

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**SELECT COMMITTEE ON  
HIV, ILLEGAL DRUGS  
AND  
PROSTITUTION**

**INTERIM REPORT**

**PROSTITUTION IN THE ACT**

**APRIL 1991**

*Select Committee on HIV, Illegal Drugs and Prostitution*

Select Committee on HIV, Illegal Drugs and Prostitution

*Committee membership:*

Mr M Moore (Presiding Member)

Ms C Maher <sup>(1)</sup>

Mrs R Nolan <sup>(1) (2)</sup>

Mr W Stefaniak <sup>(3) (4)</sup>

Mr B Wood

*Secretary:*

Mr R Owens

*Committee staff:*

Ms J Starcevich

Ms M Terril

---

<sup>1</sup> Discharged from attendance 14 December 1989

<sup>2</sup> Reappointed 22 February 1990

<sup>3</sup> Appointed 14 December 1989

<sup>4</sup> Discharged from attendance 22 February 1990

RESOLUTION OF APPOINTMENT <sup>(5)</sup>:

That –

- (1) a select committee be appointed to inquire into and report on HIV, illegal drugs and prostitution in the ACT with particular reference to:
  - (a) the effectiveness of current legal and social controls enabling action to prevent the spread of HIV;
  - (b) the effectiveness of current legal controls on prostitution and drug-taking;
  - (c) alternative social, medical or legal proposals which may assist in restricting the further spread of HIV; and
  - (d) other such matters relating to the issues of HIV in the ACT which the committee considers should be drawn to the attention of the Assembly;
- (2) the committee shall report at its earliest convenience;
- (3) the committee shall consist of 3 members, namely, Mr Moore, Mrs Nolan and Mr Wood;
- (4) the majority of members constitutes a quorum of the committee;
- (5) the committee be provided with the necessary additional staff, facilities and resources; and
- (6) the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

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<sup>5</sup> MoP, No. 22; as amended – MoP, No. 40 and MoP, No. 46

Φιλοκαλούμεν τε γὰρ μετ' εὐτυλείας καὶ φιλοσοφούμεν ἀνεὺ μαλακίας.

*(For we have loved beauty with prudence and we have loved wisdom without timidity)*

Thucydides, *History of the Peloponnesian War*, Book II, 40,1

## **PREFACE**

The Select Committee on HIV, Illegal Drugs and Prostitution did not set out to conduct an investigative inquiry along the lines of some Parliamentary committees, nor did it set out to follow the procedures used by the Royal Commissioners Mr A Fitzgerald QC and Mr F Costigan QC. Rather this committee has attempted to extend the debate on the politically unpalatable social issues with which it was dealing: that the committee was successful in this area was reflected in an editorial in *The Canberra Times* of 3 February 1991:

"It is, perhaps, a measure of the maturity of the Canberra Community that public debate surrounding this inquiry has been conducted in such sensible and low key language."

The prime reason for examining prostitution and illegal drugs is the potential they represent for the spreading of HIV, and throughout this report it must be borne in mind that this potential still remains, although up until now prostitution in the ACT has not been a vehicle for the spread of HIV. HIV and other sexually transmitted diseases are of great concern to the community, and the question of a moral stand on these issues by the community must always be considered in the light of the public health. Where there is a conflict the public health must take priority.

A matter of general concern raised through this inquiry is the nature of society when dealing with marginalised groups. Having defined prostitutes and intravenous drug users as scapegoats, our community has deprived them of some basic human rights; as was once true, and possibly still is, of the *gay* community. It is incumbent upon any person, who is concerned with civil liberties, to ensure that no individual or group loses their basic human rights, particularly through the moral position of others.

The study has provided a most interesting and fascinating look into human nature, and for me, and I believe the other members of the committee, it has opened a side of life that we were hardly aware existed. The very ordinary nature of the people involved in prostitution came as a surprise to me. The workers we met and with whom we discussed the issues were from the full social spectrum of our society. They are normal people doing, what many in society consider, an abnormal job. It is ironic that so many members of our community consider something so abnormal when it has clearly been part and parcel of human society for so long.

I would like to convey my thanks to the other members of the committee, Bill Wood and Robyn Nolan, for constantly retaining an open mind and for their tolerance through some difficult debates. I would also like to extend the thanks of the committee to its secretariat, particularly to the committee's secretary Ron Owens. Thanks are also due to Peta Roberts for her initial enthusiasm and contribution, to Marion Terril for her work in the preparation of our early statement which is attached to the report as Appendix E, and to Judy Starceвич who has

assisted the committee as a research officer.

A particular thanks go the Dr Gordon White, Director of the STD Clinic/AIDS Reference Centre, Royal Canberra Hospital (South) for his medical advice and assistance, and to the Australian Federal Police, particularly the Office of the Chief Police Officer ACT Region, for the statistical evidence and other assistance provided to the committee.

I think it is also appropriate to recognise the maturity of the Canberra community at large. Whilst many different views have been expressed on the issue of prostitution, the debate on the matter has been carried out in a sensible and rational way, with an understanding of the diverse points of view and with very little appeal to emotionalism. I hope that debate on this matter will continue in that logical and rational manner, while the Government considers this report.

A handwritten signature in black ink that reads "Michael Moore". The signature is written in a cursive, flowing style.

Michael Moore

Chairman

17 April 1991

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## 1 INTRODUCTION

"... it is not the function of the law to intrude into the private lives of citizens or to enforce particular patterns of behaviour, other than to carry out the legitimate functions of the criminal law."<sup>(1)</sup>

### **Establishment of committee**

1.1 The Assembly appointed a Select Committee on HIV, Illegal Drugs and Prostitution on 28 September 1989,<sup>(2)</sup> to report at its earliest convenience.

1.2 At the request of the committee, the Assembly, on 20 February 1991, authorised the committee to submit an interim report on prostitution in the ACT.<sup>(3)</sup>

1.3 The committee made this request of the Assembly as it had become apparent during the course of its inquiries that the link between the issues to be addressed concerning the effectiveness of current legal controls on prostitution in the ACT and the issues to be addressed concerning HIV (*see* chapter 3) and illegal drugs (*see* chapter 4) were not as substantial as first suggested.

### **Background**

1.4 During the course of its inquiries the committee visited each of the known established brothels in the ACT (*see* Appendix A) and spoke with both workers and owners/managers. Discussions have been held with prostitutes collectives in all states and territories except Tasmania (*see* Appendix C). Informal discussions were also held with Ms B Grant, chairperson of the Western Australian Community Panel on Prostitution;<sup>(4)</sup> with Dr Mukherjee of the Queensland Criminal Justice Commission; with Mr P Beattie, MLA, chairman of the Parliamentary Criminal Justice Committee, Queensland; and with Mr D Manzie, MLA, Attorney-General of the Northern Territory.

1.5 In Adelaide, Brisbane and Darwin the committee was able to share in 'round table' discussions with senior government officials. The frank exchange of views made possible by these discussions was of great benefit to the committee and, the committee believes, to the

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<sup>1</sup> Pornography and Prostitution in Canada, Report of the Special Committee on Pornography and Prostitution, 1985, Vol 2, p. 482

<sup>2</sup> MoP, No. 22, p. 89

<sup>3</sup> MoP, No. 96, p. 408

<sup>4</sup> The final report of the Panel was submitted to the WA Minister for Police on 19 September 1990

government officials involved.

1.6 Discussions were also held with state government officials in Perth and Sydney. The committee greatly appreciated the assistance afforded it by the appropriate Ministers in each state.

1.7 Unfortunately, because of advised state government policy,<sup>(5)</sup> it was not possible for the committee to have informal discussions with Victorian government officials. This was unfortunate because at the moment Victoria is the only state to have legalised the operation of brothels and the committee has also heard from a number of sources, including the Prostitutes Collective of Victoria, Professor M Neave and other academics, that there are problems with the approval and licensing system for brothels.

1.8 The committee also held discussions with a number of ACT sex workers.

### Submissions

1.9 The committee received 12 submissions specifically related to prostitution, 3 of which were received in confidence, and a further 3 submissions which dealt, *inter alia*, with prostitution (see Appendix D).

1.10 Of the 15 submissions received dealing with prostitution 11 recommended changes in the law in favour of legitimising prostitution.

1.11 The committee was concerned that it received relatively few submissions on the prostitution part of its terms of reference. There could be number of possible interpretations. One of the interpretations the committee has tentatively reached is that proposals to decriminalise and regulate prostitution in the ACT are not a matter of widespread objection in the community.

1.12 Concern at this lack of public response to the issues being investigated by the committee led it to submit a two part article to *The Canberra Times*, which was published on 6 and 7 November 1990. The text of the article is at Appendix E. As a result of *The Canberra Times* article the committee received an additional 2 submissions; opposed to changes in the law. The committee believes, therefore, that the ACT community has been well informed about proposals to reform prostitution laws in the ACT.

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<sup>5</sup> Letter from Secretary, Department of the Premier and Cabinet, dated 15 June 1990

## **Witnesses**

1.13 The committee heard evidence from 47 witnesses (see Appendix D) at 7 public hearings; because of the sensitivities of the issues involved and the fact that, in some instances, the committee was dealing with illegal activities a number of witnesses, including the Australian Federal Police (AFP), gave evidence to the committee *in camera*.

## **Interstate visits**

1.14 During the course of its inquiries the committee made a number of interstate trips to visit each of the mainland state and territory capitals.

1.15 During June 1990 the committee visited Melbourne, Adelaide and Perth. Whilst in Melbourne the committee visited the Withdrawal Support Unit in Geelong (a drug rehabilitation unit), the Victorian IV Drugs and AIDS Unit in Collingwood and the Prostitutes Collective of Victoria in St Kilda.

1.16 In Adelaide the South Australian Health Commission organised a 'round table' discussion which included representatives of:

- AIDS Co-ordinator
- Communicable Disease Control Unit
- Department of Community Medicine, University of Adelaide
- Drug and Alcohol Services Council
- Public and Environmental Health Division
- South Australian Police Department
- STD Services.

1.17 Whilst in Perth the Assistant Commissioner, Public Health, of the Health Department of WA arranged a business itinerary for the committee. Through the agency of the Assistant Commissioner the committee was able to hold discussions with the following people and organisations:

- AIDS Advisory Committee
- Alcohol and Drug Authority
- Alcohol and Drug Information Service
- Chairperson of WA Community Panel on Prostitution
- Director, WA AIDS Council
- Disease Control Branch, Health Department
- Manager, AIDS Bureau
- SIERRA (Prostitutes Collective).

1.18 The committee also visited a brothel, *The Aphrodite*, and had an informal discussion with its manager. *The Aphrodite* is one of a number of brothels in Perth which are allowed to operate under the 'containment' policy of the WA Police Department, by which they unofficially control brothels and regulate their number. The committee was also able to visit, and to hold discussions with the manager of, an Escort Agency which operated outside of the Police 'containment' policy.

1.19 The committee visited Sydney in August 1990, and with the consent of the Premier was able to hold discussion with:

The Criminal Law Division of the Attorney-General's Department  
 Officers from the Department of Health, including Epidemiology and the AIDS Bureau  
 The Drug Enforcement Agency, NSW Police Department.

1.20 The committee also spoke with the AIDS Action Council; SWOP (Sex Workers Outreach Program); the NSW Users and AIDS Association (NUAA); Dr A Wodak of St Vincent's Hospital; and Ms Roberta Perkins of the University of NSW and associated with PROS (Prostitutes Rights Organisation for Sex Workers).

1.21 During November 1990 two members of the committee visited Brisbane and Darwin.

1.22 Again, with the consent of the Queensland Premier's Department, the committee was able to share in a 'round table' discussion with representatives of:

AIDS Education Unit, Department of Health  
 Alcohol and Drug Dependence Service  
 Criminal Justice Commission  
 Department of the Attorney-General  
 Department of Family Services and Aboriginal and Islander Affairs  
 Department of the Premier  
 Division of Specialised Health Services  
 Queensland Police Department.

1.23 The committee also held discussions with the AIDS Action Council; SQWISI (Prostitutes Collective); Queensland Intravenous AIDS Association (QuIVAA); Dr Mukherjee of the Queensland Criminal Justice Commission; Brisbane Youth Service; and Mr P Beattie, MLA, Chairman, Parliamentary Criminal Justice Committee.

1.24 Once again in Darwin, with the consent of the Northern Territory Attorney-General, the committee was able to share in a 'round table' discussion with representatives of the:

Aboriginal AIDS/STD Program  
 AIDS/STD Program



Attorney-General's Department  
Communicable Diseases Centre  
Department of Health and Community Services  
Urban AIDS/STD Program.

1.25 During discussions with the Attorney-General he offered to provide the committee with a copy of draft legislation proposing reforms in prostitution once that draft legislation was tabled in the Northern Territory Legislative Assembly. <sup>(6)</sup>

1.26 The committee also held discussions with the Territory Users Forum (TUF); AIDS Action Council; and the Prostitutes Association of the Northern Territory for Health, Education and Referral (PANTHER).

1.27 In February of 1991, with the approval of the committee, the committee chairman and the committee secretary visited the Kirketon Road Health and Welfare Clinic, Kings Cross, Sydney. This clinic was set up as a result of the report of the Select Committee of the NSW Legislative Assembly upon Prostitution with the following aims in mind:

"It is expected that this centre will adopt an informal, non-judgmental approach and segregate its medical services. It should prove accessible to prostitutes and will be all the more accessible because it is not exclusively a centre for prostitute clients or for the treatment of sexually transmitted diseases." <sup>(7)</sup>

1.28 In March 1991 a member of the committee, at the request of the committee, held informal discussions with an officer of the Commonwealth's Human Rights and Equal Opportunity Commission, at their offices in Sydney. With regard to the human rights of those engaged in prostitution, the committee member was advised that the position of the Commission was one of non-involvement as such people were engaging in an illegal activity.

### **AIDS and HIV**

1.29 The committee considered it important in this introductory chapter to clarify, with some simplicity, the nature of AIDS and HIV.

1.30 AIDS is caused by a virus known as the Human Immunodeficiency Virus (HIV).

1.31 This is a serious disease which reduces the body's ability to fight infection by breaking down the immune system. The disease has three stages. The first stage has no symptoms, but a

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<sup>6</sup> The draft legislation was tabled on 9 December 1990.

<sup>7</sup> Report of the Select Committee of the Legislative Assembly upon Prostitution, April 1986, Parliament of NSW, p. 151

blood test will reveal whether a person is antibody positive (ie being HIV positive or being seropositive). Between 30 and 40% of case progress to the next stage. The second stage, category B, exhibits symptoms of swollen lymph glands, general malaise, lethargy and intermittent fever and night sweats. Some second stage sufferers progress to the third stage. At the third stage, category A, the immune system is severely damaged and many different infections can occur. A person at stage three has a life expectancy of one to five years. Between 10 and 15% of those people carrying AIDS antibodies will eventually develop AIDS category A.

1.32 The mode of viral transmission is via the body fluids (blood, semen, vaginal secretions, breast milk) of an infected person to the blood stream of another.

1.33 There are four known ways by which a person can become infected with the Human Immunodeficiency Virus:

- . having unprotected anal, vaginal or oral sex with an infected person;
- . sharing a needle or syringe with an infected person;
- . an infected woman can pass the virus to her child during pregnancy, child birth or through breast feeding; and
- . transfusion of infected blood products.

1.34 In Australia this last risk has been virtually eliminated through careful donor selection and screening which began in March 1985.

### **Definitions**

1.35 In the text of this report the committee has adhered to the following definitions:

**AIDS** Acquired Immune Deficiency Syndrome

**Brothel** Premises established and maintained for the provision of commercial sexual services

**Commercial sexual services** The engaging in of sexual activity, for monetary or material reward, the basis for which is an ordinary commercial transaction

**Escort Agency** A service, other than at a brothel, which provides, through a commercial transaction, a female or male companion for a specified period of time; the covert implication of which being the provision of commercial sexual services

**HIV** Human Immunodeficiency Virus

<b>Parlour</b>	A synonym for Brothel
<b>Prostitute</b>	A person who provides commercial sexual services for monetary or material reward
<b>Prostitution</b>	The provision of commercial sexual services for monetary or material reward
<b>Sex industry</b>	<p>The amalgam of business institutions, both licit and illicit, that provide commercial services of a sexual nature – such business include, <i>inter alia</i> –</p> <ul style="list-style-type: none"><li>Adult book, film and video shops</li><li>Brothels and associated 'massage parlours'</li><li>Escort agencies</li><li>Production of non violent erotica</li><li>Prostitution</li><li>Striptease clubs</li></ul>
<b>Sex worker</b>	A person employed in the sex industry
<b>Sexual exploitation</b>	The exploitation of one person by another person by offering to meet some immediate need or material comfort, eg a bed for the night, a meal, a drink, a drug, in return for the provision of some form of sexual gratification
<b>STD</b>	Sexually Transmitted Disease
<b>Studio</b>	A synonym for Brothel
<b>Worker</b>	A synonym for Prostitute

## 2 THE CURRENT POSITION

"The philosophy seems to have been that the male population was entitled, without sanction, to seek the services of prostitutes, but insofar as the morality or health of the community might be compromised by such activity, the target of the law was properly the purveyors and not the customers of the business."<sup>(1)</sup>

### Introduction

2.1 It is not illegal in the ACT to be a prostitute, nor is it illegal to engage in commercial sexual activity as a prostitute. There are no specific offences punishing those prostitutes who choose to work in brothels (*however see* paragraph 14). Nor is it illegal for a prostitute to work out of home. Procuring a person, whether by force, violence or intimidation, to engage in prostitution against their will is not a specific offence in the ACT (*however see* paragraph 17), except where the person being procured is a child under the age of 16. There are a number of offences, however, that circumscribe the conducting of prostitution in the ACT.

### The law

2.2 The primary law dealing with prostitution in the ACT is the *Police Offences Act 1930* (*see* Appendix F) which defines a brothel, but not prostitution and proscribes the managing or conducting of a brothel or allowing premises to be used as a brothel. It allows for a landlord to terminate a tenant's lease if that lease is being used as a brothel. The Act proscribes soliciting and living on the earnings of prostitution. It also requires shopkeepers and cafe proprietors not to allow prostitutes to remain on their premises.

### *Brothels*

#### Definition

2.3 Section 5 of the Police Offences Act (the Act) provides the following definitions of 'brothel':

5. In this Act, unless the contrary intention appears –

"Brothel" means –

- (a) premises, a vehicle or a caravan to which persons of opposite sexes resort for the purposes of prostitution; or
- (b) premises that are occupied or used, or a vehicle or caravan that is used, by any person or persons for the purposes of prostitution.

'Prostitution' or 'prostitute' are not defined in the Act. There are common law definitions however. The Australian Courts have proffered the following definition of "prostitution":

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<sup>1</sup> Pornography and Prostitution in Canada, *op cit*, p. 403

"The ordinary meaning of 'prostitution' is 'the offering of the body to indiscriminate lewdness for hire'. The same or a similar meaning has been applied to the word 'prostitution' in criminal statutes." <sup>(2)</sup>

### Managing or conducting a brothel

2.4 Section 18 of the Act provides:

18. A person who—
- (a) manages or conducts a brothel; or
  - (b) is knowingly concerned in the management or conduct of a brothel, is guilty of an offence and is punishable, upon summary conviction, by imprisonment for a period not exceeding twelve months.

For recent convictions under this section *see* Table 1.

### Allowing premises to be used as a brothel

2.5 Section 19 of the Act provides:

19. A person who –
- (a) knowingly permits premises, a vehicle or caravan to be used as a brothel; or
  - (b) leases, lets or sublets premises, knowing that the premises are to be used as a brothel, is guilty of an offence and is punishable, upon summary conviction by imprisonment for a period not exceeding six months.

For recent convictions under this section *see* Table 1.

2.6 Section 19A, subsections (3) and (4) of the Act provide:

- (3) Where—
- (a) a person is convicted of an offence against section 18 of this Act;
  - (b) the offence was committed in relation to premises used or occupied by the person under a lease, sublease, tenancy, subtenancy or licence;
  - (c) the person who granted the lease, sublease, tenancy, subtenancy or licence –
    - (i) on becoming aware of the conviction of the first-mentioned person, fails to determine the lease, sublease, tenancy, subtenancy or licence; or
    - (ii) having determined the lease, sublease, tenancy, subtenancy or licence, fails to take reasonable steps to prevent the continued occupation or use of the premises by the first-mentioned person; and
  - (d) the first-mentioned person is afterwards convicted of an offence against section 18 of this Act in relation to the same premises,
- the person who granted the lease, sublease, tenancy, subtenancy or licence is guilty of an offence unless, before the commission of the offence to which the conviction referred to in paragraph (d) of this subsection relates, he has disposed of his right or title to, or his interest in, the premises.
- (4) A person who commits an offence against the last preceding subsection is punishable, upon conviction, by a fine not exceeding one hundred dollars.

For recent convictions under this section *see* Table 1.

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<sup>2</sup> *Samuels v Bosch* (1972) 127 CLR at 524, per Gibbs J

Determination of lease etc.

2.7 Section 19A, subsections (1) and (2) of the Act provide:

19A.(1) Where—

- (a) a person is convicted of an offence against section 18 of this Act; and
- (b) the person occupies or uses the premises in relation to which the offence was committed under a lease, sublease, tenancy, subtenancy or licence, the person by whom the lease, sublease, tenancy, subtenancy or licence was granted may, by instrument in writing that is delivered to the first-mentioned person or affixed to the premises and which purports to be given under this section, require the first-mentioned person to quit the premises or, in the case of premises used under a licence, to cease to use the premises.

(2) Where notice is delivered in person, or affixed to premises, in pursuance of the last preceding subsection, the lease, sublease, tenancy, subtenancy or licence to which the notice relates is, by force of this section, determined at the expiration of seven days from the date on which the notice is so delivered or affixed.

There appears to have been no actions under these subsections of the Act for a number of years.

*Soliciting*

2.8 Pursuant to paragraph 23(1)(ja) of the Act any person who in any public place persistently solicits or importunes for immoral purposes is guilty of an offence; the penalty for which is imprisonment for three months. For recent convictions under this paragraph *see* Table 1.

*Living on the earnings*

2.9 Pursuant to paragraph 23(1)(j) of the Act any person who knowingly lives wholly or in part on the earnings of prostitution is guilty of an offence; the penalty for which is imprisonment for three years. For recent convictions under this paragraph *see* Table 1. The Act further provides, at subsection 23(3):

(3) Where a male person is proved to live with, or to be habitually in the company of, a prostitute, and has no visible means of support, he shall, for the purposes of paragraph (j) of subsection (1) of this section, unless he satisfies the Court to the contrary, be deemed to be knowingly living on the earnings of a prostitute.

2.10 The committee notes with some concern the explicit sexist nature of this provision, ie the covert implication that only women are prostitutes and the overt statement that only males who live with prostitutes are subject to ignominy, despite major reviews of the Act in 1983 and 1984.

*Discrimination*

2.11 Section 34 of the Act provides:

34 Every person who has or keeps any house, shop, room, or place of public resort wherein provisions, liquor, or refreshments of any kind are sold or consumed (whether they are kept or retained therein or procured elsewhere), who –

(c) knowingly permits or suffers prostitutes or persons of notoriously bad character to meet together and remain therein, shall be guilty of an offence.

Penalty: Ten dollars

No one has ever been convicted under this section of the Act.

Table 1 – ACT arrest and conviction patterns – 1 January 1986 to 27 March 1991

Act and relevant Section Number	No of briefs of evidence prepared	No of convictions recorded	Matters not proceeded with <sup>(i)</sup>	Matters pending before courts
POA <sup>(ii)</sup> Para 18(a)	7	2	4	1
POA Para 18(b)	3	1	2	–
POA Para 19(a)	–	–	–	–
POA Para 19(b)	5	–	–	5
POA Subsc 19A(3)	–	–	–	–
POA Para 23(1)(i)	–	–	–	–
POA Para 23(1)(ja)	–	–	–	–
POA Sc 34	–	–	–	–
Crimes Act <sup>(iii)</sup> Sc 92N	–	–	–	–
Totals	15	3	6	6

Source: Letter from Australian Federal Police, dated 9 April 1991

(i) The decisions not to proceed made by DPP in accordance with prosecution policy

(ii) Police Offences Act 1930

(iii) Crimes Act 1900 of NSW

### *Under age prostitution*

2.12 Under age prostitution is dealt with by the Crimes Act 1900 of NSW as in force in the ACT (*and see* paragraph 2.17). Section 92N of that Act provides:

92N A person who employs or permits to be employed a person who is under the age of 16 for the purposes of prostitution, is guilty of an offence punishable on conviction by imprisonment for 10 years.

For recent convictions under this section *see* Table 1.

### *Common law*

2.13 In evidence give before it the committee was informed by the Government Law Office that there is an offence at common law of keeping a brothel or a common bawdy house. <sup>(3)</sup> There have been no convictions in the ACT for keeping a common bawdy house.

<sup>3</sup> Transcript, 4.6.90, p. 103

*Other legal controls*Police Act

2.14 Under the *Police Act 1927* a magistrate has the authority to issue a warrant to enter and search a house suspected of being a brothel. Section 15 of the Act provides:

15. If it is made to appear to a magistrate, by information on oath, that there is reason to suspect that any house, or part of a house, is used by a person for purposes of prostitution, and that another person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the magistrate may issue a warrant authorising any constable to enter and search the house and to arrest that other person.

2.15 Pursuant to section 17 of this Act any member of the Police Force may "enter any house, room, or place kept or used for any theatrical or any public entertainment ... or any recreation ground or racecourse" and order any common prostitute found therein to leave.

2.16 Also under the provisions of this Act anyone, with or without a warrant, may apprehend a common prostitute. Subsection 21 (1) provides:

21.(1) Any member of the Police Force, or any other person, with or without a warrant, may apprehend any reputed common prostitute or thief, or any loose, idle, or disorderly person, or any reputed rogue and vagabond or incorrigible rogue who, within view of the member or person, commits any offence against this Act or the *Police Offences Act 1930* of the Territory.

Crimes Act

2.17 Pursuant to the Crimes Act 1900 of NSW, as it applies in the Territory, it is an offence to abduct or unlawfully detain a person for the purposes of engaging that person in sexual intercourse (section 92M); it is also an offence to employ or to permit the employment of a person under the age of 16 to engage in a sexual act or to be in the presence of people engaging in sexual acts (section 92NA).

Drugs of Dependency Act

2.18 Prostitution is also controlled through the policing of the Drugs of Dependency Act. Under the prosecution policy of the Director of Public Prosecutions the possession or use of illegal drugs is an 'aggravating circumstance' that can lead to a prosecution (see paragraph 23).

Leasehold and planning controls

2.19 Other legal measures which can be used, albeit indirectly, to control prostitution include the leasehold system and compliance with such things as lease purpose clauses, and the planning controls of the National Capital Plan and the Territory Plan which specify the kinds of activities that may be permitted in certain areas. In evidence given before the committee, the AFP



indicated that they had used the City Area Leases Act to close a brothel operating in Western Creek.<sup>(4)</sup>

### Public Health (Infectious and Notifiable Diseases) Regulations

2.20 It is also possible to exercise controls over prostitutes through such mechanisms as the Public Health (Infectious and Notifiable Diseases) Regulations which, in certain circumstance empower the Medical Officer of Health to place a person in quarantine and to exercise certain powers in the interests of the public health. These regulations specify AIDS as a notifiable disease but not HIV seropositivity.

