitution Act*, so it is actually more stringent. You cannot transmit under any circumstances, even where you may have taken what would be considered reasonable steps under the public health regulations.¹⁹⁹

- 7.16 The Attorney told the Committee that while there were 'obligations under the *Health Act*' in relation to 'notification of certain transmissible infections', those were 'not obligations limited to sex workers'. They were 'obligations on any citizen' and, in particular, there were 'certain obligations on medical practitioners to advise of the detection of certain infections'.²⁰⁰

- 7.17 However, the Attorney noted 'a different in approach' between sections 24 & 25 of the *Prostitution Act* and the *Public Health Regulations 2000*, as the latter criminalised :

some of the same activity as is criminalised by section 25 of the *Prostitution Act* but only where "reasonable precautions" (precautions

¹⁹⁸ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.19-20.

¹⁹⁹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.19-20.

²⁰⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.18.

taken on the advice of a doctor or authorised person) are not taken. There is no such exclusion of liability under sections 24 and 25 of the *Prostitution Act*.²⁰¹

Differences

7.18 However, the Attorney added that:

It is accepted that the provisions of the *Prostitution Act* relate to regulating the provision of commercial sex services, whereas the Public Health Regulation provides for public health generally.

7.19 The consequences of this were possibly that:

the *Prostitution Act* provisions may not give appropriate recognition to government-supported and evidence-based methods of preventing STI transmission. It is generally agreed that consistent, correct use of condoms is an effective precaution in the prevention of STIs, including HIV, and much effort and money has been expended promoting this concept over several decades.²⁰²

7.20 The Attorney also noted that:

It may be argued that, in their present form, sections 24 and 25 of the *Prostitution Act* could have the effect of preventing a person with HIV from ever accessing the services of a sex worker or being employed in sex work, as HIV is a life-long, presently incurable STI.²⁰³

7.21 The ACT Government submission voiced other concerns over sections 24 and 25 of the Act, saying that:

It has been argued that sections 24 and 25 are discriminatory under section 15 of the *Commonwealth Disability Discrimination Act 1992*. Section 15 provides that it is unlawful for an employer to discriminate against a person on the grounds of the person's disability, in determining who

²⁰¹ ACT Government, Submission No.34, p.10.

²⁰² ACT Government, Submission No.34, p.10.

²⁰³ ACT Government, Submission No.34, p.10.

should be offered employment, or in the terms or conditions on which employment is offered.²⁰⁴

7.22 However, it also noted that:

section 48 of the Commonwealth Act provides an exclusion in relation to health. It states that it is not unlawful for a person to discriminate against another person on the grounds of the person's disability if the disability is an infectious disease and the discrimination is reasonably necessary to protect public health.²⁰⁵

7.23 And that the ACT's *Discrimination Act 1991* 'contains similar provisions at sections 10 and 56 respectively'.²⁰⁶

7.24 In view of this, the Government submission noted that:

Repeal of sections 24 and 25 of the *Prostitution Act* would remove a potential area of discrimination against sex workers with STIs. Supporters of this approach argue that sex workers maintain high standards of precautions against communication of STIs by, or to, commercial sex providers. There is little evidence to suggest otherwise.²⁰⁷

7.25 In summary, the Government submission noted that:

Debate about the intended and actual effect of sections 24 and 25 reflects a difficult tension between the right to engage in lawful employment on one hand, and the protection of the community from health risk on the other.²⁰⁸

7.26 In light of this, the Government stated that it would

welcome public views about how this aspect of public safety might be properly balanced with the rights of sex workers. It may be that sections 24 and 25 of the *Prostitution Act* could be amended so that no offence is

²⁰⁴ ACT Government, Submission No.34, p.10.

²⁰⁵ ACT Government, Submission No.34, p.11.

²⁰⁶ ACT Government, Submission No.34, p.11.

²⁰⁷ ACT Government, Submission No.34, p.11.

²⁰⁸ ACT Government, Submission No.34, p.11.

committed if the requirements of the *Public Health Regulation* have been met. It is a question that should be examined.²⁰⁹

ACT Health

7.27 On invitation by the Committee, the ACT Health Directorate provided a submission to the inquiry in its own right, distinct from the whole-of-government submission discussed above. The submission advised the Committee of further areas of difference between the *Prostitution Act* and *Public Health Regulations*.

7.28 One aspect hinged on different references, in statute, to notifiable or non-notifiable STIs. The Health Directorate noted that the Dictionary of the *Prostitution Act 1992* stated that:

sexually transmissible infection means-(a) chancroid, chlamydia/ infection, donovanosis, gonorrhoea, HIV/AIDS, lymphogranuloma venereum or syphilis; or (b) an infection prescribed by regulation.²¹⁰

7.29 However, the *Public Health Notifiable Conditions Determination 2005* lists:

the range of notifiable conditions under the *Public Health Act* as well as providing an indication of whether a condition is transmissible. STI may be notifiable (chlamydia, gonorrhoea, syphilis, HIV/AIDS and donovanosis, the latter being exceedingly rare in Australia) or non-notifiable (examples include, but are not limited to, herpes simplex virus infections, genital human papilloma virus infections and genital infection with molluscum contagiosum).²¹¹

7.30 Regarding this, the Directorate noted that there was 'no distinction between notifiable or non-notifiable STI in either Section 24 or Section 25'.²¹²

7.31 Making comment on this, the Directorate suggested that this 'lack of differentiation between notifiable and non-notifiable STI in Section 24 and

²⁰⁹ ACT Government, Submission No.34, p.11.

²¹⁰ ACT Health Directorate, Submission No.59, p.2.

²¹¹ ACT Health Directorate, Submission No.59, p.2.

²¹² ACT Health Directorate, Submission No.59, pp.2-3.

Section 25 could be problematic and warrants review', particularly in view of the different specification given under the framework of the *Public Health Act*.²¹³

- 7.32 The Directorate suggested two possible responses. The first was that 'if Section 24 and Section 25 [were] retained, a more feasible approach could be to include notifiable STI rather than STI per se'. A second option was to 'cross reference the STI definition provided in the *Prostitution Act 1992* with the *Public Health Act 1997* and related instruments'.²¹⁴

Other differences in legislation

- 7.33 The Directorate noted other differences between the *Prostitution Act 1992* and relevant parts of the *Public Health Regulation 2000*:

Sections 24 and 25 also create a different level of responsibility for brothel owners, sex workers and clients with an STI ... than for those engaging in non-commercial sexual transactions. Section 21 of the *Public Health Regulation 2000* provides, in general terms, a requirement for 'reasonable precautions' to be taken in order to avert transmission of a notifiable condition.²¹⁵

- 7.34 Further, section 113 of the *Public Health Act 1997* provided that 'where the Chief Health Officer [had] reasonable grounds for believing that it [was] necessary to prevent or alleviate a significant public health hazard', he or she may issue directions, including:
- A direction requiring a person to refrain from behaviour, or an activity, that significantly contributes, or that could so contribute, to the hazard;
 - A direction requiring a person to cease performing work of a particular kind, or to cease working at a particular place, while such work significantly contributes, or could so contribute, to the hazard;
 - A direction requiring a person who has a transmissible notifiable condition to undergo a medical examination; and

²¹³ ACT Health Directorate, Submission No.59, pp.2-3.

²¹⁴ ACT Health Directorate, Submission No.59, pp.2-3.

²¹⁵ ACT Health Directorate, Submission No.59, p.3.

- A direction requiring a person who has a transmissible notifiable condition, or a contact of such a person, to undergo specified counselling.²¹⁶

7.35 In relation to this provision, the Directorate noted that section 113 was not 'specific to STI or to sex workers and their clients', but rather provided:

legal authority to the Chief Health Officer in a general public health context. However, the range of directions available to the Chief Health Officer in section 113 includes provision for directions to a person who has a transmissible notifiable condition, or a contact of such a person. Thus the Chief Health Officer has the capacity under Section 113 to issue, for example, a direction stipulating that an individual known to have a notifiable STI and presenting a significant health hazard must not engage in sexual activity without a condom. Such a direction could be made irrespective of whether the individual is engaged in providing or receiving commercial sex services.²¹⁷

7.36 The Directorate considered why a different standard had been applied in the two pieces of legislation. It was reasonable to argue that:

a person who [used] barrier protection such as condoms or dental dams [had] effectively taken reasonable precautions appropriate to the condition (that is, the presence of a notifiable sexually transmissible infection), as required in regulation 21.²¹⁸

7.37 Hence it was 'not immediately clear why a different standard [was] applied to commercial sexual transactions as per section 25 [of the *Prostitution Act*)]'. The Directorate noted that the time at which the Act came into force was 'era of extreme concern about HIV and AIDS and a time when the consequences of HIV infection were front and centre in the public mind', and this may have 'influenced the "blanket" approach taken in sections 24 and 25'.²¹⁹

7.38 There were two possibilities about how these provisions may have come into being. One possibility was that they arose from the 'perspective or belief that

²¹⁶ ACT Health Directorate, Submission No.59, pp.3-4.

²¹⁷ ACT Health Directorate, Submission No.59, p.4.

²¹⁸ ACT Health Directorate, Submission No.59, p.6.

²¹⁹ ACT Health Directorate, Submission No.59, p.6.

sex workers had more sexual contacts than most other members of the community. A second possibility was that they were an example of using the 'precautionary principle', that is 'using discretion where there is the possibility of harm and when extensive scientific knowledge on the matter is lacking'.²²⁰

Implications of low STI rates in sex workers

7.39 The Directorate also asked whether sections 24 and 25 were redundant if sex workers represented 'a negligible risk' in relation to STIs. It noted that there were difficulties with obtaining exact figures on the prevalence of STIs in sex workers, because they often attended general practices or public health clinics for testing, and there was 'no requirement for a patient to declare their employment category as part of the testing process'.²²¹

7.40 However, the Directorate suggested that indications from the 'SWOP Shop' were that ACT sex workers had 'lower rates of sexually transmissible infections than may be expected in the general population'.²²²

7.41 It also noted that the Canberra Sexual Health Centre reported that in the period 2006-2010 '255 occasions of service were provided to sex workers'. The results of this were that:

There were no diagnoses of syphilis, gonorrhoea or HIV. Only 3/140 (2.1%) of chlamydia tests were positive. This is less than the percentage of positive tests in the general ACT population, which over the same period was closer to the order of 5%.²²³

7.42 This, the Directorate advised the Committee, was consistent with findings in other Australian jurisdictions, where:

sex workers obtain sexual health checkups more regularly than members of the general community and given that sex workers have a significant

²²⁰ ACT Health Directorate, Submission No.59, p.6.

²²¹ ACT Health Directorate, Submission No.59, p.7.

²²² ACT Health Directorate, Submission No.59, p.8.

²²³ ACT Health Directorate, Submission No.59, p.8.

occupational and economic incentive to maintain good sexual health in order to be able to remain working in the industry.²²⁴

7.43 And noted that:

It is also the case that sex workers usually have greater levels of education and effectiveness in relation to the use of barrier protection, as well as a high degree of self efficacy in relation to the protection of their own sexual health. Much of this self efficacy has been assisted by a range of positive systemic and regulatory factors.²²⁵

7.44 While the Directorate acknowledge the 'paucity' of research in the area, those studies which were available showed that, in Victoria, that most STI infections in sex workers 'were related to partners outside of work' and that, in NSW, 'condom use for vaginal and anal sex exceeds 99% and sexually transmissible infection rates are at historic lows'.²²⁶

Section 25 and HIV infection

7.45 In relation specifically to HIV infection, the Directorate noted the case of an HIV-positive sex worker who in 2008 was charged under section 25 of the *Prostitution Act* which, it noted, had 'generated a great deal of media and community dialogue and discussion'.²²⁷

7.46 The Directorate noted that the case had provoked concerns from sex worker advocates that 'the provisions of section 25 were inequitable' and 'precluded an HIV positive person from ever engaging in sex work as an occupation in the ACT'.²²⁸

7.47 The Directorate also noted that given the:

²²⁴ ACT Health Directorate, Submission No.59, p.8.

²²⁵ ACT Health Directorate, Submission No.59, p.8.

²²⁶ ACT Health Directorate, Submission No.59, pp.8-9, quoting D M Lee, A Binger, J Hocking, C K Fairley, (2005), 'The incidence of sexually transmitted infections among frequently screened sex workers in a decriminalised and regulated system in Melbourne', *Sexually Transmitted Infections*, Vol. 81, no.5, pp.434-436; and Donovan B, Harcourt C, Egger S, Fairley CK, (2010), 'Improving the health of sex workers in NSW: maintaining success', *NSW Public Health Bulletin*, 2010 Mar-Apr;21(3-4):74-7.

²²⁷ ACT Health Directorate, Submission No.59, p.9.

²²⁸ ACT Health Directorate, Submission No.59, p.9.

responsibilities that are placed on clients under the provisions of section 25, it is also the case that a person living with HIV (and aware of their HIV diagnosis) is precluded from ever receiving a commercial sexual service in the ACT.²²⁹

7.48 This was not the case in other state or territory jurisdictions:

A person living with HIV can access or supply sexual commercial services in New South Wales, the Northern Territory, South Australia and Tasmania (with mandatory disclosure). There is no specific law relevant in Western Australia (which we understand along with Victoria is also currently reviewing its sex work regulation and legislation).²³⁰

7.49 The Directorate suggested that among the implications of section 25 in its present form were that it 'may in some cases deter sex workers and clients from seeking a HIV test'. Due to the high potential infectivity of persons who had recently contracted HIV, 'this could have very serious consequences if an individual, and particularly a recently infected individual, was engaging in unprotected sexual practices'.²³¹

7.50 The Directorate advised the Committee that 'some viewpoints' in the sex worker community in the ACT suggested that:

a legal penalty on a sex worker for working whilst aware of the presence of STI could in some cases result in workers being less likely to seek testing, as they could then claim ignorance of their STI status as a defence against the penalties imposed in sections 24 and 25.²³²

7.51 In relation to this, the Directorate suggested that this was a 'feasible proposition although difficult to verify, except anecdotally':

We are aware, through SWOP, that in 2008 when media attention was devoted to the high profile case of an HIV positive sex worker, there was a marked reduction for several months of the number of sex workers seeking testing with SWOP Shop. The reason for this association is not

²²⁹ ACT Health Directorate, Submission No.59, p.10.

²³⁰ ACT Health Directorate, Submission No.59, p.10.

²³¹ ACT Health Directorate, Submission No.59, p.10.

²³² ACT Health Directorate, Submission No.59, p.10.

proven although workers from SWOP have cited a theme of ‘fear of regulators’ expressed by sex workers at that time.²³³

- 7.52 In conclusion, the Directorate highlighted the question of whether the: issues raised by section 24 and 25 of the *Prostitution Act 1992*, which are essentially public health matters, could instead be effectively managed by the existing provisions of the *Public Health Act 1997* and its associated regulations and legislative instruments. Based on the above discussion it would seem that this is a feasible approach.²³⁴
- 7.53 The Directorate observed that public health approaches were ‘key to the prevention of STI’. It also flagged the potential for harmonisation between the different pieces of legislation which govern the area: the *Prostitution Act 1992*; the *Public Health Act 1997*; the *Public Health Regulation 2000*, and the *Occupational Health and Safety (Sexual Services Industry) Code of Practice 2005 (No 1)*.²³⁵
- 7.54 However, in relation to sections 24 and 25 of the *Prostitution Act*, and section 113 of the *Public Health Act 1997*, the Directorate observed that:
- It would be difficult ... to argue that there was ‘redundancy’ between these provisions in the two Acts: the existence of the *Prostitution Act 1992* in no way reduces the need for the ‘general’ provisions of section 113 to remain, and the existence and general nature of section 113 does not seem act as a panacea for the issues that sections 24 and 25 of the *Prostitution Act 1992* seek to address.²³⁶

The Human Rights Commission

- 7.55 In its submission to the inquiry, the ACT Human Rights Commission made a number of comments relevant to sections 24 and 25 of the *Prostitution Act*.

²³³ ACT Health Directorate, Submission No.59, p.10.

²³⁴ ACT Health Directorate, Submission No.59, p.10-11.

²³⁵ ACT Health Directorate, Submission No.59, p.11.

²³⁶ ACT Health Directorate, Submission No.59, p.4.

- 7.56 Commenting on how legislation should be framed in this area, the Commission quoted the *Final report of the Legal Working Party of the Intergovernmental Committee on AIDS* to the effect that:

Laws ... penalising prostitution impede public health programs promoting safer sex to prevent HIV transmission, by driving underground many of the people most at risk of infection.²³⁷

- 7.57 In support of this, the Commission noted the 1996 *International Guidelines on HIV/AIDS and Human Rights* at 4(c), which stated that:

With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients.²³⁸

- 7.58 Furthermore, the 1996 *International Guidelines on HIV/AIDS and Human Rights* at 4(a) stated that:

Criminal and/or public health legislation should not include specific offences against the deliberate or intentional transmission of HIV, but rather should apply general criminal offences to these exceptional cases.²³⁹

- 7.59 On the basis of these views, and with regard to the *Human Rights Act 2004* (ACT) the Commission suggested that:

Presently, section 24 and section 25 are discriminatory within the meaning of section 8 of the *Discrimination Act 1991* and may not meet the proportionality test in section 28 of the *Human Rights Act*.²⁴⁰

²³⁷ Human Rights Commission, Submission No.37.

²³⁸ Human Rights Commission, Submission No.37, p.7, quoting Department of Health, Housing and Community Services, *Final report of the Legal Working Party of the Intergovernmental Committee on AIDS*, November 1992, p.46..

²³⁹ Human Rights Commission, Submission No.37, p.9, quoting *International Guidelines on HIV/AIDS and Human Rights* at 4(a).

²⁴⁰ Human Rights Commission, Submission No.37, p.9.

7.60 Moreover, sections 24 and 25 were ‘not in keeping with what is known about the prevention of sexually transmissible diseases’ and, in the Commission’s view, the *Public Health Regulation 2000*, at section 21, ‘already sufficiently addresses these matters’.²⁴¹

7.61 In response, the Commission suggested a solution:

With greater strength given to section 27 of the *Prostitution Act*, and the offences contained in the *Public Health Regulations 2000*, *Public Health Act 1997* and *Crimes Act 1900*, sections 24 and 25 are unnecessary. The Commission recommends that section 24 and section 25 be removed, in combination with strengthened provisions in section 27.²⁴²

Proponents

7.62 Contributions by proponents of the *Prostitution Act 1992* were largely consistent with the positions outlined above.

Scarlet Alliance

7.63 Scarlet Alliance advised the Committee that the ‘criminalisation of sex workers living with HIV in the ACT has not prevented a single case of HIV transmission’. Instead, it had ‘jailed at least one sex worker who had not put anyone at risk’.²⁴³

7.64 The Alliance noted that it had ‘consistently raised’ its concern with sections 24 and 25 of the Act, based on the propositions that:

- The experience in Australia that education and sex workers prevents STIs and HIV and not criminalisation.
- The discriminatory nature of the law which excludes sex workers and clients with HIV (and other STIs) from participation in the legal sector of the sex industry. This approach ignores the evidence that condoms and safe sex

²⁴¹ Human Rights Commission, Submission No.37, p.8.

