

2012

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE  
STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
INQUIRY INTO THE PROSTITUTION ACT 1992**

**Circulated by the authority of  
Mr Simon Corbell MLA  
Attorney-General**



## **Executive Summary**

On 19 October 2010, the Attorney-General, Mr Simon Corbell MLA, presented a motion to the Legislative Assembly to refer a review of the operation of the *Prostitution Act 1992* to the Standing Committee on Justice and Community Safety.

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.”

The Terms of Reference for the inquiry included a range of issues to be covered. Those are set out at page (iii) of the Report of the Standing Committee.

The Chair of the Standing Committee, Mrs Vicki Dunne MLA, invited submissions to the inquiry. The Committee received 58 submissions, including submissions from the ACT Government, ACT Health, the ACT Human Rights Commission, the Australian Federal Police Association, ACT Policing and the Commonwealth Department of Immigration and Citizenship.

The Committee’s Report makes 17 recommendations covering a range of matters related to the regulation of the sex industry in the ACT. The Chair of the Committee submitted a substantial dissenting comment to the Report.

The Government’s response principally addresses the report of the majority of the Committee, noting the matters set out in paragraphs 3.116 to 3.121 of the Report which address the recognition of two diametrically opposed views of the sex industry and the Prostitution Act:

- a) that the sex industry should be treated as other industries, and that industries are governed in a way that protects workers and their clients; and
- b) that regulation does not achieve its stated aims and that sex work, or the procurement of sexual services, being degrading or detrimental to women, should be criminalised.

The Government’s position on the operation of the Prostitution Act is that, overall, the Act and the agencies responsible for its administration have significantly raised the level of protection of the health and safety of sex workers in the ACT and their clients.

However, recent events have raised the question of whether the operation of the *Prostitution Act 1992* can be improved. The Government’s commitment to enhancing the protection of the ACT community is reflected in the responses to the Committee’s recommendations.

This Government response sets out the Government’s position on each of the 17 recommendations.

The Government agrees to 5 recommendations; recommendations 1, 2, 4, 7 and 15.

The Government agrees in principle to 5 recommendations; recommendations 3, 6, 8, 9 and 12.

The Government agrees in part to 2 recommendations; recommendations 5 and 11.

The Government notes 4 recommendations; recommendations 10, 13, 14 and 17.

The Government does not agree to recommendation 16.

## Introduction and Background

1. The Prostitution Act is now 20 years old, and a review of its provisions and operation is timely. However, as the Government's submission stated (page 1, para 1), "[T]he *Prostitution Act 1992* in its current form reflects a progressive and socially responsible approach to regulation of the commercial sex industry in the Territory, which the ACT Government wishes to continue, and to improve on. While the Act is almost 20 years old and would benefit from being brought up to date, [it] is considered to be generally appropriate, and broad revision at this time is not proposed."
2. The Committee's Report presents a comprehensive analysis of the local commercial sex industry. As the Attorney-General said in moving the referral of this matter for inquiry, an complete analysis of a proposal for changing the current system demands an understanding of the rationale for opposition to the legalisation and regulation of the commercial sex industry, rather than its criminalisation.
3. Mrs Dunne's dissenting comment presents arguments for criminalisation, rather than 'normalisation', of the sex industry.
4. The recommendations in the Report, while broad-ranging, ultimately focus on the health and safety of sex workers and their clients, and on the need for effective enforcement of the Prostitution Act.
5. The Government's response to the recommendations has been developed with close attention to the submissions to the inquiry and the operational capacity and needs of the relevant Government agencies.

## ACT Government submission to the Inquiry

6. In moving for an inquiry into the Prostitution Act, the Attorney-General proposed that the Standing Committee:  
"would examine the processes in place for regulation of the [sex] industry, with the aim of identifying reforms that protect sex workers and their clients. It would also be useful at this time to examine the extent to which the ACT system prevents the employment of sex workers outside of the law. How many unregistered local workers, unregistered overseas workers, underage workers or infected workers find their way into the ACT system, and what can be done to improve the capacity of government agencies, and the industry itself, to maximise compliance." (Hansard, 28 October 2010, p.5252)
7. The Government's submission to the Inquiry considered these main issues:
  - the terms of reference for the Inquiry, and the relevance of the policy background to the Prostitution Act;
  - the responsibilities of the agencies that enforce the Act;
  - the history of enforcement of the Act;
  - perceptions of the commercial sex industry;
  - health and safety issues; and
  - the employment of minors.