### Sexually Transmitted Diseases Act

2.21 The *Sexually Transmitted Diseases Act 1956* can also be used to control prostitutes. Section 5 of this Act requires anyone who believes they are suffering from an STD to 'forthwith' consult a medical practitioner. Where a person is diagnosed as suffering with or from a venereal disease they are required to submit themselves, pursuant to section 7, to a medical examination. Should that not happen then the Medical Officer of Health may apply to the court for a warrant to apprehend the person (subsection 8(1)); and a person so apprehended may be detained in a place approved by the Medical Officer (subsection (6)). A person so detained is not allowed to leave the place of detention without the consent of the Medical Officer (section 12). Under this Act HIV is not identified as a sexually transmitted disease.

### **Prosecution policy**

2.22 It has been made clear to the committee that the law in respect of prostitution has not been upheld. The committee believes that reform is necessary so that the law can be effectively enforced.

2.23 In 1984 the Commonwealth Director of Public Prosecutions (DPP) adopted, with the consent of the Federal Attorney-General, a prosecution policy with regard to ACT prostitution based on a policy of aggravating circumstances. Basically the DPP does not consent to a prosecution simply because there is a *prima facie* case. Regard is had to contextual factors to determine if the prosecution would be in the public interest. Among the factors considered are:

- . the location of the premises, particular whether or not they are in a residential area;
- . whether there have been any complaints from the public about the premises;
- . whether drugs are being used on, or distributed from, the premises;
- . whether there is any evidence that juveniles are being employed; and

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<sup>4</sup> Transcript, 29.1.91, p. 49

. whether the premises present a threat to public health.

2.24 In a private briefing given the committee by the Government Law Office and the Office of the Commonwealth Director of Public Prosecutions, it was established that the prosecution policy outlined above, and adopted in 1984, is still the current policy of the ACT Government.

2.25 The AFP, in evidence before the committee, said that their monitoring role, on advice from the DPP in 1987, was based on the following factors:

- (i) brothels should not operate in residential areas;
- (ii) there should be no possession of or use of any narcotics or other illegal drugs in or about those premises;
- (iii) there should be no minors on the premises, whether employed as prostitutes or otherwise;
- (iv) there should be no person involved in the management of a brothel who is a known criminal, who has a known criminal record of a serious nature;
- (v) funding for the enterprise should not come from known criminals or organised crime syndicates;
- (vi) there should be no unruly or antisocial behaviour associated with, or caused by the operation of the business by clients, staff or any other person;
- (vii) circumstances which would indicate an increased risk to the public health through the operation of the business or the employment of particular persons
- (viii) any complaints received from members of the public concerning the existence and operation of brothels.<sup>(5)</sup>

2.26 From 1970 through to 1990 there was a provision in the Act (Section 19B) which required the consent of the Attorney-General, or a person authorised by the Attorney-General, before a prosecution under sections 18, 19 and 19A could be instituted. Section 19B was repealed by the *Director of Public Prosecutions (Consequential Provisions) Act 1990*.

2.27 According to advice received from the Administrative Law and Justice Branch of the Government Law Office the repeal of section 19B has not made any substantive change to the law. The repeal of section 19B reflected a policy that decisions to prosecute should be independent of the political process.<sup>(6)</sup>

2.28 Advice given by the Government Law Office to the committee, at a private briefing, indicates that the provisions of section 19B have been subsumed under the general provisions of section 20 of the *Director of Public Prosecutions Act 1990*. Section 20 of that Act empowers the

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<sup>5</sup> Transcript, 4.6.90, pp 75-76

<sup>6</sup> Letter to Chairman, dated 17 October 1990

Attorney-General to give directions to the Director of Public Prosecutions concerning the prosecution, in general terms, of indictable offences.

### **The Australian Federal Police**

2.29 The committee recognises the difficulties under which the AFP have had to operate with regard to prostitution since the adoption, in 1984, of the DPP's prosecution policy. The committee, therefore, acknowledges the excellent job done by the AFP under these difficult circumstances. During the course of its inquiry the committee found the AFP to be co-operative, open and helpful.

#### **Administrative procedures**

##### *Containment*

2.30 As a result of the prosecution policy adopted by the DPP the AFP have adopted basically a policy of 'toleration and containment' with regard to brothels in the Territory. The AFP identified its role in policing prostitution in the ACT as twofold:

"One is to monitor the running of these establishments and the other is to prosecute where these aggravated circumstances exist."<sup>(7)</sup>

2.31 The outcome of which has been to limit brothels to the Fyshwick area. At the time of writing this report only one brothel operated outside this area and it is believed that this brothel is subject to prosecution on the basis that it offends against one of the aggravating circumstance, operating in a residential area, although its actual location is a suburban shopping centre.

2.32 The AFP told the committee, in evidence, that they monitor each of the brothels by regular visits, by officers of the Gaming and Vice Squad, once every two to three weeks,<sup>(8)</sup> and by keeping records, based on the 'aggravating circumstances', of owners, lessees, managers, financiers and employees. The position of Officer in Charge of the Gaming and Vice Squad is rotated every two years.

##### *Police records*

2.33 The committee is concerned at the maintenance, by the AFP, of records of people assumed to be prostitutes, even though it was advised that the records are a manual card index and are not in any form to be used as a computer data base. The concern of the committee is two fold: it is concerned about issues of civil liberties that might arise; and it is concerned about the confidentiality of the records.

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<sup>7</sup> Transcript, 23.11.90, p. 3

### Civil liberties

2.34 As stated in paragraph 2.1 it is not illegal to be a prostitute nor is it illegal for a person to engage in commercial sexual activity as a prostitute. The committee considers that it is an infringement of civil liberties, a possible abrogation of human rights, for law enforcement agencies to maintain records on innocent people who are not engaging in any criminal activity, simply on the basis of their being assumed to be prostitutes.

### Confidentiality

2.35 In evidence given before the committee the AFP assured the committee that the records they maintain on prostitutes are taken to be highly confidential, are used for police purposes only, and are not made available to any person or organisation outside of the AFP.<sup>(9)</sup> These records are kept until the workers inform the police they are no longer working.<sup>(10)</sup>

2.36 Other evidence given before the committee, however, suggests that information identifying people as being, or having been, prostitutes has been made available to prospective employers who have sought security or police clearances on job applicants, and to other investigative organisations.<sup>(11)</sup> This evidence raises serious concerns for the committee.

### **The Brothels**

2.37 The committee was advised that there are seven brothels operating in the ACT (see Appendix A). The committee, in the course of its inquiries visited each one, and spoke with both the management and the workers.

2.38 The brothels offered a range of sexual services. The costs involved depend in some part on the service to be provided. The committee has been informed, however, that the average cost of a half hour service is \$80<sup>(12)</sup> (*and see* Appendix G).

2.39 All brothel owners in the ACT have indicated to the committee that they have a public policy of safe sex, that is they recommend the use of condoms for all sexual contact. Although

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<sup>8</sup> Transcript, 29.1.91, p. 43

<sup>9</sup> Transcript, 29.1.91, p. 48

<sup>10</sup> Transcript, 29.1.91, p. 56

<sup>11</sup> Transcript, 29.1.91, pp. 91–92, and during a private briefing

<sup>12</sup> Transcript, 23.11.90, p. 33

in the final analysis, according to management, the decision on condom usage is left to the worker.

2.40 The committee was informed in evidence that it is normal brothel practice for owners to ask for health certificates from workers on at least a weekly basis; if workers do not have a current health certificate then, in most cases, they are not allowed to work. According to the manager of one brothel:

"All our girls have STD checks every week and whatever the cycle is at the STD Clinic, they have their HIV test every 2 weeks or a month whatever the cycle is." <sup>(13)</sup>

2.41 The committee makes a number of recommendations on this matter in chapter 12 of this report.

2.42 Although the committee did not attempt an investigative report, indications, supported by evidence from the AFP, and by hearsay evidence from the brothel owners and workers, are that brothel and escort prostitution in the ACT is relatively drug free (*see* chapter 4). Reports recommended in this report should strengthen this position.

### The Workers

"[The Special Committee was] unable to answer the question of why, in a group of people in virtually identical circumstances, some choose prostitution and others do not." <sup>(14)</sup>

2.43 According to figures supplied by the AFP there are approximately 400 people working, either full time or part time, as prostitutes in the ACT. <sup>(15)</sup> According to Workers in Sex Employment (WISE), the ACT Prostitutes Collective, however, there are 150 people currently working. <sup>(16)</sup> One of the factors, in the opinion of the committee, for the discrepancy in the figures is likely to be due to the AFP retaining records on people who no longer work as prostitutes in the ACT.

2.44 In evidence given before the committee the AFP indicated that in their opinion the majority of workers are itinerant:

"We find the females that work there are not necessarily from Canberra. They move around the larger cities from – they are prostitutes who are

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<sup>13</sup> Transcript, 23.11.90, p. 36

<sup>14</sup> Pornography and Prostitution in Canada, *op cit*, p. 377

<sup>15</sup> Transcript, 29.1.91, p. 56

<sup>16</sup> Transcript, 29.1.91, p. 91

itinerant. They move around, although there are some local females involved".<sup>(17)</sup>

2.45 This evidence was also supported by WISE, who believe it is a "transient business with a very changing population".<sup>(18)</sup>

2.46 The NSW Select Committee, in its report, believed that at present research does not offer a general profile of prostitutes in that State, but information available to it suggests that as the organisation of brothels vary so does the background of prostitutes.<sup>(19)</sup>

2.47 Professor M Neave, who conducted an inquiry into Prostitution on behalf of the Victorian Government, in 1985, offered the following profile of prostitutes in Victoria:

"Although some prostitutes (particularly those who worked on the streets) came from disturbed backgrounds or had spent time in welfare institutions as children, this was not the case for the majority. A more common theme was poor education or limited job skills which restrict employment options."<sup>(20)</sup>

Professor Neave also stated, as the result of a survey, that the vast majority of people gave economic reasons for entry into prostitution.<sup>(21)</sup>

2.48 Having visited all ACT brothels, it was apparent to the committee that most of the workers we met appear to be self assured, articulate, out going, and enjoying their work. One worker, in a submission to the committee, gave the following *raison d'etre* for working in the sex industry:

"I don't pretend that I'm being a martyr 'for the sake of the children'. It is for all my immediate family that I work hard. I love being the breadwinner and when I took on that role I determined to win some bread. I have no debts, I have personal superannuation, savings and insurance. We all enjoy nice clothes, concerts and travelling. When I need a tradesperson to fix something in our home I call them, if I can't fix it myself. Keeping our car roadworthy is no hardship; its my responsibility and my pleasure."<sup>(22)</sup>

### The Clients

"What kind of men seek out prostitutes? The simple answer is every kind of man; the old and the young, working class and middle class, wealthy and not so wealthy. For some men, such as the lonely, the ugly, the incapacitated, prostitutes are often the only person to have sex with. One thing that does seem clear is that very many men going to prostitutes are married."<sup>(23)</sup>

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<sup>17</sup> Transcript, 4.6.90, p. 76

<sup>18</sup> Transcript, 29.1.91, p. 91

<sup>19</sup> Select Committee on Prostitution, 1986, p. 11

<sup>20</sup> Neave M, Inquiry into Prostitution, Summary of Final Report, October 1985, Government Printer, Victoria, p. 2

<sup>21</sup> Neave, *op cit*, p. 3

<sup>22</sup> Confidential submission from 'Gillian', p. 6

<sup>23</sup> Perkins R and Bennet G, *Being a Prostitute*, Allen and Unwin, Sydney, 1985, p. 228

2.49 The committee was not able to make any contact with the clients of prostitutes in the ACT; and most of the evidence collected by the committee concerning them came from prostitutes and is, therefore, anecdotal. The Select Committee of the NSW Legislative Assembly upon Prostitution had similar problems:

"Although the Committee's wish to contact clients was well publicised, customers remained elusive. ... Most evidence on clients and their demands came from prostitutes." <sup>(24)</sup>

2.50 The evidence collected by the committee, however, concerning the clients of prostitutes would tend to support the analysis offered by Roberta Perkins, quoted above, and that outlined by the NSW Select Committee, particularly at paragraphs 4.5.1 – 4.5.33. An anecdotal quote by one worker in a brothel visited by the committee suggests that men frequent brothels for variety.

2.51 One brothel owner has estimated that, in the ACT, approximately 4000 clients per week engage the services of some 60 to 70 prostitutes. <sup>(25)</sup> These figures apply only to those services provided by the brothels and their associated escort services.

2.52 A particular problem identified by both management and workers is that of drunkenness among clients. According to one manager:

"I am glad we are open at night only and that the clients are coming at night when there is no one else on the road. But if we were in Sydney or Melbourne those people would be lethal driving after drinking so much " <sup>(26)</sup>

and according to a worker:

"I never have to work after 10 p.m., when the drunks start to walk in. Drunks are often hopeless in bed and they talk rot." <sup>(27)</sup>

### Escort Agencies

2.53 The committee has not been able to identify the number of workers who engage in non-brothel related escort services, nor the level of their clientele. One reason for this is the simple fact that the provision of commercial sexual services through an escort agency is not an illegal activity. Currently there are 30 escort agencies listed in the 1991 ACT telephone directory; 25 of which are in Canberra and one is in Queanbeyan (*see* Appendix B). The recommendations of this committee will ensure that brothels and escort agencies are controlled in the same manner. For further discussions concern the licensing of escort agencies *see* chapter 9.

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<sup>24</sup> Select Committee on Prostitution, p. 76

<sup>25</sup> Confidential submission, undated, p. 3

<sup>26</sup> Transcript, 23.11.90, p. 28

<sup>27</sup> Confidential submission from 'Gillian', p. 6

### **Street Workers**

2.54 Evidence before the committee indicated that there is little or no commercial sexual activity taking place on the streets of Canberra. There does appear to be some commercial activity taking place in bars and night clubs, but the evidence for this activity is anecdotal and very nebulous.

2.55 Of concern to the committee, however, is the sexual exploitation of disaffected young people, both by their peers and by rapacious adults.

2.56 The Assistant Director of the Open Family Foundation, in her evidence before the committee, was strongly of the view that young people, particularly young women, on the streets in Canberra engage in 'street prostitution';

"It may not be commercial in the sense that dollars and cents pass, but quite often they will give sex for a roof over their head, for a feed, and that must be made very clear because that is prostitution." <sup>(28)</sup>

2.57 This point of view is one also held by the Working Party on Alcohol and Other Drug Issues of the ACT Women's Health Network. They believe there is an enormous amount of casual prostitution amongst young homeless women of 13 years of age and upwards. The Working Party, in evidence before the committee, identified the probable motivations for this behaviour in the following terms:

"More likely it is for a bed. It is for a roof over your head. It is for a few drinks. I often find it pitiful, and I use that word advisedly, how cheap sex actually comes in that environment and we are often talking, in the case of young women, a drink. ... in fact being able to score a warm bed for the night is seen as having done well." <sup>(29)</sup>

Other evidence placed before the committee suggests that this exploitation most likely comes from peers.

2.58 Although to some people, and to the mind of some social, welfare and youth workers, these young people are seen to be prostituting themselves, this committee is of the opinion that, because of their vulnerability, their homelessness, these young people are the victims of cynical peers, exploitive adults and inadequacies in the welfare system.

2.59 This committee is of the opinion that, in the context in which these young people live their lives, 'prostitute' and 'prostitution' are emotively laden words which carry with them a large degree of stigma and guilt by association. These young people are unlikely, in the opinion of the committee, to identify themselves as prostitutes. In this report, the committee will refer to

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<sup>28</sup> Transcript, 30.1.91, p. 158

<sup>29</sup> Transcript, 23.11.90, p. 18



the sexual exploitation of these young people not to their prostitution.

### **Male prostitution**

2.60 The committee was advised that there is a demand for male prostitutes in Canberra. At least one of the brothels offers to clients the services of male prostitutes. There would appear to be approximately six or seven young men working professionally as prostitutes for an escort agency, some of whom are from interstate. WISE, in evidence before the committee, also acknowledged the existence of male prostitutes in Canberra and supported the contention that most of them work through escort agencies rather than on the street or on beats:

"... in the last few weeks I have actually had contact with a few of the male workers from the escort company, not the street workers." <sup>(30)</sup>

2.61 Young disadvantaged men, particularly homeless young men, also seem to be the victims of sexual exploitation. In evidence before the committee the Open Family Foundation believed that there was some evidence to suggest that young men are soliciting in the Civic area. According to one youth worker from the Foundation:

"... I have been propositioned myself in Civic. The big worry was that this young person that approached me was willing to do anything for \$10. Now, that was quite frightening." <sup>(31)</sup>

2.62 The sexual exploitation of young people will be discussed in chapter 8.

### **Organised crime**

2.63 As identified in paragraph 25 one of the aggravating circumstances which would lead the AFP to lay charges against a brothel owner would be if someone involved in the management of a brothel was a known criminal or had a criminal record of a serious nature. In evidence before the committee the AFP acknowledged that aggravating circumstances had arisen only twice in the past two years <sup>(32)</sup> and neither of those circumstances related to organised crime.

2.64 The 1985 Victorian Inquiry into Prostitution also looked at involvement of organised crime in prostitution. That Inquiry concluded:

"We were unable to find evidence supporting the view that prostitution in Victoria is controlled by a single individual or a group of individuals ..." <sup>(33)</sup>

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30 Transcript, 29.1.91, p. 103

31 Transcript, 30.1.91, p. 150

32 Transcript, 29.1.91, pp. 34-44

33 Neave M, Inquiry into Prostitution, Final report, Vol 1, Government Printer of Victoria, October 1985, p. 59

2.65 The NSW select committee in its report cited evidence from the NSW Police Department that organised crime involvement with prostitution had reduced considerably since the early 1970s and was now regarded as being at a minimal level. The committee concluded:

"Organised crime figures still have some interest in prostitution, but this interest is limited and probably decreasing." <sup>(34)</sup>

2.66 It is apparent from the report of the WA Community Panel on Prostitution that, because of the containment policy of the WA Police Department, organised crime involvement is not a matter of major concern in that State, other than to maintain controls to ensure its continuing exclusion.

2.67 The Canadian Special Committee of Inquiry also inquired into the links between prostitution and organised crime in that country. That committee came to the following conclusion:

"[we] found no evidence to suggest a link between prostitution and organised crime." <sup>(35)</sup>

2.68 The committee was unable to uncover any evidence that would suggest a firm and unacceptable link between prostitution and organised crime in the ACT. It believes that this situation exists, in part, because of regular policing of brothels by the AFP. Nevertheless, the committee is aware that brothels are susceptible to involvement by criminals and hence must be closely monitored. The measures proposed in this report are designed to prevent criminal involvement in brothels.

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<sup>34</sup> Select Committee on Prostitution, p. 233

<sup>35</sup> Pornography and Prostitution in Canada, *op cit*, p. 378

### 3 HIV AND OTHER SEXUALLY TRANSMITTED DISEASES

"There have been no cases of AIDS diagnosed in female prostitutes in Australia, although several young women who have worked as prostitutes are known to be HIV seropositive. In each case the woman had been using drugs intravenously for some time before the diagnosis and the circumstances indicate that this was the source of the infection. **There is no conclusive evidence so far that any female prostitutes have been infected with HIV through their sexual activity.**" (emphasis added) <sup>(1)</sup>

#### Introduction

3.1 In this chapter the committee will constrain its remarks to the relationship between HIV and prostitution. The detail discussion of the whole complex issue of HIV will be presented in the committee's final report.

#### The link between HIV and prostitution

##### *Sexual transmission*

3.2 In moving the motion on 28 September 1989 to establish the select committee Mr Moore, who was to be elected chairman of the committee, said, in part:

"We should ensure that we understand the factors on how AIDS is linked with prostitution and with drugs. ... we should be aware that prostitution is often, as I understand it, linked with drugs because it is a method of raising money in order to buy drugs, particularly for intravenous drug users. Hence there is a link with AIDS, and as a sexually transmitted disease the link becomes even more significant. ... What we will be looking ... at [is] the link between prostitution, AIDS and drugs." <sup>(2)</sup>

Members speaking to the motion were also concerned at the perceived link between HIV/AIDS and prostitution. At the beginning of its inquiries the committee believed there was a well established link between HIV and prostitution, and that prostitution could be a major conduit for the transmission of HIV to the general heterosexual community.

3.3 The only evidence given to the committee which strongly linked HIV with prostitution was that given by Dr L Pilotto, Director of Health Services, AFP. Dr Pilotto made the following three strong statements to the committee:

"I think it is impossible to divorce the HIV issue from the drug and prostitute issue." <sup>(3)</sup>

"... there is no doubt that the IV drug user group and **the prostitution group**

<sup>1</sup> Harcourt C and Philpott R, "Female prostitutes, AIDS, drugs, and alcohol in New South Wales" in Plant M (ed), *AIDS, drugs and prostitution*, Routledge, London, 1990, p. 139

<sup>2</sup> *Hansard*, 28 September 1989, pp 1600-01

<sup>3</sup> Transcript, 4.6.90, p. 79

is the outlet group for the third wave [of HIV infections] in our community." (emphasis added) <sup>(4)</sup>

"I think that prostitution is intimately linked to the spread of HIV into the heterosexual community." <sup>(5)</sup>

3.4 These views reinforced the committee's preconception of the relationship between HIV and prostitution.

3.5 At the First National Sex Industry Conference, held in Melbourne in 1988, however, Dr B Donovan, President of the National Venereology Council of Australia has this to say about prostitution and the risk factor for HIV infection:

"I might add that studies around the country, particularly Dr. Ross Philpott's group at the Sydney STD Centre now have screened over one thousand female sex workers for HIV and their total yield is zero and I think that is extraordinary. It has had the affect that NH and MRC special unit on AIDS epidemiology and the National Venereology Council have now **officially removed prostitution as a risk for HIV infection.**" (emphasis added) <sup>(6)</sup>

3.6 This assessment of the HIV risk is further supported by Harcourt and Philpott who assert:

"Over 1100 prostitutes visiting the Centre between January 1985 and January 1989 have been tested for HIV antibody and at the time of writing none has been found to be HIV seropositive." <sup>(7)</sup>

3.7 This assessment of the low risk of HIV infection amongst prostitutes is not peculiar to Australia; it also appears to be the situation in Europe and in Canada.

3.8 According to the Dutch National Committee on AIDS Control prostitution in that country poses no major threat to the spread of HIV infection. In a London study (Praed Street Clinic, St Mary's Hospital 1986-88) out of a group of 148 women sex workers 3 were HIV positive; two had shared injecting equipment and the other was infected by her HIV seropositive boy friend. Professional heterosexual prostitutes in Frankfurt, Germany, are generally not HIV seropositive, and those who were infected were mainly intravenous drug users. The most important risk factor related to the spread of HIV infection amongst Spanish women sex workers is the use of intravenous drugs. <sup>(8)</sup>

3.9 The general evidence for Europe concerning the level of HIV infection rates for prostitutes is best summarised by the following quotation:

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<sup>4</sup> Transcript, 4.6.90, p. 80

<sup>5</sup> Transcript, 4.6.90, p. 90

<sup>6</sup> First National Sex Industry Conference, Melbourne 25 - 27 October 1988, Report and Conference Papers, p. 63

<sup>7</sup> Harcourt and Philpott, *op cit*, p. 156

<sup>8</sup> See Plant, M, ed, *AIDS, drugs and prostitution*, 1990

[It has been] concluded from a review of European studies that female prostitutes have low levels of HIV infection unless they also happen to be intravenous drug users." <sup>(9)</sup>

3.10 According to the Report of the Canadian Special Committee on Pornography and Prostitution "In Canada 'Epidemiological studies indicate that prostitutes are not a prime factor in the spread of STDs'." <sup>(10)</sup>

3.11 There appear to be two predominant reasons for this positive state of affairs among prostitutes; one quite complex and the other quite simple, and both very positive: (i) the positive power of prostitutes to instigate attitudinal changes in sexual behaviour among their clients; and (ii) the use condoms.

3.12 This positive state of affairs, however, cannot endure without ongoing educative campaigns that continue to stress the need for safe sexual practices. The potential for the spread of HIV through prostitution still remains.

3.13 During its visits to brothels in the ACT and interstate, and to all Prostitutes Collectives on the mainland, the committee was able to raise with brothel management and workers the question of condom usage during the provision of sexual services. They told the committee quite emphatically that condom use was insisted upon for any service the worker might provide for the client, and for some services two condoms are used. Quite simply, in the words of the advertisement, "If it's not on then it's not on!"

3.14 Advice given to the committee by the Kirketon Road Clinic suggests that the practice of using two condoms can be self defeating in that the friction between the two condoms during sexual activity can cause both condoms to rupture.

3.15 Whilst acknowledging that for a great majority of prostitutes condom use is insisted upon, the committee is aware that some prostitutes still continue to work without using condoms; many men willingly offer more money for sex without a condom; and some workers will accept the additional money and take the additional risk. During the committee's visit to Victoria one ex-worker related an experience where, desperate for a 'hit' of heroin, she serviced a client without a condom, the enormity of the risk taken caused her to give up prostitution and she now works as a peer outreach worker with IV drug users.

3.16 Evidence provided to the committee from a number of sources indicated that no women

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<sup>9</sup> Plant M, "Sex work, alcohol, drugs, and AIDS" in Plant M (ed), *op cit*, p. 8

<sup>10</sup> Pornography and Prostitution in Canada, *op cit*, p. 395

prostitute in the ACT has been tested HIV seropositive, and the committee has been led to believe that no prostitute in Australia has tested HIV seropositive since approximately 1986.

### *Intravenous drug use*

3.17 The forces at work in the Territory which control prostitution (the DPP, the AFP, the brothel owners and the workers) have all stressed to the committee that drug injecting workers are not tolerated. They state once a drug injecting worker is identified as a user that worker is not allowed to work; a brothel will not employ her and fellow workers will not work with her. For a more detailed discussion see chapter 4.

### *Conclusion*

3.18 On the evidence available to the committee it has concluded that the link between HIV infection of the general community and prostitution has not been substantiated. Despite this lack of substantiation the link has been used to scapegoat a marginalised group in our community (prostitutes) whilst tacitly ignoring the role and responsibilities of the dominant group (clients).

3.19 The committee is concerned, however, that recognition be given to the need for continuing educative programs so that present health standards can be maintained. Overseas evidence, from countries like the Philippines, Thailand and Myanmar, suggest that without ongoing health and safe sex orientated programs the whole gamut of STDs can become a major threat to the public health. A point of concern, in terms of public health, to the committee, but beyond its scope, is the number of men who apparently travel to these countries on 'sex holidays'.

### **Other sexually transmitted diseases**

3.20 There are a large number of diseases which can be transmitted by sexual activity or sexual contact. There are, however, six diseases, other than HIV, which have a direct impact on the conclusions reached in this report. They are, in order of incidence,<sup>(11)</sup> genital warts, herpes, hepatitis B, chlamydia, gonorrhoea and syphilis.