²⁴² Human Rights Commission, Submission No.37, p.9.

²⁴³ Scarlet Alliance, Submission No.9, p.10.

prevent transmission and is simplistic considering the range of services offered by sex workers which do not include a risk of transmission.

- Australia has in place national guidelines that outline the process for Government and health areas to manage anyone who puts another person at risk of HIV.²⁴⁴

7.65 The Alliance went on to observe that:

The potential for the misuse of this legislation as was demonstrated in the ACT in 2008. It is our experience that logic is replaced by hysteria in relation to these issues. Vilification by media and the public of one individual has resulted from this law. Public exposure of a person HIV status and details by government officials also resulted from this law.²⁴⁵

7.66 It also asserted that ‘the real impact’ of this case was ‘an (at the time) immediate reduction in the number of sex workers attending sexual health services’ and ‘increased excessive levels of stigma and discrimination against sex workers’.²⁴⁶

7.67 In light of this, the Alliance proposed that sections 24 and 25 both be removed from the Act. It stated that it was preferable adopt a public health approach which dealt with such matters ‘for people generally across the community’ rather than make provision for particular groups, since more general approaches were ‘in place regardless’.

7.68 Moreover, the Alliance suggested that obligations currently placed on brothel operators in section 24 were inconsistent with privacy legislation in Australia, in the spirit of which it was ‘not suitable for an owner or operator who is the employer of the sex worker to have information about their health status’. This was ‘far better placed between a sex worker and their general practitioner or other health officer’.²⁴⁷

²⁴⁴ Scarlet Alliance, Submission No.9, p.10.

²⁴⁵ Scarlet Alliance, Submission No.9, p.10.

²⁴⁶ Scarlet Alliance, Submission No.9, p.10.

²⁴⁷ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.41.

7.69 In relation to section 25, the Alliance was critical of the broad approach under the Act which introduced criminal sanctions too early. In the national guidelines, it told the Committee:

a range of responses are put in place by the chief public health officer et cetera before it would reach a point where police would intervene. That would only be in a situation where a person had failed to address their behaviour and change their practices.²⁴⁸

7.70 In contrast, the Alliance stated, that section 25 was 'out of step with those guidelines' because it brought in:

a police approach or a criminal approach immediately, before a person has the opportunity to go through those public health mechanisms that we in Australia have recognised as extremely responsible.²⁴⁹

7.71 Moreover, the Alliance told the Committee, the available evidence on the prevalence of HIV in sex workers in Australia supports the contention that in practice this is not a high source of risk:

in Australia we have the epidemiology, the national epidemiology collected through the National Centre in HIV Epidemiology and Clinical Research, which demonstrates the very low rates of STIs and HIV among sex workers. Actually, we do not have a problem in this area. What is working effectively in the regulation in ACT is that sex workers are accessing the free, anonymous, government-provided sexual health services. The regularity of testing is very high. The use of condoms is very high. So we do not have a problem in this area. We have lots of evidence to show that there is not a problem with people with an STI or HIV operating inappropriately within the sex industry in ACT. So I would say that the legislation currently in place which addresses people who place other people at risk is sufficient to address this issue.²⁵⁰

²⁴⁸ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.41. The reference is to *National Guidelines for the Management of People with HIV Who Place Others at Risk*, Australian Health Ministers' Conference – 18 April 2008, [http://www.health.gov.au/internet/main/publishing.nsf/Content/BF51F1922544BA6FCA2574DA007FE597/\\$File/hiv-at-risk.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/BF51F1922544BA6FCA2574DA007FE597/$File/hiv-at-risk.pdf), viewed 5/12/2011.

²⁴⁹ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.41.

²⁵⁰ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.42.

The Eros Foundation

- 7.72 Other proponents of the Act made similar observations. The Eros Foundation advised the Committee that:

In an examination of mandatory STI testing for sex workers, Wilson et al (2010) found very low rates of STI's among sex workers and almost universal condom use, indicating that the actual risk of STI contagion during commercial sex to be very low (Wilson et al. 2010). In regards to HIV infection, there has been no recorded cross infection of HIV between sex worker and client in Australia (Jeffreys et al. 2010; Scarlet Alliance 2010). Sex workers have a vested interest in remaining STI free and take advantage of sexual health screening programs.²⁵¹

- 7.73 The Foundation advised the Committee that such laws were not an effective means to 'achieve public health aims or objectives':

The United National General Assembly on Human Rights has found a failure of laws that criminalize HIV transmission to achieve public health aims or objectives and have far-reaching impact on the enjoyment of the right to health for those affected and concludes that only intentional, malicious HIV transmission can be legitimately criminalized (2010).²⁵²

- 7.74 Moreover, Foundation advised the Committee:

Laws that prevent a person from 'knowingly infecting' another with HIV/AIDS are already in place. To criminalise sex workers living with HIV is to further discriminate against a small and marginalised group. A condom is an effective barrier against HIV, as is a glove for health workers who care for people who are HIV positive.²⁵³

- 7.75 A further dimension was that:

There are a growing number of clients who have HIV and who deliberately seek out workers who also have HIV. Clients with HIV

²⁵¹ Eros Foundation, Submission No.13, p.7.

²⁵² Eros Foundation, Submission No.13, p.7.

²⁵³ Eros Foundation, Submission No.13, p.7.

should have the right to sexual services and to be able to choose a worker they feel comfortable with.²⁵⁴

AIDS Action Council of the ACT

- 7.76 The AIDS Action Council of the ACT also recommended that sections 24 and 25 be abolished on the grounds that:

the use of prophylactics and the public health regulation provide satisfactory protection against the transmission of sexually transmitted infections, including HIV, and that these sections currently discriminate unreasonably against people living with HIV.²⁵⁵

- 7.77 When it appeared before the Committee, the Council agreed that its view was that sections 24 and 25 were ‘outmoded’, and that public health regulations were a superior instrument for prevention because they allowed ‘for different obligations based on the infection we are talking about’, as opposed to ‘a blanket ban, with all people with a sexually transmitted infection being out of work’.²⁵⁶

Opponents

- 7.78 Opponents of the present Act did not specifically refer to sections 24 and 25 of the Act in their submissions to the inquiry. However, they did refer to the risks of sexually transmitted diseases being communicated through sex work. CATWA, Collective Shout, and the Australian Christian Lobby all indicated these risks.²⁵⁷

²⁵⁴ Eros Foundation, Submission No.13, p.7.

²⁵⁵ Mr Mills, *Transcript of Evidence*, 20 April 2011, p.44.

²⁵⁶ Mr Mills, *Transcript of Evidence*, 20 April 2011, p.45.

²⁵⁷ CATWA, Submission No.28, p.5; Collective Shout, Submission No.43, p.7; Australian Christian Lobby, Submission No.42, p.9..

Section 27

7.79 Section 27 of the *Prostitution Act 1992*, 'Use of prophylactics', provides that:

(1) Each operator and owner of a brothel or escort agency shall take reasonable steps to ensure that no person provides or receives commercial sexual services at the brothel or escort agency, being services which involve vaginal, oral or anal penetration by any means, unless a prophylactic is used.

(2) An operator or owner of a brothel shall not discourage the use of prophylactics at the brothel.

(3) A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services that involve vaginal, oral or anal penetration by any means unless a prophylactic is used.

(4) A person shall not, at a brothel or elsewhere, while providing or receiving commercial sexual services that involve oral, anal or vaginal penetration—

(a) misuse, damage or interfere with the efficacy of any prophylactic used; or

(b) continue to use a prophylactic that he or she knows, or could reasonably be expected to know, is damaged.

7.80 The maximum penalty for each of these offences is 50 penalty points, with the exception of section 27(2), for which the maximum penalty is 100 penalty points.²⁵⁸

7.81 In relation to the provision of prophylactics and other safety equipment, the Attorney noted that the code of conduct states that:

Items such as condoms, dams, latex gloves and water-based lubricants shall be provided free of charge.²⁵⁹

7.82 The Attorney noted, however, that 'it is not clear who should bear the cost of these items' and that it was the Government's view that:

²⁵⁸ Values of penalty points are specified in the *Legislation Act 2001*, section 133, currently \$110 for individuals and \$550 for corporations.

²⁵⁹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

such items represent safety equipment and, therefore, recommends that the committee consider whether employers should be required to make these items freely available to workers.²⁶⁰

7.83 The Attorney also suggested that this 'requirement should probably be enshrined in legislation'.²⁶¹

7.84 This was also raised as a matter of concern by the ACT Health Directorate, the Human Rights Commission, and the AIDS Action Council.

7.85 The Health Directorate noted the efficacy of prophylactics and their importance in preventing key sexually transmitted diseases, quoting the US Government Centre for Disease Control and Prevention (CDC) to the effect that:

Overall, the preponderance of available epidemiologic studies have found that when used consistently and correctly, condoms are highly effective in preventing the sexual transmission of HIV infection and reduce the risk of other STDs ... The CDC view is corroborated by many other sources and it has been generally agreed for some decades that correct use of condoms and other barrier protection such as dental dams is an effective precaution in the prevention of notifiable STIs, including HIV. Much effort and money has been expended promoting this concept as a cornerstone of public STI prevention campaigns.²⁶²

7.86 The Human Rights Commission noted the 'silence' of the current section 27 on the issue of who is to provide prophylactics, and stated its view that the section should be 'strengthened to prohibit sex workers being pressured into not using prophylactics as the current penalties in this section are small'. The Commission suggested that the:

²⁶⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2.

²⁶¹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.2. See also ACT Government, Submission No.34, p.9.

²⁶² ACT Health Directorate; Submission No.59, p.7, quoting Centre for Disease Control and Prevention, 'Male Latex Condoms and Sexually Transmitted Diseases', <<http://www.cdc.gov/condomeffectiveness/latex.htm>>, viewed 5/12/2011.

provision of prophylactics ought to be considered an essential safety issue by all sexual service operators, as other safety equipment is treated in other high risk jobs.²⁶³

7.87 And recommended amending the section:

to clarify this issue, placing the onus on the commercial sexual service operator/owner to make a wide range of prophylactics available to sex workers and clients free of charge.²⁶⁴

7.88 Moreover, an 'absolute liability offence and increased penalty should be imposed in order to reflect the seriousness of the risks involved'.²⁶⁵

7.89 The AIDS Action Council noted that:

Pressure from clients to provide sexual services without condoms is common (40 to 50% of sex workers report receiving these requests in one study), and in practice clients have little to fear from requesting the service despite the illegality.²⁶⁶

7.90 In addition, '[Some] brothel-based sex workers report having to provide their own condoms or purchase them from the brothel operator'. As a result, the Council stated that 'condoms should be provided free of charge as part of the brothel operators' responsibility to prevent unprotected sex occurring on premises'.²⁶⁷

²⁶³ Human Rights Commission, Submission No.37, p.8.

²⁶⁴ Human Rights Commission, Submission No.37, p.8.

²⁶⁵ Human Rights Commission, Submission No.37, p.8.

²⁶⁶ AIDS Action Council of the ACT, Submission No.12, pp.9-10.

²⁶⁷ AIDS Action Council of the ACT, Submission No.12, p.10.

Committee comment

- 7.91 In relation to sections 24 and 25 of the Act, the Committee notes the complexity of the considerations to be taken into account.

Section 24

- 7.92 In relation to section 24, the Committee notes representations made to it, from some contributors, that such an obligation placed on the owner or operator of a brothel is in conflict with established legislative principles on privacy.
- 7.93 It also notes arguments put to it by the Human Rights Commission, that the matters governed by section 24 (and section 25) are also provided for under section 21 of the *Public Health Regulation 2000*.
- 7.94 Under the circumstances, a majority of the Committee is concerned that the duplication of provisions between the *Prostitution Act 1992* and the *Public Health Regulation 2000* may make the law in this area less clear. It takes the view that this is best dealt with by removing section 24 from the *Prostitution Act 1992* and inserting a sign-post indicating section 21 of the *Public Health Regulation 2000*.

Section 25

- 7.95 In relation to section 25, the majority of the Committee notes representations that legislation should tend toward more general legal arrangements to prevent the transmission of STIs, rather than making particular arrangements for sex workers.
- 7.96 It also notes arguments put before it that particular risks arise from making such arrangements. For section 25, these have included arguments that criminalising transmission 'too early', or introducing a criminal offence at all, except where there is a specific intent to transmit an infection, may result in lower levels of compliance with public health principles and regulation. This, reportedly, includes a lesser inclination by those in high-risk groups to be tested for STIs. In the case of HIV testing, this is a significant effect, which warrants due consideration.

- 7.97 The other concern raised in relation to section 25 is that it criminalises receiving or providing sexual services even where both parties are HIV-positive, and that this may have implications under the *Human Rights Act 2004*. It is to be noted that this is not the case in the majority of Australian jurisdictions.²⁶⁸
- 7.98 A majority of the Committee notes that there are provisions to control, and potentially penalise, the transmission of infectious diseases, including sexually transmitted diseases, in the *Public Health Regulation 2000*, and notes the views of contributors who see this as a duplication of measures which makes the legal framework less clear, and less consistent in view of the different provisions, penalties and definitions. It also notes representations by ACT Health that these should not be considered a significant duplication in view of the different standards of liability applied under the *Public Health Regulations* and the *Prostitution Act*.
- 7.99 It is significant that prosecutions in Australia for wilful or negligent transmission of HIV have not occurred under legislation framed specifically for sex work, or to create a specific offence in relation to disease transmission. For two well-known documented cases, in Western Australia and New South Wales, this was done under the more general charges of causing bodily harm.²⁶⁹ A legal guide on the matter in NSW in 2009 discussed possible legal action under the *Crimes Act 1900* (NSW) exclusively: no other more specific legislation was indicated.²⁷⁰
- 7.100 It is also noteworthy that in the one case in which a person was charged and convicted of providing unprotected sexual services while HIV-positive under

²⁶⁸ See Elena Jeffreys, Kane Matthews, Alina Thomas, 'HIV criminalisation and sex work in Australia', *Reproductive Health Matters* 2010;18(35), p.133.

²⁶⁹ Australasian Society for HIV Medicine, 'Sex Work', *Guide to Australian HIV Laws and Policies for Healthcare Professionals*, <<http://www.ashm.org.au/HIVLegal/Default.asp?PublicationID=2&ParentSectionID=P2&SectionID=337>>, viewed 5/12/2011.

²⁷⁰ HIV/AIDS Legal Centre Inc and DLA Phillips Fox, *Criminal Transmission of HIV - A guide for legal practitioners in NSW*, May 2009, <http://www.halc.org.au/downloads/crim_transmission.pdf>, viewed 5/12/2011.

section 25 of the *Prostitution Act 1992*, the defendant was sentenced to 2 months and 14 days imprisonment and a good behaviour order.²⁷¹

- 7.101 The circumstances of this conviction, and sentence applied, do not support the view that section 25 is an indispensable component of the *Prostitution Act*. It would be a different matter if there were no other legislation capable of creating an appropriate offence, and if there were more of a body of case-law and record of successful prosecutions in relation to section 25.
- 7.102 The slender history of prosecutions under section 25, in combination with other views in favour of applying more general offences under the *Crimes Act* or similar legislation, provides a basis on which to remove it from the Act. This would have the effect of asserting the primacy of the *Public Health Regulation 2000*, and would clarify the state of law in this area.

RECOMMENDATION 6

- 7.103 **A majority of the Committee recommends that sections 24 and 25 of the *Prostitution Act 1992* be removed and a cross-reference to section 21 of the *Public Health Regulation 2000* be inserted in the *Prostitution Act*.**

Section 27

- 7.104 In relation to section 27, the Committee takes the view that operators of brothels should provide safety equipment to sex workers in their employ, and that this should be clarified in the Act.

RECOMMENDATION 7

- 7.105 **The Committee recommends that section 27 of the *Prostitution Act 1992* be amended such that operators of brothels are required to provide safety equipment, including prophylactics, to sex workers in brothels under their management.**

²⁷¹ ACTSC 62 (26 May 2009).

8 LINKS WITH CRIMINAL ACTIVITY

- 8.1 As noted above, the *Prostitution Act 1992* contains specific provisions to exclude persons with a record of criminal activity from owning or operating brothels in the ACT, in particular at sections 5, 6 and 15.
- 8.2 As part of the inquiry, the Committee considered the degree to which there was criminal activity in the sexual services industry in the ACT. This included questions about whether there was an illegal industry; about the prevalence of offences under the Act and under other legislation; and the prevalence of human trafficking in the ACT sexual services industry.

Scale and prevalence

- 8.3 A number of contributors to the inquiry voiced the opinion that there was little criminality in the regulated sexual services industry in the ACT. This was put forward by the ACT Government, the Australian Federal Police Association, and ACT Policing.²⁷²
- 8.4 ACT Policing stated that it had found ‘a relatively low correlation between serious and organised crime and the sex industry in the ACT’, and that while ‘high profile incidents may give rise to a public perception that crime is rife in the regulated sex industry, the evidence over the last six years has not supported this hypothesis’.²⁷³
- 8.5 ACT Policing advised the Committee that it had ‘encountered the following criminal activities in the ACT sex industry’:
- the involvement of children in the sex industry;
 - the provision of sexual services to under-age customers;
 - the involvement of illegal immigrants in the sex industry;

²⁷² Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.3; and Australian Federal Police Association, Submission No.18, p.2; ACT Policing Submission No.16, p.1; and Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.22..

²⁷³ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.22; ACT Policing Submission No.16, p.2.

- the presence of illicit drugs in licensed premises;
- business conducted outside the terms of a licence, e.g. operating an unregistered brothel; and
- alcohol related offences, disturbances, and assaults.²⁷⁴

8.6 In relation to offences in the industry, ACT Policing told the Committee that it had received 150 information reports about criminality in the industry in the five-year period between 2006 and 2011. Of those, 93 were for offences under the Act. The other 57 reports were for other offences, of which the 'critical mass' related to drug-related matters, followed 'in terms of frequency' by 'property related matters' which could be 'damage, theft or passage of stolen property' and 'a smattering of assault complaints'. It was recommended that this be seen, however, 'in the context of an indeterminate size of an unregulated industry'.²⁷⁵

8.7 Of 150 reports, 10 actions were taken for offences under the Act and 'brought to court through various methods, either arrests or summonses'.²⁷⁶ Of these, 1 was for aiding or abetting the operation of a brothel other than in a prescribed location; 3 for operating a brothel in other than a prescribed location; 2 for failing to give registrar notice of operation and for failing to give notice within 7 days; and 2 for knowingly infecting with an STD. These 10 reports gave rise to 6 arrests and 4 instances in which charges were laid and the defendants appeared before a court: 2 for failing to give registrar notice of operation (7 days) and 2 for knowingly infecting with an STD.²⁷⁷

8.8 Despite this general picture, the Chief Police Officer, ACT Policing, told the Committee that it was examining some information reports about the involvement of organised crime in the ACT sex industry. While there was not solid information to corroborate this, there were indications of such an involvement in the ACT.²⁷⁸

²⁷⁴ ACT Policing Submission No.16, p.2.