8. Broadly, the submission concluded that:
- The Prostitution Act assists in ensuring that the commercial sex industry in the ACT operates in an open, safe and healthy environment.
  - Views within the community, and within the commercial sex industry, about how the law should deal with the industry are divergent and often strongly held.
  - The Government would generally not support the imposition of significant additional regulatory requirements in this area.
  - It should be recognised that the Prostitution Act promotes treating sex workers in the same way as workers in other occupations.
  - The Prostitution Act should be brought up to date to ensure that it continues to reflect a progressive and responsible approach to regulation of the sex industry.
  - The Government supports amendments to the Prostitution Act to remove pejorative terms, to protect people from trafficking, abuse and disease, and to ensure that underage people are not employed in the ACT as sex workers.

#### Other submissions to the Review

9. As the Report notes, the 58 submissions to the Inquiry can generally be divided into two categories:
- proponents, who favour regulation rather than criminalisation of the commercial sex industry; and
  - opponents, who do not believe that regulation achieves its stated aims and that sex work, or the procurement of sexual services, being degrading or detrimental to women, should be criminalised.
10. It is not intended to review each of the submissions in this Government response. However, without diminishing the importance or relevance of any of the submissions, it is appropriate to identify some of the core issues raised by stakeholders and advocates in their submissions.
11. The Government notes that ACT Policing provided a separate submission to the Inquiry. That submission, and the evidence of the Chief Police Office before the Committee, dealt comprehensively with issues including:
- levels of criminal activity and association with organised crime such as people trafficking;
  - the risk of schemes such as the “Swedish model” operating to drive the commercial sex industry underground; and
  - concerns about compliance and enforcement, and the need for a clear division of responsibilities between ACT Policing and Government agencies.

12. The ACT Policing submission also proposed a number of additional legislative changes to provide:
  - a clear power to demand a person's name, address and identity at premises where sex work is performed;
  - a power to enter premises without a warrant;
  - a strengthening of the requirement on operators to identify minors;
  - a clarification of section 21 of the Act, relating to proceeds of child prostitution;
  - an expansion of the range of disqualification offences; and
  - a requirement for advertisements for sexual services to include a licence number.
13. The ACT Policing submission is supported by a separate submission from the Australian Federal Police Association, which recommended (among other things) that the Government consider amending the Prostitution Act to widen the scope of section 28 (entry by police) to include all of the offences prescribed in Part 3 of the Act
14. The Government and the working group will consider the legislative changes recommended by ACT Policing, and agreed amendments will be included in legislative reforms responding to the Committee's recommendations.
15. In his submission to the Committee, the Commonwealth Minister for Immigration and Citizenship, the Hon Chris Bowen MP, outlined his Department's responsibilities in relation to the prevention of people trafficking. He provided information about the linkages between the Australian sex industry and people trafficking, and brought to the Committee's attention the Australian Government's Anti-People Trafficking Strategy. The Minister stated that his Department is keen to continue close cooperation with ACT law enforcement and regulatory agencies, given that this field attracts some employers who might not comply with their obligations and the potential also for sexual servitude or trafficking to occur.
16. The ACT Human Rights Commission made 12 recommendations in its submission, aimed at improving regulation of the sex industry in the ACT and the protection of the rights and safety of sex workers and their clients. The Commission put the view that the legalisation of commercial sexual services in the ACT has enabled regulation of the industry from an Occupational Health & Safety perspective as well as from a public health perspective. The Committee has addressed the Commission's recommendations in its Report.
17. The Australian Sex Workers Association (Scarlet Alliance) does not support any structural change to the current regulatory framework, and opposes a move to a different regulatory model such as the 'Swedish model'. Instead, the Association supports a reduction in regulation, including removal of the requirement for individual sex workers to register.

18. A number of submissions, including those from the Australian Christian Lobby, the Catholic Archdiocese of Canberra and Goulburn, the Coalition of Trafficking of Women Australia, and numerous individuals, strongly oppose legalisation of the sex industry, generally promoting the 'Swedish model' of criminalisation of the act of procuring sexual services, rather than the provision of services. These submissions received support in Mrs Dunne's dissenting comments.
19. Several individual sex workers urged the Committee to consider their right to work, their right to privacy, and the need to ensure adequate safety and health protection in the industry.