3.21 In examining the question of STDs, the committee also thought it important to bear in mind the attitude of workers and brothel managers with regard to the personal health of workers. Many workers have told the committee that, as they regard their body as their livelihood, it is of paramount importance to them that they remain healthy; during any period of illness they cannot work and if they do not work then they are not earning.

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<sup>11</sup> Advice given by the STD Clinic, RCH (S)

3.22 Like any other business brothel owners and managers rely on their reputation to maintain commercial viability; thus it is also in their interests to ensure that the workers in their establishments are, and remain, healthy (*see* paragraph 2.40).

#### *Genital wart virus*

3.23 Genital wart virus is a common condition and, therefore, cannot be regarded as a problem peculiar to sex workers. It is estimated that probably up to 80 per cent of the adult population are infected with one strain or other of this virus. A clinical problem with this virus is its persistence; a person with the virus can remain potentially infectious for many years. This virus is implicated in the development of cervical and vulval cancer.

#### *Herpes genitalis*

3.24 The incidence of genital herpes appears to be increasing amongst the general population in Australia; but again it is not a problem distinctive of prostitutes. The problem of herpes amongst prostitutes appears to be no greater than in the general population. Herpes has a somewhat similar clinical problem to the wart virus infection in that it too can remain potentially infectious for many years, despite absence of symptoms or signs.

#### *Hepatitis B*

3.25 Hepatitis B is a virus which attacks the liver and can be transmitted by infected blood, semen, vaginal secretions and other contaminated body fluids. In some cases hepatitis B can lead to death through cirrhosis or cancer of the liver.

3.26 It has been estimated that a women sex worker has a 30 to 50 per cent lifetime chance of acquiring hepatitis B and a male sex worker has over a 90 per cent lifetime chance of acquisition.

(12) There is, however, the

"most efficacious vaccine in the history of mankind which has the potential to eradicate [hepatitis B] for all time from the human race ...".

According to Dr Donovan, in 1988, this vaccine was not being widely used. (13)

3.27 Dr G White, Director, STD Clinic/AIDS Reference Centre, Royal Canberra Hospital (South) (RCH (S)), has advised the committee that this vaccine is now widely used here in Canberra and has an effectiveness for approximately 10 to 12 years.

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<sup>12</sup> First National Sex Industry Conference, *op cit*, pp. 61–62

<sup>13</sup> *Loc cit*

3.28 The incidence of Hepatitis B amongst women sex workers in the ACT is, according to sources from the STD clinic at RCH (S), such that it would appear to be lower than in the general female population.

### *Chlamydia*

3.29 *Chlamydia trachomatis* (serotype D–K) is a bacterium which lives intra-cellularly and is transmitted primarily through sexual contact. The most effective protection for sexually active people is the use of condoms.

3.30 In women these chlamydiae can cause:

- . cervicitis
- . endometritis
- . dyspareunia and dysmenorrhoea
- . salpingitis (Pelvic Inflammatory Disease – PID)
- . proctitis
- . pharyngitis (possibly).

In men these chlamydiae can cause:

- . nongonococcal urethritis
- . epididymo–orchitis, causing subfertility or infertility
- . prostatitis
- . proctitis.

3.31 As of 1988 women presenting to STD clinics in Australia have the lowest rates of chlamydial infection in the world; and, of those women presenting, women sex workers have the lowest rate of infection.

3.32 A word of caution, however, was sounded, for Canberra's women sex workers, at the First National Sex Industry Conference in 1988 by Dr B Donovan:

"The only exception is in fact in our Nation's capital, Canberra, where the local STD clinic was not budgeted to do chlamydia tests and when women sex workers presented to the Canberra STD clinic and were tested for chlamydia for the first time, they had a 25 percent prevalence rate and that is in our Nation's capital." <sup>(14)</sup>

3.33 Since that time, however, the prevalence rates in the ACT have reverted to equality with, or are below, the National prevalence rates. <sup>(15)</sup>

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<sup>14</sup> First National Sex Industry Conference, *op cit*, p. 59

<sup>15</sup> Advice give by the STD Clinic, RCH (S)



### *Gonorrhoea*

3.34 In Australia female gonorrhoea has almost disappeared. STD clinics were seeing one case a day in 1981, by 1988 it was down to almost one case a year. This probably reflects the efficacy of Australia's sexual behaviour change programs; which is also supported by the very marked decline in the rate of male homosexually acquired gonorrhoea. There has also been a decline in infection rates amongst male heterosexuals. <sup>(16)</sup>

### *Syphilis*

3.35 The current situation with regard to syphilis is similar to that of gonorrhoea. Incidents of infection have markedly declined; due probably to effective sexual behaviour change programs. One disturbing aspect concerning transmissions mode for this disease is the fact that it can be transmitted by unclean injection implements, ie dirty needles. <sup>(17)</sup>

### *Conclusion*

3.36 On the evidence considered by the committee it appears that the current self regulated health practices of the workers and of the brothels and associated escort agencies in the ACT present no current threat to the community's public health. To maintain the proposition that workers are 'unclean', 'dirty' and 'filthy' is to maintain an unhealthy prejudice against a small, predominantly female, group and does nothing to address the underlying factors that engender prostitution in our society. Nevertheless the business of prostitution is one where there is a great potential for the spread of disease, by both the client and the worker, and must, therefore, be closely monitored.

3.37 The committee is concerned that current high levels of public and personal health be maintained; both by self regulation and by means of public health regulations. In chapter 11, where the committee will discuss reform in the prostitution industry, it will be making some recommendations in this area of public health.

3.38 A further matter of concern to the committee relates to funding for the STD Clinic at RCH (S). The Clinic maintains a computer data base on sexually transmitted diseases, which is currently inoperative due to lack of funding. The committee believes the data base is an important tool to be used to the benefit of public health and, therefore, needs to be operative.

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<sup>16</sup> First National Sex Industry Conference, *op cit*, pp 60-61

<sup>17</sup> Advice given by STD Clinic RCH (S)

*Recommendation 1*

3.39 The committee recommends:

**That ongoing funding be made available to the STD Clinic, Royal Canberra Hospital (South), to continue to maintain its data base on sexually transmitted diseases.**

3.40 Within the context of prostitution, however, the greatest threat present to the public health of the community is from those male clients who insist on not wearing condoms when using the services of prostitutes. Those clients who use the services of prostitutes must accept their responsibilities with regard to the community's public health.

3.41 This position is supported by researchers in the field.

"The contributors to this book have highlighted two main sources of risk for sex workers. The first of these is the fact that a substantial proportion of **clients choose** to indulge in high risk sexual activities. This demand has persisted in spite of extensive mass media publicity about AIDS. Some clients, probably a fairly small, but important, minority, deliberately seek prostitutes who are prepared to acquiesce to their requests for unsafe sex. Others even use threats or violence to force prostitutes to engage in such activities.

The second major source of risk for prostitutes is their clear preference for engaging in unprotected sex with their spouses, lovers, or other non-paying partners. As emphasised ... many prostitutes use condoms as contraceptives, disease preventives, and to maintain a symbolic distance from their clients. This distance is not maintained with lovers, even if at least some of these are intravenous drug users or have multiple sexual partners." (emphasis added)  
(18)

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<sup>18</sup> Plant, M, "Conclusions and future strategies" in Plant (ed), *op cit*, p. 199

## 4 ILLEGAL DRUGS

"... there was little empirical support for the beliefs that prostitution somehow 'drives' people into drug use or that female addicts turn to prostitution to support the cost of drug use."<sup>(1)</sup>

### Introduction

4.1 In this chapter the committee will constrain its remarks to the relationship between illegal drugs and prostitution. The detail discussion of the whole complex issue of illegal drugs will be presented in the committee's final report.

### Discussion

4.2 A major constraint on the use of illegal drugs by prostitutes working in brothels in the ACT is the prosecution policy of the DPP and the 'on the ground' support of that policy by the AFP. This policy, which is described in detail in chapter 2 (*see* paragraphs 2.22 – 2.28) is one which takes a number of factors into account when deciding whether or not to proceed with a prosecution against a person, or persons, for owning or managing a brothel. One of those factors is the possession of or use of narcotics or illegal drugs on the premises.

4.3 Each of the brothel owners or managers who have spoken with the committee have indicated that they do not employ anyone whom they know to be a drug user and they will dismiss a worker if it is brought to their attention that the worker is using drugs.<sup>(2)</sup> They have also told the committee that such workers are unreliable, both in terms of turning up for work and in handling money, particularly on escort work, they seem to spend a lot of time sleeping, and are not appreciated by the clients.

4.4 The workers also appear not to be tolerant of drug users. They told the committee that they find many of these people moody, uncommunicative, often out of sorts and disruptive of the camaraderie that develops amongst workers in each establishment. The workers also support the owners and managers in saying that, in their experience, the clients dislike drug affected workers. In the words of one worker "no client likes a girl to fall asleep on him and the drug addicts do just that".

4.5 The AFP, in evidence before the committee, indicated that they had found aggravating

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<sup>1</sup> Plant M, "Sex work, alcohol, drugs, and AIDS" in Plant M, (ed) *op cit*, p. 4

<sup>2</sup> See 'Prosecution policy' paragraphs 2.22–27

circumstances, as defined by the DPP, only twice in the last two years <sup>(3)</sup> and they, the AFP, visit each brothel every two to three weeks. <sup>(4)</sup> The AFP also inform brothel owners of prostitutes who

"... are either well known heroin addicts, or a de facto of well known heroin suppliers. In those cases where the management have not known of that problem and have been advised about them, they have stopped working there." <sup>(5)</sup>

4.6 The committee, consistent with the statement by M Plant quoted at the beginning of this chapter, has not been given any substantial evidence, for the ACT to suggest that people take up prostitution to maintain a drug habit, or that being a prostitute somehow 'drives' a person to take up an illegal drug habit. There is, however, anecdotal evidence to suggest that some workers use prescription drugs or alcohol and cigarettes as a bolster whilst they are working.

4.7 Information gathered by the committee during its interstate visits, particularly its visit to Sydney, Melbourne and Perth, indicated that the strongest links between drug abuse and prostitution is associated with street prostitution and in particular with young prostitutes. Information given to the committee chairman during a visit to the Kirketon Road Clinic, Sydney, also supports this contention.

4.8 As stated in chapter 2 (paragraphs 2.54–2.59) the committee believes there is little or no street prostitution in Canberra, although it is aware of, and concerned about, the sexual exploitation of our homeless youth and street kids (*and see* chapter 8). This lack of street prostitution further underlines the fact that illegal drug activity appears not to be a problem associated with Canberra's prostitution industry.

4.9 Several witnesses have informed the committee, however, of a number of illegal drug users who have also been, or are, prostitutes; but the link seems to be one of a sub culture milieu rather than any interdependence.

4.10 One witness, doing a PhD on recreational intravenous illegal drug users, informed the committee that of the people she had interviewed two women, who were non-dependent, had worked as prostitutes in the ACT. In answer to a question whether or not this was to raise money for drugs the witness answered:

"Not just for drugs, no. Neither of them were using more than \$30 to \$50 a

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<sup>3</sup> Transcript, 29.1.91, p. 43

<sup>4</sup> Transcript, 29.1.91, p. 43

<sup>5</sup> Transcript, 29.1.91, p. 47

week on drugs, so it was for other reasons, because you could make big money that way." <sup>(6)</sup>

4.11 Evidence given before the committee by the Working Party on Alcohol and Other Drug Issues of the ACT Women's Health Network seems to suggest that amongst our homeless youth, and particularly among young women, that there is a link between what the Working Party sees as casual prostitution engaged in by these young people and the use of illicit drugs. <sup>(7)</sup>

4.12 The committee, however, as outlined in paragraph 2.57, regards this as a problem associated with the sexual exploitation of these young people and not a problem specifically associated with prostitution.

### **Conclusion**

4.13 The committee was given little evidence to suggest a problem of illegal drug use amongst prostitutes in the ACT. Nevertheless the risks associated with illegal drug related activity remains a concern of the committee.

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<sup>6</sup> Transcript, 23.11.90, p. 59

<sup>7</sup> Transcript, 23.11.90, pp. 17-18

## 5 OTHER JURISDICTIONS

" ... it is crucial to any planned and reasoned approach to prostitution that both the political will and resources be applied which will allow a combination of long term social engineering and short term legal control mechanisms to work." <sup>(1)</sup>

### Introduction

5.1 In Australia only one state, Victoria, has legalised prostitution. The Northern Territory is moving towards law reform; draft legislation was tabled in the Legislative Assembly on 6 December 1990. The Western Australian Government received the final report of the Community Panel on Prostitution; which also recommends law reforms, in September 1990. In 1986 a select committee of the NSW Legislative Assembly tabled a report suggesting substantial law reform concerning prostitution and the Criminal Justice Commission of Queensland is currently conducting an inquiry into prostitution in Queensland. <sup>(2)</sup>

5.2 Tables 2 and 3 provide a summary of the current laws, in each State and Territory, which relate to prostitutes and prostitution related activity.

### Victoria

5.3 Provisions controlling the location of brothels in Victoria were introduced by the Planning (Brothels) Act 1984. Under this Act brothels are prohibited from operating in residential areas or local business zones. Permits to operate a brothel are granted by local councils who must take into account the guidelines on the location of brothels, prepared by the Ministry of Planning and Environment.

5.4 The Prostitution Regulation Act 1986 (introduced as a result of the inquiry into prostitution conducted by Professor Neave) specifies the offences connected with prostitution; establishes a licensing system for brothels; and enacts certain planning controls. Under this Act prostitution offences committed against young people carry penalties of seven years imprisonment.

5.5 Brothels are also further controlled by the Health (Brothels) Regulations 1990. The object of these regulations are –

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<sup>1</sup> Pornography and Prostitution in Canada, *op cit*, p. 509

<sup>2</sup> The Queensland Criminal Justice Commission issued an Information and Issues Paper in March 1991

- (a) to encourage proprietors of brothels to provide and maintain an environment in brothels for prostitute and clients which is safe from the spread of infectious disease; and
- (b) generally to protect the public health by preventing or containing the spread of infectious diseases, particularly sexually transmitted diseases, in brothels.<sup>(3)</sup>

5.6 All other prostitution and prostitution related activities conducted outside of brothels which have a town planning permit are illegal.

### **Northern Territory**

5.7 In moving towards prostitution law reform for the Territory, the Northern Territory Attorney-General, on 6 December 1990, tabled in the Legislative Assembly, a draft Prostitution Regulation Bill, for constructive debate and public comment.

5.8 The bill, in general, regularises the current unofficial arrangements in the Territory. Brothels, other than those occupied by a single person, are to remain illegal; as is soliciting in a public place. The legal provision of commercial sexual services is to be through a system of licensed escort agencies; and although workers will not be registered their employment will depend on a certificate, supplied by the Northern Territory Police, indicating their suitability.

5.9 The draft bill also makes provision for an Escort Agency Licensing Board to consist of three members; a legal practitioner, an experienced community health worker and someone having responsibility for social welfare.

5.10 The offence of 'living on the earnings', except where force or intimidation is involved, is to be repealed. Offences which entail the involvement of young people in prostitution are to carry a penalty of seven years imprisonment.

5.11 It is not proposed to introduce mandatory health testing of workers for STDs as such testing is opposed by both government and non-government health agencies. According to the Attorney-General, control of STDs and HIV infection is being achieved by consultation and co-operation with the sex industry at a local level and workers are regularly attending the Communicable Diseases Centre for health checks.<sup>(4)</sup>

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<sup>3</sup> Regulation 2, Health (Brothels) Regulations 1990

<sup>4</sup> *Hansard* (NT Legislative Assembly), 6.12.90 (Daily proof), p. 10

### **Western Australia**

5.12 The Western Australian Minister for Police appointed a Community Panel on Prostitution in March 1990 to look at establishing a formal basis for the regulation and control of prostitution in the State and to examine the discretionary control exercised by the police through 'the containment policy'. The Community Panel presented its report to the Police Minister in September 1990.<sup>(5)</sup>

5.13 The Community Panel supported the view that decriminalisation with controls was the most effective way to manage prostitution and recommended a licensing system for brothels and escort agencies. The Panel also recommended that all workers have regular weekly health checks.

5.14 It is this committee's understanding that the report of the Community Panel is still under consideration by the Western Australian Government.

### **New South Wales**

5.15 The Select Committee of the Legislative Assembly upon Prostitution presented its report to the Assembly in April 1986, recommending substantial law reform in the area of prostitution.

5.16 The committee determined that the legal recognition of prostitution coupled with control of some aspects to be an approach most likely to be successful. In essence the committee recommended –

- i) brothels be subject to planning requirements not to criminal legislation;
- ii) controls be placed on ownership of brothels;
- iii) street soliciting be prohibited in residential areas and near schools, churches and hospitals;
- iv) provision of criminal sanctions for those who use violence, coercion or other forms of exploitation in order to live on the earnings of prostitution;
- v) clients to be subject to the same enforcement of soliciting laws as are prostitutes;
- vi) advertising of prostitution be prohibited in the electronic media and limited elsewhere;
- vii) changes to social welfare arrangements to enable workers to change employment and to make prostitution a less viable alternative; and

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<sup>5</sup> Final Report of the Community Panel on Prostitution, 19 September 1990, Government Printer, Western Australia



viii) health measures to reduce the incidence of STDs and drug abuse.<sup>(6)</sup>

5.17 The recommendations of this committee report have not, as yet, been acted upon.

### Queensland

5.18 Prostitution in Queensland is currently subject to inquiries by the Queensland Criminal Justice Commission. The Criminal Justice Commission has asked that comments on its information and issues paper, issued in March 1991, reach the Commission by 5 April 1991. It is expected that the Commission will present its report to the Parliamentary Standing Committee on Criminal Justice by the end of 1991.

5.19 There have been no recent changes in the State's prostitution laws and the current laws are summarised in Tables 2 and 3.

### South Australia

5.20 The House of Assembly in South Australia appointed a select committee on prostitution in November 1979. The committee presented its report in February 1980 and recommended that the law be altered to provide for the decriminalisation of prostitution but with appropriate controls. The committee also recommended, *inter alia*, that the law relating to soliciting be applied to both men and women, and that it be an offence for people under the age of 18 to engage in prostitution.<sup>(7)</sup>

5.21 The recommendations of this select committee have not, as yet, been taken up by the South Australian Government. The South Australian Attorney-General, however, announced, on 7 April 1991, that the prostitution laws of South Australia will be reviewed.<sup>(8)</sup>

5.22 As in Queensland there have been no recent changes to the State's prostitution laws and the current laws are summarised in Tables 2 and 3.

### Tasmania

5.23 There have been no recent inquiries into prostitution in Tasmania and no recent changes

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<sup>6</sup> Select Committee on Prostitution, pp. xxix–xxx

<sup>7</sup> Report of the Select Committee of Inquiry into Prostitution, Parliamentary Paper No. 152, Government Printer, South Australia, 1980, pp. 21–22

<sup>8</sup> *The Canberra Times*, 8.4.91, p. 3

to the State's prostitution laws. The current State prostitution laws are also summarised in Tables 2 and 3

Table 2 – Laws relating to prostitutes

State	Street Work	Brothel Work	Escort Agency Work
<b>Victoria</b> Prostitution Regulation Act 1986 Vagrancy Act 1966	Soliciting and loitering, s. 5 (Prostitution Regulation Act).	An offence except where premises have a town planning permit. Vagrancy Act 1966, s. 11.	Not an offence
<b>New South Wales</b> Summary Offences Act 1988	Soliciting near or within view of a dwelling, school, church or hospital, or in a school, church or hospital, s. 19. Taking part in an act of prostitution in or within view of a school, church, hospital or public place, or within view of a dwelling, s. 20.	Not an offence unless premises are 'held out' as available for massage, sauna, photographs etc, s. 16.	Not an offence
<b>Queensland</b> Vagrants, Gaming and Other Offences Act 1931-1987	Soliciting or loitering, being a prostitute behaving in a riotous, disorderly or indecent manner in a public place; soliciting within view or hearing of a person in a public place, s. 5.	Occupier of a house frequented by prostitutes, s. 5. "One-woman" brothel not an offence. Using premises held out for other purposes, for prostitution, s. 8A.	Not an offence
<b>South Australia</b> Summary Offences Act 1953	Accosting, soliciting or loitering for the purposes of prostitution in a public place, s. 25.	Receiving money paid in a brothel in respect of prostitution, s. 28(1)(b).	Not an offence
<b>Western Australia</b> Police Act 1892	Common prostitute who solicits, importunes or loiters, s. 59; wandering in streets or highways or being in a place of public resort or behaving in a riotous or indecent manner, s. 65(8), s. 76G	Could be prosecuted if occupier permits premises to be used as a brothel, s. 76F. Occupier of a house frequented by prostitutes, s. 76(7). "One-woman" brothel not an offence.	Not an offence
<b>Tasmania</b> Police Offences Act 1935	Common prostitute solicits or importunes in a public place or within view or hearing of a public place, or loiters for such a purpose, s. 8(i)(c).		Not an offence

Table 2 (cont'd)

State	Street Work	Brothel Work	Escort Agency Work
ACT Police Offence ACT 1930	Persistently soliciting or importuning for an immoral purpose in a public place, s. 23.	Could be prosecuted for permitting premises to be used as a brothel. "One-woman" brothel not an offence.	Not an offence.
NT Summary Offences Act (as in force 17 August 1987)	Common prostitute accosting, soliciting or loitering for the purposes of prostitution in a public place, s. 53. Persistently solicits or importunes for immoral purposes (males only), s. 57 (ha). Being a common prostitute wandering in streets or highways or behaving in a riotous or indecent manner, s. 56(b). Loitering, may be asked to leave public place, s. 47A.	Same as ACT	Not an offence

Source: Pinto P, Scandia A, Wilson P, "Prostitution Laws in Australia", *Trends and issues*, No. 22, May 1990

Table 3 – Laws relating to prostitution related activities

State	Living on Earnings	Brothel-Keeping	Procuring	Permitting Premises to be used for Prostitution	Advertising	Other
Victoria Prostitution Regulation Act 1986 Vagrancy Act 1966	An offence, except where premises have a town planning permit Vagrancy Act, s. 10.	An offence except when premises have a permit Vagrancy Act, s. 11.	Only an offence where force or violence or child. Prostitution Regulation Act, ss. 10,11.	Tenant, lessee or occupier who permits premises to be used is guilty of an offence except where premises have a town planning permit Vagrancy Act, s. 12. Similarly for land-lords	Advertising employment in a brothel; Crimes Act 1958, s. 59A.	

Table 3 (cont'd)

State	Living on Earnings	Brothel-Keeping	Procuring	Permitting Premises to be used for Prostitution	Advertising	Other
<b>New South Wales</b> Summary Offences Act 1988	An offence, s. 15.	Allowing premises held out as available for other purposes, to be used for prostitution, s. 16.	An offence, Crimes Act 1900, s. 91A, 91B.		Advertising that premises are used or a person is available for prostitution, s. 18.	
<b>Queensland</b> Vagrants, Gaming and other Offences Act 1931-1987	An offence, s. 5.	Keeping or managing a brothel, s. 8. Keeping a bawdy house, Criminal Code, s. 231.	An offence Criminal Code, s. 217.	Tenant, lessee or occupier who permits premises to be used, landlord who knows premises are used, s. 8.		Keeper of a lodging house permitting it to be the resort or place of meeting of prostitutes, s. 9.
<b>South Australia</b> Summary Offences Act 1953	An offence, s. 26	Keeping or managing a brothel, s. 28(i)(a).	An offence Criminal Law Consolidation Act, 1935, s. 63.	Lets or sublets premises knowing to be used as a brothel, permits premises to be used as a brothel, s. 29		
<b>Western Australia</b> Police Act 1892	An offence, s. 76G	Keeping or managing a brothel, s. 76F. Keeping a place for prostitution, Criminal Code, s. 209.	An offence Criminal Code, s. 191.	Tenant, lessee or occupier who permits premises to be used for prostitution, landlord who knows premises used, s. 76F.		Occupier of a house frequented by prostitutes, s. 65.

Table 3 (cont'd)

State	Living on Earnings	Brothel-Keeping	Procuring	Permitting Premises to be used for Prostitution	Advertising	Other
<b>Tasmania</b> Police Offences Act 1935	An offence, s. 8.	Keeping a bawdy- house; Criminal Code, s. 143.	An offence Criminal code, s. 128.	Letting a house, knowing it is to be used as a brothel, s. 11.		Occupying a house and harbouring prostitutes, s. 10. (1)(b); lodging or entertaining a prostitute to the annoyance of the inhabitants, s. 10(i)(d)
<b>ACT</b> Police Offences Act 1930	An offence, s. 23(j).	Manages or conducts a brothel, or knowingly concerned in manage- ment, s. 18.	Only an offence if child under 16 Crimes Act, 1900 (NSW), s. 92N.	Leases, lets, sublets knowingly permits, s. 19.		Person who keeps a house, room, shop where re- freshments sold permitting prostitutes to meet or remain there, s. 34.
<b>NT</b> Summary Offences Act (as in force 17 August 1987)	An offence, s. 59(b)		An offence Criminal Code, s. 136.			Person who keeps a house, shop, room where refresh- ments sold and permits prostitutes to meet together or remain there, s. 66

Source: Pinto P, Scandia A, Wilson P, "Prostitution Laws in Australia", *Trends and issues*, No. 22, May 1990

## 6 TAXATION AND IMMIGRATION

In 1981–82 it was estimated that the average annual income of prostitutes was the equivalent of the top 10% of male income and equivalent to the top 3% of female income. <sup>(1)</sup>

### Taxation

6.1 During the visits the committee made to each of the ACT's brothels a number of workers raised the question of paying income tax. It was apparent to the committee that there appeared to be a deal of confusion over who should deduct tax, whether workers are self employed or employees and at what rates taxation should be paid.

6.2 A confidential submission received from a brothel owner raised questions concerning the payment of taxation by workers <sup>(2)</sup> and one witness, during *in camera* evidence, also raised this issue. <sup>(3)</sup>

6.3 As a result of this confusion the committee wrote to the Commissioner for Taxation asking if officers of the Australian Taxation Office (ATO) could brief the committee, in private, on the payment of taxation by sex workers. Officials from the ATO briefed the committee on 15 February 1991.

6.4 In its general approach to the collection of personal income tax, the ATO has adopted as a policy that income earned by workers is in the nature of salary and wages and is therefore subject to the PAYE system of paying personal income tax. This is a position supported by the committee. In adopting this position the ATO takes a number of matters into consideration.

6.5 The ATO accepts the common law definition of salary and wages, and, under taxation law, payment under contract that is principally for labour is also to be regarded as salary and wages. The ATO also has regard for the degree of control exercised by the owner or manager of each establishment; taking into account management's right to set rates, to hire and fire, to set working hours and to exact fines and penalties. In classifying workers as employees the ATO also considers such matters as who pays for the telephone services, who arranges for advertisements to be placed, who pays the rent, who pays for heating and lighting, who provides the linen and towels, etc.