²⁷⁵ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.23.

²⁷⁶ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.23.

²⁷⁷ ACT Policing, Submission No.16, p.2.

²⁷⁸ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.22.

- 8.9 As noted in Chapter 2 of this report, the Chief Police Officer also told the Committee, when he appeared at a public hearing, that there were difficulties in quantifying the unregulated industry. He was able to assure the Committee that there was very little or no trafficking in the regulated sex industry in the ACT, but was not able to comment on the prevalence of trafficking in the unregulated industry.²⁷⁹

Drug use

- 8.10 The Committee asked the Chief Police Officer for more detail on drug use in sex work. He responded, telling the Committee that he thought that the police reports of offences in the sex industry, as they related to drugs, were likely to involve a combination of 'drug use and drug supply'. He commented that there was not 'much surprise about that', in that 'drug use is quite prevalent across a whole range of sectors in the community', and that the sex industry was unlikely to be 'immune' to the same influences in that regard.²⁸⁰
- 8.11 The Attorney made similar comments, telling the Committee that:
- drug use in this industry is no different from drug use in other industries. For example, there are reported problems of drug use in other industries, such as the construction industry. In that example unions and employers have made concerted attempts to improve drug education and health promotion activities in that industry. So I would simply assert that, to the extent that drug use is an issue in the sex industry, is no different from drug use in other industries.²⁸¹
- 8.12 The Attorney went on to say that:
- The government's position is that the use of illicit drugs and other substances in the sex industry is the same concern that we see in other

²⁷⁹ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, pp.28, 29.

²⁸⁰ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

²⁸¹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.4-5.

industries in our economy. The issue is about dealing with those issues as and when they arise.²⁸²

Proponents

- 8.13 Proponents of the Act were consistent in putting forward the view that there was a low correlation between crime and the sexual services industry in the ACT.

Scarlet Alliance

- 8.14 Scarlet Alliance advised the Committee that it had seen ‘no evidence of the existence of organised crime in the ACT's sex industry’ and that there was ‘no pattern or evidence to suggest exploitation by syndicates’. It also noted that in the ‘ongoing and regular interactions’ of Scarlet Alliance and SWOP ACT with both police and Government ministers, ‘they too have concurred that organised crime is not prevalent in the ACT sex industry’.²⁸³

Ms Shelle Mulvay

- 8.15 Ms Shelle Mulvay advised the Committee that she had ‘seen no evidence that the ACT sex industry has links with either organised crime or trafficking’ and suggested that this:

seems to be raised as a concern regularly because people find it difficult to believe that the sex industry can be operated in a responsible, ethical manner by brothels and sex workers.²⁸⁴

- 8.16 In Ms Mulvay’s view, this was ‘merely another example of how stigma and ignorance can lead to mistaken assumptions’.²⁸⁵

²⁸² Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.5.

²⁸³ Scarlet Alliance, Submission No.9, p.11.

²⁸⁴ Ms Mulvay, Submission No.6, p.4.

²⁸⁵ Ms Mulvay, Submission No.6, p.4.

AIDS Action Council

- 8.17 The AIDS Action Council advised the Committee that in its view the *Prostitution Act* had been ‘successful in preventing links between the sex industry and organised criminal activity in the ACT’. This, it suggested, was in contrast to the ‘criminalisation of the sex industry in other jurisdictions [that had] been linked to criminality and corruption’.²⁸⁶
- 8.18 However the Council was concerned ‘with the extent to which sex workers risk criminality through provisions of the *Prostitution Act* which are unreasonable or ignored’²⁸⁷:
- Some provisions of the legislation such as the registration of sole operators are widely ignored in the industry and by authorities (see next section). In our consultation with community, workers expressed concern that these provisions ‘if policed could make life hard [to work in the ACT]’. Sex workers in this position may be reluctant to access police or health services due to a fear of persecution, and may be more likely to become linked to criminal activity.²⁸⁸
- 8.19 In view of this, the Council recommended that ‘unreasonable provisions’ of the *Prostitution Act* ‘should be removed to avoid unnecessary criminalisation of sex workers through normal practice’.²⁸⁹
- 8.20 This matter is considered in further detail in the following chapter.

Opponents

- 8.21 For the most part, opponents of the *Prostitution Act* made general comments asserting an association between crime and sex work.

²⁸⁶ AIDS Action Council of the ACT, Submission No.12, p.10.

²⁸⁷ AIDS Action Council of the ACT, Submission No.12, p.10.

²⁸⁸ AIDS Action Council of the ACT, Submission No.12, p.10.

²⁸⁹ AIDS Action Council of the ACT, Submission No.12, p.10.

Coalition Against Trafficking in Women Australia

- 8.22 CATWA told the Committee that there was an 'inherent involvement of organised crime in prostitution' because:

Prostitution, by its very nature, is organised through crime because it involves the trafficking and pimping of women and children for use mainly by men.²⁹⁰

- 8.23 CATWA suggested that although 'legalising prostitution was aimed at reducing organised crime, in fact it has strengthened its grip' and indicated examples from Victoria to support this. It suggested that legalisation 'does not discourage crime groups from involvement in prostitution because of the considerable profits they can make from this industry'.²⁹¹

Collective Shout

- 8.24 Collective Shout made similar representations, saying that organised crime gangs 'have flourished in countries where legalisation of prostitution has occurred', indicating the Netherlands and Germany as instances where this was borne out.²⁹²

Australian Christian Lobby

- 8.25 The Australian Christian Lobby made more direct reference to experience in the ACT where, it suggested, illegal sex work was 'still a problem in the ACT despite regulation', especially 'in connection with illegal immigration and exploitation of prostituted women':

In late 2010 a group of Thai sex workers were found to be illegally employed in two brothels in Fyshwick. Earlier that year a woman was charged with running an illegal brothel out of a rented home in Kaleen. In late 2009 a woman faced court on sex slave and trafficking charges following a police raid in Kambah.²⁹³

²⁹⁰ Dr Norma, *Transcript of Evidence*, 11 May 2011, p.73.

²⁹¹ CATWA, Submission No.28, p.5.

²⁹² Collective Shout, Submission No.43, p.8.

²⁹³ Australian Christian Lobby, Submission No.42, p.8.

- 8.26 In addition, ACL quoted the comments of the Chief Police Officer, ACT Policing, that sex work 'still attracts the kind of people around which crime fringes do occur' to support its argument that there was an inherent association between sex work and crime.²⁹⁴

Powers of ACT Policing

- 8.27 When appearing in public hearings and in its submission to the inquiry, ACT Policing told the Committee that it was, in its view, hampered in its ability to control criminality associated with sex work due to insufficient police powers.
- 8.28 In particular, ACT Policing advised the Committee, it needed the power to 'demand name, address, and proof of identity' and 'power of entry without warrant' in brothels.
- 8.29 In relation to this, ACT Policing suggested that:
- Legislation relating to certain activities which have mandatory age restrictions (such as alcohol consumption or tobacco purchasing) provide specific powers to police and regulatory officers to enter premises and demand details such as proof of age. For example, provisions of this nature are contained in the *Liquor Act 1975* and the *Tobacco Act 1927*.²⁹⁵
- 8.30 The *Prostitution Act* conferred some powers on police, but they were not sufficient in the view of ACT Policing:
- While the *Prostitution Act 1992* does provide power of entry for police to a premises without warrant (N.B only for the purpose of investigating offences relating to children), the *Prostitution Act 1992* does not currently provide police (or inspectors) with a power to demand name, address, proof of age, or proof of identity, from any person on the premises once they have invoked a power of entry without warrant under the Act.²⁹⁶
- 8.31 In practice:

²⁹⁴ Australian Christian Lobby, Submission No.42, p.9.

²⁹⁵ ACT Policing, Submission No.16, p.3.

²⁹⁶ ACT Policing, Submission No.16, p.3.

It is possible that, once on a regulated premises through the invocation of their entry power under the Act, police are able to invoke other statutes which provide them with powers to demand name, address and proof age/identity. However, this presupposes that the requisite preconditions exist for those statutory powers to be invoked. For example, police are able to demand name and address under the *Drugs of Dependence Act 1992*. However, they need to reach a certain threshold of suspicion that a drug offence has been committed before they are able to use that power.²⁹⁷

- 8.32 This, in the view of ACT Policing, resulted in unwieldy arrangements in instances where ACT Police attended at brothels:

It is the view of ACTP that police officers should have legislated powers to demand details of name, address, proof of age, and proof of identity when they are on any premises for the purpose of investigating offences or undertaking any other activities under the Act.²⁹⁸

- 8.33 Similarly, in relation to powers of entry without warrant, ACT Policing suggested that:

As referenced above, under the *Prostitution Act 1992*, ACTP only has power of entry to premises without warrant when they are investigating offences under the Act relating to children.²⁹⁹

- 8.34 There were circumstances which allowed entry to brothels by ACT Policing, but they were subject to a variety of conditions:

Power of entry without warrant to a premises operating in the sex industry may also be invoked if police are investigating offences under other statutes, such as drugs or liquor breaches. However, as previously indicated, certain preconditions and levels of suspicion (or belief) need to exist in order for those powers to be utilised.³⁰⁰

²⁹⁷ ACT Policing, Submission No.16, p.3.

²⁹⁸ ACT Policing, Submission No.16, p.4.

²⁹⁹ ACT Policing, Submission No.16, p.4.

³⁰⁰ ACT Policing, Submission No.16, p.4.

- 8.35 The main avenue through which ACT Policing could gain entry to a brothel was through grounds for 'due cause' being generated through the 'regulatory or investigation functions' of other agencies:

For police to enter premises to investigate any other offence under the Act they must either seek a judicial warrant or be in support of another Territory or Commonwealth agency that is undertaking a regulatory or investigative function. Examples of the latter situation are ORS compliance inspections and DIAC immigration investigations.³⁰¹

- 8.36 Access by virtue of judicial warrants had proved more difficult:

Obtaining the necessary supporting information to ground an application for a judicial warrant authorizing police to enter a sex industry premises for the purpose of investigating an offence under the Act has historically proven difficult due to the reluctance of industry operators, employees, and indeed clientele, to provide information to police. The latter cohort in particular has proven reticent and reluctant to cooperate with police due to the stigma associated with brothel patronage and the desire to protect reputations and extant relationships.³⁰²

- 8.37 This 'reticence', in the view of ACT Policing, also strengthened arguments for increased powers by police:

This lack of cooperation from public sources is often an impediment to police seeking to acquire sufficient grounds to pursue intelligence leads relating to crime in the sex industry. It is the view of ACTP that police officers should have legislated powers of entry without warrant to any premises for the purpose of investigating any offences or undertaking any other activities under the Act.³⁰³

³⁰¹ ACT Policing, Submission No.16, p.4.

³⁰² ACT Policing, Submission No.16, p.4.

³⁰³ ACT Policing, Submission No.16, p.4.

Committee comment

- 8.38 The perceived low level of criminality associated with the ACT sex industry might be considered a positive attribute of the current regime, in that it favours regulation over criminalisation. However the evidence from ACT Policing is that it is difficult to quantify the extent of the illegal industry, and this is a matter for concern.
- 8.39 Further, the possibility that there could at some future point be an entry into the industry of criminal elements remains, and the Government should have effective mechanisms for risk management in place to anticipate and prevent this. This is part and parcel of the due diligence Government must perform if it is to act as regulator in this area of activity.
- 8.40 In the Committee's view there clearly needs to be further research to establish the quantum of the unregulated sector in the ACT, and to work with other jurisdictions to establish the size and nature of inter-jurisdictional activity in the sex industry. This last appears to be a known characteristic of the industry, and yet it seems less than fully understood.
- 8.41 Effective risk management against an incursion of organised crime into sex work in the ACT is best conducted by ACT Policing under a more general watching-brief on organised crime in the ACT. The ACT Government and ACT Policing should ensure, through their regular purchase agreements, that this important area of policing achieves the focus and visibility, and attracts the resources, that it deserves.

RECOMMENDATION 8

- 8.42 **The Committee recommends that the ACT Government and ACT Policing ensure an appropriate level of focus and resourcing to manage risk from organised crime, including in the sexual services industry, in the ACT. This should be included in purchase agreements between the ACT Government and ACT Policing.**

9 TRAFFICKING

- 9.1 There are perceptions that sex workers may be at risk of being subject to trafficking. This is a particular concern for opponents of the ACT's *Prostitution Act 1992*, but is acknowledged by both sides as an area where there are risks which should be managed.

ACT Government

- 9.2 The Attorney-General told the Committee that it was the Government's view that 'trafficking and sexual slavery is not a widespread or significant issue in the sex industry, but it [had] occurred from time to time'. Where it had occurred, 'commonwealth offences and policing activities have intersected with our own regulatory operations'. It was the 'nature of the industry' that 'these issues arise from time to time', but there was 'no evidence to suggest that they [were] widespread'. However it was appropriate 'to recognise that there are risks and there is the prospect and possibility of trafficking of sex workers occurring'.³⁰⁴
- 9.3 The Attorney told the Committee that it was 'quite clear' that there was not 'the same level of criminality' in the ACT sex industry, regarding 'sexual servitude or sex slavery', to the same extent as 'industries in other parts of the country'.³⁰⁵
- 9.4 The Attorney attributed this to the regulated nature of the sex industry in the ACT; the 'criminalisation of specific activities'; and 'the comparatively small size of the ACT industry which enables more effective regulatory compliance and enforcement'.³⁰⁶

³⁰⁴ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.5.

³⁰⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.6.

³⁰⁶ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.6.

- 9.5 The 'real issues' with regard to the sex industry, the Attorney told the Committee, were not 'around issues of sexual servitude, slavery or exploitation' but rather:

what steps we need to take to further improve the health and safety of those who work in and pay for the services of the industry and what steps need to be taken to further ensure that we do not see minors engaged in the industry

- 9.6 Where risks did arise with regard to trafficking, the Attorney told the Committee the 'important thing' was to:

ensure that there are appropriate arrangements for cooperation between ACT regulatory authorities and commonwealth regulatory authorities, such as the department of immigration and the Australian Federal Police, through its national operations, to deal with these matters.³⁰⁷

- 9.7 Consistent with this, the ACT Government's submission to the inquiry stated that the Government was:

committed to the protection of human rights for all individuals in the ACT. There is an internationally recognised link between the sex industry and labour trafficking involving the unlawful exploitation of people - women and children in particular. Such sexual exploitation of women and children against their will is a serious breach of human rights and must be addressed by governments at every level.³⁰⁸

- 9.8 The submission noted that in general 'Federal laws criminalise "trafficking" (migration) of sex workers (with or without consent) and "sex slavery", and that it was 'committed to measures to prevent sex slavery from occurring in the ACT'.³⁰⁹

- 9.9 The Government advised the Committee that a measure it supported to address risks of people being trafficked in the sex industry was to make it 'compulsory for all brothels in the ACT to have multilingual signs on display in prominent places, clearly stating that slavery is a serious crime'. These

³⁰⁷ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.5.

³⁰⁸ ACT Government, Submission No.34, p.5.

³⁰⁹ ACT Government, Submission No.34, p.5.

signs would also ‘clearly state that the use of “contracts” to force women and girls into prostitution may be a form of slavery’, and that help was available ‘by contacting the police’.³¹⁰

- 9.10 The submission noted that implementation of this measure would ‘require amendment to the *Prostitution Act* to provide this obligation and vest appropriate compliance and enforcement powers in the Office of Regulatory Services and ACT Policing.’³¹¹

Human Rights Commission

- 9.11 In its submission to the inquiry, the Human Rights Commission noted that while section 17 of the *Prostitution Act* creates offences relating to inducing a person to provide, or continuing to provide commercial sexual services, there is no linkage to the relevant section of the *Human Rights Act 2004*. In view of this, the Commission recommended that

that the Act be amended to specifically incorporate the freedom from forced work and movement (protected under s.26 and s.13 of the *Human Rights Act 2004*), and that the heading of the section use those terms, with existing penalties reassessed.³¹²

ACT Policing

- 9.12 When asked about human trafficking and the ACT sex industry, the Chief Police Officer (CPO) told the Committee that this would be an element in ‘any population of sex workers in Australia’, but that it was not ‘in strong evidence at all’ in the ACT. In the regulated ACT sex industry it was either ‘non-existent’ or ‘would be a very rare aberration’. It was more difficult to make confident assessments of the unregulated component of the industry, due to the ‘movement of trafficked workers through the sex industry in both the regulated and unregulated sectors’.³¹³

³¹⁰ ACT Government, Submission No.34, p.5.

³¹¹ ACT Government, Submission No.34, p.5.

³¹² Human Rights Commission, Submission No.37, pp.3 & 9.

³¹³ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.26.

- 9.13 The CPO told the Committee that the primary jurisdiction for trafficked sex workers in Australia rests with the Department of Immigration and Citizenship and the Australian Federal Police, with a 'partner' role for police in state and territory jurisdictions, if offences occur in their jurisdiction.³¹⁴ He also told the Committee that 'Commonwealth criminal statutes deal with the trafficking of people' and that any 'state jurisdiction or police service' in Australia 'is able to enact Commonwealth legislation'.³¹⁵

Department of Immigration and Citizenship

- 9.14 In its submission to the inquiry, the federal Department of Immigration and Citizenship advised the Committee of its perspective on trafficking, especially in relation to the ACT and its sex industry.
- 9.15 The Department advised the Committee that its activities on trafficking were conducted in accordance with 'Australia's whole-of-government anti-people trafficking strategy', and that when the strategy had been established in 2003 its primary focus was on 'combating trafficking for exploitation in the sex industry' as research had 'demonstrated that this was where the majority of trafficking victims had been identified'.³¹⁶
- 9.16 With regard to the character of trafficking for sexual exploitation in Australia, the Department advised the Committee that cases have:
- largely involved small crime groups, rather than large organised crime groups. The small crime groups tend to use family or business contacts overseas to facilitate recruitment, movement and visa fraud. People trafficking matters have also generally involved other crime types, including immigration fraud, identity fraud, document fraud and money laundering.³¹⁷
- 9.17 Prevalence was considered low 'compared with other countries' because of Australia's 'strong migration controls and geographic isolation'. However

³¹⁴ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.26.

³¹⁵ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.27.

³¹⁶ Department of Immigration and Citizenship, Submission No.56, p.2.