#### **The Standing Committee's report**

20. On 23 February 2012, Mrs Vicki Dunne MLA presented the Standing Committee's report, *Inquiry into the Prostitution Act 1992* to the Legislative Assembly.
21. The Report makes 17 recommendations, most of which address the issues of health and safety, sex trafficking and underage participation in activities related to the commercial sex industry.

#### Dissenting comments by the Chair

22. The Chair of the Standing Committee dissented from recommendations 1-3, 6, 13 and 14 of the majority Report. Mrs Dunne also expressed concern 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."
23. Mrs Dunne was openly critical of the approach taken in most submissions or by witnesses who supported retention of a regulated sex industry in the ACT:
 

"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.

The majority of the committee, representing the ALP and the Greens, has equally unsurprisingly chosen to support the latter position, almost without exception ....." (Report, pp.153-4)
24. Mrs Dunne acknowledges in her dissent that she too came to the inquiry with her personal position. She is openly opposed to a legalised, regulated commercial sex industry.

25. It is acknowledged that Mrs Dunne's dissenting comments reflect a position that is held by some people in the ACT community, and the Australian community, about the commercial sex industry. The Government, however, remains of the view that effective regulation, rather than criminalisation, is the most socially responsible and progressive approach to protecting the health and safety of sex workers and their clients.
26. The Government's responses to the recommendation of the Committee therefore address the majority findings, but are mindful of the views expressed by Mrs Dunne in her dissenting comments.

### **Detailed Government responses to recommendations**

27. The Government's detailed responses to the Committee's recommendations are set out below. Table 1 to the response sets out the proposed actions to be taken in implementing the responses, and the proposed implementation and regulatory responsibilities of agencies.
28. The Government proposes to establish an implementation working group, which will include all relevant Government agencies, to develop and oversee a program of implementation of the Government's responses and recommendations made by ACT Policing. Peak representatives of the sex industry will be invited to participate in the group's deliberations.
29. Working group discussions will include the identification of agencies responsible for the implementation of agreed recommendations, and for the conduct of ongoing regulatory functions.

### ***RECOMMENDATION 1***

*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.*

### **Government response: AGREE**

30. Section 7 of the *Discrimination Act 1991* was amended in 1994 to include profession, trade, occupation or calling as a ground for unlawful discrimination. This amendment was made specifically to address the issue of discrimination against people who are sex industry workers within a legal industry.
31. Failure in the community to recognise the sex industry as an occupation perpetuates a wide range of discriminatory practices which may result in harm to sex workers, their families and associates. For example, discrimination against sex workers may

impact on their ability and willingness to access appropriate health care services and supports, endangering their health and the health of their families and clients. In addition, it may result in discrimination in areas such as housing, access to justice, privacy and reputation, and protection of family and children.

32. The ACT Government remains committed to treating the sex industry as an occupation, and legislation will reflect this in the approach to occupational health standards. The only qualification on that support is that the sex industry can reasonably be regarded to be a high risk industry, and the rules relating to participation in the industry, and the regulation of it, should be formed accordingly.

#### Government proposal

33. Amendments to relevant legislation will aim to ensure that regulation, including criminal offences, and oversight of health and safety in the sex industry is appropriate and adequate.
34. Details of the legislative provisions, clarification of regulatory responsibilities, will be considered by an implementation working group established to give effect to the Government's response to the report.

#### ***RECOMMENDATION 2***

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

#### **Government response: AGREE**

35. The majority of the Committee considered 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, and the protection of people from harm is paramount. Workers should not be underpaid or exploited, and the employment and exploitation of minors is not acceptable.
36. The Committee concluded that the sex industry should be regarded in the same way as other industries, and should not be subjected to more draconian regulation than others.
37. The Government agrees that legislation should be framed and administered in a way that, in the context of regulation of an inherently high risk industry, makes commercial activity for sex workers neither easier nor more difficult than commercial activity for workers in other high risk industries.

### Government proposal

38. The Committee addressed the respective roles of agencies in regulating the commercial sex industry, but did not recommend a clear process for the improvement of regulation and enforcement.
39. The Government will revise the Prostitution Act and enforcement processes, having regard to the view of the majority of the Committee, which is supported by the Government, that the sex industry should be regarded in the same way as other industries.
40. The only qualification on that support is that the sex industry can reasonably be regarded to be a high risk industry, and the rules relating to participation in the industry, and the regulation of it, should be formed accordingly.
41. It is appropriate, at the same time, that the various administrative, regulatory and enforcement roles of agencies be clarified. In particular, there is a need to clearly delineate the respective roles of ACT Policing and the Office of Regulatory Services. This issue will be considered by the implementation working group.