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<sup>1</sup> See Perkins and Bennet, *op cit*, p. 221

<sup>2</sup> Confidential submission, undated, p. 7

<sup>3</sup> Transcript, 23.11.90, pp. 25–26

6.6 The ATO has advised the committee that they try to take an even handed approach with the industry and that they believe they have a good level of co-operation among workers and owners in the ACT.

6.7 The ATO has also advised the committee that, under the PAYE system, a owner who deducts income tax from a worker's wage or salary and does not remit that tax to the ATO that owner is liable for the tax collected not the worker from whose wage or salary it was deducted.

6.8 Workers who are concerned about the confidentiality of their personal identity can make arrangements with the ATO as to the 'working' name that they might use. The principal means of identifying tax payers is, of course, a person's tax file number and not their own name.

6.9 The committee is grateful to the ATO for the briefing it gave the committee and the elucidation it was able to bring to the apparent confusion. The committee believes that it would be of benefit to workers and owners in the ACT if the ATO could, by means of a small discreet campaign, clarify the taxation issues raised in this chapter.

#### *Recommendation 2*

6.10 The committee recommends:

**That the ACT Government request of the ACT Branch of the Australian Taxation Office that they inform brothel owners and those working in brothels of –**

- . the reasons why the PAYE system applies to sex workers; and**
- . their obligations to meet their taxation responsibilities.**

#### **Immigration**

6.11 In January 1991 the Commonwealth Department of Immigration, Local Government and Ethnic Affairs approached the committee with a number of concerns about the employment of illegal aliens in ACT brothels. In pursuit of this matter the chairman wrote to the relevant Commonwealth Minister (the Hon G Hand MP) seeking permission for officers of his department to brief the committee on the questions raised. This permission was granted and on 15 February 1991 officers of the Intelligence section of the department appeared before the committee.

6.12 The major concerns of Immigration officials are organised rackets run by people in Sydney and Melbourne, with apparent contacts in Canberra, to supply Asian workers to brothels. These workers are mainly brought into Australia illegally and in all cases have no work permits. According to the Immigration officials there is evidence to suggest that these Asian workers are

subject to intimidation and overbearing tactics.

6.13 Another matter of concern raised by the Department of Immigration was the question of the health status of these illegal aliens, particularly with relation to STDs and HIV. Those Asian workers who manage to obtain a visitor's visa which is valid for less than 12 months are not subject to health checks prior to entering Australia. Those people who remain and work illegally simply fall through the net.

6.14 Because of the issues raised in chapter 3 (in particular *see* paragraph 3.19), the committee is concerned to ensure that illegal aliens, particularly those from south east Asia, are not employed in brothels and escort agencies in the ACT.

6.15 The Department of Immigration has had problems with one brothel in the ACT, which it believed to have connections with some Sydney brothels. In the last two years officers of that department have entered the brothel and taken nine illegal aliens into custody, eight of which were subsequently deported. Unfortunately, the law as it currently stands makes no provision for action to be taken against brothel owners or managers who employ illegal aliens, nor is this circumstance listed amongst the 'aggravating circumstances' as set out by the DPP and the AFP (*see* paragraphs 2.23 and 2.25).

6.16 In making recommendations concerning the regulation of prostitution in the ACT the committee will be making a number of recommendations addressing the problems associated with the employment of illegal aliens in brothels in the ACT (*see* paragraph 9.51).



## 7 PHILOSOPHY AND MORALITY

"Prostitution is now the only sexual activity between consenting adults which is punished by the criminal law." <sup>(1)</sup>

"... adults who determine that they want to pursue that lifestyle and to do so without engaging in incidental criminal activity should be able to do so with dignity and without harassment." <sup>(2)</sup>

### Introduction

7.1 This committee cannot morally support the continuance of a practice which objectifies women as the sexual pleasure of men. Such a practice is currently a fact of life in our society, however, and one not capable of prohibition; accordingly it must be regulated in some manner. The basic position of the committee then contains an apparent dichotomy. The committee believes, on the one hand, that prostitution is a social problem, endemic to the fundamentally sexist nature of society, the resolution of which must be its reduction or its elimination. On the other hand, the committee believes that the civil and human rights of those who determine that they wish to pursue this kind of lifestyle, "without engaging in incidental criminal activity", should be defended and upheld. The difficult question faced by the committee is the resolution of that apparent dichotomy.

### Law reform

7.2 In adopting a law reform position on prostitution the committee has been influenced by five major factors. Firstly, the attitudes of the ACT law enforcement agencies, supported by government – both Federal and Territory, which have basically established a policy of tolerance and containment (*see* paragraph 2.30). The committee shares the concerns of the AFP with this policy, as expressed by the Chief Police Office (ACT Region), insofar as there might be a public perception that the police are not doing their job:

"... under the circumstances that exist right now ... the inference could easily be drawn, and difficult to refute, that inactivity, or ineffectual attempts by police to curb organised prostitution could lead to a belief, albeit unfounded, that the police are either corrupt, inept, or able to be readily influenced ... " <sup>(3)</sup>

Secondly, the lack of public opposition to the brothels as seen by the very low number of public complaints lodged with the AFP. According to a senior police officer:

"And frankly, I cannot think of one instance where I have had a complaint

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<sup>1</sup> Neave M, Summary of Final Report, p. 9

<sup>2</sup> Pornography and Prostitution in Canada, *op cit*, p. 534

<sup>3</sup> Transcript, 29.1.91, p. 50

received of one of those brothels from a member of the public." <sup>(4)</sup>

Thirdly, the apparent lack of willingness to participate in the committee's inquiry by the public which is best evinced by the number of submissions received (*see* paragraph 1.9), several of which the committee had to specifically ask for. It appears to the committee that the Canberra community, aware of the committee's proposals for change, has not objected. Fourthly, the legal status of escort agencies (*see* paragraph 2.53) and fifthly the tolerant attitudes of the two major churches, the Anglican Church of Australia and the Catholic Church (*see* paragraphs 5–8).

7.3 The combination of these factors, and the concern expressed above over the perceived role of the AFP, has led the committee to conclude that it is illogical to continue to marginalise and/or negate a socially tolerated supply group (the workers) by means of criminal, legal and social sanctions, particularly where the demand group (the clients) is not subject to those delimiting sanctions. The committee believes, therefore, that the laws relating to prostitution in the ACT be reformed because they no longer appear to represent community attitudes.

### **Toleration**

7.4 The law reform position of the committee is also based on a philosophy of toleration, arrived by the committee during the course of its inquiries. It must be reiterated, however, that in suggesting law reform the committee seeks neither to condone nor condemn the practice of prostitution. The law reforms suggested in this report are not intended to be seen as encouraging the practice of prostitution.

7.5 At the request of the committee senior representatives of the two major christian churches appeared before the committee to put the church's position on prostitution. Both the Bishops of Anglican Church and the Catholic Church, in the Dioceses of Canberra/Goulburn, adopted a position of toleration.

7.6 Bishop George of the Anglican Church proffered the following view:

"As a necessary evil it should be accepted and controlled. That control should be by way of decriminalisation not legislation. The Church would, I do not think ever, come out in favour of the legalisation of prostitution, but I think we could cope with decriminalisation." <sup>(5)</sup>

7.7 Bishop Power of the Catholic Church expressed the following point of view:

"The distinction ... between decriminalisation and legislation is a good one

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<sup>4</sup> Transcript, 29.1.91, p. 49

<sup>5</sup> Transcript, 30.1.91, p. 124

for the reasons stated earlier, the path of decriminalisation appears to be the better course to follow, otherwise the way is open for prostitution becoming legal, respectable and more widespread." <sup>(6)</sup>

7.8 Both churches expressed deep concern for the people involved in prostitution, and voiced a need for tolerance and understanding.

### *The law and public health*

7.9 This philosophy of toleration is seen by the committee as the most sensible means whereby the apparent conflict between the law and public health, particularly in the context of the AIDS pandemic and prostitution, can be resolved. The committee is, therefore, supportive of the view expressed by Matthews, an outreach worker with prostitutes in Liverpool (UK), who says:

"The advent of AIDS must surely now force a reappraisal of how society deals with commercial sex. ... In some respects the law is now at odds with requirements of public health." <sup>(7)</sup>

7.10 The committee is concerned that a rigorous law enforcement policy which harasses and prosecutes prostitutes, while ignoring their clients, will simply drive prostitution underground, away from medical services. Such a policy will also curtail the prevention, and encourage the spread, of STDs, including HIV. It will also put workers at greater risk of violence and coercion. It is the committee's belief that the "public health will not be enhanced by attempts to curb or proscribe prostitution". <sup>(8)</sup> Plant, in summing up a number of worldwide views, expressed the position in Europe, USA and Australia as follows:

"... there is a clear consensus that health policy will only be hindered by any attempt to proscribe prostitution or to penalize those involved." <sup>(9)</sup>

7.11 It is the committee's belief that the important health gains outlined in chapter 3, which have received worldwide recognition, particularly in the area of HIV transmission, would be undermined by any moves to suppress prostitution, as would those important education and health programs which have been so instrumental in keeping prostitution relatively HIV free. The public health of the ACT should be of greater concern to the community than the perceived moral threat of prostitution. Within the context of this maxim the committee has come to the conclusion that the laws relating to prostitution in the ACT should be reformed.

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<sup>6</sup> Transcript, 30.1.91, p. 137

<sup>7</sup> Matthews L, "Outreach work with female prostitutes in Liverpool" in Plant (ed), *op cit*, p. 85

<sup>8</sup> Thomas R M, "AIDS risks, alcohol, drugs, and the sex industry: a Scottish study" in Plant M (ed), *op cit*, p. 106

<sup>9</sup> Plant M, "Conclusions and future strategies" in Plant (ed), *op cit*, p. 201

*Suppression*

7.12 Toleration would also seem to be the logical outcome following the ineffectiveness of oppressive law enforcement approaches. The Canadian Special Committee expressed the following point of view with regard to repressive regimes:

"There is no evidence in the history of this country, or in those countries like the United States which retain a draconian system, that the results of such an approach would work." <sup>(10)</sup>

7.13 Evidence from other countries would seem to support the viability of tolerance as against suppression. In Britain the assumption seems to be that prostitution is a social fact, and that all that can reasonably be done is to fashion the law to contain, as far as possible, the problems of exploitation and public nuisance. <sup>(11)</sup> Whilst in Sweden, which also has a policy of toleration, there is evidence that the employment of social and educational strategies is actually reducing the incidence of prostitution. <sup>(12)</sup>

7.14 The Netherlands are also moving away from a policy of suppression to one of toleration. The Dutch Ministry of Justice has advised the committee:

"De gemeenten worden bevoegd vergunningen uit te geven. Op die manier houden zij toezicht op het aantal bordelen, de bouwtechnische staat en veiligheid, de hygiëne en de mensen die er werkzaam zijn. Het wetsvoorstel stelt exploitatie wel strafbaar als zij gepaard gaat met geweld, bedreiging en misbruik van macht. Exploitatie van minderjarigen is in het voorstel altijd strafbaar en wordt zonder meer als mensenhandel aangemerkt. Gebruik van geweld enz., hoeft dus niet in het geding te zijn bij exploitatie van minderjarigen. Het is sowieso al strafbaar." <sup>(13)</sup>

(Transliteration:

"Local government authorities will be given power to supervise the operation of brothels, maintaining hygiene standards and ensuring they are safe places in which to work. It is proposed to penalise those who exploit prostitutes by means of violence, coercion or intimidation. Those who exploit the under aged will also be punished as this is also seen as human slavery. The use of force, not only against the young, is unacceptable and people responsible will be punished.")

7.15 In the Netherlands it is proposed to devolve responsibility for brothels to local governments who have controls over health and safety matters. It will be an offence for anyone who, by means of violence, coercion or intimidation, who exploits prostitutes. This offence will also apply to the exploitation of under aged prostitutes.

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<sup>10</sup> Pornography and Prostitution in Canada, *op cit*, p. 533

<sup>11</sup> Pornography and Prostitution in Canada, *op cit*, p. 480

<sup>12</sup> Pornography and Prostitution in Canada, *op cit*, p. 507

<sup>13</sup> Letter to Chairman, dated 4 March 1991

7.16 Australian evidence would also appear to support the contention that suppression does not work. Following the Neave inquiry into prostitution the Victorian Government legalised the establishment and operation of brothels in that State. The Northern Territory Government is moving towards a policy of control through toleration and is seeking to legalise escort agencies. The Community Panel in Western Australia has recommended that prostitution be controlled by licensing brothels. In both NSW and South Australia parliamentary select committees have recommended that prostitution can best be controlled by means of law reform that regulates the activity. Evidence from Queensland, particularly with reference to corruption, demonstrates some of the worst aspects of a policy of suppression.

7.17 The NSW select committee closely examined the question of suppression in its report and came to the view that:

"... the suppression of prostitution is not an option which is viable in a free democratic society. Such attempts have only been effective under totalitarian conditions ..." <sup>(14)</sup>

7.18 The Canadian Special Committee highlighted the endemic sexism of society which allows prostitution when it said that the practice of prostitution could be related to three independent factors:

- i) the pervasiveness of sexism in society;
- ii) only partial recognition of the complexities of sexuality and sexual preference; and
- iii) the failure to develop educational and social programs to assist young people in dealing with the problems of sexism and sexual identity in a responsible and confident way. <sup>(15)</sup>

7.19 The Victorian Inquiry into Prostitution was also concerned at the harsh and discriminatory effects of criminal sanctions. That inquiry pointed out that while the activities of prostitutes, predominantly women, are punished by the criminal law, clients, almost exclusively men, are not guilty of a criminal offence. The inquiry also pointed out that it is not the owners or managers of brothels who are fined or imprisoned it is the prostitutes. The inquiry summed up its view as follows:

"If prostitution is largely a symptom of social injustice, and if prostitutes are already in a situation of sexual and economic inequality, punishing them further seems both cruel and pointless." <sup>(16)</sup>

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<sup>14</sup> Select Committee on Prostitution, p. 237

<sup>15</sup> See Pornography and Prostitution, *op cit*, p. 526

<sup>16</sup> Neave M, Final report, Vol 1, p. 234

7.20 This committee is also concerned at the apparent sexist nature of society and the way that might be expressed through a policy of suppression.

7.21 The committee believes, therefore, that a policy of suppression will not address these issues of discrimination.

7.22 Suppression, in the opinion of the committee, will also not address the subordinate position of women in our society. Perkins paints the following picture of prostitutes under a suppression policy:

"It is clear that the women are the most victimised at every level of power ... they are more legally repressed than men, more often arrested, more often the victims of violence, more often harassed by the police, more often victims of drug abuse, more often victimised by community pressures, and more often gaoled as a result of being powerless, being prostitutes and being women."  
(17)

It seems to the committee that to reinstitute such a repressive policy would only serve to entrench current discriminatory attitudes towards the status of women; they would remain either 'damned whores' or 'God's police'.

### Personal morality

"... the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant."  
(emphasis added) (18)

7.23 The committee is of the view that the personal morality of individuals, particularly with respect to sexual morality, ought not to find expression in the criminal law other than to ensure that the rights of others are protected. The committee believes that this view has broad community support given that throughout the Australian polity consensual sexual activity between adults is no longer proscribed by the criminal law. The only exception being, of course, prostitution.

7.24 The ACT, like the rest of Australia, is a culturally diverse society and not every one is morally opposed to prostitution. That being the case then the conclusion reached by the NSW select committee with regard to suppression, that it is not a viable option in a democratic society (see paragraph 17), would apply equally to the imposition of one group's morality on the rest of society.

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<sup>17</sup> Perkins and Bennet, *op cit*, p. 236

<sup>18</sup> Mill J S, "On Liberty" in *John Stuart Mill - Three Essays*, Oxford University Press, 1975, p. 15

7.25 Neave, in her report, also addressed this vexed question. That report shows that 72.1% of Melbourne residents agreed that prostitutes should be able to work legally in premises in certain areas, as did 56% of regular church goers.<sup>(19)</sup> The report said there was considerable evidence to show that, while many people disapprove of prostitution on moral or ethical grounds, most did not support the enforcement of their moral values by criminal sanctions.<sup>(20)</sup> Neave came to the following conclusion:

"Of all the forms of sexual activity between consenting adults which some groups in society regard as sinful or morally objectionable, prostitution remains the only behaviour which attracts criminal penalties. In our view this can no longer be justified."<sup>(21)</sup>

7.26 It is the committee's opinion that in the area of private sexual morality the criminal law has no right to intrude other than to protect the rights of minors and to prevent harm to others. The committee has formed this opinion based in large part on the fact that, but for prostitution, sexual activity between consenting adults is not a criminal activity in any jurisdiction in Australia. Based on this opinion the committee believes that the laws relating to prostitution in the ACT should be reformed.

### **Conclusion**

#### *Public health*

7.27 Based on the evidence outlined in chapters 3 and 4 the committee has concluded that prostitution in the ACT is, generally, not a health threat to the community, therefore a threat to public health is not a justifiable ground on which to continue to criminalise the participants in this activity.

7.28 There is a need, however, to reiterate the committee's concern, expressed in paragraph 3.19, that recognition be given to the need for continuing educative/health programs.

#### *Organised crime*

7.29 As outlined in chapter 2 (paragraphs 2.63–68) the committee has been unable to uncover evidence in the ACT to suggest that prostitution is controlled by organised crime, therefore a threat of criminal involvement is not a justifiable ground on which to continue to criminalise the participants in this activity. Indeed, the reforms proposed by the committee will act to further discourage criminal activity.

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<sup>19</sup> Neave M, Final Report, Vol 1, p. 232

<sup>20</sup> *Loc cit*

<sup>21</sup> *Ibid*, p. 233

*Private morality*

7.30 As outlined in this chapter (paragraphs 23–26) the enforcement of one group's private morality by criminal sanctions is not an acceptable role for the law in a pluralistic society, therefore a threat of moral disintegration is not a justifiable ground on which to continue to criminalise the participants in prostitution.

*Suppression*

7.31 It is the committee's belief that suppression is not a justified response for two reasons:

- i) suppression has never worked, neither in this country nor overseas; and
- ii) suppression, when used, has only served to entrench the sexist nature of society.

*Law reform*

7.32 The committee, like so many other inquiries which have preceded it both in this country and overseas, has been led to the conclusion that prostitution can best be controlled in society by removing the criminal sanctions and by regulating the activity. Hopefully, as is the case in Sweden, such a move will lead to programs and structural changes in our society that will, at least, reduce the incidence of prostitution.

7.33 In following chapters the committee will outline the reforms it has concluded are necessary and make appropriate recommendations.



## 8 SEXUAL EXPLOITATION OF YOUNG PEOPLE

"... young people, like adults, have a need for recognition of their sexuality, and for ways in which to express and explore it without doing harm to themselves or others. ... Most importantly, they too are beings with dignity and integrity."<sup>(1)</sup>

### **Introduction**

8.1 As outlined in chapter 2 (*see* paragraphs 2.54 following) the committee is concerned at the evidence placed before it indicating that some of our disaffected, and predominantly homeless, young people are being sexually exploited and abused by cynical peers and rapacious adults.

8.2 The committee believes that the pejorative terms 'prostitute' and 'prostitution' should not be used in connection with these young people because:

- . they denigrate the plight in which the young people find themselves;
- . they attach a sense of blame and guilt to the young people because of their plight; and
- . they stigmatise the young people.

It is this committee's considered opinion that these young people are not prostitutes, they are not engaging in prostitution, and nor should they be regarded as such.

### **Exploitation**

#### *Does it exist?*

8.3 All witnesses appearing before the committee, who were concerned with the plight of young people, gave evidence, either first hand or anecdotal, of the sexual exploitation of these young people.

8.4 The Short Cuts Information and Advocacy Services for Young People (Short Cuts) expressed their concern as follows:

"It is known that homeless people, particularly homeless young women, may sleep with a person for accommodation rather than sleeping on the streets."<sup>(2)</sup>

The Open Family Foundation were quite adamant concerning the existence of sexual exploitation:

"... as far as evidence is concerned, I think that most of the Canberra health workers and youth workers would agreed that [prostitution] occurs. ... It is

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<sup>1</sup> Pornography and Prostitution in Canada, *op cit*, p. 563

<sup>2</sup> Transcript, 4.6.90, pp. 108-107

deprivation. **They do it because it is survival to them**, and quite a lot of them do not even think about what they are doing." (emphasis added) <sup>(3)</sup>

The Working Party on Alcohol and Other Drugs Issues informed the committee that, in working with young homeless women, they are seeing an enormous degree of casual prostitution. <sup>(4)</sup>

*Who is at risk?*

8.5 The committee sought evidence from a number of groups in an attempt to identify those young people at risk. In the opinion of the Working Party on Alcohol and Other Drug Issues:

"... these young women, many of them, the vast majority of them are coming out of abusive homes, so their experience of exploitative sexual relationships is very high. They are what we would call desensitised." <sup>(5)</sup>

A witness from the Working Party also informed the committee of the age range of the young women they deal with:

"... my organisation takes women 16 and over, however, I work with a number of women at least two years younger than that and I would say that the kind of prostitution we have just described occurs amongst young women of 13 upwards ..." <sup>(6)</sup>

8.6 The Open Family Foundation, in its evidence before the committee, indicated that it chose to speak to the committee because it:

"... had been concerned about what [it] had suspected to be young male prostitution in the Civic area. ... [there was] information suggesting that some street kids use prostitution as a means of supplementing income." <sup>(7)</sup>

8.7 Short Cuts offered the following profile of homeless youth:

"A large proportion were early school leavers who came from violent alcoholic homes and had limited or no contact or support from their families, mostly long term unemployed and some were receiving benefits from the Department of Social Security, some had no incomes at all." <sup>(8)</sup>

8.8 Evidence given before the committee intimates that the majority of young homeless people in the Territory are males; <sup>(9)</sup> but the committee is concerned that no agencies, government or non-government, can say with any degree of reliability how many young people

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<sup>3</sup> Transcript, 30.1.91, p. 159

<sup>4</sup> Transcript, 23.11.90, p. 18

<sup>5</sup> Transcript, 23.11.90, p. 19

<sup>6</sup> Transcript, 23.11.90, p. 19

<sup>7</sup> Transcript, 30.1.90, p. 147

<sup>8</sup> Transcript, 4.6.90, p. 107

<sup>9</sup> Transcript, 30.1.91, p. 153

in the ACT are, in fact, homeless. The figures given to the committee for youth at serious risk of sexual exploitation in the Territory range from 50<sup>(10)</sup> through to 'thousands'.<sup>(11)</sup>

*How are they exploited?*

8.9 The Working Party on Alcohol and Other Drug Issues gave the fullest account of the way these young people are sexually exploited:

"More likely it is for a bed. It is for a roof over your head. It is for a few drinks. ... in fact being able to score a warm bed for the night is seen as having done well."<sup>(12)</sup>

8.10 Although the committee was given no evidence of the types of sexual activity engaged in by these young people, all witnesses who spoke with the committee were agreed on the reasons why they engage in this exploitative sexual activity: a perceived pressing need for accommodation, food, drugs, alcohol and even, perhaps, cigarettes.

8.11 Accommodation and food are two of the basic necessities of life (the other being clothing): many of these homeless young people, however, also seem to regard alcohol, drugs and cigarettes as necessities of life for them and these are, therefore, major currencies in their exploitation.<sup>(13)</sup>

8.12 Two witnesses appearing before the committee provided evidence of just how cheaply sexual favours can be traded. The Open Family Foundation provide evidence of young men being "willing to do anything for \$10"<sup>(14)</sup> and the Working Party on Alcohol and Other Drug Issues informed the committee that "we are often talking, in the case of young women, a drink".<sup>(15)</sup>

Peer group exploitation

8.13 Young people are being exploited within their own peer groups. It appears to be quite common for someone in the group to offer overnight accommodation with the overt implication

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<sup>10</sup> Transcript, 30.1.91, p. 157

<sup>11</sup> Transcript, 23.11.90, p. 21

<sup>12</sup> Transcript, 23.11.90, p. 18

<sup>13</sup> Transcript, 30.1.91, p. 154

<sup>14</sup> Transcript, 30.1.91, p. 150

<sup>15</sup> Transcript, 23.11.90, p. 18

that sexual favours are to be granted in return. <sup>(16)</sup> Evidence given by the Open Family Foundation also suggests that this type of exploitation is part of the sub cultural milieu:

"... [It] also occurs if there is a newcomer in town. It is a great way of finding your base and finding somewhere to stay." <sup>(17)</sup>

### Adult exploitation

8.14 These young people are also being sexually exploited by rapacious adults. The Open Family Foundation gave evidence of young women, with whom they have dealt, who were in need of accommodation or financial assistance, some of them:

"... will be a 16, 17 year old girl who has been living in a flat with a 20, 30, 40 year old man." <sup>(18)</sup>

8.15 Although the committee received no direct evidence of single or short term sexually exploitative episodes, based on the general evidence concerning the apparent willingness of some homeless young people to exchange sexual favours for the realisation of immediate necessities and on the evidence given by both Short Cuts and the Open Family Foundation concerning what they regard as soliciting, particularly in the Civic area, the committee is convinced that there is some preying on the vulnerability of young people by rapacious adults in search of sexual gratification.

### **(Un)Safe sexual practices**

8.16 Of concern to the committee, and to the witnesses who addressed this particular issue, is the evidence that this group of disaffected young people are seemingly ignorant of safe sexual practices and the ever present threat of HIV.

8.17 Short Cuts, in evidence given before the committee, identified seven areas of major concern in respect of disaffected young people in the ACT:

- i) young people are not accessing AIDS/HIV information and education;
- ii) these young people have been, or will be, homeless;
- iii) their levels of knowledge of AIDS/HIV and other important health issues is extremely poor;
- iv) they are practising behaviours which put them at risk of HIV infection;

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<sup>16</sup> Transcript, 30.1.91, p. 159

<sup>17</sup> Transcript, 30.1.91, p. 158

<sup>18</sup> Transcript, 30.1.91, p. 160

- v) there are no education programs aimed at this group;
- vi) many young women are, have been, or are trying to get, pregnant; and
- vii) they have very poor or no knowledge of how to clean injecting equipment. <sup>(19)</sup>

8.18 This level of ignorance among disaffected young people needs to be addressed by the ACT Government and the Territory's non-Government social/welfare agencies. It is the committee's opinion that in dealing with this particular problem and the very complex issue of homeless youth the Government should continue to address these important issues by further positive responses to such reports as "Our Homeless Youth" (the Burdekin Report) and "Don't Pressure Me" (the report of the Youth Accommodation Group).

### **Sexuality and integrity**

8.19 Whilst being very concerned about the sexual exploitation of these young people the committee none the less recognises their right to integrity, to the recognition of their own sexuality and their need to explore that sexuality, and to express it, in ways that bring no harm to themselves nor harms others.

8.20 The concerns of the committee with regard to the plight of homeless youth in the Territory (*see* paragraph 18) must necessarily be posited in a context that acknowledges the rights of young people to a safe family and community environment in which to express and explore their burgeoning sexuality.