³¹⁷ Department of Immigration and Citizenship, Submission No.56, p.2.

obtaining 'robust statistical information' remained 'a major challenge', as 'trafficking is largely unreported and very often transnational'.³¹⁸

- 9.18 As regards compliance testing and prevalence, the Department had, from July to December 2010, 'conducted in excess of 400 compliance field visits across Australia', of which 'three (3) visits were undertaken within the ACT sex industry'.³¹⁹
- 9.19 As regards prevalence, the Department reported that over the period 19 August 2007 to 30 December 2010 the Department had issued 249 Illegal Worker Warning Notices across Australia. Twelve were issued within the ACT, and two these were for brothels.³²⁰
- 9.20 The Department also told the Committee that for the period June 2004 to July 2010 there had been a total of 155 clients in its People Trafficking Support Program. Of these '132 were victims of sexual exploitation', with only one instance being recorded from the ACT.³²¹
- 9.21 The Department also advised the Committee of new visa arrangements which were intended to counter people trafficking. These included:
- de-linking victim support from visas;
 - extension of the Assessment Stream and Bridging F visa;
 - a period of up to 90 days assistance to victims who are willing, but not able to assist with an investigation and prosecution of a people trafficking offence;
 - a 20 day transition period for victims leaving the Program;
 - collapsing the temporary and permanent Witness Protection (Trafficking) visas into one permanent visa and including immediate family members both inside and outside Australia;

³¹⁸ Department of Immigration and Citizenship, Submission No.56, p.2.

³¹⁹ Department of Immigration and Citizenship, Submission No.56, p.1.

³²⁰ Department of Immigration and Citizenship, Submission No.56, p.1.

³²¹ Department of Immigration and Citizenship, Submission No.56, p.2.

- lowering the threshold for issuing a Witness Protection (Trafficking) Certificate from having made a “significant contribution” to making a “contribution” to an investigation; and
- commencing the process for a Witness Protection (Trafficking) visa earlier than at the completion of a prosecution process by setting an independent trigger.³²²

9.22 These were considered significant mechanisms in countering trafficking, including in the sex industry.

Expert witness: Ms Fiona David

9.23 Ms Fiona David, an international expert in trafficking and related law, made a submission to the inquiry and appeared before the Committee at a public hearing.³²³ Ms David’s evidence is described in greater detail at Appendix C of this report.

Definition of trafficking

9.24 In her submission, Ms David indicated the ‘internationally accepted definition of “trafficking in persons” from the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, known as ‘the UN Trafficking Protocol’. She noted that Article 3(a) of the protocol defined ‘trafficking in persons’ as:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of prostitution of others or other forms of

³²² Department of Immigration and Citizenship, Submission No.56, pp.7-8, Attachment B.

³²³ Ms David, Submission No.54 and *Transcript of Evidence* 13 July 2011.

sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.³²⁴

9.25 Ms David advised the Committee that in practice the definition was 'commonly broken up' into three key elements, which were:

- The action element ('... the recruitment, transportation, transfer, harbouring or receipt of persons');
- The means element ('... by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person'); and
- The purpose element ('... for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs').

9.26 Ms David advised the Committee that for a crime to fall within this definition it must have 'each of the action, means and purpose elements' although, where children are involved, 'only the action and purpose element' were required.³²⁵

Australian laws

9.27 As a signatory to the UN Trafficking Protocol, Australia was obliged to frame laws against trafficking, and it had complied with this obligation. Ms David suggested that while there were in her view 'some gaps in the laws', for the most part they sought to reflect the requirements of the Protocol, primarily in sections 270 and 271 of the *Criminal Code Act 1995* (Cth).³²⁶ Ms David told the Committee that complexity was a feature of the laws on trafficking in Australia, particularly with regard to jurisdictional matters.³²⁷

³²⁴ Ms David, Submission No.54, pp.1-2.

³²⁵ Ms David, Submission No.54, p.2.

³²⁶ Ms David, Submission No.54, p.2.

³²⁷ Ms David, *Transcript of Evidence*, 13 July 2011, p.102.

The nature of trafficking in Australia

- 9.28 Ms David advised the Committee on the nature of trafficking as it occurred, in practice, in Australia. This could be at variance from common stereotypes, and in fact have often not ‘matched stereotypes about “high-end” organized crime’.³²⁸ In practice few of the cases discovered in Australia ‘fit the traditional stereotype of “slavery”’.³²⁹ The common thread that ran through these cases was that, ‘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.³³⁰

- 9.29 In discussion with the Committee, Ms David agreed that trafficking did not necessarily involve the movement of persons, but that it did necessarily involve persons being compelled or coerced.³³¹ This could take a number of forms. Ms David told the Committee that in general the common thread was ‘power imbalance’ between perpetrator and victim.³³² Further clarifying this, Ms David advised the Committee that:

the risk of victimisation (or vulnerability to exploitation) tends to result not from any single factor but more typically from multiple individual characteristics, situations, and relationships.³³³

- 9.30 She also noted that in many cases:

It is the very factors that make people vulnerable to exploitation that can also make them unable or unwilling to report their experiences.³³⁴

³²⁸ Ms David, Submission No.54, p.4.

³²⁹ Ms David, Submission No.54, p.5.

³³⁰ Ms David, Submission No.54, p.5.

³³¹ Ms David, *Transcript of Evidence*, 13 July 2011, p.102.

³³² Ms David, *Transcript of Evidence*, 13 July 2011, p.99.

³³³ Ms David, Submission No.54, p.5.

³³⁴ Ms David, Submission No.54, p.5.

Quantifying trafficking

- 9.31 In her testimony to the Committee, Ms David emphasised the difficulty in quantifying trafficking. In Australia it was not known, with any degree of accuracy, how many people were subject to trafficking. Ms David told the Committee that the present situation for information on trafficking was similar to that which had applied in the past for domestic violence or sexual harassment. As a result there were no reliable figures on prevalence of trafficking in Australia.³³⁵
- 9.32 Ms David advised the Committee that it was unwise to place any reliance on 'simplistic measures' such as the 'increase or decrease in incidence of trafficking' which, she said, were 'notoriously unreliable'.³³⁶ Nor was detection a reliable indicator of the prevalence of trafficking. These might prove a better measure 'in 10 years time, after we have been keeping records for 15 years', after which 'we might be able to start looking at trends over time'.³³⁷
- 9.33 In the ACT, Ms David said that she was 'certainly aware of cases' of trafficking,³³⁸ although these, in Ms David's view, amounted to 'very small numbers — under five'.³³⁹

Responses

- 9.34 During its discussion with Ms David, the Committee considered possible ways to address trafficking. Ms David told the Committee that in her view the model which was most useful in this respect was 'one that comes out of writing on organised crime'.

³³⁵ Ms David, *Transcript of Evidence*, 13 July 2011, p.96.

³³⁶ Ms David, Submission No.54, pp.6-7.

³³⁷ Ms David, *Transcript of Evidence*, 13 July 2011, p.100.

³³⁸ Ms David, *Transcript of Evidence*, 13 July 2011, p.96.

³³⁹ Ms David, *Transcript of Evidence*, 13 July 2011, p.96.

9.35 Key to this model was the concept of ‘conjunction of criminal opportunity’.³⁴⁰ ‘Effectively’, Ms David told the Committee, this meant ‘looking at three factors’:

- Is there a capable and motivated offender and what can you do about that?
- Is there a suitable target, otherwise known as a victim? What can you do about that? and
- Looking at your guardians or your oversight. What can you do about that?³⁴¹

9.36 These were ‘three levers’ through which to respond to trafficking, which are considered below.³⁴²

Offenders

9.37 In response to the ‘capable and motivated offender’, Ms David noted the diversity of offenders in the Australian context.³⁴³

9.38 This diversity was underscored by the fact that the motivation for trafficking did not always depend on monetary gain:

often it is about power, as much as it is about just cold, hard cash ... It is more than just an economics consideration. It is also about power, inequality, imbalances of power.³⁴⁴

9.39 In view of this, responses to trafficking should consider ‘anything that affects that balance of power’.³⁴⁵

Victim vulnerability

9.40 For victim vulnerability, the second element of the conjunction of criminal opportunity model, there was again a surprising level of diversity, as there had been for perpetrators.³⁴⁶

³⁴⁰ Ms David, *Transcript of Evidence*, 13 July 2011, p.97.

³⁴¹ Ms David, *Transcript of Evidence*, 13 July 2011, p.97.

³⁴² Ms David, *Transcript of Evidence*, 13 July 2011, p.97.

³⁴³ Ms David, *Transcript of Evidence*, 13 July 2011, p.98.

³⁴⁴ Ms David, *Transcript of Evidence*, 13 July 2011, p.98.

³⁴⁵ Ms David, *Transcript of Evidence*, 13 July 2011, p.98.

³⁴⁶ Ms David, *Transcript of Evidence*, 13 July 2011, pp.97-98.

- 9.41 In Ms David's view, a constructive way to address this vulnerability was:
to have situations in workplaces where people can come and go without fear of, for example, their clients being arrested or themselves being arrested.³⁴⁷
- 9.42 An instance of how this may work in practice, Ms David told the Committee, were cases where 'clients come forward as the key informants in trafficking cases'. There had also been 'women themselves fronting up to police stations and seeking help'. Both of these were more likely where there were not criminal sanctions for clients or providers.³⁴⁸
- 9.43 Further aspects of the response to this element of the conjunction of criminal opportunity model were changes to visa arrangements for trafficked persons. These, Ms David told the Committee, were 'very significant and important'.³⁴⁹ This is discussed in greater detail above, in connection with the Department of Immigration and Citizenship's submission to the inquiry.

Capable guardianship and oversight

- 9.44 In relation to the third element of the conjunction of opportunity model, 'capable guardianship and oversight', Ms David told the Committee that this could include outreach services in the sex industry, such as those described by Project Respect:
having people out there in the industry who are going out to workplaces, talking to people, finding out what is going on, being a direct link to support and assistance.³⁵⁰
- 9.45 This was particularly important in view of the characteristics of the target group, victims of trafficking who have, 'to date, been drawn from some of the more marginal groups in society, including illegal workers, female migrants and sex workers'. In view of this it was important to avoid the negative effects of '[s]tigmatisation, stereotyping and lack of information' on service

³⁴⁷ Ms David, *Transcript of Evidence*, 13 July 2011, p.98.

³⁴⁸ Ms David, *Transcript of Evidence*, 13 July 2011, p.98.

³⁴⁹ Ms David, *Transcript of Evidence*, 13 July 2011, p.100.

³⁵⁰ Ms David, *Transcript of Evidence*, 13 July 2011, p.97.

delivery.³⁵¹ As a result, Ms David told the Committee:

services should, where possible, be drawn from existing services that have a depth of relevant specialisation and expertise. In this context, this might include services that have experience working with sex workers, clients from particular cultural and linguistic groups, victims of sexual assault, and migrants with complex legal needs. It is likely that increased engagement with existing service providers would effectively extend the services that can be offered under the program while ensuring services are appropriate to clients' needs.³⁵²

- 9.46 This 'guardianship and oversight' also included actions by police, and persons responsible for occupational health and safety frameworks.³⁵³

Proponents

- 9.47 In general, proponents of the *Prostitution Act* made fewer comments on trafficking than opponents of the Act.

Scarlet Alliance

- 9.48 Scarlet Alliance was one of the few proponents that addressed this matter directly. It advised the Committee that it had 'a unique perspective of brothels owned by and/or employing people predominantly from Asian backgrounds in the ACT'. This gave the Alliance, in its view, a good basis on which to comment on the prevalence of trafficking:

Scarlet Alliance regularly attends outreach with SWOP ACT, providing peer education outreach workers who speak Thai and Korean. Our South Australian member, SIN (SA) has provided peer education outreach workers who speak Mandarin to attend outreach with SWOP ACT. This partnership work allows our organisations to have a very productive relationship with the Asian sex worker community in the ACT.³⁵⁴

³⁵¹ Ms David, Submission No.54, p.6.

³⁵² Ms David, Submission No.54, p.6.

³⁵³ Ms David, *Transcript of Evidence*, 13 July 2011, p.97.

³⁵⁴ Scarlet Alliance, Submission No.9, p.11.

- 9.49 On the basis of this activity, the Alliance asserted that there had been:
- no indication of trafficking or sexual slavery in any of the brothels or in private workers situations in the ACT, including at premises where management were resistant to Scarlet Alliance's initial inquiries and presence, and/or premises targeted by police and DIAC for trafficking.³⁵⁵

Opponents

- 9.50 As noted, opponents of the *Prostitution Act* made considerably more comment on trafficking in the context of sex work.

Catholic Archdiocese of Canberra and Goulburn

- 9.51 In general, opponents of the Act took the view, as did the Catholic Archdiocese of Canberra and Goulburn, that 'prostitution and trafficking are innately linked'.³⁵⁶ In CATWA's view, this was confirmed by United Nations data showing the Netherlands and Germany, both jurisdictions with a liberalised regime on sex work, as being in the 'top ten' as destination countries for trafficking.³⁵⁷ The Australia Christian Lobby found further confirmation of this link in statements that trafficking to Sweden had been reduced through laws criminalising the purchase of sexual services.³⁵⁸
- 9.52 The Archdiocese noted difficulties in quantifying trafficking in Australia, but referenced available studies which suggested high rates of trafficking amongst sex workers from other countries working in Sydney. The same studies considered the role of debt-bondage in trafficking.³⁵⁹
- 9.53 The Archdiocese told the Committee that it was likely that the true prevalence of trafficking was significantly greater than that suggested by current statistics. Arrests and convictions represented, for any kind of crime,

³⁵⁵ Scarlet Alliance, Submission No.9, p.11.

³⁵⁶ Mr Casey, *Transcript of Evidence*, 11 May 2011, p.76.

³⁵⁷ CATWA, Submission No.28, p.6.

³⁵⁸ Australian Christian Lobby, Submission No.42, p.4.

³⁵⁹ Catholic Arch-Diocese of Canberra and Goulburn, Submission No.35, p.18, quoting Lara Fergus, *Trafficking in women for sexual exploitation – Briefing No.5*, Australian Institute of Family Studies, June 2005 – <http://www.aifs.gov.au/acssa/pubs/briefing/b5.html>

only a subset of true rates of prevalence.³⁶⁰ It quoted one source which suggested that ‘approximately 90 per cent of trafficked women go undetected by immigration authorities’ internationally.³⁶¹

- 9.54 In addition, the Archdiocese expressed concern over the level of effort expended by the Australian Federal Police (the AFP) on trafficking, which it did not consider to be taking a ‘strong approach’. In the view of the Archdiocese, the quality of intelligence was below par because statistics produced by the AFP, in its view, largely relied records of successful or unsuccessful prosecutions rather than seeking to represent the wider prevalence of trafficking.³⁶²
- 9.55 In response to what it perceived to be a significant risk of trafficking in association with sex work in the ACT, the Archdiocese proposed a ‘chain of responsibility’ model for creating offences for trafficking. This had been effective in regulating road transport in Australia, which showed some similarities with trafficking in that there were similar cross-jurisdictional challenges to seeking better legislative control.³⁶³
- 9.56 In outlining this approach, the Archdiocese recommended that:
- as regards those situations where persons have been trafficked into the Territory for the purpose of the sexual services industry, that the Government of the Territory enact a strict liability offence for all persons falling within the ‘chain of responsibility’, excepting the trafficked person him/herself. A strict liability offence would thus apply to any person who:
- traffics a trafficked person into the Territory;
 - owns or leases the premises where the trafficked person is located;

³⁶⁰ Mr Casey, *Transcript of Evidence*, 11 May 2011, p.79.

³⁶¹ Catholic Archdiocese of Canberra and Goulburn, Submission No.35, p.19, citing Maltzahn, K. (2002a), “Trafficking in women for prostitution”, *Women Against Violence: An Australian Feminist Journal*, No. 11, pp. 2001-2002., cited in Dillon, J. (2000), “Help for sex slave women to escape pimps”, *Independent on Sunday*, London, 2 July 2000, both cited in Lara Fergus, ‘Trafficking in women for sexual exploitation’, Australian Institute of Family Studies, Briefing No.5 June 2005, available at <http://www.aifs.gov.au/acssa/pubs/briefing/b5.html>

³⁶² Mr Casey, *Transcript of Evidence*, 11 May 2011, p.79.

³⁶³ Mr Casey, *Transcript of Evidence*, 11 May 2011, p.82.

- owns or leases the premises where the prostitution activity is carried out by the trafficked person;
- ‘uses’ the prostitution services provided by the trafficked person;
- is the landlord of premises where the trafficked person is located or where the prostitution activity is carried out by the trafficked person;
- is a director of a company who carries out any of the above.³⁶⁴

9.57 Furthermore, the Archdiocese suggested:

this strict liability offence should not require that a person be trafficked for prostitution against his or her will or with the use of coercion or force. Simply arranging or facilitating the arrival in the Territory of a trafficked person for the purpose of prostitution is to be considered as human trafficking attracting this new strict liability offence.³⁶⁵

Committee comment

- 9.58 While there have been few examples of trafficking in the ACT, it has occurred in sex industries in other jurisdictions. In the Committee’s view, trafficking is a risk associated with the sex industry. The ACT’s legislation on sex work is predicated on people choosing to work in the sex industry. That anyone should be compelled to do so—that is, be trafficked in the sex industry—is abhorrent.
- 9.59 The prevalence of trafficking in the ACT sex industry appears to be low, but the ACT Government should guard against the risk of trafficking. There are a number of measures that are worthy of support.
- 9.60 First, there is merit in the Human Rights Commission’s proposal to create a linkage between section 17 of the Act (‘Duress’) and the relevant sections of the *Human Rights Act 2004* which create freedoms from forced work and of movement (section 26 and section 13). It also proposed that penalties for offences under section 17 of the *Prostitution Act* should be reviewed in light of these provisions of the *Human Rights Act*.

³⁶⁴ Catholic Archdiocese of Canberra and Goulburn, Submission No.35, pp.34-35.

³⁶⁵ Catholic Archdiocese of Canberra and Goulburn, Submission No.35, p.35.

RECOMMENDATION 9

- 9.61 **The Committee recommends that offences under section 17 of the *Prostitution Act* be re-cast to reflect Section 13, Freedom of Movement, and Section 26, Freedom from forced work, of the *Human Rights Act 2004*. Penalties for offences under section 17 should be consistent with those offences under the *Human Rights Act*.**
- 9.62 A second possible measure is to provide programs to assist people working in the sex industry who did not wish to continue. There should be assistance for those who are currently involved in prostitution, but do not wish to be, to cease to do so and find assistance into other income generating activities.

RECOMMENDATION 10

- 9.63 **The Committee recommends that programs to assist people wishing to cease working in the sexual services industry be supported, at an adequate level, by the ACT Government. The ACT Government should ensure that sex workers are aware of the existence of these programs.**
- 9.64 The Government's proposal to install signage in brothels a step in this direction. However, the current proposal has the limitation of not addressing an identified characteristic of the sex worker population: that it is ethnically and linguistically diverse. Government should encourage workers and clients, of whatever ethnic and linguistic background, to make a report where they suspect that trafficking may be occurring in the context of sex work.