### **RECOMMENDATION 3**

*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'.*

### **Government response: AGREE IN PRINCIPLE**

42. The Government agrees that the title of the Act, and certain terminology within it, should be changed. The title proposed by the Committee would be acceptable, but the Government will consider whether a more appropriate title might be one which begins with the relevant word "sexual" or "sex"; for example, the Sexual Services Act or the Sex Industry Act. The word "commercial" may not be essential to the title, and may in fact make the legislation more difficult to locate in the Legislation Register.

### Government proposal

43. The Government will amend the Act as proposed by the Committee, subject to consideration by the implementation working group of the most appropriate name.

#### **RECOMMENDATION 4**

*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.*

#### **Government response: AGREE**

44. Chapter 4 of the Report deals with regulation of brothels. The Government accepts that evidence presented to the Committee indicates a perceived lack of clarity in some areas of regulation, notably in relation to responsibility for the conduct of inspections.
45. The Government agrees that there should be a clear, understood and effective regime for inspections and investigations of brothels and that inspections relating to the functions of the Justice and Community Safety Directorate should be reported in the annual report of that Directorate.
46. The Government also maintains its view that the most effective approach to regulation of this industry is to achieve a balance between enforcement action and pre-emptive or remedial education.
47. WorkSafe ACT maintains a detailed checklist for brothel inspections relating to its functions. The checklist is contained within the *Work Health and Safety (Sexual Services Industry) Code of Practice 2011*, which is publicly available. Generally, inspections undertaken by WorkSafe ACT are programmed, but not announced. WorkSafe ACT reports on the number of inspections undertaken in the JACS Annual Report as well as the common safety issues.
48. Implementation of this recommendation may engage some human rights, such as the right to privacy and reputation and protection of family and children (which may be particularly relevant if the business is being conducted from a home). This is relevant to clients and sex workers.

#### **Government proposal**

49. The Government will be informed by the implementation working group about options for changing the current inspection regime to enable the activities of the various agencies involved to be more effective and better coordinated.
50. In particular, the roles and powers of agencies will be reviewed to identify any gaps or overlap.

## **RECOMMENDATION 5**

*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.*

*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.*

### **Government response: AGREE IN PART**

51. Currently, section 20 of the Prostitution Act 1992 provides:

- (1) A person commits an offence if-
  - (a) The person causes, permits, offers or procures a child to provide commercial sexual services; and
  - (b) The child is under 12 years old.  
Maximum penalty 1500 penalty units, imprisonment for 15 years, or both.
- (2) Absolute liability applies to section (1) (b).
- (3) A person commits an offence if-
  - (a) The person causes, permits, offers or procures a child to provide commercial sexual services; and
  - (b) The child is 12 years old or older.  
Maximum penalty 1000 penalty units, imprisonment for 10 years, or both.
- (4) Strict liability applies to section (3) (b).

52. (For the Prostitution Act 1992, a child is defined by reference to the Legislation Act 2001 as ‘if age rather than dependency is relevant, means an individual who is under 18 years old’).

53. :Additionally, under section 22, it is a defence to a prosecution under sections 19(2) or 20 if it is 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.

54. The offence under section 20 (3) applies to children aged from 12 to 18 years. In effect, the Committee recommends that section 20(3)(b) ( which currently provides for strict liability) be amended to provide for absolute liability, and that the defence at section 22 be deleted.

55. The ‘Guide for framing offences’, maintained by the Justice and Community Safety Directorate, notes that:

“absolute liability offences are extremely rare and must only be made in the most exceptional circumstances. In addition to clear legitimate grounds for penalising persons lacking fault, there must also be clear legitimate grounds for penalising a person who made an honest and reasonable mistake of fact as the defence of reasonable mistake of fact is not available for absolute liability.”

56. While it is appropriate for the offence at section 20(1) to be an absolute liability offence, applying absolute liability to the offence at section 20(3) may result in a person being convicted in circumstances where a young person fraudulently

provides credible false identification, and the brothel operator will be guilty of an absolute liability offence punishable by 10 years' imprisonment.