8.21 The committee believes that one of the basic causes for these disaffected young people acquiescing in their own sexual exploitation is the failure, on the part of governments, to develop educational and social programs to assist young people in dealing with the problems of sexism and sexual identity in a confident way. A belief expressed by the Canadian Special Committee on Pornography and Prostitution <sup>(20)</sup> and supported by Mr J Fernand-Laurent, of the United Nations, the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others who said, in part:

"... it means changing the image of women in the collective mentality by giving children moral and civic education in schools, including education to promote mutual respect between women and men ..." <sup>(21)</sup>

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<sup>19</sup> Transcript, 4.6.90, p. 108

<sup>20</sup> Pornography and Prostitution in Canada, *op cit*, p. 526

<sup>21</sup> *Activities for the advancement of women: Equality, Development and Peace*, Report of J Fernand-Laurent, Special Rapporteur, United Nations, 1985, p. 21

*Recommendation 3*

8.22 The committee recommends:

**That the ACT Government encourage schools to include in their curricula educational and social programs that will assist young people in dealing with the problems of sexism and sexual identity.**

## 9 LAW REFORM

"Long-established policies must be reconsidered urgently in the light of a new imperative: AIDS IS A MUCH BIGGER THREAT TO SOCIETY THAN EITHER DRUGS OR PROSTITUTION."<sup>(1)</sup>

"We see no virtue in replacing the present system with a more repressive regime."<sup>(2)</sup>

### Introduction

9.1 The evidence presented to, and the position adopted by, the committee in the preceding chapters of this report have led it to a position where it must recommend law reforms for the prostitution industry in the ACT. Those law reforms, however, must take into account the public health of the community, the protection of minors, the level of public nuisance and the rights of those engaged as workers to safe and equitable working conditions. To this end the law reforms recommended by the committee are aimed at regulating the industry so as to take these matters into account.

9.2 Changes to the criminal law will be discussed in chapter 10; health and safety issues will be discussed in chapter 11; and some social reform issues will be discussed in chapter 12.

### Legislative controls

9.3 At a private briefing for the committee the Government Law Office identified eight disparate and specific pieces of legislation which are, or can be, used to control prostitution in the ACT in conjunction with the prosecution policy of the DPP (*see* chapter 2). It is the committee's belief that controls over prostitution can best be exercised through a single unified piece of legislation.

### *Recommendation 4*

9.4 The committee recommends:

**That the control of prostitution in the ACT be exercised through one enactment only (the Prostitution Regulation Act)**

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<sup>1</sup> Plant M, "Conclusions and future strategies" in Plant (ed), *op cit*, p. 202

<sup>2</sup> Pornography and Prostitution in Canada, *op cit*, p. 533

## Definitions

9.5 During the course of its inquiries the committee became concerned at the ill defined nature of terms associated with prostitution and the often pejorative connotations that went with these ill defined terms, for example "the offering of the body to **indiscriminate lewdness** for hire" (see paragraph 2.3). The committee believes that, in the pursuit of legal clarity, moralistic and emotive or pejorative overtones should be avoided in offering legislative definitions. As expressed in chapter 8, the committee is concerned that current moral definitions of 'prostitution' entrap some of our disaffected young people. To avoid pejoratively subordinating sexual exploitation to prostitution the committee is of the opinion that the terms 'brothel', 'escort service' and 'prostitution' need to be more clearly and rationally defined. This course of action will also require that the Police Offences Act be amended.

### *Recommendations 5 and 6*

9.6 The committee recommends:

**That in the Prostitution Regulation Act the following definitions apply:**

- . 'brothel' – 'premises used for the purposes of commercial sexual activity';
- . 'commercial sexual activity' – 'providing sexual services for monetary or material reward based on a normal commercial transaction';
- . 'escort service' – 'the provision of commercial sexual services, other than on the premises of a licensed brothel';
- . 'prostitute' – 'a person providing commercial sexual services for monetary or material reward'; and
- . 'prostitution' – 'engaging in commercial sexual activity'.

**That section 5 of the *Police Offences Act 1930* be amended by omitting the definition of "Brothel".**

## Licensing Board

9.7 The most recent actions in jurisdictions in Australia to either implement or recommend law reforms have recommended a licensing systems to control brothels and/or escort agencies. The Victorian Inquiry into Prostitution recommended, *see* recommendation 41, the establishment of a system under which brothel owners would be required to be licensed. In Western Australia the Community Panel on Prostitution recommended, at recommendation 6.2.1, that a licensing board be appointed to register premises used for prostitution. The Northern Territory, in its draft Prostitution Regulation Bill at clause 19, recommends the establishment of an Escort Agency licensing board. In NSW, however, the 1986 select committee on prostitution sought to control brothels by making a recommendation, recommendation 10.47, that anyone lodging a development application for consent as an owner or operator of a brothel be of good fame and character.



9.8 The committee supports the proposition put forward by the Victorian Inquiry in its recommendation 41:

"The aims of the licensing system should be to exclude criminals from the operation and management of brothels, to protect prostitutes and to prevent adverse environmental effects of brothels." <sup>(3)</sup>

9.9 The committee believes that a licensing control body, with statutory responsibilities to administer a licensing system, is the most appropriate mechanism for controlling prostitution in the ACT.

*Recommendation 7*

9.10 The committee recommends:

**That a Licensing Board be established to grant, reissue, transfer and monitor licences to own and operate a brothel and/or an escort agency.**

**Licensing Board membership**

9.11 The Victorian inquiry into prostitution recommended a licensing board to consist of three people:

- . a nominee of the Chief Commissioner of Police, being a police officer;
- . a nominee of the Minister for Local Government; and
- . a nominee of the Minister for Planning and Environment. <sup>(4)</sup>

9.12 The Community Panel of Western Australia recommended to the Minister for Police a licensing board of seven people:

- . Chairperson – legal practitioner appointed by Cabinet;
- . the Commissioner of Police or his nominee;
- . a medical practitioner nominated by the Commissioner of Health;
- . a representative of women's interests;
- . an elected representative nominated by the Minister for Local Government;
- . a representative of the industry; and
- . a community member. <sup>(5)</sup>

9.13 The draft Northern Territory legislation recommends an Escort Agency Licensing Board of three members appointed by the Minister:

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<sup>3</sup> Neave M, Final Report, Vol 1, p. 329

<sup>4</sup> Neave M, Final Report, Vol 1, p. 331

<sup>5</sup> Community Panel on Prostitution, Final Report, p. 31

- . a legal practitioner;
- . a person with experience or expertise in the field of community health; and
- . a person having responsibility for social welfare.<sup>(6)</sup>

9.14 The committee, being conscious of the size of the industry in the ACT, believes that a board of three members could effectively carry out the functions and powers of the Licensing Board. It is the committee's intention that the members of the board would hold part-time positions, their appointment should be for two years and, for the purposes of continuity, members should be able to be reappointed for one further term. At least one member of the Board should be a woman.

### *Recommendation 8*

9.15 The committee recommends:

**That –**

- . **the Licensing Board consist of three part time members to be appointed by the Minister;**
- . **the term of appointment be for two years; and**
- . **members be eligible for reappointment for one further term; and**
- . **at least one member of the Board be a woman.**

### **Role and functions of board**

9.16 The board should be responsible for the granting, reissuing, transferring and monitoring of licences to own and operate a brothel and/or an escort agency. It would be the responsibility of the board to review licences and to cancel them in those circumstance where the licensee has committed offences relating to the conduct of brothels or escort agencies, or other serious criminal offences. The board should also be the forum before which complaints against licensed owners are heard, other than criminal proceedings, and in the resolution of those complaints the board, where appropriate, should have the power to fine licence holders. All decisions of the board should be appealable to the Administrative Appeals Tribunal.

9.17 The committee also believes that the board should advise the Minister on regulatory mechanisms, without intruding on acceptable commercial practises, for the efficient control of the industry, including the level of fines to be imposed and the drafting of a voluntary code of ethics.

9.18 The board should be required to maintain a register of licences granted, reissued or

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<sup>6</sup> Draft Prostitution Regulation Bill, clause 19

transferred showing the name and address of the licence holder/s. The register should also be available for public inspection.

9.19 In the committee's opinion the board should be administratively serviced through the Department of Health, Education and the Arts and responsible to the Minister.

*Recommendations 9, 10 and 11*

9.20 The committee recommends:

**That the functions of the Licensing Board be to:**

- . **hear and determine applications for the grant of a licence to own and operate a brothel and/or an escort agency;**
- . **to hear and determine applications for the reissue or transfer of licences to own and operate a brothel and/or an escort agency;**
- . **cancel licences to own and operate a brothel and/or an escort agency;**
- . **hear and determine complaints, other than criminal proceedings, against licence holders;**
- . **monitor the adherence to licence provisions; and**
- . **maintain a register of licences granted, reissued or transferred.**

**That the Licensing Board have the power to issue and collect fines imposed for breaches of licence conditions.**

**That decisions of the Licensing Board be appealable to the Administrative Appeals Tribunal.**

**Licences**

9.21 Based on the evidence considered by it, it is the committee's belief that licences should be issued to own and operate a brothel and to own and operate an escort agency. Licensing is the control mechanism which offers the best means of having an industry that remains free of criminal involvement; does not become a threat to the public health; and does not become a public nuisance.

9.22 The committee is also of the opinion that the licensing system be a two tier one, in that a class (1) licence can be issued to own and operate a service which is to employ up to and including ten people, and a class (2) licence can be issued to own and operate a service employing more than ten but less than 40 people. In limiting the number of people that can be employed at one establishment the committee is seeking to ensure controls over matters such as public nuisance and public health.

9.23 The provisions of the Northern Territory draft legislation allow for a licence to remain in force for a year from the date on which it was granted or renewed.<sup>(7)</sup> The Victorian Inquiry recommended that a licence to operate a brothel remain in force for a period of three years, on the ground that the licensing board has the power to investigate complaints and to revoke a licence.<sup>(8)</sup> The committee is of the opinion, however, that in the ACT the period a licence should remain in force is one year.

9.24 The committee considers it inappropriate for the Licensing Board to be publicly funded. To recoup the costs of the board the committee considers that it would be appropriate for licences to be granted, reissued or transferred on the payment of a fee, that the fee differentiate between the two classes of licence proposed above (see paragraph 22). The levels of the fee ought properly be fixed by the Minister but in the opinion of the committee this should be done on the recommendation of the Licensing Board.

*Recommendations 12, 13, 14, 15, 16 and 17*

9.25 The committee recommends:

**That licences be issued to own and operate a brothel, to own and operate an escort agency and to own and operate a brothel and an escort agency jointly.**

**That there be two classes of licence to own and operate a brothel and/or an escort agency—**

- class (1) allowing for the employment of up to 10 people;
- class (2) allowing for the employment of 11 and up to 40 people.

**That a licence to own and operate a brothel and/or an escort agency be valid for one year only and, on application to the Licensing Board, may be reissued.**

**That a licence to own and operate a brothel or escort agency, on application to the Licensing Board, may be transferred.**

**That a licence to own and operate a brothel and/or an escort agency be granted, reissued or transferred, subject to a fee.**

**That the licence fee to own and operate a brothel and/or an escort agency be determined by the Minister on recommendation of the Licensing Board.**

**Licence eligibility**

9.26 The NSW select committee recommended that the ownership and operation of brothels

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<sup>7</sup> Draft Prostitution Regulation Bill, sub clause 28(4)

<sup>8</sup> Neave M, Final Report, Vol 1, p. 335

be registered in the name of individuals in order to ensure:

"... that the ownership or operation of brothels is related to identifiable individuals who have some actual involvement in the running of establishments and to ensure that the real operators do not hide behind nominee or trust companies ..." <sup>(9)</sup>

9.27 The Victorian Inquiry recommended that a person should not be eligible to obtain a licence to operate a brothel unless he or she is a natural person over the age of 21 years: Part of a package of provisions designed to ensure that people with serious criminal convictions, or criminal associates, are not actively involved in the management of brothels. <sup>(10)</sup>

9.28 The Community Panel on Prostitution in Western Australia has recommended, amongst the requirements of a licensee, that premises used for the purpose of prostitution must be owned by a natural person. <sup>(11)</sup>

9.29 The draft legislation of the Northern Territory provides for both individuals who have attained the age of 18 years and bodies corporate to be eligible to be granted an operator's licence in respect of an escort agency. For a body corporate to be eligible, however, its shareholders must not include a body corporate. <sup>(12)</sup>

9.30 The committee is concerned to ensure that those who own and operate brothels and escort agencies are readily identifiable, and that there is no contrivance by which people, otherwise ineligible to be granted a licence, can surreptitiously obtain a licence. To this end the committee is persuaded by the arguments of the NSW select committee, the Victorian Inquiry and the Western Australian Community Panel, and believes that a licence to own and operate a brothel and/or an escort agency should only be granted to a natural person.

9.31 With regard to the minimum age at which a person would be eligible to make an application for the grant of a licence the committee believes that the current age of majority, ie 18 years of age, should be the minimum age. This is similar to those provisions which apply to, for example, the granting of a liquor licence or a licence to operate a hotel or club.

### *Recommendation 18*

9.32 The committee recommends:

**That a licence to own and operate a brothel and/or an escort**

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<sup>9</sup> Select Committee on Prostitution, p. 282

<sup>10</sup> Neave M, Final Report, Vol 1, pp. 332–333

<sup>11</sup> Community Panel On Prostitution, Final Report, p. 32

<sup>12</sup> Draft Prostitution Regulation Bill, clause 21

**agency be granted, reissued or transferred only to a natural person who has attained the age of 18 years.**

9.33 The community standing of an applicant for a licence is a matter that was addressed in WA, NSW, Victoria and the Northern Territory. Both the Community Panel, (Western Australia) and the select committee (NSW) recommended that applicants be clearly of good character. The NSW select committee also recommended that:

"A person should be deemed not to be of good fame and character if that person has been convicted of any serious criminal offence in the ten years before the application ..." <sup>(13)</sup>

9.34 The Northern Territory draft bill provides that a person is ineligible for the grant of a licence if they have been convicted, within the preceding ten years, of a disqualifying offence; and furthermore they are not to be the spouse, de facto partner or business partner of someone who has been so convicted. <sup>(14)</sup> A 'disqualifying offence' is defined, *inter alia*, as being an offence punishable on conviction, except were dealt with summarily, by imprisonment for five years or more. <sup>(15)</sup>

9.35 The Victorian Inquiry recommends similar restrictions to those proposed in the Northern Territory, although the moratorium is reduced to five years and the term of imprisonment is 12 months or more. <sup>(16)</sup> The Inquiry also recommended that a person be ineligible to obtain a licence if he or she:

"... has previously held a licence to operate a brothel which has been cancelled within the preceding 5 years." <sup>(17)</sup>

9.36 This committee has concluded that most of the restrictions enunciated above should also apply in the ACT. The committee believes, however, that it is inappropriate to penalise a spouse or partner because of another person's criminal activity. The committee is also concerned that the 10 year moratorium proposed in NSW and the Northern Territory might be too long and that the five year moratorium in Victoria <sup>(18)</sup> might be too short. In seeking not to disadvantage those who have paid their debt to society the committee is of the opinion that a moratorium ought not to exceed eight years.

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<sup>13</sup> Select Committee on Prostitution, p. 283

<sup>14</sup> Draft Prostitution Bill, paragraphs 22(1)(c) & (d)

<sup>15</sup> Draft Prostitution Bill, sub clause 22(4)

<sup>16</sup> Neave M, Final Report, Vol 1, Recommendation 47

<sup>17</sup> Neave M, Final Report, Vol 1, p. 333

<sup>18</sup> Prostitution Regulation Act 1986, section 21

*Recommendation 19*

9.37 The committee recommends:

**That a licence to own and operate a brothel and/or an escort agency not be granted, reissued or transferred to a person who:**

- **has within the preceding eight years been convicted of an indictable offence under the law of the Territory or any other State or Territory punishable by imprisonment for three years or more; or**
- **has previously held a licence to own and operate a brothel and/or an escort agency which has been cancelled within the preceding three years.**

9.38 The NSW select committee recommended that the ownership and operation of brothels be registered in the name of an individual resident in NSW. The NSW committee gave the following reason for this recommendation:

"In order to effectively control the day-to-day management of brothels the individual must be a resident of New South Wales. Also, in dealing with ... appropriate authorities, it is important that notices be able to be served on the individual who has to respond to them. The use of a solicitor or an accountant as a 'letter-box' in these circumstances is not appropriate."<sup>(19)</sup>

9.39 The Northern Territory are proposing that to be eligible to be granted a licence in respect of an escort agency an individual must be a resident of the Territory.<sup>(20)</sup>

9.40 Although the committee recognises the restriction it is placing on the ownership of a private business, it is nevertheless persuaded by the arguments put forward by the NSW select committee in favour of making residency a prerequisite to the granting of a licence. Such a measure will also mean, for the ACT community, that the local industry is not being controlled by persons interstate.

*Recommendation 20*

9.41 The committee recommends:

**That to be eligible to be granted a licence to own and operate a brothel and/or an escort agency, or to have a licence reissued or transferred, a person must be a resident of the Territory.**

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<sup>19</sup> Select Committee on Prostitution, p. 282

<sup>20</sup> Draft Prostitution Regulation Bill, paragraph 22(1)(b)

**Licence cancellation**

9.42 Both the proposed Northern Territory legislation and the Victorian legislation <sup>(21)</sup> make provision for the cancellation or revocation of licences. The primary grounds for cancellation or revocation being conviction of an indictable offence and noncompliance with licence conditions. Both jurisdictions provide for mandatory licence cancellation where a licensee has been convicted of an indictable offence.

9.43 This committee sees no reason why similar provisions should not apply in the ACT, provided they are hedged by the concept of natural justice, and, as indicated in paragraph 16, all decisions of the Licensing Board are appealable to the Administrative Appeals Tribunal.

9.44 The committee believes that the Licensing Board should be required to cancel a licence where a licensee is convicted of a criminal offence which would make him or her ineligible to apply for a licence (*see* paragraph 37).

*Recommendation 21*

9.45 The committee recommends:

**That the Licensing Board be required to cancel a licence to own and operate a brothel and/or an escort agency where the licensee is convicted of an indictable offence under the law of the Territory or any other State or Territory punishable by imprisonment for three years or more.**

9.46 Whilst the above recommendation makes provision for the mandatory cancelling of a licence the committee also believes there will be circumstances under which the Licensing Board will need to exercise discretionary powers with regard to licence cancellation.

*Recommendation 22*

9.47 The committee recommends:

**That the Licensing Board be empowered to cancel a licence to own and operate a brothel and/or an escort agency, being satisfied that the licence should be cancelled, where a licensee:**

- is convicted of an offence against the Prostitution Regulation Act that carries as a maximum penalty the loss of the licence; or**
- fails to comply with the conditions of the licence.**

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<sup>21</sup> Prostitution Regulation Act 1986, section 27



### **Licence conditions**

9.48 The committee is concerned to ensure that the conduct of brothels and escort agencies is appropriately controlled. To achieve this aim the committee believes that a series of conditions should apply to the granting of licences.

9.49 The committee has already canvassed the vexed question of the sexual exploitation of young people (*see* chapter 8) and does not seek through law reform to offer them a legitimate means whereby they can acquiesce in their own exploitation. The committee is strongly of the opinion the people under the age of 18 years should not be employed in brothels or escort agencies. Any licensee knowingly employing underage people in a brothel or escort agency should be subject to the severest of penalties, including the loss of their licence (*see* paragraphs 10.29–10.32).

9.50 The committee also considered the question of underage people being on premises used as brothel. Given that the majority of workers are women and that a proportion of them are parents the committee has considered that there might be circumstances where a mother might find it necessary to take her child to work. The committee is conscious, however, of objections should children be allowed in brothels or escort agencies. The committee has come to the conclusion that young people under the age of 18 years should not be allowed on premises used as a brothel or an escort service. Any licensee knowingly allowing under aged persons on his or her premises should be subject to a fine imposed by the Licensing Board.

9.51 As mentioned in chapter 6 concerns have been raised with the committee about the employment of illegal aliens in brothels in the ACT. For the reasons spelt out in chapter 6 this is a practice that must be prevented. The committee believes it is appropriate to make it a condition of granting a licence that the licensee does not employ illegal aliens. Any licensee knowingly employing illegal aliens should be subject to the loss of their licence.

9.52 The committee has already recommended at paragraph 25 that there be two classes of licence. It is the committee's opinion that any licensee who employs people above the limit allowed by the licence should be subject to a fine imposed by the Licensing Board.

9.53 At paragraph 18 the committee has intimated that the register of licences granted, reissued or transferred be available for public inspection. In keeping with this the committee believes that as a condition of granting a licence premises used as a brothel or an escort agency should, in a publicly accessible place, display the name of the licensee. Any licensee failing to

publicly display a notice identifying the licensee should be subject to a fine imposed by the Licensing Board.

9.54 It is the committee's opinion that it should also be a condition of granting a licence that the licensee abide by any regulations promulgated by the Executive under the Prostitution Regulation Act.

*Recommendations 23, 24 and 25*

9.55 The committee recommends:

**That it be a condition for the granting, reissuing or transfer of a licence to own and operate a brothel and/or an escort agency that a licensee:**

- . not employ people under the age of 18 years to work in the brothel or escort agency;
- . not employ foreign persons who do not have a current work permit issued by the Commonwealth Department of Immigration, Local Government and Ethnic Affairs;
- . who fails to comply with these conditions may be subject to the loss of the licence.

**That it be a condition for the granting, reissuing or transfer of a licence to own and operate a brothel and/or an escort agency that a licensee:**

- . not allow people under the age of 18 years on the premises of the brothel or escort agency;
- . not employ any number of people that is above the limit specified in the licence;
- . publicly display a notice identifying the licensee;
- . who fails to comply with these conditions may be subject to a fine imposed by the Licensing Board.

**That it be a condition for the granting, reissuing or transfer of a licence to own and operate a brothel and/or an escort agency that a licensee comply with any Regulations made under the Prostitution Regulation Act.**

**Location and sighting**

9.56 As explained in chapter 2 (*see* paragraphs 2.30–2.31) the current 'toleration and containment' policy of the AFP, based on the prosecution policy of the DPP, has effectively limited the operation of brothels to the Fyshwick industrial area. Because, at present, owning and operating an escort agency is not an illegal activity no similar restrictions have been applied to these businesses, even though from the list at Appendix B it might be concluded that some escort agencies are operating from private premises, possibly in breach of their lease purpose clause.

9.57 The Victorian Inquiry <sup>(22)</sup> and the NSW select committee <sup>(23)</sup> addressed the issue of location and siting in their reports. Both concluded that brothels should not be permitted in any areas zoned as 'residential'; both were concerned that brothels should not operate near schools, churches or hospitals; and both recommended that brothels not be permitted near the boundary of a residential zone.

9.58 The Victorian Inquiry further recommended that brothels not be permitted within 100 meters of a kindergarten, primary or secondary school, or a guide or scout hall; and the NSW select committee further recommended that brothels in commercial shopping centres not be permitted at street level.

9.59 The committee believes the approaches taken, in this respect, by the Victorian Inquiry and the NSW select committee to be sensible ones. Both have attempted to deal with the 'social' and 'moral' impact of the location and siting of brothels by ensuring discreet distances and 'buffer' zones. It is the committee's opinion, however, that in the ACT brothels and escort agencies should be established only in areas defined as 'industrial' in National Capital Development Commission Policy Plans, as incorporated in the Territory Plan (Fyshwick, Mitchell and Hume).

#### *Recommendation 26*

9.60 The committee recommends:

**That brothels and escort agencies be sited only in areas defined in National Capital Development Commission Policy Plans, as incorporated in the Territory Plan, as 'industrial'.**

#### **The role of the Australian Federal Police**

9.61 The current role of the AFP in relation to prostitution in the ACT is outlined in chapter 2 (see paragraphs 2.22 following). Should the recommendations of this committee be adopted then the role of the AFP will change. It is envisaged that, pursuant to the recommendations contained in this report, the responsibility for monitoring the operations of brothels and escort agencies will reside with the Licensing Board. It is further envisaged that there no longer be any criminality attached to licensed prostitution and prostitution related activities in the ACT.

9.62 It is the committee's belief that the AFP should have no greater powers in respect of lawful prostitution and prostitution related activities in the ACT than with respect to any other

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<sup>22</sup> Neave M, Final Report, Vol 1, chapter 9

<sup>23</sup> Select Committee on Prostitution, paragraphs 10.23.12–16

legitimate business activity.

9.63 It is also the committee's belief that the police records, identified in paragraphs 2.33–36, should no longer be maintained and that those records currently in existence ought to be destroyed.

*Recommendations 27, 28 and 29*

9.64 The committee recommends:

**That the Australian Federal Police have no special and /or specific powers in respect of brothels or escort agencies for which the Licensing Board has issued a licence to own and operate.**

**That the records kept by the Australian Federal Police, and identified in paragraph 2.33 of this report, be destroyed.**

**That the Assistant Commissioner of Police (ACT Region) notify the Assembly, through the Minister, that the records have been destroyed.**

### **Advertising**

9.65 Other than advertisements which appear in the 'Yellow Pages' of the telephone directory, brothels and escort agencies in the ACT, most likely because of the advertising policies of the local media, do not, or cannot, advertise their services. Some ACT brothels and escort agencies do advertise in such periodicals as '*Naughty Sydney*' and in brochures circulated in hotels such as '*This Week in Canberra*'.

9.66 *The Canberra Times* does not carry advertisement for brothels because they are an illegal activity, nor do they carry advertisements for escort agencies which are not illegal. The paper does, however, carry advertisements in its personal columns for erotic or sexually explicit telephone calls and also carries advertisements for X-rated videos and establishments catering for what are euphemistically called 'adult products and marital aids'. A number of adult video stores do advertise their products by means of the television, but normally such advertisements would only appear after approximately 11 pm.

9.67 The general thrust of the committee's report is to allow, with appropriate restrictions, the prostitution industry access to legitimate business activities. To deny licensed operators access to advertising would, in the opinion of the committee, be to place unfair restrictions on their legitimate business operations. The committee is aware, however, of its responsibility to ensure as far as possible that the advertising of sexual services is not readily available to the purview of young people. It further believes that Government should not be seen to be endorsing

prostitution and thus Government sponsored or funded publications should not carry advertisements for prostitution.

9.68 The Victorian Inquiry also looked at the problem of advertising and believed that controls on advertising could have some effect on demand for prostitution services and on recruitment into prostitution. The Inquiry further argued:

"There would also be an advantage in removing blatantly provocative and sexist advertising which contributes to the view that women are sexual objects and promotes the idea that prostitution is glamorous and exciting."  
(24)

9.69 The NSW select committee believed it had to balance its commitment to reducing the demand for prostitution against its general policy of law reform. The committee also believed that prostitution was not an appropriate subject for television or cinema advertising, but concluded there was a place for discreet advertising in print. (25)

9.70 The Northern Territory draft bill provides for a number of advertising offences, including no television or radio advertising; no inducement to seek employment as a prostitute; no inducements to provide prostitution services. The draft bill also allows for the making of regulations with respect to the size, form and content of advertisements. (26)

9.71 This committee believes that advertising should be allowed, that it be discreet, that it be nonsexist and that it be controlled by regulations made under the Prostitution Regulation Act. There should be, however, some limitations on the content of advertisements. It should not be possible to advertise for staff to be employed, nor should it be possible to advertise specific, or general sexual services.