RECOMMENDATION 11

- 9.65 **The Committee recommends that the ACT Government amend legislation so as to require that ACT brothels display multi-lingual signage in ACT brothels, advising clients and workers that trafficking is a criminal offence and providing a contact through which reports may be made. The contact should be available 24 hours, 7 days a week.**

Culturally and Linguistically Diverse (CALD) outreach program

- 9.66 The Committee notes, and finds persuasive, the recommendation of Scarlet Alliance that Government should fund a Culturally and Linguistically Diverse (CALD) outreach program, in view of high levels of ethnic diversity among sex workers and identified difficulties in informing workers of their rights and obligations.³⁶⁶

RECOMMENDATION 12

- 9.67 **The Committee recommends that the ACT Government fund a Culturally and Linguistically Diverse (CALD) outreach program for sex workers in the ACT.**

³⁶⁶ Scarlet Alliance, Submission No.9, pp.13-16.

10 UNLICENSED OPERATORS

- 10.1 Other parts of this report, above, record that the extent of the unregulated or illegal sex industry in the ACT is not well-known. However, the Committee was told that the majority of single operators in the ACT are not registered and thus comprise a group of ‘unlicensed operators’. This has led to discussion of current obligations to register, and consideration as to whether these obligations should remain in the Act.

ACT Government

- 10.2 When he appeared in a public hearing, the Attorney-General told the Committee that the Government acknowledged that ‘registration requirements for sole operators appear to be honoured more in the breach’ and that this was ‘obviously raising questions about the effectiveness or appropriateness of that particular requirement under the Act’.³⁶⁷
- 10.3 The Attorney told the Committee that:
- some people who work in the industry argue that they are not prepared to register themselves as sole operators because they are concerned about confidentiality and the protections that would be given to that information.³⁶⁸
- 10.4 However, he did not believe that this was ‘a compelling reason not to have registration’. In the Attorney’s view, it was ‘perhaps a compelling reason’ to ‘improve the security and the controls over that information and to give operators confidence that that information will be appropriately protected’. He noted that ‘government and policing authorities’ held registers of people that were ‘very secure and have very significant controls around them’ and

³⁶⁷ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.9.

³⁶⁸ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.9.

were subject to 'oversight by independent bodies such as the Ombudsman to protect the privacy and security of that information'.³⁶⁹

10.5 As a result, the Attorney told the Committee that he did not believe that it was 'beyond our wit to deal with that particular issue'. He acknowledged that there still remained, however, a 'broader philosophical issue about whether or not there should be registration of those workers'.³⁷⁰

10.6 The Committee asked the Attorney further questions about confidentiality for the information held in the register. In a response to questions by the Committee, the Attorney advised the Committee that the information was maintained by the registrar under section 11 of the Act. Under the Act, the register was made available for public inspection, but the names and addresses of sole operators were not.³⁷¹

10.7 Regarding access to information on the register by other persons, the Attorney advised the Committee that:

There are only a small number of Office of Regulatory Services staff who have access to information on brothels and escorts beyond that which is available publicly and it is only available where they are directly involved with the administration of the Act.³⁷²

10.8 There were clear pathways over who could or could not access the information:

Information regarding the address and names of a sole-operator is not disclosed to the public. However it may be disclosed to a police officer or a public servant if the Registrar is satisfied that the information is necessary to allow the person seeking it to perform the functions of their office.³⁷³

³⁶⁹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.9.

³⁷⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.9.

³⁷¹ Letter to the Committee from the Attorney-General, 8/6/11.

³⁷² Letter to the Committee from the Attorney-General, 8/6/11.

³⁷³ Letter to the Committee from the Attorney-General, 8/6/11.

- 10.9 In formal terms the information was, the Attorney advised the Committee, protected under Federal Privacy legislation and by the provisions of the Act itself:

All personal information collected by the Office of Regulatory Services is protected by the *Privacy Act 1988*. In addition, the section 11 of the Act prevents the Registrar from releasing information about individuals and each delegated employee is made aware that they must not divulge any information that they may have access to in the normal course of their employment.³⁷⁴

- 10.10 There were also administrative protocols in place to protect the confidentiality of data held on the register:

The ORS privacy and access policy restricts access to information based on an individual officer's role in the organisation and the business system holding the register restricts access to information on brothels and escorts to specific, delegated officers who have direct responsibility for the administration of the Act. Staff are also made aware that they should not seek access to data that is not required as part of their normal duties.³⁷⁵

- 10.11 The Committee also asked the Attorney if names could be removed from the register. The Attorney responded that:

When a registration ceases, the information regarding the brothel or escort agency is removed from the register.³⁷⁶

- 10.12 This was quite at variance from the perceptions of sex workers about the operation of the register, who believed either that names were permanently entered on the register, or that the ability to apply, successfully, to have a name removed depended solely on the decision by the responsible staff-member in the ORS at any given time. This perception had significant implications for the willingness of sole operators to register with the ORS, and these matters are discussed in further detail below.

³⁷⁴ Letter to the Committee from the Attorney-General, 8/6/11.

³⁷⁵ Letter to the Committee from the Attorney-General, 8/6/11.

³⁷⁶ Letter to the Committee from the Attorney-General, 8/6/11.

- 10.13 In addition, the Attorney acknowledged the challenges posed by the transient nature of the sex industry for compliance with obligations to register:

It is quite clear that what we have seen, particularly in the last number of years, is a significant number of people who work in the industry who are quite transient. They come from Sydney or Melbourne, in particular, or indeed other parts of the country, and they visit the ACT and provide their services here for a period of time and then they will return to where they base themselves, or they move to another city to provide their services there. It is quite clear that there are a number of people who work in the sex industry, who are sex workers, and their business model is that they do not just operate in one city; they operate in a number of cities and they develop a clientele around a number of cities. That is a challenge to the operation of our act.³⁷⁷

- 10.14 The Attorney went on to speak about the character of this activity:

Does it mean that there is illegal activity taking place? I do not know whether it is right to classify it as illegal in the broad sense of the word; obviously prostitution is not itself illegal in the territory as long as you abide by the provisions of the act.³⁷⁸

- 10.15 And about its implications for the administration of the Act:

Failure to register is obviously not abiding by the provisions of the act, but it may reflect the fact that the provisions of the act have not kept pace with the way these services are being provided, and there may be a need to reconsider how those registration requirements operate.³⁷⁹

Single and multiple operators

- 10.16 Another significant issue which arose in connection with ‘unlicensed operators’ centred on the question of whether the current provisions for sole operators (that they are able to operate from a private residence) should

³⁷⁷ Ms Hunter and Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.10.

³⁷⁸ Ms Hunter and Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.10-11.

³⁷⁹ Ms Hunter and Mr Corbell, *Transcript of Evidence*, 23 March 2011, pp.10-11.

extended so that they would apply to two or more sex workers operating from a private residence.

- 10.17 In relation to this question, the Attorney told the Committee that there were two sides to this question. On one hand:

Occupational health and safety considerations should be foremost in our consideration of the operation and the regulation of the sex industry in the ACT, so safety of workers as well as the safety of clients should be a very high priority.³⁸⁰

- 10.18 On the other hand, the Attorney suggested, this needed to be:

balanced against community concerns that the laws could result in brothels operating from residential areas.³⁸¹

- 10.19 The Attorney then went on to speak about the background to these arrangements. In relation to gaining support for proposals contained in the original Bill, the Attorney told the Committee that:

the move towards a regulated industry and a decriminalisation of the activities was predicated very strongly on the agreement that these activities would only occur in certain locations and there would be a way of being able to track where those activities took place.³⁸²

- 10.20 Essentially, a balance had been struck which had led to broader acceptance for the current model:

One of the successes and I think one of the broad reasons for community acceptance of the regulation of the sex industry here in the ACT and the decriminalisation of prostitution is the fact that we have been able to draw a distinction between operations in non-residential and residential areas, because there are legitimate concerns from many people in the community on social, moral grounds about the provision of sexual services and we have to be sensitive to those.³⁸³

³⁸⁰ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.11.

³⁸¹ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.11.

³⁸² Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.8.

³⁸³ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.11.

- 10.21 A change in these arrangements could cause wider concern in the community:

There would of course be parents or older people who would be concerned about facing the prospect of a more obvious provision of sexual services in residential areas. The government would share those concerns and would be very cautious indeed about contemplating in any way a more obvious provision of sexual services in residential areas.³⁸⁴

- 10.22 As a result, the Attorney told the Committee, the Government supported 'the current model', which was:

that provision of these services should be restrained to non-residential areas, to industrial suburbs like Fyshwick, Mitchell and so on, and that sole workers can operate from private residences because it is discreet and low profile.³⁸⁵

- 10.23 Overall, the Attorney told the Committee, 'the prospect of making that more than one worker from a premise is one that I think has issues around it that have to be very carefully thought about'.³⁸⁶

ACT Policing

- 10.24 The Committee asked ACT Policing to comment on the size of the unregulated sex industry in the ACT. Appearing at a public hearing, the Chief Police Office (CPO) told the Committee that there were 'real difficulties in terms of the ACT police quantifying ... the size of that unregulated industry ... for a number of reasons'.³⁸⁷ These reasons included that the:

population of the unregulated industry expands and contracts according to major events that may be occurring in the ACT or the broader region at any given point in time.³⁸⁸

³⁸⁴ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.11.

³⁸⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.11.

³⁸⁶ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p.11.

³⁸⁷ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

³⁸⁸ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

10.25 This occurred because ‘participation in the unregulated industry is not permanent; quite a lot of the population come and go in an ad hoc manner’.³⁸⁹

10.26 Moreover, ‘that industry, an unregulated one, is notoriously reticent in its reporting to police in relation to crime. There may be crime occurring, but we are just not aware of it because the reporting is not coming through.’³⁹⁰

10.27 He went on to comment that:

Problems are normally manifested in residents of communities making complaints about people parking on footpaths, ingress and egress, people coming. So there is always reporting where there is a problem. So the size of the industry—indeterminant quantity at this point of time—if it was large, is not manifesting in reporting to us of residential complaints or victims’ complaints or any crime that is occurring as a hub around these things.³⁹¹

10.28 Although it was difficult to determine the size of the unregulated industry, there was no evidence that it was so large as to create significant problems. On the other hand the CPO noted a significant disparity between the number of sole operators registered with ORS, reckoned to be in the ‘in the low teens: 14 or 15 at this point in time’ and the number of advertisements offering sexual services in *The Canberra Times*, in which there were ‘many more advertisements than 14’.³⁹²

10.29 The CPO also told the Committee that he believed there was ‘an organisation ... of prostitution in the unregulated industry by interstate elements’.³⁹³ It would be:

naïve to believe that every single sole operator advertisement that we see ... in the ACT is exactly that; there is a syndication that occurs and there is not much doubt in my mind in relation to that.³⁹⁴

³⁸⁹ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

³⁹⁰ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

³⁹¹ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.28.

³⁹² Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

³⁹³ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

³⁹⁴ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.25.

10.30 The CPO told the Committee that this correlated with his professional experience as a police officer over twenty-five years, on the basis of which he said that he could 'definitively state that there are syndicated groups which work sex workers through various states'.³⁹⁵

10.31 In order to address this, and provide better intelligence on the unregulated sector, the CPO proposed that advertisements for sexual services be obliged to quote the registration number of the provider. This would, the CPO told the Committee:

would certainly allow a better quantification of the unregulated industry. It would also assist my counterparts in Health to better regulate an unregulated sector.³⁹⁶

10.32 If his view, there were clear benefits because:

If you drive the demand out of the unregulated sector into a regulated sector, there is then more visibility for police. When I have visibility, I can actually enforce the law better.³⁹⁷

10.33 This proposal is discussed further below.

Proponents

10.34 A number of proponents of other aspects of the Act objected to the current registration requirements for sole operators. For the most part, this was on grounds that the requirements for registration were onerous, and due to concerns about the confidentiality of personal information once it was placed in the register.

Ms Shelle Mulvay

10.35 Ms Shelle Mulvay advised the Committee that in relation to these matters, in her view:

³⁹⁵ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.26.

³⁹⁶ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.30.

³⁹⁷ Mr Quaadvlieg, *Transcript of Evidence*, 23 March 2011, p.30.

While the *Prostitution Act* clearly aims to provide a framework for the sex industry to operate legally in the ACT, there are significant problems in areas that relate to the traditional methods by which sex workers engage in sex work.³⁹⁸

- 10.36 As a result, sole operators were ‘unable to comply with the legislation without compromising their privacy and personal safety’. This, Ms Mulvay suggested, increased their ‘risk of experiencing problems with OH&S and harassment’.³⁹⁹

Registration onerous for sole operators

- 10.37 A number of contributors advised the Committee that registration requirements for sole operators were perceived as onerous, and that this led to a low rate of compliance.

Ms Shelle Mulvay

- 10.38 Ms Shelle Mulvay advised that sole operators saw it as an undue burden that they ‘must provide photo ID, pay \$263 per year (pro rata) and give a business address’.⁴⁰⁰ This was particularly problematic for sex workers who travelled for work, who saw it as:

unreasonable to pay for registration for the rest of the registration period (expiry on 30th September each year) to work in the ACT for only a few days or weeks.⁴⁰¹

- 10.39 Ms Mulvay advised that this was a particular problem for those sex workers who changed their place of work often:

The requirement of a business address means that sex workers who work from hotels are expected to update their registration, and be issued with a new certificate of registration. Thus, if a sex worker works one day a week from a hotel and it is a different hotel each week, they would be

³⁹⁸ Ms Mulvay, Submission No.6, pp.1-2.

³⁹⁹ Ms Mulvay, Submission No.6, pp.1-2.

⁴⁰⁰ Ms Mulvay, Submission No.6, p.2.

⁴⁰¹ Ms Mulvay, Submission No.6, p.2.

expected to update their registration 52 times a year, and be issued with 52 certificates of registration.⁴⁰²

AIDS Action Council

10.40 The AIDS Action Council noted that as there were, in February 2011 only eight registered sole operators, that there must be a 'substantial majority of unregistered sole operators in the industry'.⁴⁰³ This was the result of registrations requirements being seen as 'unreasonable' and not having 'benefit for registered sex workers'.⁴⁰⁴

10.41 The Council advised the Committee that it had conducted a consultation in which sex workers had told them that they would 'like to see this provision abolished', and that reported 'barriers to registration' as a sole operator included:

- fear of disclosure of personal information
- cost of registration
- difficulty in obtaining and submitting registration forms
- inability to remove record from register
- for seasonal or transient workers, the perceived inconvenience in registering for a short period; and
- not being aware of a requirement to register.⁴⁰⁵

10.42 The Council suggested that these barriers, together, create:

an environment where the majority of sole operator sex workers work illegally but [are] tolerated by regulators and law enforcement.⁴⁰⁶

10.43 The Council told the Committee that under these conditions sex workers were less likely to access the Council's educational programs and sexual health services because:

⁴⁰² Ms Mulvay, Submission No.6, p.2.

⁴⁰³ AIDS Action Council of the ACT, Submission No.12, pp.10-11.

⁴⁰⁴ AIDS Action Council of the ACT, Submission No.12, p.11.

⁴⁰⁵ AIDS Action Council of the ACT, Submission No.12, p.11.

⁴⁰⁶ AIDS Action Council of the ACT, Submission No.12, p.11.

They would be in a position of noncompliance and many workers, despite our best efforts, see the sex worker outreach project as an arm of government or police and have a fear of approaching us or using our services if they feel that they are [p.48.] in a situation that might be illegal. For that reason we think that these requirements are a barrier to the use of health services.⁴⁰⁷

- 10.44 Overall, this was a situation which was ‘undesirable for health promotion and HIV prevention’. It noted the Fifth National HIV Strategy, which stated that:

In jurisdictions with sex industry licensing regimes, a substantial part of the industry is unlicensed and effectively illegal with the result that it is very difficult to access those sex workers with HIV and STI prevention services, and workplace conditions are not subject to occupational health and safety standards.⁴⁰⁸

- 10.45 In light of this and the other points it indicated, the Council suggested that the requirement ‘to register as a sole operator is a provision that has not worked’, and that a revision of the *Prostitution Act* ‘should provide for sole operators to work unregistered’.⁴⁰⁹

Criminal or civil offence for non-registration

- 10.46 In connection with questions over registration for sole operators, the Committee pursued a line of questioning as to whether offences for not registering should be a civil matter, or a criminal matter, as now.
- 10.47 Currently, sole operators, as operators of a brothel, are obliged to tender registration notices and annual notices to the Registrar under sections 12 and 13 of the Act. The maximum penalty for non-compliance with either of these requirements is ‘100 penalty units, imprisonment for 1 year or both’.

⁴⁰⁷ Mr Mills, *Transcript of Evidence*, 20 April 2011, pp.47-48.

⁴⁰⁸ AIDS Action Council of the ACT, Submission No.12, p.11, quoting *Fifth National HIV Strategy*, available at <http://www.ashm.org.au/images/hiv%20national%20strategy/5th%20national%20hiv%20aids%20strategys%202005-2008.pdf>

⁴⁰⁹ AIDS Action Council of the ACT, Submission No.12, p.11.

ACT Government

- 10.48 The Acting Executive Director of the Legislation and Policy Branch, Department of Justice and Community Safety, told the Committee that current provisions in this respect reflected ‘a decision that was made at the time that those were the areas that were appropriate for criminal sanctions’, and that New Zealand had ‘moved towards a registration process rather than a prosecution process’, thus moving registration ‘to the civil regime’.⁴¹⁰

Confidentiality

- 10.49 In relation to concerns over the handling of personal information contained in the register, contributors told the Committee that sex workers saw it as arbitrary and unsafe.

Removal of names from register

Ms Shelle Mulvay

- 10.50 Ms Shelle Mulvay advised the Committee that the registration process varied ‘depending on the current policy of the Office of Regulatory Services’. She proposed that while the *Prostitution Act* did not ‘require that the list of sole operators be maintained after they have finished working in the ACT sex industry’, it also did not ‘require that the list be destroyed either’.⁴¹¹
- 10.51 Ms Mulvay gave an example showing how practices in relation to the register could be perceived as arbitrary and onerous. This involved the question of whether names could be removed from the register:

In one instance a sex worker registered as a sole operator after being told that her name would be removed on request after she had ceased working. When she contacted the Office of Regulatory Services to have her name removed she was told that policy had changed and she should expect her name to remain on the list for the rest of her life’.⁴¹²

⁴¹⁰ Ms Field, *Transcript of Evidence*, 23 March 2011, p.7.

⁴¹¹ Ms Mulvay, Submission No.6, p.2.

⁴¹² Ms Mulvay, Submission No.6, p.2.