57. The Government does not agree that the imposition of absolute liability for the offence at section 20 (3) in the absence of an appropriate document verification service is appropriate.
58. An important consideration is that, at present, there is no external mechanism for a brothel operator to verify documentation confirming the age of the sex worker. A brothel operator must rely on the proof of age documents that are provided by the person. As is noted in the Inquiry, regulation of the information that must be provided by sex workers is a matter of concern, and will have a significant engagement with the right to privacy.
59. Additionally, the rationale of the Committee is that absolute liability for both of the offences in section 20 will place an 'appropriate' burden of responsibility upon brothel operators, and will result in the lowest possible level of risk that children or young people could be employed to provide sexual services in the ACT. The burden of responsibility (to obtain the age of prostitutes to ensure that they are over 18) is the same, regardless of whether strict or absolute liability applies to the offence. The consequences of failing to meet that burden, however, are quite different.
60. The Government is of the view that the risk that a young person could be employed to provide sexual services would be partly addressed through the development of an appropriate document verification service that can be made available to brothel operators. Such a scheme is currently under discussion in relation to the availability of services for verifying the authenticity of documents.
61. In relation to the Committee's concerns about inconsistencies in relevant definitions in the Prostitution Act and the *Criminal Code 2002*, the Government notes that the question of inconsistencies was raised by the ACT Human Rights Commission (HRC). The HRC expressed a concern that the offences at section 20 are not consistent with the sexual offences against children pursuant to the *Crimes Act 1900* as differing ages delineate between the different offences under each Act.
62. Under the Prostitution Act, the most serious offence applies where a child is under 12 years old whereas, in the Crimes Act, the most serious offences apply to children under the age of 10 years.
63. Further, the sexual offences against children in the Crimes Act only apply to young people up to 16 years of age, whereas the Prostitution Act offences apply to young people up to 18 years.

64. The Government has made a commitment to progressively codify offences against the person, including sexual offences. The construction of sexual offence involving children and young people represents a significant body of work that has already been commenced with the introduction of the Crimes Legislation Amendment Bill 2012, which included the offences of 'sexual intercourse with young person under special care' and 'act of indecency with young person under special care'.
65. Given the level of exploitation and abuse that may accompany offences pursuant to section 20 of the Prostitution Act, it is appropriate that this offence apply in circumstances where the young person is aged up to 18 years of age.
66. Additionally, the HRC argues that the absolute liability offence at section 20(1) of the Prostitution Act should apply to young people up to the age of 16 years, with the strict liability offence applying to young people aged from 16 to 18 years.
67. The Government supports the approach proposed by the Human Rights Commission, and is of the view that the offence at section 20(1) should be amended to apply to children under 16 years of age. The offence at section 20(3) should apply to young people 16 and 17 years of age. As a result, the defence at section 22 should apply to the offence at section 20(3).
68. The Government also agrees with the Human Rights Commission that consideration should be given to adopting the defences, in the section 35 of the *Criminal Code 2002*, of mistake or ignorance of fact.

#### Government proposal

69. The Government will amend the Prostitution Act as discussed above.

#### **RECOMMENDATION 6**

*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.*

#### **Government response: AGREE IN PRINCIPLE**

70. The recommendation is consistent with the Health Directorate's further submission (No.59) to the Committee, specifically in relation to the interrelationship between the Prostitution Act and the Public Health Act.
71. It was suggested in the ACT Health submission that public health approaches are key to the prevention of HIV and sexually transmissible infections, as outlined in the relevant national and local strategies.

72. The matters addressed in sections 24 and 25 of the Prostitution Act can be effectively managed under the existing provisions of the Public Health Act.

Government proposal

73. The Government will repeal sections 24 and 25 of the Prostitution Act. Consideration will also be given to whether the penalty provisions in section 21 of the *Public Health Regulation 2000* should be amended.
74. From a drafting perspective, it may not be appropriate to insert, as recommended, a direct cross-reference to a regulation of another Act into the Prostitution Act. The Government and the working group will examine how best to give effect to the intent of the recommendation.

**RECOMMENDATION 7**

*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.*

**Government response: AGREE**

75. This recommendation is consistent with the Government's submission to the Committee, as well as the Health Directorate's further submission.
76. Barrier protection is still the key element of strategies to reduce sexually transmissible infections by promoting safe sex practice. Prophylactics represent 'safety equipment', and it should be the responsibility of the employer to provide them.