*Recommendations 30, 31 and 32*

9.72 The committee recommends:

**That it be an offence under the Prostitution Regulation Act to place, and to publish, advertisements in either the print or electronic media:**

- . offering employment in a brothel and/or an escort agency; and
- . offering, in a brothel or through an escort agency, the provision of specific or general sexual services.

**That the penalty to be imposed for offences against provisions in the Prostitution Regulation Act dealing with**

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<sup>24</sup> Neave M, Final Report, Vol 1, p. 280

<sup>25</sup> Select Committee on Prostitution, p. 256

<sup>26</sup> Draft Prostitution Regulation Bill, clause 18

**advertising be no greater than a fine of \$2000**

**That regulations be made under the Prostitution Regulation Act with respect to the size, form and content of advertisements for the provision of commercial sexual services through licensed establishments.**

## 10 CRIMINAL LAW

"The provisions [of the criminal law] still reflect the view that men and women should be protected from the consequences of their own decisions to work as prostitutes even if those decisions are freely made. In the case of adults, this approach is patronising and inappropriate. It is also inconsistent with the principle that the individual freedom and dignity of prostitutes should be respected, even though many people may disapprove of the form of work they have chosen. The criminal law should not reinforce the sexist attitude that adult women are incapable of making independent judgments about whether or not to become involved in prostitution.<sup>(1)</sup>

### Introduction

10.1 In recommending a policy of law reform the committee is aware of the need to make substantial changes to the criminal law as it now applies to prostitution in the Territory. It is the committee's view that the locus of the criminal law ought properly to be in protecting people from forced prostitution and in the prevention of community nuisance caused by brothels and escort agencies.<sup>(2)</sup> In general the recommendations of this chapter tend to remove most aspects of prostitution from the criminal law, but at the same time strengthening provisions against the use of violence, coercion and exploitation.<sup>(3)</sup> The committee is also concerned to strengthen the provisions against those who use and involve young people in prostitution. It is the committee's intention to recommend a tightening of the criminal law with regard to offences connected with street prostitution in the ACT to ensure that the Territory remains free of this problem. Changes in the law with regard to health related matters will be discussed in chapter 11.

### Soliciting

10.2 To the best of the committee's knowledge, based on the evidence presented to it, there is very little or no street prostitution in the ACT and the committee will not be recommending law reform that in any way could lead to the establishment of this type of prostitution in the Territory. The committee is concerned, however, that the laws applying to street prostitution apply equally to those whose seek to buy as well as those who choose to sell sex.

10.3 The current provision dealing with soliciting is paragraph 23(1)(ja) of the Police Offences Act, which merely states that any person who in any public place persistently solicits or importunes for immoral purposes shall be guilty of an offence. The AFP, in evidence before the

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<sup>1</sup> Neave M, Final Report, Vol 1, p. 250

<sup>2</sup> *Loc cit*

<sup>3</sup> Select Committee on Prostitution, pp. 247–248

committee, expressed some disquiet at the enforceability of this provision; particularly with the interpretation of the word "persistently".<sup>(4)</sup>

10.4 It is the committee's view that a person ought not to accost anyone in a public place for the purposes of prostitution. This should apply both to those who are seeking to sell their services and those who are seeking to buy sexual services. In recommending changes to the soliciting laws, the penalties proposed by the committee are similar to those enacted in the Victorian Act<sup>(5)</sup> and to those proposed in the Northern Territory Bill.<sup>(6)</sup>

10.5 Provisions relating to the protection of young people, under the age of 18, from being enmeshed in prostitution will be dealt with in paragraphs 27 following.

*Recommendations 33, 34, 35 and 36*

10.6 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for any person, for the purposes of prostitution, to –**

- solicit or accost any person in a public place; or
- loiter in a public place.

**That it be an offence under the Prostitution Regulation Act for any person –**

- in a public place, to invite or solicit any person to prostitute themselves; or
- to loiter in or frequent a public place for the purpose of –
  - inviting or soliciting any person to prostitute themselves; or
  - being accosted by or on behalf of a prostitute.

**That the penalty to be imposed for offences against the provisions in the Prostitution Regulation Act dealing with soliciting be no greater than a fine of \$2000 or imprisonment for four months.**

**That paragraph 23(1)(ja) of the *Police Offences Act 1930* be repealed.**

**Violence and coercion**

10.7 As stated in paragraph 2.1 it is not a specific offence in the ACT to procure a person,

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<sup>4</sup> Transcript, 29.1.91, pp. 50–51

<sup>5</sup> Prostitution Regulation Act 1986, section 5

<sup>6</sup> Draft Prostitution Regulation Bill, clause 10



whether by force, violence or intimidation, to engage in prostitution against their will. As the committee is recommending that prostitution no longer be a criminal activity it is its firm belief that people should find some protection in the criminal law against their being forced into prostitution, or being forced to remain in prostitution, against their will. The committee agrees with the view of the Victorian Inquiry that:

"[t]he purpose of the criminal law should be to prevent the use of violence, coercion or the supply of drugs to induce adults to become prostitutes or to prevent them from changing to other work."<sup>(7)</sup>

10.8 The committee is of the opinion that anyone, using coercion of any kind, who attempts to induce a person to engage in, or remain in, prostitution against their will should be guilty of a serious offence. The penalty recommended by the committee is similar to that enacted in the Victorian Act<sup>(8)</sup> and to that proposed in the Northern Territory Bill.<sup>(9)</sup>

#### *Recommendations 37 and 38*

10.9 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person, for the purposes of inducing a person aged 18 or more to engage or to continue to engage in prostitution, to –**

- . **assault or threaten to assault that or another person;**
- . **intimidate that or another person;**
- . **supply or offer to supply a drug of dependence to that or another person; or**
- . **make a false representation or use a false pretence or other fraudulent means.**

**That the penalty to be imposed for offences against provisions in the Prostitution Regulation Act dealing with the forcing of an adult to become or remain a prostitute be no greater than six years imprisonment.**

#### **Living on the earnings of prostitution**

10.10 In chapter 9 the committee recommends that brothels and escort agencies in the ACT be given legal standing through a licensing system. A natural consequence of these recommendations is that those licensed to own and operated a brothel or an escort agency ought not to be guilty of an offence of living wholly or partly on the earnings of prostitution. Therefore, at least with regard to licensees and those employed by them, the laws relating to

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<sup>7</sup> Neave M, Final Report, Vol 1, p. 265

<sup>8</sup> Prostitution Regulation Act 1986, section 10

<sup>9</sup> Draft Prostitution Bill, clause 11

living on the earnings of prostitution need to be amended.

10.11 Working as a prostitute is not an offence in the ACT (see paragraph 2.1); and a prostitute has the same rights as all other members of the community with regard to the disposal of any income earned from prostitution. The spouse, lover or *de facto* spouse, however, is subject to the censure of the law should they be in receipt of any moneys earned by their partner. Paragraph 23(1)(j) of the Police Offence Act proscribes a penalty of three months imprisonment for some one guilty of the offence of living, wholly or in part, on the earnings of prostitution. Subsection 23(3) reverses the onus of proof if the person charged with living on the earnings is a man.

10.12 The committee is concerned that the current provisions unfairly impinge on personal, genuine relationships where one partner choose to work as a prostitute in order to contribute to the financial viability of the relationship. This matter was also addressed by the Victorian Inquiry which believed:

"Since prostitution itself has never been a criminal offence, prostitutes should be able to spend their earning as they choose, without running the risk that their dependent lovers may be guilty of criminal offences."<sup>(10)</sup>

And NSW select committee believed that such provisions:

"... would prevent prostitutes from engaging voluntarily in domestic relationships with others, and such matters as shared rental of a home could be used in evidence against a spouse or live in-companion."<sup>(11)</sup>

10.13 Both these inquires also expressed concern, however, at the use of coercion to provide financial support through prostitution; a concern shared by this committee. The Victorian Inquiry thought it necessary to include within a definition of coercion the withholding of a drug of addiction where a promise of supply had been given;<sup>(12)</sup> a matter taken up by the Northern Territory in its draft legislation.<sup>(13)</sup>

10.14 The committee has come to the conclusion that, except where violence or coercion is used, or where the prostitution is an illegal activity, it should no longer be a criminal offence to live wholly or partly on the earnings of prostitution. The use of violence or coercion should, however, attract a severe penalty. The penalty recommended by the committee is similar to that enacted in the Victorian Act<sup>(14)</sup> and to that proposed in the Northern Territory Bill.<sup>(15)</sup>

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<sup>10</sup> Neave M, Final Report, Vol 1, pp. 262-263

<sup>11</sup> Select Committee on Prostitution, p. 250

<sup>12</sup> Neave M, Final Report, Vol 1, pp. 263-264

<sup>13</sup> Draft Prostitution Regulation Bill, clause 12

<sup>14</sup> Prostitution Regulation Act 1986, section 11

<sup>15</sup> Draft Prostitution Regulation Bill, clause 12

10.15 The committee has also concluded that it should continue to be an offence for someone to live on the earnings of prostitution where those earnings are derived from illegal prostitution activities.

*Recommendations 39, 40, 41, 42, 43 and 44*

10.16 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person, with the intent to induce another person aged 18 or more to provide or continue to provide him or her with a payment or payments derived, directly or indirectly, from acts of prostitution taken part in by that other person, to –**

- . assault or threaten to assault that person or another;**
- . intimidate that person or another; or**
- . supply or offer to supply a drug of dependence to that person or another.**

**That the penalty to be imposed for offences against provisions in the Prostitution Regulation Act dealing with forcing an adult to provide financial support out of prostitution be no greater than six years imprisonment.**

**That it be an offence under the Prostitution Regulation Act for a person to live wholly or in part on the earnings of prostitution where those earnings are derived from unlicensed commercial sexual activity.**

**That the penalty to be imposed for offences against provisions of the Prostitution Regulation Act dealing with living on the earning of unlicensed commercial sexual activity be no greater than six months imprisonment.**

**That section 15 of the *Police Act 1927* be repealed.**

**That paragraph 23(1)(j) and subsection 23(3) of the *Police Offences Act 1930* be repealed.**

**Brothels and escort agencies**

10.17 Having recommended the licensing of brothels and escort agencies as an appropriate means of effectively controlling the prostitution industry in the ACT, the committee wishes to ensure that brothels and escort agencies do not operate outside of the licensing system. To achieve this aim the committee believes it should be an offence to own and/or operate or manage an unlicensed brothel or escort agency. The penalties proposed by the committee are similar to those enacted in the Victorian Act<sup>(16)</sup> and to that proposed in the Northern Territory Bill.<sup>(17)</sup>

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<sup>16</sup> Prostitution Regulation Act 1986, section 15

<sup>17</sup> Draft Prostitution Regulation Bill, clauses 5 and 6

10.18 A system of licensed brothels and escort agencies will also require changes to the Police Offences Act regarding offences connected with brothels.

*Recommendations 45, 46, 47 and 48*

10.19 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person to own a brothel or escort agency, which is not subject to a current licence to own and operate a brothel or escort agency issued by the Licensing Board.**

**That it be an offence under the Prostitution Regulation Act for a person to –**

- . knowingly permit premises to be used as a brothel or an escort agency; or
- . lease, let or sub let premises, knowing that the premises are to be used as a brothel or an escort agency, where that brothel or escort agency is not subject to a current licence to own and operate a brothel or escort agency issued by the Licensing Board.

**That the penalties to be imposed for offences against the provisions in the Prostitution Regulation Act dealing with the unlicensed operation of brothels and escort agencies be no greater than a fine of \$10,000 or 12 months imprisonment.**

**That sections 18, 19 and 19A of the *Police Offences Act 1930* be repealed.**

**Unlicensed commercial sexual activity**

10.20 In order to further ensure the interests of the community are protected the committee has come to the conclusion that commercial sexual activity ought only to take place under the provisions of a licence to own and operate a brothel or an escort agency. The committee also believes that such measures, in conjunction with the new soliciting laws recommended at paragraph 6, will assist in keeping street prostitution out of the Territory.

*Recommendations 49 and 50*

10.21 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person to engage in commercial sexual activity other than in accordance with a licence to own and operate a brothel or an escort agency.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with unlicensed commercial sexual activity be no greater than a fine of \$1000.**

## **Other matters**

10.22 There are several other minor legal provisions which basically serve, in the opinion of the committee, only to demean those who freely choose to take up prostitution. The committee is in agreement with the Canadian Special Committee when it voiced the opinion that:

"... adults who determine that they want to pursue that lifestyle and to do so without engaging in incidental criminal activity should be able to do so with dignity and without harassment." <sup>(18)</sup>

10.23 The committee believes that the reference to prostitutes in the Police Offences Act and in the Police Act should be omitted.

### *Recommendations 51 and 52*

10.24 The committee recommends:

**That section 34 of the *Police Offences Act 1930* be amended by omitting all references to "prostitutes".**

**That sections 17 and 21 of the *Police Act 1927* be amended by omitting all references to "prostitutes".**

## **The common law**

10.25 As mentioned in paragraph 2.13 there is at least one offence under the common law dealing with prostitution in the ACT. With respect to common law offences this committee is in agreement with the opinion of the NSW select committee:

"... that all common law offences in relation to prostitution and brothels should be repealed as their existence and use could undermine the effect of other recommendations ... " <sup>(19)</sup>

10.26 The committee has concluded that it is not in keeping with the recommendations of this report that common law offences relating to prostitution remain in force in the ACT.

### *Recommendation 53*

10.27 The committee recommends:

**That all common law offences in relation to prostitution and keeping or running of brothels or common bawdy houses be statutorily repealed.**

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<sup>18</sup> Pornography and Prostitution in Canada, *op cit*, p. 534

<sup>19</sup> Select Committee on Prostitution, p. 272

## Young people

10.28 In chapter 8 the committee expressed its deep concern with the sexual exploitation of the Territory's young people, particularly those who are disaffected and homeless, and in chapter 9 the committee stated that law reform must take into account the protection of minors (see paragraph 9.1). In the committee's opinion society has a prime responsibility for the nurture and protection of its young people. Although that responsibility ought not, generally, be excessively paternalistic, in the case of prostitution the committee believes such paternalism justified. This committee agrees with the following sentiment expressed by the Victorian Inquiry:

"... we do not believe young people should have the same freedom as adults to engage in activities which the community regards as harmful." <sup>(20)</sup>

10.29 It is the committee's view that no person under the age of 18 years should engage in commercial sexual activity, and any person gaining any benefit from the prostitution of a young person should be subject to the severest of penalties.

### *Procuring young people for the purposes of prostitution*

10.30 In the committee's opinion the procuring of young people for the purposes of prostitution should constitute a serious offence irrespective of the fact that the young person concerned might freely choose to become a prostitute. The penalty recommended by the committee is similar to that enacted in the Victorian Act <sup>(21)</sup> and to that proposed in the Northern Territory Bill. <sup>(22)</sup>

### *Recommendations 54 and 55*

10.31 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person to cause or induce a person under the age of 18 to take part, or to continue to take part, in the provision of commercial sexual services.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the causing or inducing a young person to take part in prostitution be no greater than seven years imprisonment.**

### *Allowing young people to take part in prostitution*

10.32 The committee is also of the opinion that licensees of brothels or escort agencies, those

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<sup>20</sup> Neave M, Final Report, Vol 1, p. 270

<sup>21</sup> Prostitution Regulation Act 1986, section 6

<sup>22</sup> Draft Prostitution Regulation Bill, clause 13

knowingly concerned with the management or conduct of a brothel or escort agency, and those having the care or control of young people should not permit young people to engage in the provision of commercial sexual services. Any person so doing should be guilty of a serious offence. The committee proposes a penalty similar to that enacted in the Victorian Act <sup>(23)</sup> and to that proposed in the Northern Territory Bill. <sup>(24)</sup>

*Recommendations 56, 57 and 58*

10.33 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person who owns a brothel or an escort agency, whether or not that brothel or escort agency is subject to a licence to own and operate a brothel or escort agency issued by the Licensing Board, to allow a person under the age of 18 years to take part in the provision of commercial sexual services.**

**That it be an offence under the Prostitution Regulation Act for a person having the care or control of a young person to allow that young person to take part in the provision of commercial sexual services.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with a young person taking part in the provision of commercial sexual services be no greater than seven years imprisonment.**

*Soliciting a young person*

10.34 The Territory's young people should be allowed to walk the streets unmolested; and disaffected young people should not be exposed to sexual exploitation by rapacious adults seeking sexual gratification. It is the committee's belief that it should be a serious offence for an adult to solicit or seek to enter into any sort of agreement with a young person which entails the provision of sexual services by that young person. The penalty proposed is similar to that enacted in the Victorian Act <sup>(25)</sup> and to that proposed in the Northern Territory Bill. <sup>(26)</sup>

*Recommendations 59, 60, 61 and 62*

10.35 The committee recommends:

**That it be an offence under the Prostitution Regulation Act**

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<sup>23</sup> Prostitution Regulation Act 1986, section 7

<sup>24</sup> Draft Prostitution Regulation Bill, clause 14

<sup>25</sup> Prostitution Regulation Act 1986, section 9

<sup>26</sup> Draft Prostitution Bill, clause, 16

for a person –

- in a public place, to invite or solicit any young person to prostitute themselves; or
- to loiter in or frequent a public place for the purpose of inviting or soliciting any young person to prostitute themselves.

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the soliciting of young people be no greater than three years imprisonment.**

**That it be an offence under the Prostitution Regulation Act for a person to enter into an agreement, or to offer to enter into an agreement, other than as an act of soliciting in a public place, under which a young person is to provide commercial sexual services to that person or another in return for payment or in exchange for drugs of dependence.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the entering into agreements with young people for the provision of commercial sexual services be no greater than seven years imprisonment.**

*Payment in respect of sexual service provided by a young person*

10.36 As a further measure to protect young people from becoming enmeshed in prostitution the committee, in agreement with Victorian legislation <sup>(27)</sup> and the proposed legislation of the Northern Territory, <sup>(28)</sup> is of the opinion that it should be an offence for a person to receive a payment knowing that it has been derived from the commercial sexual activity of a young person. It is necessary, however, to provide an exception where the payment is in the ordinary course of a business which is unrelated to prostitution, for example payment for the delivery of electricity to premises. The penalty proposed by the committee is similar to that enacted in the Victorian Act and to that proposed in the Northern Territory Bill.

*Recommendations 63 and 64*

10.37 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person to, except in the ordinary course of a business unrelated to prostitution, receive a payment knowing that it or any part of it has been derived, directly or indirectly, from commercial sexual services provided by a young person.**

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<sup>27</sup> Prostitution Regulation Act 1986, section 8

<sup>28</sup> Draft Prostitution Regulation Bill, clause 15



**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the receipt of payments in respect of commercial sexual services provided by a young person be no greater than seven years imprisonment.**

*Proof of age*

10.38 As well as protecting young people from the potentially harmful effects of prostitution the committee has a responsibility to offer some protection to those who genuinely believe the person they are dealing with is in fact over the age of 18 years. In all jurisdictions in Australia there are legal provisions, where proof of age is required, for an accused person to prove that all reasonable steps were taken to ascertain the age of the person concerned. Given the severity of the penalties proposed in this report for prostitution related offences against young people, the committee is of the opinion that it can be a defence that reasonable steps were taken to establish the age of the young person concerned.

*Recommendation 65*

10.39 The committee recommends:

**That it be provided under the Prostitution Regulation Act that in proceedings for offences against young people it is not necessary for the prosecution to prove the accused knew that the person concerned was a young person but it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.**

*Crimes Act 1900 of NSW*

10.40 The only prostitution related offence in the ACT concerning young people is that provided for in section 92N of the Crimes Act 1900 of NSW as in force in the Territory, which makes it an offence to employ, or permit the employment of, a person under the age of 16 for the purposes of prostitution (*see* paragraph 2.12).

10.41 In paragraphs 28–39 the committee has recommended a series of offences that should apply to the engaging of young people in prostitution. These recommendations go beyond the scope of section 92N and, therefore, the committee, in keeping with its belief expressed at paragraph 9.2 that controls over prostitution can best be exercised through a single unified piece of legislation, is of the opinion that this section of the NSW Crimes Act should no longer apply in the Territory.

*Recommendation 66*

10.42 The committee recommends:

**That section 92N of the Crimes Act 1900 of NSW, in force in the ACT, be repealed.**

## 11 HEALTH AND SAFETY

"We do not believe that the role of prostitutes in the spread of sexually transmitted diseases should be under estimated. ... However, it is also clear that a vast majority of infections are not contracted from prostitutes. Males between the ages of 20 to 29 are in the highest risk group for contracting (and possibly spreading) venereal diseases and form a significant portion of the sexually active population."<sup>1</sup>

### Introduction

11.1 As stated in paragraph 9.1 law reforms in prostitution must take into account the public health of the community. Evidence given to the committee suggests that approximately 4000 clients seek the commercial sexual services of some 60 to 70 prostitutes a week (see paragraph 2.50). The committee is concerned at this level of activity and the potential threat of STDs this poses to the public health. Accordingly the committee believes that there should be some legislative framework regulating health and hygiene matters associated with brothels and escort agencies.

### Sexually transmitted diseases

#### *Proclamation of STDs*

11.2 The *Sexually Transmitted Diseases Act 1956* is the primary legislation dealing with the control of STDs in the Territory (see paragraph 2.21). The committee, however, has some concerns about the mechanisms by which a disease can be defined as an STD; at present the only diseases which are defined as STDs are those listed in section 4 of the Act, to identify another disease as an STD requires that the Act be amended. In the opinion of the committee this is a clumsy method.

#### *Recommendation 67*

11.3 The committee recommends:

**That the *Sexually Transmitted Diseases Act 1956* be amended to allow for the proclamation of a disease as a sexually transmitted disease, for the purposes of the Act, by means of regulations made under the Act.**

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<sup>1</sup> Neave M, Final Report, Vol 1, p. 356

*Infecting other people*

11.4 Currently it is not an offence under the provisions of the Sexually Transmitted Diseases Act for a person with an STD to knowingly infect another person. Although the committee believes that, should there be such an offence, a conviction would be most unlikely, it agrees with the Victorian Inquiry that:

"... there may be some educative value in a provision which penalises a person who knows he or she is suffering from a venereal disease and engages in sexual activity with another person."<sup>(2)</sup>

11.5 Such an approach would, however, be consistent with the Public Health (Infectious and Notifiable Diseases) Regulations which imposes penalties on people suffering from an infectious or notifiable disease who willingly or negligently exposes themselves.<sup>(3)</sup> The committee sees merit in such an approach and the penalty it proposes is similar to that recommended by the Victorian Inquiry.<sup>(4)</sup>

*Recommendations 68 and 69*

11.6 The committee recommends:

**That it be an offence under the *Sexually Transmitted Diseases Act 1956* for a person to knowingly infect another person with a sexually transmitted disease.**

**That the penalty to be imposed for offences against the provisions of the *Sexually Transmitted Diseases Act 1956* dealing with knowingly infecting another person be no greater than a fine of \$1000.**

*Permitting infected prostitutes to work*

11.7 The committee is also concerned to protect both the health of prostitutes and of clients in this area of sexually transmitted diseases. The committee believes that those who propose to provide commercial sexual services must ensure that the provision of these services is disease free. The committee also believes that any prostitute, suffering from a sexually transmitted disease, should not be compelled, by an employer, to continue to provide commercial sexual services. In the opinion of the committee the licensed owner of a brothel or escort agency, or the operator or manager of a licensed brothel or escort agency should not knowingly allow a prostitute, suffering from an STD, to work.

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<sup>2</sup> Neave M, Final Report, Vol 1, p. 362

<sup>3</sup> Public Health (Infectious and Notifiable Diseases) Regulations, Regulations 13 and 23

<sup>4</sup> Neave M, Final Report, Vol 1, p. 362

11.8 A similar imposition should also apply to a prostitute who knows he or she is infected with an STD. The penalty proposed by the committee is similar to that enacted in the Victorian legislation.<sup>(5)</sup>

*Recommendations 70, 71 and 72*

11.9 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to knowingly permit a prostitute to work (whether under a contract of service or a contract for services) during any period that prostitute is infected with a sexually transmitted disease.**

**That it be an offence under the Prostitution Regulation Act for a prostitute to work as a prostitute during any period which the prostitute knows that he or she is infected with a sexually transmitted disease.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with a prostitute, infected with a sexually transmitted disease, working, or being required to work, be no greater than a fine of \$2000**

11.10 In setting parameters for defining how a license holder might be regarded as knowing whether or not a prostitute has an STD, the committee believes that the responsibility for knowing must rest with the license holder. As set out in paragraph 7 those providing sexual services must ensure that those services are disease free.

11.11 By placing the responsibility with regard to STDs on the license holders, the committee believes they will be encouraged to ensure that the prostitutes working for them have regular medical examinations.

11.12 In these circumstance it would be an acceptable defence for a license holder to claim to have take all reasonable steps to ensure that the prostitute was undergoing regular medical examinations and was not infected. Such a defence has been included in the Victorian legislation, where 'regular' implies at least on a fortnightly basis.<sup>(6)</sup> The committee believes such a defence should also apply in the ACT.

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<sup>5</sup> Prostitution Regulation Act 1986, section 13

<sup>6</sup> Prostitution Regulation Act 1986, subsection 13(2)

*Recommendation 73*

11.13 The committee recommends:

**That it be provided under the Prostitution Regulation Act that in proceedings for an offence dealing with knowingly permitting a prostitute with a sexually transmitted disease to work, a person is taken to have known that the prostitute was infected unless that person proves that at the time the offence is alleged to have been committed that person believed on reasonable grounds that –**

- the prostitute had been undergoing regular medical examinations, on at least a fortnightly basis, for the purpose of determining whether he or she was infected with a sexually transmitted disease; and**
- that the prostitute was not infected with a sexually transmitted disease.**

*Health certificates and mandatory medical examinations*

11.14 The committee has given consideration to the question of compulsory medical examinations and the issuing of health clearance certificates by medical examiners. The most compelling argument in favour of such drastic measures is control over the AIDS pandemic in Australia.

11.15 The Australian Medical Association, both in its submission to the committee and in evidence before it, argued for compulsory testing of prostitutes for HIV seropositivity if voluntary testing proved ineffectual, on the grounds that such measures were necessary to combat AIDS and to prevent its spread into the heterosexual community.<sup>(7)</sup> One brothel owner, also both in her submission and in evidence before the committee, strongly argued for compulsory AIDS testing of workers. In the submission it was argued:

"Monthly HIV testing is mandatory, and has been responsible for the **non-occurrence** of HIV in the sex industry in ACT."<sup>(8)</sup>

This same witness, in evidence before the committee, also argued for some form of medical card which would be carried by workers:

"I thought that was a really good idea, that every girl should be issued with book. Now whatever doctor or clinic she goes to, the doctor stamps it and signs it and writes down the test she had and the date she was tested on."<sup>(9)</sup>

11.16 Neither of these witnesses acknowledged the fact that both the National Health and

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<sup>7</sup> Australian Medical Association (ACT Branch), Submission, dated 26.6.90, p. 2 and Transcript, 23.11.90, p. 26

<sup>8</sup> Confidential submission, undated, p. 8

Transcript, 23.11.90, p. 37

<sup>9</sup> Transcript, 23.11.90, p. 37

Medical Research Council and the National Venereology Council of Australia have officially removed prostitution as a risk for HIV infection (see paragraph 3.6).