AIDS Action Council

10.52 The AIDS Action Council also told the Committee that protocols on the removal of names were unreliable. The Council told the Committee that at the time of the hearing in which it appeared, that names could not be removed from the register. The previous registrar had been ‘quite willing to remove our names from the database ... [if] we were no longer sex workers’, but the present incumbent was ‘not happy to do that’.⁴¹³

10.53 The Council told the Committee that the current status quo for the removal of names was that:

If, say, I go in and register today and I decide that in six months’ time I do not want to be a sex worker anymore and I want to take my name off the registration file, I can go in and say, “Can you take my name off?” and they will give me back the paper copy of my registration. But electronically my name stays there forever. It does not matter if I am not a sex worker and it does not matter if I die; it is still there. They will not take names off the database.⁴¹⁴

Scarlet Alliance

10.54 Scarlet Alliance, appearing before the Committee, suggested that these were long-term concerns, which extended beyond the time when a person could be working as a sex worker:

We also know that for sex workers it is frequently the case that the impact is not during the time that you are working as a sex worker; it is later on, after you have left the industry and moved on to another part of your life, that that affects you. Of course, for some people studying to go into law and a whole range of other areas, that would have a significant impact on their future occupation and professional life.⁴¹⁵

⁴¹³ Ms Jury, *Transcript of Evidence*, 20 April 2011, p.50.

⁴¹⁴ Ms Jury, *Transcript of Evidence*, 20 April 2011, p.49-50.

⁴¹⁵ Scarlet Alliance, *Transcript of Evidence*, 20 April 2011, p.38.

- 10.55 The Alliance added that this did not only affect the status of present or former sex workers alone, but also their families:

sex workers often seek to protect not only themselves but their families and their children who have experienced discrimination when people are aware that they are a sex worker.⁴¹⁶

- 10.56 The Alliance gave an example from another jurisdiction where this kind of confidential information about a former sex worker had been released and had had significant implications in a family law case.⁴¹⁷

Eros Foundation

- 10.57 The Eros Foundation advised, in connection with registered information that:

The *Prostitution Act 1992* suggests that information 'may be' deleted on workers and brothels when they cease operation. This needs to be changed to ensure that workers who register will not have a lifetime of 'records' about their private occupation. Every piece of information collected should have a sound reason for doing so that is beyond statistic collecting or curiosity and these reasons should be transparent at the time of data collection.⁴¹⁸

Sharing of information

Eros Foundation

- 10.58 The Eros Foundation suggested that there were grounds for concern about the protocols for sharing information held on the register:

As it stands, the Registrar is also required to give personal information to any public officer (eg ATO and Family Services) when no criminal activity is suspected which is in breach of the privacy of the person, as ones occupation has no bearing on their income, criminal status, ability to parent effectively or their morals and ethics.⁴¹⁹

⁴¹⁶ Scarlet Alliance, *Transcript of Evidence*, 20 April 2011, p.38.

⁴¹⁷ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, p.37.

⁴¹⁸ Eros Foundation, Submission No.13, p.6.

⁴¹⁹ Eros Foundation, Submission No.13, p.6.

10.59 As a result the Foundation suggested that:

The *Prostitution Act* needs to specify; what information should be stored and why, that identifying information may only be shared with police officers investigating a possible crime, and that the information will be permanently deleted at the request of the worker or the absence of a registration renewal.⁴²⁰

10.60 The Foundation advised the Committee that:

Working as a sex worker is a highly stigmatised activity even in legal climates. Therefore sex workers often use an alias and separate their working life from their other life. The registration procedures are extremely threatening to workers who fear that their personal information will be deliberately given, or leaked to others.⁴²¹

AIDS Action Council

10.61 The AIDS Action Council also provided evidence on this. It told the Committee that there was significant uncertainty amongst sex workers on to whom their personal information might be given. The Council had attempted to clarify this with the ORS and sex workers, but distrust and uncertainty had persisted:

We have worked with the Office of Regulatory Services to try and outline with them the situations where information on the register can be disclosed to other organisations and we have tried to communicate that to workers so that the workers have an understanding because the understanding in the community of what happens to that information is very low.⁴²²

10.62 Nor was it possible, the Council told the Committee, to provide an alias for the purposes of registration, as registrants had 'to provide 100 points of ID'

⁴²⁰ Eros Foundation, Submission No.13, p.6.

⁴²¹ Eros Foundation, Submission No.13, p.5.

⁴²² Mr Mills, *Transcript of Evidence*, 20 April 2011, p. 49.

with their real name and 'an address you are working from'. Requests to register using a working name had been refused.⁴²³

Conclusion on registration

Eros Foundation

- 10.63 The Foundation suggested that registration, alone, did not make a substantive difference to the situation of sex workers, except in formal terms:

The only difference between legal and illegal workers in the ACT is that of registration status as the business of being a sex worker does not change whether one is registered or not.⁴²⁴

- 10.64 And that many sex workers would not contemplate complying with obligations to register if they were working as sole operators:

There is a culture among workers that believes that the registration process is not safe and many have expressed that they would not register if working privately ...⁴²⁵

Ms Shelle Mulvay

- 10.65 Ms Shelle Mulvay advised the Committee that:

these issues make it extremely difficult for sex workers to comply with the current registration requirements, which are seen as unwieldy, discriminatory and punitive.⁴²⁶

- 10.66 Overall, she advised:

Registration serves no clear purpose other than to create a list of sex workers who are operating within the bounds of the law, and no useful function at all. Sex workers currently experience significant discrimination when their sex work status is disclosed and so most sex workers rigorously protect their privacy with regard to work.

⁴²³ Ms Jury, *Transcript of Evidence*, 20 April 2011, p.48.

⁴²⁴ Eros Foundation, Submission No.13, p.5.

⁴²⁵ Eros Foundation, Submission No.13, p.5.

⁴²⁶ Ms Mulvay, Submission No.6, p.2.

Registration is seen as a significant risk to their privacy and this obviously affects willingness to comply with this requirement.⁴²⁷

- 10.67 A better arrangement, she advised the Committee, would be to remove the requirement for sole operators to register. She said that this would 'greatly reduce the lack of compliance with the *Prostitution Act*' and allow sex workers to 'operate without fear of accidental disclosure'.⁴²⁸

Single or multiple operators

- 10.68 Contributors also addressed the issue, raised above, of whether more than one independent sex worker could operate from the same residential address. This is currently not permitted under the Act.

Ms Shelle Mulvay

- 10.69 In relation to this, Ms Mulvay advised the Committee that:

The restriction that does not allow sole operators to work together without being considered a brothel significantly increases OH&S problems and ignores the tradition of sex workers working together for the purposes of increased safety and reduced overheads.⁴²⁹

- 10.70 However, under the present form of the Act, Ms Mulvay advised the Committee:

Private sex workers that work together are regarded as illegal commercial brothels under the current model, regardless of the particulars of their working environment ... [and even] two workers who see one client together for a job are considered to be running an illegal brothel.⁴³⁰

⁴²⁷ Ms Mulvay, Submission No.6, p.2.

⁴²⁸ Ms Mulvay, Submission No.6, p.2.

⁴²⁹ Ms Mulvay, Submission No.6, p.3.

⁴³⁰ Ms Mulvay, Submission No.6, p.3.

10.71 She said that this caused 'significant disadvantage' sex workers, particularly when compared with other owner-operated small business collectives, for example General Practitioners'.⁴³¹

10.72 There were, Ms Mulvay advised the Committee, significant benefits in changing present constraints in this regard:

If two or more private workers are able to work together the number of jobs each sex worker must complete per week to cover overheads such as rent, advertising etc is greatly reduced and allows sex workers more flexibility to reduce their work hours and the number of clients they see per week. Reducing the number of jobs needed to cover overheads also allows greater flexibility when screening clients, increasing sex workers' ability to make risk assessments based on safety rather than financial need.⁴³²

Eros Foundation

10.73 The Eros Foundation advised the Committee that the inability of more than one sex worker to operate under the conditions presently set out in the Act for sole operators had a number of disadvantages for sex workers:

they are unable to work together or even in pairs which denies them peer support and company. These restrictions make it difficult for independent workers to afford to employ drivers, cleaners and other support staff. This creates isolation which increases the risk of violence and depression from being unsupported. Many workers in Canberra are also under the misapprehension that it is in fact illegal for them to employ ancillary staff. They are also denied the opportunity to offer 'doubles' or other services which require more than one worker and denied the right to rent out space to other workers when they are choosing not to work.⁴³³

⁴³¹ Ms Mulvay, Submission No.6, p.3.

⁴³² Ms Mulvay, Submission No.6, p.3.

⁴³³ Eros Foundation, Submission No.13, p.6.

Scarlet Alliance

- 10.74 Scarlet Alliance advised the Committee that there was not 'a prevalence of unlicensed brothel-style operations with the ACT', however:

Private sex workers are required to work alone and are required to register - something that sex workers avoid. As a result those individuals fall into the category of unlicensed operators - because they are private workers working with friends.⁴³⁴

- 10.75 These operations were, the Alliance advised the Committee, 'currently treated as illegal brothels'. This impinged upon 'sex workers' safety', as they were 'much more likely to be the targets of violent crime and exploitation if working alone'.⁴³⁵

- 10.76 When they appeared before the Committee in a public hearing, the Alliance went into further detail on the disadvantages of these arrangements. First, the Alliance told the Committee, sex workers who were sole operators could not call on another sex worker for a second opinion during 'visible STI checks', if there were signs of an infection. Second, sex workers could not share costs with other sex workers. Third, physical safety was compromised, as noted above. And, fourth, sex workers missed 'a large component of possible bookings during the time that they are busy', and as a result 'earning capacity is reduced'.⁴³⁶

- 10.77 Proponents who contributed on this aspect of the Act recommended that the current conditions for sole operators should apply for at least two, and possibly four, independent sex workers.

- 10.78 The Eros Foundation advised the Committee that:

Sole operators already submit to the laws regarding home based occupations, such as vehicle access and car parking and advertising, and also have a vested interest in discretion.⁴³⁷

⁴³⁴ Scarlet Alliance, Submission No.9, p.12.

⁴³⁵ Scarlet Alliance, Submission No.9, p.6.

⁴³⁶ Ms Fawkes, *Transcript of Evidence*, 20 April 2011, pp.36-37.

⁴³⁷ Eros Foundation, Submission No.13, p.6.

10.79 In the Foundation's view:

Changing the Act to allow for 2 workers and staff from a private residence will not result in mega-brothels in the suburbs creating a public nuisance but will increase the occupational health and safety of those workers and allow them the same privileges as other home based occupations.⁴³⁸

10.80 Similarly, Scarlet Alliance recommended:

the expansion of the definition of Private Sex Workers to allow workers to work in teams of more than one; for example two workers together (as in Tasmania) or four workers together (as in New Zealand).⁴³⁹

10.81 This would mean that 'private workers would not be policed as if they [were] illegal brothel operations'.⁴⁴⁰

Prescribed locations

Eros Foundation

10.82 The Eros Foundation raised questions over current provisions which allow brothels to only be situated in Fyshwick or Mitchell, as stipulated in section 4 of *Prostitution Regulation 1993*.

10.83 The Foundation advised the Committee that these strictures were unnecessary because:

Brothel and escort services that are located outside of industrial districts have a vested interest in discretion. Clients are generally not comfortable to advertise their patronage, so businesses should be able to operate from commercial and suburban areas without attracting attention from the general public.⁴⁴¹

⁴³⁸ Eros Foundation, Submission No.13, p.6.

⁴³⁹ Scarlet Alliance, Submission No.9, p.12.

⁴⁴⁰ Scarlet Alliance, Submission No.9, p.12.

⁴⁴¹ Eros Foundation, Submission No.13, p.6.

10.84 Moreover, the Foundation advised:

The sexual practises of commercial sexual services are no different from the sexual practises of the general population ... and when conducted in private, pose no threat to the community.

10.85 It also suggested that there was:

no evidence from other jurisdictions in Australia that allow commercial sexual services in business districts to indicate that these services cause any problems for local residents, other businesses or the general public.

⁴⁴²

10.86 In addition, in the Foundation's view there were safety concerns arising from having brothels restricted to industrial areas:

The restriction of brothels to Fyshwick and Mitchell raises safety and accessibility issues as these areas are often isolated and have poor public transportation after business hours. ⁴⁴³

10.87 This matter is discussed further below.

Opponents

10.88 For the most part, opponents of the present *Prostitution Act* expressed concerns over the extent to which unlicensed operators existed in the ACT.

Australian Christian Lobby

10.89 ACL told the Committee that:

In this inquiry we have heard an estimate of between 600 and 1,000 prostitutes in the ACT and only about 14 registrations by sole operators. ⁴⁴⁴

⁴⁴² Eros Foundation, Submission No.13, p.6.

⁴⁴³ Eros Foundation, Submission No.13, p.6.

⁴⁴⁴ Mrs Pearse, *Transcript of Evidence*, 11 May 2011, p.61.

10.90 As a result, ACL suggested, it would be:

quite reasonable to conclude then, as we have seen in other jurisdictions in Australia, that the illegal industry has grown to be bigger than the legal, regulated one.⁴⁴⁵

10.91 ACL told the Committee that it believed that the unregulated, 'unsafe', industry would 'continue to grow if not addressed'.⁴⁴⁶

Coalition Against Trafficking in Women Australia

10.92 Other opponents of the Act took a similar view. CATWA advised the Committee that international research showed that 'wherever prostitution is legalised the illegal industry proliferates and overshadows the legalised sector'. Under these conditions it was 'difficult to ascertain the extent of the illegal industry in any legalised context because of the lack of research and police attention'.⁴⁴⁷

Collective Shout

10.93 Collective Shout voiced similar views:

It is currently difficult to ascertain the extent to which unlicensed operators exist within the ACT, due to the lack of research and police investigation. However international research and research in Victoria demonstrates that wherever prostitution is legalised, the illegal industry significantly increases due to the profits that can be made in the legal sector.⁴⁴⁸

10.94 As noted elsewhere in this report, Collective Shout suggested that in other jurisdictions 'legalising prostitution' had established a legitimate 'front' for the operations of the illegal industry. Moreover, 'in an environment in which government endorses prostitution' the 'illegality of certain businesses is

⁴⁴⁵ Mrs Pearce, *Transcript of Evidence*, 11 May 2011, p.61.

⁴⁴⁶ Mrs Pearce, *Transcript of Evidence*, 11 May 2011, p.61.

⁴⁴⁷ Mrs Pearce, *Transcript of Evidence*, 11 May 2011, p.61.

⁴⁴⁸ Collective Shout, Submission No.43, p.8.

difficult to ascertain'.⁴⁴⁹ There were incentives to operate in the illegal sector, where brothels were:

not constrained by the restrictions and policies that licensed brothels must follow, for example limited trading hours, taxes, working permit restrictions, age restrictions, room controls etc.⁴⁵⁰

- 10.95 This, in the view of Collective Shout, explained growth in illegal sex work in Victoria and Queensland, because 'the illegal industry clearly offers advantages.' At the same time, however, it put sex workers 'at significantly increased risk of harm'.⁴⁵¹ In light of this, Collective Shout recommended that there should be a greater effort to ascertain the quantum of the unregulated industry in the ACT, and that 'no new legislative measures be introduced before there is more accurate estimate of this problem'.⁴⁵²

Majority committee comment

Registration

- 10.96 The Committee as a whole considers that registration should continue to be a feature of the regulatory regime for brothels in the ACT.
- 10.97 A majority of the Committee considers that the requirement for sole operators, as brothel operators under the Act, to register with the ORS, has not been effective. There are very low levels of compliance with this requirement, and arguments put to the Committee explain why this is so. Sole operators should no longer be required to register with the ORS as brothel operators.

RECOMMENDATION 13

- 10.98 A majority of the Committee recommends that sole operators no longer be required to register with the Office of Regulatory Services.**

⁴⁴⁹ Collective Shout, Submission No.43, pp.8-9.

⁴⁵⁰ Collective Shout, Submission No.43, p.9.

⁴⁵¹ Collective Shout, Submission No.43, p.9.

⁴⁵² Collective Shout, Submission No.43, p.9.

Sole operators in residential premises

- 10.99 The Committee heard arguments that security and occupational health and safety (OH&S) of sole operators would be enhanced if a sole operator was, under the Act, able to work in residential premises with another sole operator.
- 10.100 A majority of the Committee considered that this argument had merit, and considered the example of other jurisdictions. In Tasmania, two sex workers may legally work from the same residential premises if neither one are in the employ of the other. Similar conditions apply in New Zealand, where up to four sex workers may work from such premises.
- 10.101 The Tasmanian model is more appropriate for the ACT setting, in that it is likely to be less disruptive and to represent a smaller degree of change from present arrangements.

RECOMMENDATION 14

- 10.102 **A majority of the Committee recommends that up to two sex workers who are sole operators may work from a residential premises, where neither are in the employ of the other.**
- 10.103 There are at present measures under the Act to prevent minors from being present in brothels. This is by virtue of sole operators being considered brothel operators, and their premises brothels, under the definitions of 'sole operator' and 'sole operator brothel' in section 5 of the Act. The presence of minors in brothels is specifically prohibited by section 23 of the Act.
- 10.104 If sole operators are no longer required to register as brothel operators as recommended above, their premises would no longer have the status of a registered brothel. This may create a need to insert a new provision in the in the Act to prevent minors being exposed to commercial sexual transactions at sole operator premises.

Further committee comment

Prescribed locations

- 10.105 The Committee has considered representations that the present restriction on the location of commercial brothels be lifted. It does not believe that further relaxing of restrictions is warranted, or that such a change would attract the support of ACT residents.

Unknown quantum of industry

- 10.106 It remains a concern that there is so little data on the size of the ACT sex industry, when the unregulated component of the industry is taken into account. There are indications, noted by contributors, that there is considerably more activity in the area than is captured by the registration process.
- 10.107 If implemented, the recommendations of this report—to absolve sole operators of the requirement to register and to allow up to two sole operators to work from the same residential premises—will reduce the size of the unknown component of the sector. It may also make sex workers more willing to interact with government agencies. Sound risk management in this area entails a responsibility by Government to gather and maintain accurate information.
- 10.108 As a result, a specific direction, and appropriate funding, should be given to ACT Policing to ensure accurate data in this area, as provided for in Recommendation 5 of this report.

Privacy and holding of personal information

- 10.109 The Committee notes representations made to it by the Human Rights Commission that there were concerns over the extent of legal protections for information held about people working in the sex industry. Currently this includes sole operators and other brothel operators.
- 10.110 If recommendations made in this report were implemented—to remove the obligation for sole operators to register, and to make offences under section 20 of the Act absolute liability offences—holdings of information would change. Sole operators would no longer be listed on the ORS register,

and commercial brothel operators would, in all likelihood, keep a record of the proof of age and identity provided to them by applicants to work in brothels.

- 10.111 In this case the information would not be protected under present law. This sensitive material should attract specific protection in view of the stigma attached to sex work, which clearly makes it particularly important that there be adequate privacy and security for personal information.

RECOMMENDATION 15

- 10.112 The Committee recommends that persons holding the personal information of sex workers be required to do so in accordance with the *Privacy Act 1988* (Cwth).**

- 10.113 In addition, statute should clearly circumscribe the capacity of the Office of Regulatory Services to provide information to other persons. Specifically, ORS staff should only be able to share information from the register with police undertaking a relevant criminal investigation.