Government proposal

77. The Government will amend the Prostitution Act to require operators to provide appropriate safety equipment.

**RECOMMENDATION 8**

*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.*

**Government response: AGREE IN PRINCIPLE**

78. The commercial sex industry should, so far as possible, be investigated and regulated in the same way as other industries.

79. The experience in the ACT has been that existing criminal laws allow law enforcement to appropriately target and address organised crime. The ACT has not to date become the haven for organised crime that some said it would. On balance, it is considered that the risks of adopting the measures outweigh the risks associated with our current approach.
80. In June 2009 the ACT Government released a report to the Assembly entitled "*Serious Organised Crime Groups and Activities*". As a result of that report, the ACT Government made a number of legislative changes through the *Crimes (Serious Organised Crime) Act 2010*.
81. The ACT has enacted a number of legislative measures to combat organised crime, and has decided that it will not at this stage adopt laws to declare criminal organisations due to the constitutional and human rights concerns with such an approach.
82. While the Government agrees that every effort should be made to ensure an appropriate level of focus and resourcing to manage risk from organised crime, the Government believes that the Committee's recommendation should be confined to the operation of the sex industry in the ACT.
83. Further, the arrangement between the ACT Government and ACT Policing does not constrain the Chief Police Officer in the manner in which ACT Policing achieves the agreed outcomes in the agreement, or the allocation of policing resources to functions.

#### Government proposal

84. The implementation working group will examine ways in which the risk of organised crime in the sex industry can continue to be minimised.

#### **RECOMMENDATION 9**

*The Committee recommends that offences under section 17 of the Prostitution Act be recast 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.*

#### **Government response: AGREE IN PRINCIPLE**

85. The Government notes that there are no offences under the Human Rights Act.
86. The Government's view is that section 17 is broadly consistent with sections 13 and 26 of the Human Rights Act. However, in light of the Committee's discussion on this issue, and having regard to the Human Rights Commission's submission, the Government agrees that a clearer link to the Human Rights Act may be beneficial.

### Government proposal

87. However, the Government and the working group will review the offences under section 17 of the Prostitution Act with a view to more clearly demonstrating consistency with sections 13 and 26 of the Human Rights Act.

### **RECOMMENDATION 10**

*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.*

### **Government response: NOTED**

88. The Government agrees that sex workers should be provided with adequate information, counselling and assistance to enable them to cease working in the commercial sex industry if, and when, they wish to do so.
89. Taking into account the nature of this industry, sex workers should be provided with information and assistance similar to that available to workers in other industries.
90. The Government will not, however, embark on a targeted campaign to encourage workers to leave the industry. It is more appropriate to implement information programs to raise awareness of the options available to sex workers, and to facilitate access to proper assistance.
91. There are currently numerous mainstream training and retraining services available to workers, including sex workers. ACT Government funds a general Culturally and Linguistically Diverse (CALD) outreach program for sex workers, and programs to assist people wishing to cease work in the sexual services industry.
92. In addition, the ACT Government funds a sex worker outreach project (SWOP) through its service funding agreement with the AIDS Action Council. The service targets CALD sex workers as far as possible. Additional funds for an expansion of this service are not available within existing funding sources for a range of blood-borne virus and sexual health initiatives.
93. It may be that more can be done to draw those services to the attention of sex workers.
94. The development of further specific, targeted programs is likely to have significant budgetary implications for the Government. Any proposal for such services would be subject to assessment and approval in the usual budget process.

### Government proposal

95. The Government and the working group will examine what measures might be taken to enable sex workers to understand their employment options and obtain assistance to leave the sex industry if they wish to. This might include appropriate references to re-training opportunities.

### **RECOMMENDATION 11**

*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.*

### **Government response: AGREE IN PART**

96. The Government supports the intent of this recommendation but notes that there are potential sensitivities relating to the manner in which it is implemented.
97. Any person who knows of, or suspects, an offence may call ACT Policing on 131 444. It would be appropriate to display that number on signage.
98. Making alternative contacts for reports available on a '24 hours, 7 days a week' basis may not be achievable across all agencies, but consideration will be given to how the objective of the recommendation may be achieved.

### Government proposal

99. The Government will implement measures to provide the information and assistance recommended, and to ensure that operators display proper signage as recommended.
100. It will also be necessary to clarify which agency will be responsible for implementing these measures and providing ongoing assistance. This will be considered by the implementation working group.