11.17 In the Northern Territory the Attorney-General, in his statement on tabling the draft prostitution bill, informed the Legislative Assembly that mandatory testing was opposed by both government and non-government health agencies, and gave the following three reasons:

- Control of sexually transmitted disease and HIV infection is being achieved at present by consultation and cooperation with the sex industry at a local level. The aim of the HIV control strategy in this area is to facilitate and maintain contact between prostitutes and public health agencies. Implementation of a mandatory testing scheme, which would penalise non attendance, may alienate certain workers and encourage them to work underground which, in turn may militate against education, diagnosis and treatment.
- Sex industry workers have been willing and regularly attending the Communicable Diseases Centre for health checks, both for their own benefit and because many are required to do so by escort agency owners. To make attendance compulsory would probably not alter the percentage of people attending.
- A compulsory scheme may hinder insistence on safe sex practices by sex industry workers because clients may be encourage to consider the worker 'clean' for having undergone a medical check-up.<sup>(10)</sup>

11.18 This question of compulsory medical examinations and the issuing of health certificates was also discussed by the NSW select committee and the Victorian Inquiry. The Victorian Inquiry argued that:

"[r]egistration and compulsory examination of prostitutes cannot be justified on epidemiological grounds since males and females with multiple sexual partners also play an important part in the spread of disease."<sup>(11)</sup>

The Inquiry also expressed the view that the most effective way to prevent the spread of STDs by prostitutes and their clients is to raise the level of awareness of these diseases amongst the general population.<sup>(12)</sup>

11.19 The NSW select committee came out strongly against the introduction of any form of health card:

"It was pointed out that any certificate issued by a doctor would only be valid until the prostitute's next sexual contact. And possession of such a document would probably induce a totally false sense of security in both prostitute and

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<sup>10</sup> *Hansard* (NT Legislative Assembly), 6.12.90 (Daily Proof), p. 10

<sup>11</sup> Neave M, Final Report, Vol 1, p. 370

<sup>12</sup> *Loc cit*

client, leading to the neglect of far more important basic health-care precautions such as client health checks and the use of condoms."<sup>(13)</sup>

11.20 The committee is swayed by the arguments put forward in the Northern Territory, Victoria and NSW against mandatory medical examinations of prostitutes and the issuing of health cards. In addition, the recommended penalty for knowingly allowing an infected prostitute to continue to work (*see* paragraph 9) is of sufficient severity, in the opinion of the committee, to induce licence holders to insist on safe sexual practices thus making mandatory medical examinations unnecessary.

11.21 The committee is also aware that in Victoria it is an offence for a medical practitioner to provide a prostitute with certificate stating she is free from STDs and in both NSW and Victoria it is an offence for anyone to use a medical certificate in connection with prostitution.<sup>(14)</sup>

11.22 The committee believes that a certificate stating that a prostitute is free from disease is valid **at the time of testing only** and, therefore, is of only limited value. Whilst of the opinion that a medical practitioner should be able to issue a certificate stating that, at the time of the testing, a person was, or was not, infected with an STD, the committee believes it to be unacceptable that someone should be able to use such a certificate to claim they are free of disease. Further, a licence holder should not be allowed to display a medical certificate, or use the result of an examination, to induce a belief that a prostitute is disease free.

*Recommendations 74, 75, 76, 77 and 78*

11.23 The committee recommends:

**That it be an offence under the *Sexually Transmitted Diseases Act 1956* for a person, for the purpose of or in relation to prostitution, to make use of a certificate given by a medical practitioner which signifies or implies that the person to whom the certificate refers is not infected with a sexually transmitted disease within the meaning of the Act.**

**That health cards not be introduced for prostitutes.**

**That there be no legal provision mandatorily requiring prostitutes to undergo regular medical examinations.**

**That it be an offence under the *Prostitution Regulation Act* for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to fail to take reasonable steps to ensure that written or oral evidence of a prostitute's attendance at a medical**

<sup>13</sup> Select Committee on Prostitution, p. 176

<sup>14</sup> Victoria – Venereal Diseases Act 1958, section 12  
NSW – Venereal Diseases Act 1918, section 15



**examination or the results of that examination is not displayed or used to induce a client to believe that a prostitute is free from infection with a sexually transmitted disease.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the evidence of medical examinations be no greater than a fine of \$2000.**

*Use of condoms*

11.24 It appears to the committee that the relative disease free state of prostitution in the ACT is due, in the main, to attitudinal changes in sexual behaviour amongst prostitutes and clients, and, in no small measure, to use of prophylactics. As stated in paragraph 3.36, the greatest threats to this state of affairs are those clients who insist on condom free sexual services from prostitutes. This must be discouraged.

11.25 The committee firmly believes that in the provision of commercial sexual services the licence holder has a responsibility to protect the health of those who work in the establishment and the clients. Part of that responsibility must be a policy of condom usage for every sexual services provided by the brothel, or escort agency. The penalty proposed by the committee in the following recommendations is similar to that imposed by the Health (Brothels) Regulations 1990 of Victoria.

*Recommendations 79, 80, 81 and 82*

11.26 The committee recommends:

**That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to fail to take reasonable steps to ensure that a client and a prostitute use condoms in any encounter which involves vaginal, oral or anal penetration, by any means.**

**That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to expressly or impliedly discourage the use of condoms in the brothel or escort agency.**

**That it be an offence under the Prostitution Regulation Act for a person working as a prostitute in a brothel or escort agency, which is subject to a licence to own and operate a brothel or escort agency issued by the Licensing Board, to engage in any encounter with a client which involves vaginal, oral or anal penetration, by any means, without using a condom.**

**That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the use of condoms be no greater than a fine of \$5000.**

### **Other health related issues**

11.27 There are also a number of other health related issues that need to be regulated in the interests of public health. These include such matters as the cleanliness of brothels, the provision and laundering of linen and towels, the disposal of used condoms, hygiene standards for spas and sexual aids, and the provision of shower, washing and toilet facilities for clients and for staff.

11.28 The committee is also concerned to ensure that brothels and escort agencies display, on their premises, information on STDs and that generally licence holders be required to safeguard the health of customers and people employed by them.

11.29 To ensure that appropriate health standards are met by, and maintained in, licensed brothels and escort agencies the committee believes that Public Health Inspectors, appointed under the Public Health Act, should have the requisite authority to inspect brothels and escort agencies and to deal with any breaches in the Prostitution Regulation Act, or regulations made under that Act, dealing with health and related matters.

### *Recommendations 83 and 84*

11.30 The committee recommends:

**That regulations be made under the Prostitution Regulation Act with respect to:**

- . **the cleanliness of brothels;**
- . **the provision, use and laundering of towels and other items of linen;**
- . **hygiene standards for swimming pools, spa baths and sexual aids;**
- . **provision of, and hygiene standards for, showers, washing and toilet facilities;**
- . **the disposal of used condoms;**
- . **the inspection of premises;**
- . **the provision of information relating to sexually transmitted diseases to prostitutes employed by the brothel or escort agency and to clients; and**
- . **safeguarding the health of clients of, and people employed by, the brothel or escort agency.**

**That section 6A of the *Public Health Act 1928* be amended to allow for the appointment of Health Inspectors for the purposes of the Prostitution Regulation Act.**

### Occupational health and safety

11.31 The committee believes that, following the law reforms recommended in this report, current Territorial legislation covering occupational health and safety should apply to the prostitution industry. It has been a major concern of the committee that those who have chosen to work in prostitution have been required to sacrifice some very basic civil and human rights. The committee has continued to argue through this report that those who freely choose to work as prostitutes should be allowed to pursue that life style without harassment.

11.32 Currently workers are not entitled to paid holiday leave, are not entitled to sick leave provisions, there is limited access to workers compensation, there are no set hours of work, no established rates of pay or remuneration, no established working conditions and no access to industrial representation.

11.33 Because prostitution has basically always been an illegal activity, those working in the industry, either as owners or as workers, have not been required to deal with normal work practices and are, therefore, possibly ignorant of their rights and their responsibilities. It is the committee's belief, at least in the area of occupational health and safety, that, following the decriminalisation of prostitution in the Territory an information campaign will be necessary to inform all participants in the prostitution industry of their rights and their responsibilities. The committee expects that all occupational health and safety provisions, including, where appropriate, the establishment of Designated Work Groups, will be met.

11.34 In the committee's opinion such a campaign should be conducted by the Industrial Relations Branch of the Chief Minister's Department (as that branch has a responsibility to provide an occupational health and safety advisory service to the private sector) in conjunction with, and funded by, the Licensing Board.

### *Recommendation 85*

11.35 The committee recommends:

**That, following the decriminalisation of prostitution in the ACT, an information campaign be conducted by the Chief Minister's Department, in conjunction with and funded by the Licensing Board, informing licensed brothel and escort agency owners and operators, managers, and prostitutes working in those licensed brothels and escort agencies of their rights and responsibilities under the *Occupation Health and Safety Act 1989*.**

11.36 Although a similar problem appears to exist with reference to workers compensation, the committee is of the opinion that information and advice on this matter should be made available to interested people on request rather than as part of any concerted publicity campaign.

## 12 SOCIAL CONCERNS

"It seems then that prostitution is like any work in that some do it because it is the only job available to them, while others do it because it is a good job or because it provides them with money when they need it, or because they enjoy it." <sup>(1)</sup>

### Introduction

12.1 The committee believes it necessary, at the beginning of this chapter, to reiterate its view, stated in paragraph 7.4, that the committee neither condones nor condemns the practice of prostitution. Within its terms of reference, however, the committee now has a responsibility, in the light of the evidence it has received and considered, to make recommendations that will allow those who choose to adopt the lifestyle of prostitution to do so without harassment; and this the committee has done in the preceding chapters of this report.

12.2 The committee is aware that any changes or recommendations it might make in response to these social issues must be posited in the context of the ACT being sociologically and politically part of a greater area than its own geographic limits.

12.3 Like many of its predecessors, the committee has not been able to answer the question "why, of so many people with similar life circumstances, some choose prostitution and others do not?" It is apparent to the committee that the reasons for a person choosing to take up prostitution are as many and as varied as the people making that choice; even if it is possible to categorise their basic motivations.

12.4 One inescapable conclusion reached by the committee, however, is that for as long as society remains sexist in its orientation, for as long as women remain portrayed as saleable objects, for as long as men continue to have the financial dominance to buy their sexual release, then for so long will prostitution remain a part of our society. The Victorian Inquiry expressed similar concerns:

"Women learn that they are objects for male sexual gratification and nurturers ... These two aspects of women's role, sex object and nurturer, are often traded for financial and physical (and to some extent emotional) security from men. The entrenchment of these rigid roles has resulted in the forced dependence of women upon men." <sup>(2)</sup>

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<sup>1</sup> Perkins and Bennet, *op cit*, p. 213

<sup>2</sup> Neave M, Final Report, Vol 1, p. 446

### **Job retraining and skills development**

12.5 Many profiles of prostitutes in Australia emphasise the lack of job opportunities (often exacerbated by inadequate or non-existent child minding facilities); lack of job skills and job related training; and an incomplete education.<sup>(3)</sup>

12.6 To overcome some of these problems the committee has considered the possibility of making available to workers job retraining and job skills improvement schemes, and assistance in providing access to further education. Such schemes should be voluntary and access to them should be by request of a worker; advertising of the schemes should be discreet and limited to licenses brothels and escort agencies; and care should be taken to avoid any sense of paternalism.

12.7 The primary assistance under these scheme ought simply to be ensuring a place in a recognised course at a training or an educational institution; in some circumstance assistance should be given to aid in the payment of fees.

12.8 In considering such schemes the committee was influenced by their apparent success in Sweden. Both the Canadian Special Committee and the Victorian Inquiry report on the achievements of the Swedish initiatives:

"In Sweden there is evidence that the employment of social and educational strategies is actually reducing the incidence of prostitution."<sup>(4)</sup>

12.9 The committee concluded, however, that special government funded consideration could not be given to those prostitutes who wished to leave the industry. But it is appropriate, in the opinion of the committee, for the Licensing Board to take on the responsibility for providing assistance of this kind to workers who wish to change their employment life styles, particularly those who are having difficulty in doing so because of the limitations identified in paragraph 5.

### *Recommendation 86*

12.10 The committee recommends:

**That the Licensing Board provide, to prostitutes, assistance, and where appropriate financial assistance, in gaining access to job retraining, job skills improvement schemes and further education.**

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<sup>3</sup> Select Committee on Prostitution, pp. 130-131  
Neave M, Final Report, Vol 1, pp. 68-70

<sup>4</sup> Pornography and Prostitution in Canada, Vol 2, p. 507

## Sexism and community attitudes

12.11 In paragraphs 7.18–19 the committee expressed its concern at the sexist nature of society which allows, and even condones under a double standard, the existence of prostitution. The committee is in agreement with the Victorian Inquiry and the Canadian Committee that:

"... sexism, often combined with ignorance or misinformation about matters of sexuality and sexual identity, are factors which contribute to women and young people becoming prostitutes and clients seeking their services."<sup>(5)</sup>

12.12 To fundamentally change a basic orientation of society is, in the short or medium term, a difficult if not impossible task. But nonetheless such a fundamental change is desirable and the task is one that ought not to be shirked by government.

12.13 The committee is aware of the Government's, and the Federal Government's, commitment to equal employment opportunities and to dealing with sexual discrimination and sexual harassment. In the opinion of the committee, however, more needs to be done.

12.14 The National Committee on Violence, when commenting on censorship in its report, suggested a number of strategies for dealing with sexism in society:

"The Committee deplores sexism and the denigration of women. It feels, however, that values such as these, no less than other anti-social thoughts, are best combated not by censorship, but by criticism, censure and stigmatisation in the marketplace of ideas."<sup>(6)</sup>

12.15 It is the committee's considered opinion that the starting place for changing community attitudes is the education system with educative programs in human sexuality and sex roles. The committee has already recommended, at paragraph 8.23 – Recommendation 3, that school curricula include programs to assist young people with the complex problems of sexuality and sexual identity.

## Prostitute support groups

"No ... policy to combat the exploitation of prostitution can be implemented solely with State means; associations must also be included in this endeavour. Associations have considerable knowledge of the field and frequently maintain close contacts with prostitutes themselves. Associations can also take risks and can thus uncover and venture to reveal unacceptable situations, which the authorities must then take into account."<sup>(7)</sup>

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<sup>5</sup> Neave M, Final Report, Vol 1, p. 446

<sup>6</sup> *Violence: Directions for Australia*, Report of the National Committee on Violence, Australian Institute of Criminology, Canberra, 1990, p. 211

<sup>7</sup> Fernand-Laurent J, *op cit*, paragraph 72

12.16 The committee supports the contention of the United Nations Report on *Activities for the advancement of women: Equality, Development and Peace*, concerning the role that associations have to play in combating exploitation in the industry; and believes further that such associations have important educative, health and advocacy roles to play.

12.17 The prostitutes association in the ACT, WISE, was formed in 1989. It is a support, education and advocacy service for workers which provides outreach to workers, education in the areas of prostitution, safe sexual practices and HIV, and individual counselling as requested. It is also involved in the distribution of condoms to workers. <sup>(8)</sup> WISE has advised the committee that it is funded for one worker for 30 hours a week plus an additional \$2000 a year for resources. <sup>(9)</sup> Funding is on an annual basis with no future commitment. The current level of funding for WISE is of some concern to the committee.

12.18 In response to a question concerning future directions for the association WISE advised the committee of a need for two full time workers and adequate resource allocation. The committee believes this to be a conservative estimate of the association's need.

12.19 If an association is to meet those needs identified by the United Nations and to fulfil a role as an effective educative and advocacy body, which the committee believes it should, then attention must be paid to its funding. In the opinion of the committee, a collective in the ACT should be entitled to –

- . secure resource allocation, including rental funding;
- . staff funding equivalent to two full time workers; and
- . because of outreach work, funding for a vehicle.

12.20 The committee believes that funding for a collective should not be project based.

12.21 At paragraph 9.25 the committee discussed the need to defray the cost of the Licensing Board by means of a fee for a licence to own and operate a brothel or an escort agency; and at paragraph 9.26 recommended, Recommendation 15, that licences be subject to a fee. It is the committee's opinion that, should the recommendations of this report be implemented, funding for a collective should come from the revenues collected by the Licensing Board from licence fees. Appropriate financial and administrative controls and accountability mechanisms should, of course, be put in place before any funding is made available.

12.22 Prior to the reforms recommended in this report being adopted the committee is of the opinion that there should be a review of the funding needs of an association, with a view to

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<sup>8</sup> WISE submission, undated, p. 1

<sup>9</sup> Transcript, 29.1.91, p. 95 and p. 101



ensuring its effectiveness in the delivery of educative, health and advocacy programs to prostitutes.

*Recommendations 87, 88 and 89*

12.23 The committee recommends:

**That, where appropriate, funding for a prostitutes collective be guaranteed, at least for the next three years.**

**That there be a review of the funding needs of a prostitutes collective with a view to ensuring its effectiveness in the delivery of educative, health and advocacy programs to prostitutes.**

**That, following the establishment of the reforms recommended in this report, a prostitutes collective be funded through the Licensing Board, in accordance with the conditions set out in paragraph 12.21 of this report.**

12.24 It is also the opinion of the committee that the interests of workers can be protected through membership of an appropriate union, and the involvement of a union will add significantly to the monitoring of the operations of brothels and escort agencies.

**Future directions**

12.25 The committee is aware that the recommendations made in this report presage substantial social change in our society. The committee is also aware that it is unlikely that the recommendations have addressed, or addressed satisfactorily, all the issues related to the regulation of the prostitution industry in the ACT. To that end the committee considers that it would be appropriate if, after some period of time, the operations of the proposed Prostitution Regulation Act be reviewed.

12.26 The review should consider, amongst other things, the adequacy of the licensing fee; the appropriateness of the two tier licence system; the restrictions on location and siting; and the policing of brothels and escort agencies. It is the opinion of the committee that the review should be commissioned by the Minister at the end of the third year of operation of the Prostitution Regulation Act.

*Recommendation 90*

12.28 The committee recommends:

**That, at the end of the third year of operation of the Prostitution Regulation Act, the Minister commission a review of the operation of the Act including the adequacy of the licensing fee, the appropriateness of the two tier licence**

**system, the restrictions on location and siting, and the policing of brothels and escort agencies.**

## 13 SUMMARY OF RECOMMENDATIONS

"... there is little evidence that decriminalisation necessarily results in an increase in prostitution and related criminality. ... it seems to make a considerable difference in terms of result whether a move to decriminalisation is balanced by the replacement of the criminal law with some form of regulation."<sup>(10)</sup>

### Introduction

13.1 As a result of its inquiries and the consideration of the evidence presented before it the committee has concluded that the most appropriate means of controlling prostitution in our society is through decriminalising the activity and regulating it. The committee has also concluded that there needs to be some significant tightening of the law in respect of the involvement of young people in prostitution and some general tightening in respect of the criminal law. In seeking to make recommendations concerning the regulation of prostitution the committee has paid special attention to the aspect of public health and sexually transmitted diseases. The committee has also made some recommendations on broader social issues.

### Decriminalisation

13.2 In seeking to decriminalise the activity of prostitution, the committee has made the following recommendations:

#### *Recommendation 4 (paragraph 9.4)*

That the control of prostitution in the ACT be exercised through one enactment only (the Prostitution Regulation Act)

#### *Recommendation 5 (paragraph 9.6)*

That in the Prostitution Regulation Act the following definitions apply:

- . 'brothel' – 'premises used for the purposes of commercial sexual activity';
- . 'commercial sexual activity' – 'providing sexual services for monetary or material reward based on a normal commercial transaction';
- . 'escort service' – 'the provision of commercial sexual services, other than on the premises of a licensed brothel';
- . 'prostitute' – 'a person providing commercial sexual services for monetary or material reward'; and

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<sup>10</sup> Pornography and Prostitution in Canada, *op cit*, p. 508

'prostitution' – 'engaging in commercial sexual activity'.

*Recommendation 6 (paragraph 9.6)*

That section 5 of the *Police Offences Act 1930* be amended by omitting the definition of "Brothel".

*Recommendation 27 (paragraph 9.64)*

That the Australian Federal Police have no special and /or specific powers of entry in respect of brothels or escort agencies for which the Licensing Board has issued a licence to own and operate.

*Recommendation 36 (paragraph 10.6)*

That paragraph 23(1)(ja) of the *Police Offences Act 1930* be repealed.

*Recommendation 43 (paragraph 10.16)*

That section 15 of the *Police Act 1927* be repealed.

*Recommendations 44 (paragraph 10.16)*

That paragraph 23(1)(j) and subsection 23(3) of the *Police Offences Act 1930* be repealed.

*Recommendation 48 (paragraph 10.19)*

That sections 18, 19 and 19A of the *Police Offences Act 1930* be repealed.

*Recommendation 51 (paragraph 10.24)*

That section 34 of the *Police Offences Act 1930* be amended by omitting all references to "prostitutes".

*Recommendation 52 (paragraph 10.24)*

That sections 17 and 21 of the *Police Act 1927* be amended by omitting all references to "prostitutes".

*Recommendation 53 (paragraph 10.27)*

That all common law offences in relation to prostitution and keeping or running of brothels or common bawdy houses be statutorily repealed.

**Regulation**

13.3 The committee is firmly of the opinion that decriminalisation can only be effective if it is balanced by appropriate regulation. The committee has made the following recommendations to regulate the prostitution industry.

*Recommendation 7 (paragraph 9.10)*

That a Licensing Board be established to grant, reissue, transfer and monitor licences to own and operate a brothel and/or an escort agency.

*Recommendation 8 (paragraph 9.15)*

That –

- . the Licensing Board consist of three part time members to be appointed by the Minister;
- . the term of appointment be for two years;
- . members be eligible for reappointment for one further term; and
- . at least one member of the Board be a woman

*Recommendation 9 (paragraph 9.20)*

That the functions of the Licensing Board be to:

- . hear and determine applications for the grant of a licence to own and operate a brothel and/or an escort agency;
- . to hear and determine applications for the reissue or transfer of licences to own and operate a brothel and/or an escort agency;
- . cancel licences to own and operate a brothel and/or an escort agency;
- . hear and determine complaints, other than criminal proceedings, against licence holders;
- . monitor the adherence to licence provisions; and
- . maintain a register of licences granted, reissued or transferred.

*Recommendation 10 (paragraph 9.20)*

That the Licensing Board have the power to issue and collect fines imposed for breaches of licence conditions.

*Recommendation 11 (paragraph 9.20)*

That decisions of the Licensing Board be appealable to the Administrative Appeals Tribunal.

*Recommendation 12 (paragraph 9.25)*

That licences be issued to own and operate a brothel, to own and operate an escort agency and to own and operate a brothel and an escort agency jointly.

*Recommendation 13 (paragraph 9.25)*

That there be two classes of licence to own and operate a brothel and/or an escort agency—

- . class (1) allowing for the employment of up to 10 people;
- . class (2) allowing for the employment of 11 and up to 40 people.

*Recommendation 14 (paragraph 9.25)*

That a licence to own and operate a brothel and/or an escort agency be valid for one year only and, on application to the Licensing Board, may be reissued.

*Recommendation 15 (paragraph 9.25)*

That a licence to own and operate a brothel or escort agency, on application to the Licensing Board, may be transferred.

*Recommendation 16 (paragraph 9.25)*

That a licence to own and operate a brothel and/or an escort agency be granted, reissued or transferred, subject to a fee.

*Recommendation 17 (paragraph 9.25)*

That the licence fee to own and operate a brothel and/or an escort agency be determined by the Minister on recommendation of the Licensing Board.

*Recommendation 18 (paragraph 9.32)*

That a licence to own and operate a brothel and/or an escort agency be granted, reissued or transferred only to a natural person who has attained the age of 18 years.

*Recommendation 19 (paragraph 9.37)*

That a licence to own and operate a brothel and/or an escort agency not be granted, reissued or transferred to a person who:

- . has within the preceding eight years been convicted of an indictable offence under the law of the Territory or any other State or Territory punishable by imprisonment for three years or more; or
- . has previously held a licence to own and operate a brothel and/or an escort agency which has been cancelled within the preceding three years.

*Recommendation 20 (paragraph 9.41)*

That to be eligible to be granted a licence to own and operate a brothel and/or an escort agency, or to have a licence reissued or transferred, a person must be a resident of the Territory.

*Recommendation 21 (paragraph 9.45)*

That the Licensing Board be required to cancel a licence to own and operate a brothel and/or an escort agency where the licensee is convicted of an indictable offence under the law of the Territory or any other State or Territory punishable by imprisonment for three years or more.

*Recommendation 22 (paragraph 9.47)*

That the Licensing Board be empowered to cancel a licence to own and operate a brothel and/or an escort agency, being satisfied that the licence should be cancelled, where a licensee:

- . is convicted of an offence against the Prostitution Regulation Act that carries as a maximum penalty the loss of the licence; or

- . fails to comply with the conditions of the licence.

*Recommendation 23 (paragraph 9.55)*

That it be a condition for the granting, reissuing or transfer of a licence to own and operate a brothel and/or an escort agency that a licensee:

- . not employ people under the age of 18 years to work in the brothel or escort agency;
- . not employ foreign persons who do not have a current work permit issued by the Commonwealth Department of Immigration, Local Government and Ethnic Affairs;
- . who fails to comply with these conditions may be subject to the loss of the licence.

*Recommendation 24 (paragraph 9.55)*

That it be a condition for the granting, reissuing or transfer of a licence to own and operate a brothel and/or an escort agency that a licensee:

- . not allow people under the age of 18 years on the premises of the brothel or escort agency;
- . not employ any number of people that is above the limit specified in the licence;
- . publicly display a notice identifying the licensee;
- . who fails to comply with these conditions may be subject to a fine imposed by the Licensing Board.

*Recommendation 25 (paragraph 9.55)*

That it be a condition for the granting, reissuing or transfer of a licence to own and operate a brothel and/or an escort agency that a licensee comply with any Regulations made under the Prostitution Regulation Act.

*Recommendation 26 (paragraph 9.60)*

That brothels and escort agencies be sited only in areas defined in National Capital Development Commission Policy Plans, as incorporated in the Territory Plan, as 'industrial'.



*Recommendation 30 (paragraph 9.72)*

That it be an offence under the Prostitution Regulation Act to place, and to publish, advertisements in either the print or electronic media:

- . offering employment in a brothel and/or an escort agency; and
- . offering, in a brothel or through an escort agency, the provision of specific or general sexual services.

*Recommendation 31 (paragraph 9.72)*

That the penalty to be imposed for offences against provisions in the Prostitution Regulation Act dealing with advertising be no greater than a fine of \$2000

*Recommendation 32 (paragraph 9.72)*

That regulations be made under the Prostitution Regulation Act with respect to the size, form and content of advertisements for the provision of commercial sexual services through licensed establishments.