RECOMMENDATION 16

- 10.114 The Committee recommends that if personal information for sex workers is held by ORS, that this information only be disclosed to police investigating a crime, on presentation of a warrant.**

- 10.115 The Committee considers that the *Prostitution Act 1992* is an important part of ACT legislation. If the Act is changed as a result of this inquiry, it considers that it should be reviewed five years after the changes have come into effect. In this way the Assembly can be assured that the Act will continue to be responsive to contemporary conditions.

RECOMMENDATION 17

- 10.116 The Committee recommends that any changes to the Prostitution Act 1992 arising from this inquiry be reviewed in five years time.**

Vicki Dunne MLA

Chair

11 DISSENTING COMMENTS – VICKI DUNNE MLA

Introduction

- 11.1 I formally dissent from recommendations 1 - 3, 6, 13 and 14 of the main report of the Inquiry into the *Prostitution Act 1992*. I'm also concerned that issues raised in evidence were minimised or ignored in the final report, and that the report represents a missed opportunity for sensitive reform of a vexed community issue.
- 11.2 The Committee received a range of evidence and submissions about prostitution in the ACT and in other jurisdictions, which is canvassed in detail in the main report and the generality of which will not be repeated here.
- 11.3 With the exception of the Australian Federal Police, whose approach, being based on available intelligence and direct experience of enforcement, is more practical than ideological, most of the remaining submitters fell into one of two categories:
- the opponents of legalised prostitution, who often brought a combination of moral, religious and feminist perspectives to the issue. They generally supported their position with (varying levels of) evidence from other Australian and international jurisdictions;
 - supporters of legalised prostitution, who are referred to in the main report as "proponents". In the main, the proponents were representatives of the prostitution industry, or agencies of or bodies funded by the ACT government, whose support for the status quo, or an even more liberal regime, is perhaps unsurprising.
- 11.4 The majority of the committee, representing the ALP and the Greens, has equally unsurprisingly chosen to support the latter position, almost without exception. I say unsurprisingly because during the course of the inquiry some

members of the Committee and some of their parliamentary colleagues met with and, in some cases, held media events with submitters and witnesses before the inquiry. Some members of the committee publicly canvassed their views on some of the issues before the inquiry. While I don't believe that these incidents materially affected the deliberations of the Committee I believe that it is an unfortunate practice that should be avoided.

- 11.5 Like other members of this committee, I start with an *a priori* view on the status of prostitution, based on a general philosophy of life. Such views are not however in themselves a sufficient basis for public policy; such policy should rather be based on a balancing of the harms and benefits to society.
- 11.6 My own position has developed over a decade of policy development based on conversations and encounters with people in the industry; trafficked women; government and non-government agencies; and volunteer groups in Australia and internationally, together with extensive reading of evidence of the harms and benefits of various approaches to the regulation of prostitution.
- 11.7 On the basis of this experience, I became active in a campaign to improve Australia's approach toward the trafficking of women for the sex industry – a campaign that has had some success in recent years. I have also become aware of a range of thinking in various jurisdictions about alternative ways to address prostitution. It may come as a surprise to some that it is not a universally held view that prostitution has always been with us and there is nothing we can do as a society to address the apparently insatiable demands of, mainly, men for sex with, mainly, women. The approaches by some Governments and many non-government agencies to address the demand side of prostitution have been a revelation.

Normalising Prostitution in the ACT

- 11.8 A campaign to normalise prostitution in the ACT, as in other Australian jurisdictions, has proceeded in several stages over the years.
- 11.9 The first phase was for proponents to argue that, although there are risks associated with prostitution (STIs, involvement of minors, organized crime, drug use, and more recently an increased incidence and/or awareness of

people trafficking), these harms are better addressed through a legalise-and-regulate approach of “harm-minimisation”. This stage resulted in the passage of the *Prostitution Act 1992*.

- 11.10 Now having legalised and “regulated” the industry, proponents, relying on incomplete data from the legal-and-regulated part of the local industry, asserted it to be safe (or at least not very dangerous). They argue that the industry should be treated as legitimate and the level of regulation should be wound back. This is combined with shifting the focus to removing “stigma” through changing terminology, ensuring “OH&S” provisions are complied with, and defending the human rights of “sex workers” to participate in the industry. This phase has resulted in Recommendations 1-3 in the main report.
- 11.11 These recommendations presuppose that all participants in prostitution do so freely⁴⁵³ and there are no harms to the ongoing welfare of these participants.
- 11.12 It is an inescapable fact that some participants may have “chosen” to participate as a result of addiction, threats including to family members or naked violence.
- 11.13 These issues are not considered significant human rights problems and have been largely played down by the majority of the Committee in response to the submissions and evidence of proponents. The majority of the Committee’s response to trafficking, for example, consists mainly of a recommendation to post multi-lingual signs. This stands in contrast to, for example, the “right” of HIV-positive prostitutes to continue to work in the industry.
- 11.14 Thus the Government has asserted rather than argued that prostitution is “a valid occupational choice”⁴⁵⁴ and an industry much like any other⁴⁵⁵ choosing as its comparators not other industries of contested moral status and acknowledged risks to society and individuals (gambling, drugs, alcohol), but industries like health care and tourism. The Government further asserted

⁴⁵³ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p 4.

⁴⁵⁴ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p 2.

⁴⁵⁵ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p 5.

that drug use was no more prevalent in prostitution than any other industry⁴⁵⁶ in direct repudiation of its previous view⁴⁵⁷.

- 11.15 From this perspective, the harms of prostitution are minimised or denied, or if undeniable (such as the drug death of a seventeen-year-old in a Canberra brothel which was the immediate catalyst for this inquiry, or convictions for sex trafficking in the ACT) claimed to be exceptional. Any such claims are of course based on data from the legal, regulated sector, and such legally-verified data are taken to represent the totality of incidents across the legal and illegal sectors. Data from other jurisdictions are held to be inapplicable.
- 11.16 A similar level of denial is in effect in the ACT at present: we're different, because we're special.
- 11.17 Perhaps the reason we haven't seen evidence of problems in the ACT is not that we're "special" - somehow immune to the influence of organized crime, drugs etc - but we haven't looked.
- 11.18 The Committee heard in evidence that there was a period of about five years when there were no inspections of brothels in the ACT, and when there were brothel operators were mostly forewarned. And of course no one inspected illegal brothels.
- 11.19 ACT Policing gave evidence that there was some relationship between ACT prostitution and organized crime but was unable to elaborate.⁴⁵⁸ The Chief Police Officer also expressed concern about being unable to quantify the size of the undocumented, illegal sector, let alone the incidence of problems therein⁴⁵⁹. The Committee did not comprehensively consider data from other

⁴⁵⁶ Mr Corbell, *Transcript of Evidence*, 23 March 2011, p 6.

⁴⁵⁷ ACT submission to the New South Wales working group on illegal non-citizens in the sex industry, 2003.

⁴⁵⁸ Mr Roman Quaadvlieg, Chief Police Officer, ACT Policing, *Transcript of Evidence*, 23 March 2011, pp 22-23.

⁴⁵⁹ Mr Roman Quaadvlieg, Chief Police Officer, ACT Policing, *Transcript of Evidence*, 23 March 2011, p 25.

jurisdictions suggesting the creation of a legal sector is associated with an expansion rather than a removal of the illegal sector⁴⁶⁰.

- 11.20 Recommendations 1-3 are largely based on scant information and assertions that are not supported by the full array of facts. The normalization of prostitution is not the only approach to minimising harm in society.
- 11.21 These Recommendations do not pass the test of balancing the harms and benefits.

Sexual Health and Prostitution

- 11.22 I dissent from Recommendation 6 of the main report.
- 11.23 I do not believe that the provisions of the *Public Health Regulations 2000* provide sufficient protection against STI infection to individuals or the wider public. I do not agree with the Human Rights Commission that the provisions of section 25 of the Prostitution Act are discriminatory or disproportionate. The right of a member of the public to be free from risk of STIs is greater than the right of an infected person to engage in sex for money. The provisions of the Health regulations to “take reasonable precautions” do not afford the same level of protection as envisaged in the Prostitution Act.

Registration of prostitution and operation in designated areas in the ACT

- 11.24 I dissent from Recommendations 13 and 14 of the main report.
- 11.25 The most alarming aspect of this report is that it proceeds, on the basis of incomplete data on the legal, documented sector, to recommend that a large number of brothels, namely premises operated by sole operators, be moved into the undocumented sector [Rec 13].

⁴⁶⁰ Dr Mary Sullivan, Submission #53 p 3, and Dr Sullivan’s published PhD Thesis *Making Sex Work*, Spinifex Press, Melbourne, 2007 and Ms Shirley Woods, Outreach Officer, Project Respect, *Transcript of Evidence*, 13 July 2011, p 91.

- 11.26 This is a radical departure from the status quo and would make policing and intelligence gathering even more difficult. This radical departure would be exacerbated by the recommendation [Rec14] which would allow two sole operators to provide services from the one site. This would result in the effective expansion of brothel services out of the current industrial areas into residential areas.
- 11.27 I do not believe that this approach would meet community expectations.
- 11.28 Taken together, these two recommendations could potentially create a government-sanctioned expansion of the unregulated sector of the brothel industry. These two recommendations create a blurring of the lines between what is legal and what is illegal.

Issues not addressed by the main report

Protection of children

- 11.29 Section 23 of the Prostitution Act makes it an offence to ‘permit a child to be on the premises’ of a brothel or escort agency. It is disappointing that the majority of members of the Committee would not support a recommendation that this provision be expanded to make it an offence for a sole operator to have a child on the premises while sexual transactions are being conducted. In the light of the Committee’s unanimous recommendation to make it an absolute liability offence to have an underage person working in the sex industry, it is mystifying why the majority of the Committee did not consider it appropriate to protect young children who might come into contact with de facto brothels in the suburbs.

The Swedish Model

- 11.30 I am disappointed that the majority of the Committee chose not to seriously consider alternative approaches to regulating prostitution. There is a detailed outline of this policy and its development at Appendix B which I recommend to interested members. I thank the Embassy of Sweden for their assistance in providing information in English to the Committee.

- 11.31 The “Swedish model” as adopted in Sweden, Norway, Iceland and Korea is an innovative, woman-centred approach to the regulation of prostitution. Many submitters addressed the model, whose central feature is the application of criminal sanctions to the buyers but not the sellers of sex⁴⁶¹.
- 11.32 One of the things that make this policy so interesting is the fact that it originated in Sweden - one of the “early adopters” of legalized prostitution along with a variety of other “progressive” social measures -and was a direct response to widespread legal prostitution, and its effects on society in general and women in particular. Insofar as it has an ideological basis at all, it would be a feminist concern about the oppression of women. The other thing that makes the approach interesting is that it is the only demand-side approach operating in the world. An element of the policy in operation is awareness-raising with the purchasers of sex. Unfortunately the majority of the Committee specifically rejected any information campaigns targeting the purchasers of sex.
- 11.33 Although religious bodies such as the ACL and the Catholic Archdiocese advocated it, among others, it is likely that from their perspective it represents a compromise between what they would regard as ideal from a moral standpoint, and what might be achievable in a pluralistic Western society.
- 11.34 Ideally the transformation of prostitution seen in Sweden and elsewhere would benefit from a national approach and that Australia’s federated system would militate against such an approach. This is especially the case for the ACT which is an island in NSW. While a wholesale adoption of the Swedish model in the ACT might be difficult if not impractical, there are elements such as education for purchasers and programs would be of great benefit to the mainly women who might want to exit prostitution.
- 11.35 I regret that the majority of members of the Committee did not want to engage in this discussion. Their assertion that they reject the notion of

⁴⁶¹ Other important complementary features include educational campaigns, and measures to re-train former prostitutes.

criminality associated with the industry⁴⁶² is almost risible and is not borne out by the evidence before the Committee, especially from ACT Policing. It is particularly regrettable that these members think that the mainly women who want to exit prostitution can access ordinary workforce programs.

Police powers

- 11.36 Another area of reform that the majority of the Committee was unwilling to support was the extension of police powers. ACT Policing made a submission calling for a minor increase of powers which would allow them to better police the issue of under age people in the industry the original impetus for this inquiry. They further asked for a more rigorous registration regime that might give them more insight into the illegal sex industry.

More rigorous approach to registration

- 11.37 ACT Policing called for a better approach to registration to enable them to get a better handle on the size of the industry. One means of increasing the rigor of the registration model would be to make failure to register a disqualifying offence in Schedule 2 of the Prostitution Act. The majority of the Committee would not support such an approach.
- 11.38 The problems with the current regulatory regime were highlighted with the recent fire at a brothel in Mitchell. After the fire it came to the public's attention that this brothel had been operating without registration since late 2012. Advice from the Attorney –General received by the Committee in the last week reveal that there has been a registered brothel operating from the site in Mitchell until September 2010. Between then and the recent fire, another, unregistered brothel had been operating from the same site presumably without the knowledge of the regulatory authorities.

⁴⁶² See paragraph 3.128 of the main report.

Conclusion

- 11.39 This inquiry into the operation of the *Prostitution Act 1992* is a missed opportunity.
- 11.40 In its persistence in trying to depict prostitution as normal and inevitable the majority of the Committee relinquished the opportunity to take a fresh look at the harms of prostitution and innovative ways to ameliorate those harms.
- 11.41 Far from ameliorating those harms, the recommendations of the majority of the Committee to normalise prostitution; cut back on regulation; water down health safeguards will encourage the spread of prostitution and increase the harm to individuals and the community alike.

Vicki Dunne
23 February 2012

APPENDIX A: Summary of the Act

The Prostitution Act 1992 (ACT)

Part 1 of the Act, 'Preliminary' indicates that 'other legislation applies in relation to offences against this Act', notably offences under the Criminal Code, and that where penalties are expressed as penalty units, that this is provided for under the Legislation Act.

Part 2 of the Act deals with registration of brothels and prostitutes. Section 5 gives definitions for key terms used in Part 2. Disqualifying offences, which prevent persons from being deemed acceptable as having an interest in a brothel, are specified in section 6, which references offences under the Criminal Code, listed in Schedule 1, and those created under the *Prostitution Act 1992* listed in Schedule 2.

Other offences are also listed in section 6, including money laundering; serious drug offences; offences from other Australian jurisdictions similar to those listed in Schedules 1 and 2; specific offences under the Commonwealth Migration Act 1958 section 232A (Organising bringing groups of non-citizens into Australia); and offences against laws of foreign countries as listed in Schedule 3 of the Act.

Part 2, Division 2.1, defines 'registration notice' and 'annual notice', which the operators of brothels or escort agencies are obliged to provide (defined under section 7 and section 8, and obligations to provide stipulated in section 12 and section 13), to the Registrar of Brothels and Escort Agencies created in Division 2.2, 'Registrar, register and notices', in section 9. Here the functions of the registrar are listed, in section 10. The form of the information provided by operators of brothels and escort agencies, to be held in the Register and maintained by the Registrar, is set out in section 11, as are conditions and restrictions on public access to the register. Operators and former operators are obliged, under section 14, to advise the Registrar of changes to the 'particulars' in the last notice within 7 days.

In Division 2.3, section 15(1) makes it an offence for any person 'convicted or found guilty of a disqualifying offence' to be 'an interested person' for a brothel or escort agency or, in section 15(2), for a person to become an interested person knowing that 'or is reckless as to whether' another interested person is disqualified as per section 15(1). Under section 16 a person must provide the Registrar with a police report at least 7 days before they become an interested person for a brothel or escort agency.

Part 3 identifies offences under the Act. Section 17 makes it is an offence to induce a person to provide commercial sexual services through threats, intimidation or assault, by supplying a 'controlled medicine or prohibited substance', or by making false representations. Section 18 makes it an offence to operate a brothel in any other place than a prescribed location (defined in section 4 of Prostitution Regulation 1993). Section 19 defines soliciting offences: either offering or procuring commercial sexual services in a public place (section 19(1), or accosting a child in order to offer or procure commercial sexual services in a public place (section 19(2)).

Section 20 makes it an offence if a person 'causes, permits, offers or procures' a child for commercial sexual services, and provides different levels of penalty depending on the age of the child (either in section 20(1) & (2), under 12 years of age or section 20(3) & (4), over 12 years of age). Absolute liability (meaning there is no defence available in making a mistake) and strict liability (meaning that *mens reus* — deliberate intent or 'guilty mind' — need not be established) apply, respectively, to the fact of the child being under or over 12 years of age. Maximum penalties are 15 and 10 years imprisonment respectively.

Section 21 makes it an offence to receive a payment that a person knows, or could reasonably be expected to know, derives from commercial sexual services provided by a child, with a maximum penalty of 7 years. Section 22 makes it a defence against prosecution if a person 'took reasonable steps' to ascertain the child's age, or 'believed on reasonable grounds that the child had attained 18 years of age'. Section 23 makes it an offence for an operator of a brothel or escort agency to 'permit a child to be on the premises'.

The balance of Part 3, sections 24-27, is concerned with infection control. Under section 24 the operator and owner of a brothel or escort agency must take 'reasonable steps' to ensure that a prostitute does not provide sexual

services while infected with a sexually transmissible infection. Section 25 makes it an offence to provide or receive commercial sexual services while knowingly infected with a sexually transmissible infection. Section 26 makes it an offence to make false representations about medical tests, to the effect that an operator (section 26(1)) or a prostitute (section 26(2)) either intends the person being told to believe that the prostitute is not infected with a sexually transmissible infection, or is reckless about that matter.

Section 27 provides that operators and owners of brothels and escort agencies take 'reasonable steps' to ensure that no person provides or receives commercial sexual services unless a prophylactic is used; that no operator or owner discourage the use of prophylactics; that no person, at a brothel or elsewhere, shall provide or receive commercial sexual services without a prophylactic being used; and that no person shall 'misuse, damage or interfere with the efficacy of any prophylactic used, or continues to use a prophylactic knowing that it is damaged.

Part 4 of the Act deals with 'miscellaneous' matters. These include:

- in section 28, conditions under which a police officer may enter a brothel or escort agency;
- in section 29, the power of the Minister to make determinations on fees;
- in section 30, the power of the registrar to approve forms; and
- in section 32: the power of the Executive to make regulations for the Act, in relation to, among other things:
 - the 'cleanliness of brothels';
 - laundering and linen;
 - hygiene standards;
 - disposal of prophylactics;
 - inspections of brothels and escort agencies;
 - 'provision of information relating to sexually transmissible infections to prostitutes and clients';
 - the health of clients and prostitutes;
 - provision of assistance to prostitutes to prepare for alternative occupations; and

- the 'size, form and content' of advertisements for brothels and escort agencies.

APPENDIX B: The Swedish Model

Introduction

As noted, a number of contributors to the inquiry have referred to the so-called 'Swedish Model', in which the purchase rather than the provision of sexual services is criminalised.