### **RECOMMENDATION 12**

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

### **Government response: AGREE IN PRINCIPLE**

101. The Health Directorate already funds a sex worker outreach project (SWOP) through its service funding agreement with the AIDS Action Council. The service targets CALD sex workers as far as possible.

102. The recommended CALD program could be linked with the existing SWOP and the employment of an outreach worker to support sex workers from culturally and linguistically diverse communities.
103. Clarity in responsibilities between agencies is necessary to ensure that this requirement could be properly undertaken, and to ensure that funds are available when and where they are needed.
104. At this time, additional funds for an expansion of this service are not available within existing funding sources for a range of blood borne virus and sexual health initiatives.
105. Implementation of the recommendation could be problematic, particularly given the potential range of languages to be covered. The same argument would apply in relation to other industries where there is reputed to be exploitation of non English-speaking labour (e.g. restaurants, cleaning industry, home factories).

#### Government proposal

106. The Government and the implementation working group will consider whether any further action is necessary in relation to this recommendation.

#### ***RECOMMENDATION 13***

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

#### **Government response: NOTED**

107. The Government agrees that the requirement to register should not be unreasonably burdensome, and should not pose a risk to the personal privacy or safety of sex workers.
108. It should be noted that, while implementation of this recommendation will slightly reduce the work of the Office of Regulatory Services in registering brothels, it may increase complaints and compliance issues, because the proportion of establishments offering sex services, which are possibly not under direct surveillance of regulatory and enforcement agencies, is likely to rise.
109. The Government's preferred approach to this recommendation is to continue for the time being with a modified registration requirement that is not unreasonably burdensome and provides for the identity and privacy of sex workers to be protected.
110. If sole operators are no longer required to register as brothel operators as recommended, their premises would no longer have the status of a registered

brothel. There may be a need to amend the Act to prevent minors being exposed to commercial sexual transactions at sole operator premises.

#### Government proposal

111. In the short term, the Government and the implementation working group will examine options for a more reasonable registration regime and review the operations of its agencies to ensure that privacy and safety are adequately protected.
112. The implementation of this recommendation may impact on enforcement resources in particular. If implementation is subject to the availability of additional resources, then the government's agreement to do so will be subject to assessment and approval of a proposal for funding in the usual budgetary process.
113. If no workable options are identified, the Government will consider the immediate repeal of the registration requirement for sole operators.

#### ***RECOMMENDATION 14***

*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.*

#### **Government response: NOTED**

114. The Government recognises the security, health and safety benefits that might result from implementing this recommendation.
115. However, the potential impact of the change on the intensity of use of residential premises, and on residential amenity, should be carefully examined.
116. The Government notes that the ACT Neighbourhood Watch Association Inc recently wrote to the Chief Minister expressing its concern about the implications that this recommendation, and recommendation 13, may have for the safety, security and well-being of local communities. That concern should be carefully regarded in deciding whether to lower regulatory thresholds and increase the intensity of commercial sex work in residential areas.
117. Further, the Government will need to consider whether the change would result in a significant additional compliance and enforcement burden for ACT Policing or other agencies. ACT Policing has raised concerns about a range of hazards that may be created by a lack of regulation in the sex industry, and argues that regulatory tools such as registration aid visibility of the industry and opportunities for enforcement and compliance activity.

Government proposal

118. The Government and the implementation working group will consider whether this recommendation may be practicably implemented.

**RECOMMENDATION 15**

*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).*

**Government response: AGREE**

119. Sex workers' personal information is already required to be obtained and protected in accordance with the *Privacy Act 1988* (Cwth) in the same way as the personal information of any other worker, taking into account the circumstances in which the information is to be obtained or passed on.

Government proposal

120. Agencies involved in obtaining and dealing with the personal information of sex workers will continue to be required to ensure that their procedures for protecting sex workers' privacy fully comply with the Privacy Act and other relevant legislation protecting personal or other sensitive information.

**RECOMMENDATION 16**

*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.*

*In addition, legislation 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.*

**Government response: DISAGREE**

121. The Government's position is that the recommendation is unduly restrictive in a regulatory environment that adequately provides for the protection of personal information.
122. The recommendation is inconsistent with the manner in which ACT Policing generally obtains information from regulators for the purposes of investigating a crime.