This has been part of Swedish law since 1999. In 2010 the Swedish Government published an evaluation of relevant aspects of law, entitled in English as an *Evaluation of the prohibition of the purchase of sexual services - SOU 2010:49*.⁴⁶³

This was provided to the Committee by the Embassy of Sweden in Canberra, responding to a request by the Committee for further information on legislative arrangements in Sweden. The *Evaluation* reports on the official evaluation of the Model commissioned by the Swedish Government, and as such is the most authoritative source. However, the *Evaluation* has only been published in-full in Swedish, although selected chapters have been translated and published elsewhere.⁴⁶⁴ The account provided below relies on the English-language summary published as an integral part of the *Evaluation*.

Relevant provisions of Penal Code

According to the summary, Sweden enacted its legislation in 1999 to criminalise the purchase of sexual services,⁴⁶⁵ creating, in Chapter 6, Section 11 of the Swedish *Penal Code*, a legal mechanism under which:

⁴⁶³ Swedish Government, (2010), *Evaluation of the prohibition of the purchase of sexual services - SOU 2010:49* (English summary), <<http://www.sweden.gov.se/content/1/c6/15/14/88/6dfbdbcdbd.pdf>>, viewed 12/01/2012.

⁴⁶⁴ Swedish Institute, (2010), *Evaluation of the prohibition of the purchase of sexual services: English translation*, provided by the Swedish Institute, of chapter 4 and 5 in SOU 2010:49, Swedish Government, <<http://www.sweden.gov.se/content/1/c6/15/14/88/0e51eb7f.pdf>>, viewed 12/01/2012.

⁴⁶⁵ Evaluation of the prohibition of the purchase of sexual services - SOU 2010:49 (English summary), p.29.

A person who obtains a casual sexual relation in return for payment commits the crime of purchase of sexual service Purchasing a sexual service on one single occasion is sufficient for criminal liability.

Compensation can be in the form of money, but payment can also be made through such means as alcohol or drugs. Promising compensation so that payment is a condition for the service is sufficient to establish liability. A crime is committed even if someone other than the person who avails him or herself of the sexual service has provided or promised the compensation. An attempted offence is also punishable. The scale of penalties for the purchase of sexual services is a fine or imprisonment for at most six months.⁴⁶⁶

At the time, this was the first such legislation in the world.⁴⁶⁷

Motivating imperatives

A number of perceptions motivated this approach. The original imperative to change Swedish law arose in a Bill intended to counter violence against women, of which prostitution was considered to be a part.⁴⁶⁸ Prostitution, characterised as 'men obtain casual sexual relations with women in return for payment', was considered to be 'shameful and unacceptable' and inconsistent with Sweden as a 'gender equal society'.⁴⁶⁹

Government stated that prostitution and human trafficking were not acceptable in Swedish society and that 'far-reaching measures' were needed to combat them.⁴⁷⁰ A strong link was proposed between 'the existence of prostitution' and 'human trafficking for sexual purposes'. This last was considered to be increasing and to require additional legislative response.⁴⁷¹

In the ten years since these arrangements had been put in place, a range of opinions had been expressed about their effect. The summary suggested that those critical of these arrangements argued that it was 'is possible to differentiate between voluntary and non-voluntary prostitution'; that 'adults should have the right to freely sell and freely purchase sex', and that the ban

⁴⁶⁶ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.32.

on the purchase of sexual services represented 'an outdated position, based on sexual moralism'.

In response, the summary observed that:

based on a gender equality and human rights perspective, and shifting focus away from what is being offered, i.e. those who are exploited in prostitution, to demand, i.e. traffickers, procurers and sex purchasers, the distinction between voluntary and nonvoluntary prostitution [was] not relevant.⁴⁷²

Other aspects of the response

The summary stressed that the criminal process alone was not sufficient to achieve the aims of the legislation, as criminalisation could 'never be anything other than a supplement to other efforts to combat prostitution'. As a result, it was 'necessary to ensure continued and sustained social work to prevent and combat prostitution and trafficking in human beings for sexual purposes'. It was also important to 'increase the measures directed at purchasers of sexual services'.⁴⁷³

As a result, work to combat prostitution had 'long been oriented around social initiatives'. Instances of this were 'extensive work' being carried out in Stockholm, Gothenburg and Malmo aimed directly:

at people who are exploited in prostitution. People with experience of prostitution have complex help needs, and special knowledge and skills are required when implementing initiatives targeting these people. Work in the prostitution groups involves a number of different components. It

⁴⁶⁷ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.29.

⁴⁶⁸ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.30.

⁴⁶⁹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.29.

⁴⁷⁰ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.30.

⁴⁷¹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), pp.31, 30.

⁴⁷² *Evaluation of the prohibition of the purchase of sexual services*, (English summary), p.31.

⁴⁷³ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.41.

includes outreach activities, motivational interviews, different forms of therapy and psychosocial support.⁴⁷⁴

These initiatives included efforts to change the behaviour of purchasers of sexual services—that is, to reduce demand—as well as focusing on the providers of those services.⁴⁷⁵

Limits to knowledge

In presenting the findings of the evaluation, the summary stated that there had been difficulties in obtaining reliable information about the sexual services industry in Sweden. Although there many studies had been completed:

The empirical surveys that [had] been carried out have, in some cases, had limited scope, and different working procedures, methods and purposes [had] been used. In light of these and other factors, there can at times be reason to interpret the results with caution.⁴⁷⁶

Other difficulties arose through rapidly-changing characteristics of the sex industry. Particular limitations were noted in relation to knowledge of ‘people who [were] active as prostitutes in arenas other than street settings’, on the Internet, and the prevalence of prostitution outside metropolitan areas.⁴⁷⁷

Street prostitution

In considering the findings of the evaluation, the summary gave particular emphasis to evidence on street prostitution. This, it suggested, had been halved since the implementation of the provisions criminalising the purchase of sexual services, and was ‘considered to be a direct result’ of this.⁴⁷⁸

Evidence from the comparable neighbouring countries, Norway and Denmark, was considered to confirm this. In these countries, over a period of time, street prostitution had increased while it had remained at a stable low level of prevalence in Sweden. It was suggested that similarities between these

⁴⁷⁴ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.33.

⁴⁷⁵ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.33.

⁴⁷⁶ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.34.

countries and Sweden in all other respects except for the legislation encouraged the conclusion that the legislation was responsible for this difference.⁴⁷⁹

The summary considered whether prostitution formerly conducted on the street may have moved to the Internet as its place of business. It suggested that prostitution 'where the initial contact is made over the Internet' was 'an important and growing arena for prostitution that has received increasing attention in recent years'. However, its prevalence was 'more difficult to verify and assess' than that of street prostitution.⁴⁸⁰

Despite this, the summary suggested that there was 'nothing to indicate that a greater increase in prostitution over the Internet' had occurred in Sweden than in Norway and Denmark, and that this indicated that the 'ban [had] not led to street prostitution in Sweden shifting arenas to the Internet'.⁴⁸¹ In light of this, the summary suggested:

it should be possible to conclude that the halving of street prostitution that took place in Sweden represents a real reduction in prostitution here, and that this reduction is also mainly a result of the criminalisation of sex purchases.⁴⁸²

Further, it reflected:

The overall picture we have obtained is that, while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden. There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have increased in

⁴⁷⁷ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.34.

⁴⁷⁸ *Evaluation of the prohibition of the purchase of sexual services* (English summary), pp.34-35.

⁴⁷⁹ *Evaluation of the prohibition of the purchase of sexual services*(English summary), p.35.

⁴⁸⁰ *Evaluation of the prohibition of the purchase of sexual services*(English summary), p.35.

⁴⁸¹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.35.

⁴⁸² *Evaluation of the prohibition of the purchase of sexual services* (English summary), pp.35-36.

Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution.⁴⁸³

Moreover, the summary stated that in Sweden human trafficking was considered to be 'substantially smaller in scale than in other comparable countries', and that this too supported confidence in the efficacy of Sweden's position on prostitution.⁴⁸⁴

Effects

The summary notes that when the ban on the purchase of sexual services was introduced 'various misgivings were voiced' over the possible effects of the ban, including that:

fears that criminalisation would risk driving prostitution underground, making it harder to reach out to the vulnerable people involved through social measures, and that the ban would bring an increased risk of physical abuse and generally worsen living conditions for prostitutes.⁴⁸⁵

However, the summary notes that:

As far as we can judge from the written material and the contacts we have had with public officials and people involved in prostitution, these fears have not been realised.⁴⁸⁶

Rather, it records positive effects of the ban reported by police officers and social workers, who suggested that:

purchasers of sexual services have become more cautious and that the ban has led to a decrease in demand, at least for street prostitution, as a result of criminalisation.⁴⁸⁷

⁴⁸³ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.36.

⁴⁸⁴ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.37.

⁴⁸⁵ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.37.

⁴⁸⁶ *Evaluation of the prohibition of the purchase of sexual services* (English summary), pp.37-38.

⁴⁸⁷ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.38.

The summary goes on to observe that:

According to the police, purchasers are afraid to be caught, but are more concerned about the offence of which they are suspected becoming known to family and acquaintances than about the penalties they risk.⁴⁸⁸

This was supported to a degree by other survey data:

The impression that purchasers have become more cautious is shared by some of the current and former prostitutes who responded to the Inquiry's questions ...⁴⁸⁹

However, some of this cohort reported less encouraging findings, 'that criminalisation has not affected purchasers because so few are caught and the penalties are so lenient'.⁴⁹⁰

There were some caveats about this data, in that it was linked most closely to street prostitution. The summary observed that police operations:

have mainly targeted street prostitution and more organised forms of prostitution that are linked to procuring or human trafficking. The police have not ordinarily prioritised, or had the resources for, interventions against the purchase of sexual services via other forms of prostitution.⁴⁹¹

However, the summary also observed that street prostitution was 'seen by police to have great symbolic value in the eyes of the public', and could therefore be seen as a significant area of activity in terms of changing public attitudes toward prostitution.⁴⁹²

Compliance

The summary considered the levels of compliance with the ban. It noted that 'compliance with the ban depends largely on the priorities set by the police and the resources they have available', and suggested that, according to 'both police officers and prosecutors':

⁴⁸⁸ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.38.

⁴⁸⁹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.38.

⁴⁹⁰ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.38.

⁴⁹¹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), pp.38-39.

⁴⁹² *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.39.

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.⁴⁹³

It also suggested that one reason why priority was not given to sexual purchase offences was 'the low penal value of this type of offence'.⁴⁹⁴

Prosecutions

In considering whether the ban had provided an adequate basis for successful prosecutions, the summary reported that when the ban was introduced initially there had been fears 'that it would be difficult to monitor compliance with the ban and to define and prove the criminal act'.⁴⁹⁵ Subsequently, however, 'following an initial period of some uncertainty, police officers and prosecutors now consider that in general the provision works well'.⁴⁹⁶

This said, some uncertainties remained:

The uncertainties that remain when it comes to applying the provision concern whether those who have been exploited should be considered witnesses or injured parties in court proceedings, and the point in time at which an attempted offence has been committed. It is considered difficult to prove attempted crimes, with the result that, in connection with street prostitution, the police deliberately wait until the sexual act has begun before intervening, and the offence has thus been committed in full.⁴⁹⁷

In practice, because of these uncertainties, particularly those relating to evidence, in most instances penalties were applied without legal contest:

Eight out of ten cases in which purchasers of sexual services are prosecuted involve situations in which the offence has been admitted to. This applies to both street prostitution and other forms of prostitution. When suspects admit to an offence, the prosecutor does not generally

⁴⁹³ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.39.

⁴⁹⁴ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.39.

⁴⁹⁵ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.40.

⁴⁹⁶ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.40.

⁴⁹⁷ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.40.

bring legal proceedings; instead a summary fine is imposed on the suspected purchaser of sexual services.⁴⁹⁸

It also remained unclear, according to the summary, as to whether a sex worker should be considered an 'injured party' in such cases:

Neither legislation nor legal doctrine offer a clear answer to the question of who is to be considered an injured party. In our assessment, there is nothing to prevent a person who has been exploited in prostitution from having the status of injured party in proceedings concerning the purchase of sexual services. An examination should be undertaken in each case to determine whether the person providing the sexual service is so directly affected by the offence that she or he should be entrusted with exercising the public function implied by a penal claim.⁴⁹⁹

Public opinion

The summary reported a significant change in public opinion on the purchase of sexual services as a result of the ban:

The ban on the purchase of sexual services was intended as a statement of society's view that prostitution is an undesirable phenomenon. To gauge Swedish public opinion concerning sex purchases, surveys were conducted before and after criminalisation was introduced. Judging by the results of four population-based opinion polls, there has been a change of attitude with regard to the purchase of sexual services that coincides with the criminalisation of the purchase of such services. The marked shift in attitude that has occurred here - without an equivalent shift in Norway and Denmark- must be interpreted as meaning that the ban itself has had a significant normative effect which, given that support for criminalisation is greatest among young people, can be expected to last. In all three surveys conducted since the ban was introduced, more than 70 per cent of those asked took a positive view of the ban.⁵⁰⁰

⁴⁹⁸ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.39.

⁴⁹⁹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.42.

⁵⁰⁰ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.37.

Future directions

The summary identified main two areas for further development of the Model. One was to improve information streams regarding the provision of commercial sexual services which it currently found to be:

difficult to grasp and, in part, difficult to assess, and is shaped by the operational focus and perspective of the agencies and organisations concerned.⁵⁰¹

This, the summary suggested, made it ‘impossible to draw entirely reliable assessments and comparisons using the available knowledge’. There was a need to establish ‘continuous follow-up and systematic knowledge of these phenomena’ to address this.

A second area suggested for further development of the Model discriminate between types of offences relating to the purchase of sexual services:

In our view, variations between different sexual purchase offences are far too seldom taken into account when deciding on a penalty. From the review of current practice undertaken by the Inquiry, it is clear that in some cases there is reason to take a more serious view of the offence than has been the case in practice. Examples of such cases include exploitation of a person with a psychiatric disability, contact being made through a third party or an ordering service, exploitation of one person for several hours by several sex purchasers or exploitation of a young person or a person under the influence of drugs.⁵⁰²

The summary suggested that there should be potential for more severe penalties for offences at the more serious end of the spectrum:

In our view, the current level of penalties for certain sexual purchase offences is not proportionate to the seriousness of the crime. There is a need to be able to make a more nuanced assessment in more serious cases of the purchase of sexual services than is possible within the current penalty scale for the offence. We therefore propose that the maximum

⁵⁰¹ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.41.

⁵⁰² *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.42.

penalty for the purchase of sexual services be raised from imprisonment for six months to imprisonment for one year.⁵⁰³

If implemented this would, in effect, expand the ban on the purchase of sexual services in Sweden.

⁵⁰³ *Evaluation of the prohibition of the purchase of sexual services* (English summary), p.42.

APPENDIX C: Submissions

- Ms Delany Bliss, Submission No.1
- Ms Jane Reeve, Submission No.2
- Mr Alex Beard, Submission No.3
- Rev Jason Page, Submission No.4
- Ginninderra Christian Church, Submission No.5
- Ms Shelle Mulvay, Submission No.6
- Mr Simon Owe, Submission No.7
- Name withheld, Submission No.8
- Scarlet Alliance, Submission No.9
- Ms Elizabeth Lolohea, Submission No.11
- AIDS Action Council, Submission No.12
- Eros Foundation, Submission No.13
- Bravehearts Inc, Submission No.14
- Mr Mark Shepphard, Submission No.15
- ACT Policing, Submission No.16
- Mr M May, Submission No.17
- Australian Federal Police Association, Submission No.18
- Name withheld, Submission No.19
- Mr Peter Hylands, Submission No.20
- Mr W and Mrs D Vardos, Submission No.21
- Ms Fiona Peterson, Submission No.22
- Ms Sandra MacDonald, Submission No.23
- Ms Delizia Costa, Submission No.24
- Ms Alissa Holden, Submission No.25
- Elskien Eschauzier, Submission No.26
- Mr Peter MacDonald, Submission No.27
- Coalition Against Trafficking in Women, Submission No. 28
- Ms Judy Seach, Submission No.29

- Mr Thomas Bielenberg, Submission No.30
- Ms Rebecca Andersen, Submission No.31
- Dr Gordon White, Submission No.32
- Ms Patricia McKay, Submission No.33
- ACT Government, Submission No.34
- Catholic Archdiocese of Goulburn and Canberra, Submission No.35
- Mr Tristan Pyke, Submission No.36
- ACT Human Rights Commission, Submission No.37
- Mr Stephen Brown, Submission No.38
- Ms Maddy Kuhl, Submission No.40
- Mr Patrick Cole, Submission No.41
- Australian Christian Lobby, Submission No.42
- Collective Shout, Submission No.43
- Ms Leah Ashman, Submission No.44
- Mr Peter Mullins, Submission No.45
- Mr Peter McKay, Submission No.46
- Ms Johanna Haavisto, Submission No.47
- Ms Sue Mitchell, Submission No.48
- Ms Sarah Wilson, Submission No.49
- FamilyVoice Australia, Submission No.50
- Ms Louise Rolley, Submission No.51
- Ms Christine Carden, Submission No.52
- Dr. Mary Sullivan, Submission No.53
- Ms Fiona David, Submission No.54
- Mr Hillas MacLean, Submission No.55
- Department of Immigration and Citizenship, Submission No.56
- Ms Rosa Ingram, Submission No.57
- Mr Craig Charlton, Submission No.58
- ACT Health, Submission No.59

APPENDIX D: Public hearings

23 March 2011, Legislative Assembly of the ACT

Witnesses

- Mr Simon Corbell MLA, Attorney-General
- Ms Julie Field, Acting Executive Director, Legislation and Policy Branch, Department of Justice and Community Safety
- Mr Mark McCabe, Work Safety Commissioner, Department of Justice and Community Safety
- Mr Brett Phillips, Commissioner for Fair Trading, Department of Justice and Community Safety
- Mrs Alison Playford, Deputy Chief Executive (Justice), Department of Justice and Community Safety
- Mr Roman Quaedvlieg, Chief Police Officer, ACT Policing

20 April 2011, Legislative Assembly of the ACT

Witnesses

- Ms Janelle Fawkes, Chief Executive Officer, Scarlet Alliance
- Ms Jane Green, Executive Committee Member, Scarlet Alliance
- Ms Lex Jury, Sex Worker Outreach Officer, AIDS Action Council
- Mr David Mills, Community Development Manager, AIDS Action Council
- Ms Shelle Mulvay, Private capacity

11 May 2011, Legislative Assembly of the ACT

Witnesses

- Mr Matthew William Casey, Coordinator Parish Support, CatholicLIFE, Archdiocese of Canberra and Goulburn
- Mr Nick Jensen, ACT Director, Australian Christian Lobby
- Dr Caroline Norma, Lecturer, RMIT University, and Representative, Coalition Against Trafficking in Women Australia

- Mrs Michelle Pearce, WA Director, Australian Christian Lobby
- Ms Melinda Tankard Reist, Co-founder, Collective Shout

13 July 2011, Legislative Assembly of the ACT

Witnesses

- Ms Fiona David, Visiting Fellow, Centre for International and Public Law, College of Law, Australian National University
- Ms Fiona Patten, Executive Officer, Eros Association
- Ms Shirley Woods, Outreach Coordinator, Project Respect