123. Further, the Government notes that the Chief Health Officer, who has health care responsibilities in relation to sex workers, should be able to obtain information from ORS if it is required to meet those responsibilities.
124. As stated above, agencies involved in obtaining and dealing with the personal information of sex workers are required to protect sex workers' privacy and to treat personal information in accordance with the requirements of the Privacy Act, which does allow for disclosure of personal information for the purposes of law enforcement.

Government proposal

125. The Government will consider whether a memorandum of understanding, to formally articulate an information sharing arrangement in relation to investigations involving sex workers, would be appropriate.

***RECOMMENDATION 17***

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

**Government response: NOTED**

126. The Government notes the Committee's reasons for recommending a review of the Act in five years.
127. However, the Government does not agree that a formal review of the Act is necessary.

Government proposal

128. The Government will keep the operation of the Act under review to assess the effectiveness of the implementation of the Committee's recommendations.

Report recommendation	Government Response	Implementation – Lead Agency	Other Agencies/Partners	Implementation Timeline
1. A majority of the Committee recommends that the sex industry be recognised in the community as an occupation and that the legislation reflect this approach to occupational health hazards.	AGREE	JACSD/WorkSafe ACT	Health, Community Services, ACT Policing	Medium term, ongoing
2. A majority of the Committee recommends that the sex industry be treated by regulatory regimes in a similar fashion to other industries.	AGREE	JACSD (ORS)	Health, Community Services	Short term
3. 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'.	AGREE IN PRINCIPLE	JACSD (LPB)	Health, Community Services, ACT Policing	Short term
4. 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.	AGREE	JACSD (ORS)/WorkSafe ACT	Health	Short term
5. The Committee recommends that an offence under section 20 of the <i>Prostitution Act 1992</i> 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.	AGREE IN PART	JACSD (LPB)	ACT Policing, ORS, Community Services, Health	Short term

Report recommendation	Government Response	Implementation – Lead Agency	Other Agencies/Partners	Implementation Timeline
6. A majority of the Committee recommends that sections 24 and 25 of the <i>Prostitution Act 1992</i> be removed and a cross-reference to section 21 of the Public Health Regulation 2000 be inserted in the Prostitution Act.	AGREE IN PRINCIPLE	JACSD (LPB)	Health	Medium term
7. The Committee recommends that section 27 of the <i>Prostitution Act 1992</i> be amended such that operators of brothels are required to provide safety equipment, including prophylactics, to sex workers in brothels under their management.	AGREE	JACSD (LPB)	Health, WorkCover	Medium term
8. 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.	AGREE IN PRINCIPLE	JACSD (LPB/ORS)/ACT Policing		Ongoing
9. 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 <i>Human Rights Act 2004</i> . Penalties for offences under section 17 should be consistent with those offences under the Human Rights Act.	AGREE IN PRINCIPLE	JACSD (LPB)	ACT Policing, ORS	Medium term

<b>Report recommendation</b>	<b>Government Response</b>	<b>Implementation – Lead Agency</b>	<b>Other Agencies/Partners</b>	<b>Implementation Timeline</b>
10. 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.	NOTED	Community Services	Health, JACSD (ORS)	Medium term
11. 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.	AGREE IN PART	JACSD (LPB & ORS)	ACT Policing, Community Services	Medium term
12. The Committee recommends that the ACT Government fund a Culturally and Linguistically Diverse (CALD) outreach program for sex workers in the ACT.	AGREE IN PRINCIPLE	Health	Community Services	Long term
13. A majority of the Committee recommends that sole operators no longer be required to register with the Office of Regulatory Services.	NOTED	JACSD (LPB & ORS)	ACT Policing	Medium term
14. 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.	NOTED	JACSD (LPB & ORS)	ACTPLA, ACT Policing	Medium term

<b>Report recommendation</b>	<b>Government Response</b>	<b>Implementation – Lead Agency</b>	<b>Other Agencies/Partners</b>	<b>Implementation Timeline</b>
15. 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).	AGREE	JACSD (LPB & ORS)	ACT Policing, Health, Community Services	Medium term
16. 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.	NOT AGREED			
17. The Committee recommends that any changes to the <i>Prostitution Act 1992</i> arising from this inquiry be reviewed in five years time.	NOTED	JACSD (LPB & ORS)	ACT Policing, Community Services, Health	5 years