**The criminal law**

13.4 The committee has closely examined the criminal law in relation to prostitution and has made a series of recommendations consequent upon the decriminalisation and regulation of the industry. It is the committee's intention that the laws relating to street prostitution remain in place and, where appropriate, be strengthened. The committee has made the following recommendations with regard to the criminal law.

*Recommendation 33 (paragraph 10.6)*

That it be an offence under the Prostitution Regulation Act for any person, for the purposes of prostitution, to –

- . solicit or accost any person in a public place; or
- . loiter in a public place.

*Recommendation 34 (paragraph 10.6)*

That it be an offence under the Prostitution Regulation Act for any person –

- . in a public place, to invite or solicit any person to prostitute themselves; or
- . to loiter in or frequent a public place for the purpose of –
  - . inviting or soliciting any person to prostitute themselves; or

- . being accosted by or on behalf of a prostitute.

*Recommendation 35 (paragraph 10.6)*

That the penalty to be imposed for offences against the provisions in the Prostitution Regulation Act dealing with soliciting be no greater than a fine of \$2000 or imprisonment for four months.

*Recommendation 37 (paragraph 10.9)*

That it be an offence under the Prostitution Regulation Act for a person, for the purposes of inducing a person aged 18 or more to engage or to continue to engage in prostitution, to –

- . assault or threaten to assault that or another person;
- . intimidate that or another person;
- . supply or offer to supply a drug of dependence to that or another person; or
- . make a false representation or use a false pretence or other fraudulent means.

*Recommendation 38 (paragraph 10.9)*

That the penalty to be imposed for offences against provisions in the Prostitution Regulation Act dealing with the forcing of an adult to become or remain a prostitute be no greater than six years imprisonment.

*Recommendation 39 (paragraph 10.16)*

That it be an offence under the Prostitution Regulation Act for a person, with the intent to induce another person aged 18 or more to provide or continue to provide him or her with a payment or payments derived, directly or indirectly, from acts of prostitution taken part in by that other person, to –

- . assault or threaten to assault that person or another;
- . intimidate that person or another; or
- . supply or offer to supply a drug of dependence to that person or another.

*Recommendation 40 (paragraph 10.16)*

That the penalty to be imposed for offences against provisions in the Prostitution Regulation Act dealing with forcing an adult to provide financial support out of prostitution be no greater than six years imprisonment.

*Recommendation 41 (paragraph 10.16)*

That it be an offence under the Prostitution Regulation Act for a person to live wholly or in part on the earnings of prostitution where those earnings are derived from unlicensed commercial sexual activity.

*Recommendation 42 (paragraph 10.16)*

That the penalty to be imposed for offences against provisions of the Prostitution Regulation Act dealing with living on the earning of unlicensed commercial sexual activity be no greater than six months imprisonment.

*Recommendation 45 (paragraph 10.19)*

That it be an offence under the Prostitution Regulation Act for a person to own a brothel or escort agency, which is not subject to a current licence to own and operate a brothel or escort agency issued by the Licensing Board.

*Recommendation 46 (paragraph 10.19)*

That it be an offence under the Prostitution Regulation Act for a person to –

- . knowingly permit premises to be used as a brothel or an escort agency; or
- . lease, let or sub let premises, knowing that the premises are to be used as a brothel or an escort agency,

where that brothel or escort agency is not subject to a current licence to own and operate a brothel or escort agency issued by the Licensing Board.

*Recommendation 47 (paragraph 10.19)*

That the penalties to be imposed for offences against the provisions in the Prostitution Regulation Act dealing with the unlicensed operation of brothels and escort agencies be no greater than a fine of \$10,000 or 12 months imprisonment.

*Recommendation 49 (paragraph 10.21)*

That it be an offence under the Prostitution Regulation Act for a person to engage in commercial sexual activity other than in accordance with a licence to own and operate a brothel or an escort agency.

*Recommendation 50 (paragraph 10.21)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with unlicensed commercial sexual activity be no greater than a fine of \$1000.

**Young people**

13.5 As set out in chapter 8 and the latter part of chapter 10 the committee is deeply concerned about the sexual exploitation of our community's young people. Having given this matter serious consideration the committee has made the following recommendations aimed at ensuring young people, neither voluntarily nor through coercion, engage in prostitution.

*Recommendation 54 (paragraph 10.13)*

That it be an offence under the Prostitution Regulation Act for a person to cause or induce a person under the age of 18 to take part, or to continue to take part, in the provision of commercial sexual services.

*Recommendation 55 (paragraph 10.13)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the causing or inducing a young person to take part in prostitution be no greater than seven years imprisonment.

*Recommendation 56 (paragraph 10.33)*

That it be an offence under the Prostitution Regulation Act for a person who owns, manages or conducts a brothel or an escort agency, whether or not that brothel or escort agency is subject to a licence to own and operate a brothel or escort agency issued by the Licensing Board, to allow a person under the age of 18 years to take part in the provision of commercial sexual services.

*Recommendation 57 (paragraph 10.33)*

That it be an offence under the Prostitution Regulation Act for a person having the care or control of a young person to allow that young person to take part in the provision of commercial sexual services.

*Recommendation 58 (paragraph 10.33)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with a young person taking part in the provision of commercial sexual services be no greater than seven years imprisonment.

*Recommendation 59 (paragraph 10.35)*

That it be an offence under the Prostitution Regulation Act for a person –

- . in a public place, to invite or solicit any young person to prostitute themselves;
- or
- . to loiter in or frequent a public place for the purpose of inviting or soliciting any young person to prostitute themselves.

*Recommendation 60 (paragraph 10.35)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the soliciting of young people be no greater than three years imprisonment.

*Recommendation 61 (paragraph 10.35)*

That it be an offence under the Prostitution Regulation Act for a person to enter into an agreement, or to offer to enter into an agreement, other than as an act of soliciting in a public place, under which a young person is to provide commercial sexual services to that person or another in return for payment or in exchange for drugs of dependence.

*Recommendation 62 (paragraph 10.35)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the entering into agreements with young people for the provision of commercial sexual services be no greater than seven years imprisonment.

*Recommendation 63 (paragraph 10.37)*

That it be an offence under the Prostitution Regulation Act for a person to, except in the ordinary course of a business unrelated to prostitution, receive a payment knowing that it or any part of it has been derived, directly or indirectly, from commercial sexual services provided by a young person.

*Recommendation 64 (paragraph 10.37)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the receipt of payments in respect of commercial sexual services provided by a young person be no greater than seven years imprisonment.

*Recommendation 65 (paragraph 10.39)*

That it be provided under the Prostitution Regulation Act that in proceedings for offences against young people it is not necessary for the prosecution to prove the accused knew that the person concerned was a young person but it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.

*Recommendation 66 (paragraph 10.42)*

That section 92N of the Crimes Act 1900 of NSW, in force in the ACT, be repealed.

**Health and safety issues**

13.6 In chapters 3 and 11 the committee discussed the important questions of HIV, STDs and public health. The committee believes that the industry is relatively disease free in the ACT and accepts its responsibility to make recommendations ensuring that this state of affairs continues. To this end the committee has made the following recommendations.

*Recommendation 67 (paragraph 11.3)*

That the *Sexually Transmitted Diseases Act 1956* be amended to allow for the proclamation of a disease as a sexually transmitted disease, for the purposes of the Act, by means of regulations made under the Act.

*Recommendation 68 (paragraph 11.6)*

That it be an offence under the *Sexually Transmitted Diseases Act 1956* for a person to knowingly infect another person with a sexually transmitted disease.

*Recommendation 69 (paragraph 11.6)*

That the penalty to be imposed for offences against the provisions of the *Sexually Transmitted Diseases Act 1956* dealing with knowingly infecting another person be no greater than a fine of \$1000.

*Recommendation 70 (paragraph 11.9)*

That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to knowingly permit a prostitute to work (whether under a contract of service or a contract for services) during any period that prostitute is infected with a sexually transmitted disease.

*Recommendation 71 (paragraph 11.9)*

That it be an offence under the Prostitution Regulation Act for a prostitute to work as a prostitute during any period which the prostitute knows that he or she is infected with a sexually transmitted disease.

*Recommendation 72 (paragraph 11.9)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with a prostitute, infected with a sexually transmitted disease, working, or being required to work, be no greater than a fine of \$2000

*Recommendation 73 (paragraph 11.13)*

That it be provided under the Prostitution Regulation Act that in proceedings for an offence dealing with knowingly permitting a prostitute with a sexually transmitted disease to work, a person is taken to have known that the prostitute was infected unless that person proves that at the time the offence is alleged to have been committed that person believed on reasonable grounds that –

- . the prostitute had been undergoing regular medical examinations, on at least a fortnightly basis, for the purpose of determining whether he or she was infected with a sexually transmitted disease; and
- . that the prostitute was not infected with a sexually transmitted disease.

*Recommendation 74 (paragraph 11.23)*

That it be an offence under the *Sexually Transmitted Diseases Act 1956* for a person, for the purpose of or in relation to prostitution, to make use of a certificate given by a medical practitioner which signifies or implies that the person to whom the certificate refers is not infected with a sexually transmitted disease within the meaning of the Act.

*Recommendation 75 (paragraph 11.23)*

That health cards not be introduced for prostitutes.

*Recommendation 76 (paragraph 11.23)*

That there be no legal provision mandatorily requiring prostitutes to undergo regular medical examinations.

*Recommendation 77 (paragraph 11.23)*

That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to fail to take reasonable steps to ensure that written or oral evidence of a prostitute's attendance at a medical examination or the results of that examination is not displayed or used to induce a client to believe that a prostitute is free from infection with a sexually transmitted disease.

*Recommendation 78 (paragraph 11.23)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the evidence of medical examinations be no greater than a fine of \$2000.

*Recommendation 79 (paragraph 11.26)*

That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to fail to take reasonable steps to ensure that a client and a prostitute use condoms in any encounter which involves vaginal, oral or anal penetration, by any means.



*Recommendation 80 (paragraph 11.26)*

That it be an offence under the Prostitution Regulation Act for a person, who holds a current licence to own and operate a brothel or an escort agency issued by the Licensing Board, to expressly or impliedly discourage the use of condoms in the brothel or escort agency.

*Recommendation 81 (paragraph 11.26)*

That it be an offence under the Prostitution Regulation Act for a person working as a prostitute in a brothel or escort agency, which is subject to a licence to own and operate a brothel or escort agency issued by the Licensing Board, to engage in any encounter with a client which involves vaginal, oral or anal penetration, by any means, without using a condom.

*Recommendation 82 (paragraph 11.26)*

That the penalty to be imposed for offences against the provisions of the Prostitution Regulation Act dealing with the use of condoms be no greater than a fine of \$5000.

*Recommendation 83 (paragraph 11.30)*

That regulations be made under the Prostitution Regulation Act with respect to:

- . the cleanliness of brothels;
- . the provision, use and laundering of towels and other items of linen;
- . hygiene standards for swimming pools, spa baths and sexual aids;
- . provision of, and hygiene standards for, showers, washing and toilet facilities;
- . the disposal of used condoms;
- . the inspection of premises;
- . the provision of information relating to sexually transmitted diseases to prostitutes employed by the brothel or escort agency and to clients; and
- . safeguarding the health of clients of, and people employed by, the brothel or escort agency.

*Recommendation 84 (paragraph 11.30)*

That section 6A of the *Public Health Act 1928* be amended to allow for the appointment of Health Inspectors for the purposes of the Prostitution Regulation Act.

*Recommendation 85 (paragraph 11.35)*

That, following the decriminalisation of prostitution in the ACT, an information campaign be conducted by the Chief Minister's Department, in conjunction with and funded by the Licensing Board, informing licensed brothel and escort agency owners and operators, managers, and prostitutes working in those licensed brothels and escort agencies of their rights and responsibilities under the *Occupational Health and Safety Act 1989*.

**Ancillary matters**

13.7 During the course of its inquiries the committee addressed a number of ancillary matters, including taxation, youth homelessness, the role of, and funding for, a prostitutes collective, the maintenance of police records, and a need for a future review. The committee has made the following recommendations concerning these matters.

*Recommendation 1 (paragraph 3.39)*

That ongoing funding be made available to the STD Clinic, Royal Canberra Hospital (South), to continue to maintain its data base on sexually transmitted diseases.

*Recommendation 2 (paragraph 6.10)*

That the Government request of the ACT Branch of the Australian Taxation Office that they inform brothel owners and those working in brothels of –

- . the reasons why the PAYE system applies to sex workers; and
- . their obligations to meet their taxation responsibilities.

*Recommendation 3 (paragraph 8.22)*

That the ACT Government encourage schools to include in their curricula educational and social programs that will assist young people in dealing with the problems of sexism and sexual identity.

*Recommendation 28 (paragraph 9.64)*

That the records kept by the Australian Federal Police, and identified in paragraph 2.33 of this report, be destroyed.

*Recommendation 29 (paragraph 9.64)*

That the Assistant Commissioner of Police (ACT Region) notify the Assembly, through the Minister, that the records have been destroyed.

*Recommendation 86 (paragraph 12.10)*

That the Licensing Board provide, to prostitutes, assistance, and where appropriate financial assistance, in gaining access to job retraining, job skills improvement schemes and further education.

*Recommendation 87 (paragraph 12.23)*

That, where appropriate funding for a prostitutes collective be guaranteed, at least for the next three years.

*Recommendation 88 (paragraph 12.23)*

That there be a review of the funding needs of a prostitutes collective with a view to ensuring its effectiveness in the delivery of educative, health and advocacy programs to prostitutes.

*Recommendation 89 (paragraph 12.23)*

That, following the establishment of the reforms recommended in this report, a prostitutes collective be funded through the Licensing Board, in accordance with the conditions set out in paragraph 12.21 of this report.

*Recommendation 90 (paragraph 12.28)*

That, at the end of the third year of operation of the Prostitution Regulation Act, the Minister commission a review of the operation of the Act including the adequacy of the licensing fee, the appropriateness of the two tier licence system, the restrictions on location and siting, and the policing of brothels and escort agencies.

**APPENDIX A**

## List of ACT Brothels visited by the Committee

**Central Studios:**

O'Connor Shopping Centre

**Golden Apple:**

82 Barrier Street, Fyshwick

**Northside Studios:**

18 Wollongong Street, Fyshwick

**Sasha's:**

161 Newcastle Street, Fyshwick

**Spartan's:**

106 Gladstone Street, Fyshwick

**Tiffany's Studio:**

72 Barrier Street, Fyshwick

**Touch of Class:**

108 Gladstone Street, Fyshwick

## APPENDIX B

## ESCORT SERVICES as LISTED IN 1991 ACT TELEPHONE DIRECTORY

* Central Studios	O'Connor Shopping Centre	248 9785
Company Sir?	17 Trenerry Court, Weston	288 1159
Eastside Escorts	Newcastle Street, Fyshwick	280 7643
Elite Escorts	O'Connor Shopping Centre	247 3709
Est & A Service	7 Sargood Street, O'Connor	247 5907
Gardiner Investments	18 Wollongong Street, Fyshwick	239 1612
* Golden Apple	82 Barrier Street, Fyshwick	280 7733
Male Company	161 Newcastle Street, Fyshwick	280 7642
Misha Sydney's Top Men	14 Whitecombe Street, Rozelle, NSW	(02) 818 3903
Nightingales Glamorous Transsexual Entertainers	14 Whitecombe Street, Rozelle, NSW	(02) 818 3903
* Northside Studios	18 Wollongong Street, Fyshwick	239 1609
Peacocks	108 Gladstone Street, Fyshwick	280 5699
Prestige Companions	Bonner House, Woden	282 5016
Private Escorts	Trenerry Court, Weston	288 1159
Room Service	Canberra	232 1344
* Sashas Eastside	161 Newcastle Street, Fyshwick	280 7376
Sashas Northside	Huddart Circuit, Mitchell	241 1751
Silver Service Escorts	39 Osburn Drive, MacGregor	255 1125
* Spartan's	106 Gladstone Street, Fyshwick	280 4325
Star Escorts	18 Wollongong Street, Fyshwick	239 1610
Studio 9	9 Queen St, Marys	(008) 04 0923
Studio 72	72 Barrier Street, Fyshwick	280 5850
Sweet Jane & Friends	Wilgabar Way, Queanbeyan	299 3748
The Escort Agency	3/18 Wollongong Street, Fyshwick	239 1612
* Tiffany's Studio	72 Barrier Street, Fyshwick	280 4706
* Touch of Class	108 Gladstone Street, Fyshwick	280 5699
Touche Escorts	82 Barrier Street, Fyshwick	280 7734

Town & Country Escorts	Trenerry Circuit, Weston	288 1159
Twin City Escorts	David Street, Albury, NSW	(060) 21 1187
Valentino's	72 Barrier Street, Fyshwick	280 4706

\* Police identified brothels

**APPENDIX C**

Prostitutes Collectives

**P.A.N.T.H.E.R.**

Prostitutes Association of the Northern Territory for Health, Education and Referral  
PO Box 2826  
DARWIN NT 0801

**P.A.S.A.**

Prostitutes Association of South Australia  
PO Box 7072  
Halifax Street  
ADELAIDE SA 5000

**P.C.V.**

Prostitutes Collective of Victoria  
10 Inkerman Street  
ST KILDA VIC 3182

**P.R.O.S.**

Prostitutes Rights Organisation for Sex Workers  
C/- Roberta Perkins  
School of Sociology  
University of NSW  
PO Box 1  
KENSINGTON NSW 2033

**R.A.M.S.**

Rights for All Male Sex Workers  
PO Box 956  
KINGS CROSS NSW 2011

**S.I.E.R.R.A.**

PO Box 170  
MT LOWLEY WA 6065

**S.Q.W.I.S.I.**

Self-health for Queensland Workers In the Sex Industry  
PO Box 689  
WEST END QLD 4101

**S.W.A.N.**

Sex Workers Association of NSW  
PO Box 228  
KINGS CROSS NSW 2011

**S.W.O.P.**

Sex Workers Outreach Program  
PO Box 1453  
DARLINGHURST NSW 2010

**W.I.S.E.**

Workers in Sex Employment  
GPO Box 229  
CANBERRA ACT 2601



**APPENDIX D**

**Submissions received on Prostitution**

Australian Federal Police – ACT Region	Nelson S
Australian Medical Association – ACT Branch	O’Hanlon M V
Catholic Archdiocese of Canberra and Goulburn	Patersen N J
Coates J R	Scarlet Alliance
Cunningham, Pastor S J	Stuparich J
George, Bishop I, Anglican Church of Australia, Canberra and Goulburn Diocese	Workers In Sex Employment
	Submissions received in confidence – 3

**List of witnesses**

<b>ACT Intravenous Drug Users League</b> Ms J Byrne Mr M Rimmer Mr C Stoddart	<b>Australian Institute of Criminology</b> Ms A Stevens Dr G Wardlaw
<b>ACT Women’s Health Network – Working Party on Alcohol and Other Drugs Issues</b> Ms K Elliot Ms L Enright	<b>Australian Medical Association (ACT)</b> Dr J Donovan
<b>AIDS Action Council (ACT)</b> Mr J Ballard Mr T McKay	<b>Ms S Bower and Mr S Nelson</b>
<b>Alcohol and Drug Service (WVH)</b> Dr K Powell	<b>Catholic Archdiocese of Canberra and Goulburn</b> Bishop P Power
<b>Australian Alcohol and Drug Foundation</b> Mr G Elvy	<b>Ms P Dance</b>
<b>Australian Federal Police (ACT Region)</b> Ass Com B Bates Ag Commander B Brinkler Commander J Dau Superintendent G Lanaham Commander D McCulloch Detective Sergeant R Peters Dr L Pilotto Ms C Riethmuller	<b>Department of Community Services</b> Dr A Butlin
	<b>Director of Public Prosecutions (Commonwealth)</b> Mr I Bermingham Mr M Callahan Mr G Grey Ms J Kriegal
	<b>Mr L Drew</b>
	<b>Bishop I George</b>

**Government Law Office**

Mr B Bailey  
Ms G Fachin  
Mr L Sorbello  
Ms M Wallace  
Ms H Woolf

**Haemophilia Support Group (ACT)**

Mr F Wensing

**Mr I Mathews**

**Dr S Mugford**

**Open Family Foundation (ACT)**

Mr M Fitzgerald  
Ms N Jones  
Mr T Reid

**Short Cuts Information and Advocacy  
Service for Young People**

Mr A Lockhurst

**Workers in Sex Employment (WISE) in  
the ACT**

Ms M Cresswell  
Ms T McPartlan  
Ms F Patten  
Ms J Taylor

## APPENDIX E

Prostitution – Text of article – *The Canberra Times* 6 & 7 November 1990

## PART 1 – REFORM AND TOLERANCE

The issue of the rights of all workers in the sex industry is the single most important concern in any examination of the question of the reform of the prostitution laws in the Territory. Changes to the way in which we, as a society, deal with prostitution must include philosophical changes, that is social and attitude changes, as well as practical changes, changes in the law and in enforcement policies.

If there is to be change, either it can be in the direction of tightening up the law and enforcement on prostitution, or it can be towards a more liberal and tolerant attitude. Submissions to the Legislative Assembly's Select Committee inquiring into HIV, Illegal Drugs and Prostitution largely favour positive changes in the law regarding prostitution along more tolerant lines.

## REFORM

Much of the debate has centred around a choice between either legalisation or decriminalisation. People use these terms to mean a range of things, while in fact they belong on a continuum. To avoid misunderstanding it is clearer to speak of reform, of changing the legal and administrative responses to prostitution. The term "reform" acknowledges that legislative change is only one aspect of change: social reform, attitudinal change and change in enforcement policy are equally important.

One end of the scale, usually referred to as **decriminalisation**, involves the repeal of all legislation specific to prostitution. The industry would then be subject to the controls that apply to any other business, such as planning, health and nuisance laws.

The other end of the scale is **legalisation**, where a special set of laws are established to regulate the sex industry. This means the Government formally recognises, sanctions and monitors the industry. The monitoring could be done in a number of ways, such as by registering workers or brothels, restricting ownership, management or location, or making health checks compulsory.

A viable style of reform for the ACT probably lies between these two options. The solution should take into account the needs of workers who wish to remain in the industry, through outreach assistance and finance to WISE – the Collective, for example, and the needs of workers who wish to make a living in a different field through rehabilitation, retraining, social security and support.

*Repercussions of law reform***Police and community attitudes**

One important result of law reform would be the need to address police and community attitudes, since changing legislation is not a solution in itself. Since the current laws do not reflect enforcement policy, a change in the law might have very little effect. In addition, the laws are not particularly consistent, and are certainly not value-free, even before they are enforced, and they are always enforced in the context of individual and contemporary attitudes.

Whatever specific form of law reform is adopted, it would involve some sort of state control, especially regarding the involvement of minors and the use of violence or coercion. It is relevant to view the law reform in the context of improving the status of women.

**Private sexual morality**

Another repercussion would be on the issue of private sexual morality. In a society of great cultural diversity, there is no unanimous attitude, but many people believe the private activities of consenting adults to be outside the rightful domain of the criminal law, and further, that individuals have the right to set their own moral standards. On the other hand, the state could be seen as implicitly supporting the proposition that men's sexual requirements are uncontrollable and should be provided for, and also supporting the proposition, that while men can always buy, women are to be seen as saleable objects, and thus helping to entrench and consolidate the subordinate role of women in society. The orthodox position in legal theory has for several centuries been liberal, allowing the individual to make his or her own moral decisions, provided these do not harm society.

**Minimisation of harm**

An important repercussion of law reform is the minimisation of harm, to workers, clients and the general public through safe working practices. This is achieved firstly in the area of health. The workers are entitled, and indeed obliged, to insist on safe sex. And workers can receive medical help and advice where necessary, without fear of prosecution. Secondly, violence and intimidation should not be tolerated against sex workers any more than it would be against anyone else. And thirdly workers, like any other employees, are entitled to acceptable working conditions.

**Occupational choice**

An expected outcome of reform would be increased occupational choice for sex workers. Workers who would prefer other employment options would not be locked into the industry, and management and employers would not be able to make threats on this basis. Increasing attention to the status of women is an essential aspect of reform, as is social security, counselling or support, and child care.

Workers who prefer to remain in the industry would have increased choices too. They would have the option of setting up or buying into small scale brothels as well as larger ones. Important issues for sex workers are anonymity and the ability to move in and out of the industry without police documentation. Managers and brothel owners would like to avoid the exorbitant rates some tradesmen charge for repairs, for example, and would like to see the sex industry recognised as a legitimate arm of the hospitality industry.

**Sex workers' rights**

Allied to the issue of occupational choice is that of sex workers' rights, both industrial and civil. Workers are very resistant to registration, as an infringement of privacy which is not required in many other occupations. They do not want to exchange present managers for the state or some government-sponsored body. As in most occupations, sex workers want a degree of self determination, and have established highly organised and articulate collectives in almost all states. These carry out some of the functions associated with a trade union, such as information and advocacy, and contact with similar organisations interstate.

**STATUS QUO**

One option is to accept things as they are; that is, most prostitution-related activities are illegal, but prostitution itself is legal. This is coupled with an enforcement policy of containment and control in the ACT.

*In favour*

Since few complaints are received, it could be argued that people in the ACT are satisfied with the police continuing to monitor the industry, especially since there is little or no street prostitution or involvement of minors.

*Against***Law and practice**

In a situation where the law and the enforcement practice are so different, there is clearly a need to reform one or other or both. It is apparent that the law reflects attitudes no longer held by the community, and this obsolete legislation should be updated.

**Police involvement**

The whole issue of police involvement is problematical. The official police policy and guidelines to officers concerned are regarded as confidential information by the police. Since the policy is not clearly or publicly defined:

- . there is no means of public input or review;
- . prostitutes, clients and the general public do not have access to the information under which they are controlled;
- . there is no appeal system;
- . the policy may be selectively applied;
- . the police are open to allegations of misconduct; and
- . the public are not informed of lines of accountability.

In other words, what is the legislative or administrative basis for this secret policy?

**Civil and industrial rights**

Since prostitutes receive poor recognition of their rights, the current situation is untenable. Workers are expected to pay tax but lack industrial rights and suffer social intolerance and stigma. It is workers and managers, not clients, who are liable to prosecution. Women are often in this position as a result of the discrimination against women which is and has been rampant in society. This discrimination has been experienced in education and family expectations, in employment, in the need to be sole parent or bear both the full emotional and financial burdens of a family, and in the kind of stereotyping which leads a woman to believe her body to be her most valuable asset.

**Community attitudes**

Finally, the situation which we have at the moment is becoming increasingly unacceptable to the community at large. The majority of people do not support the enforcement of moral values by criminal penalties, whatever their view on the particular moral question. These people include civil libertarians, members of welfare organisations and religious organisations, feminists, and a wide range of members of the general public. People have been subjecting prostitution legislation to increasing scrutiny in recent years, both in Australia and overseas. The view is widely held that social reform is far more effective and humane than legal reform alone, and that prostitution is not the sort of activity which the state should have the right to forbid.

**PART 2 – OPPRESSION, AIDS AND ETHICS****SUPPRESSION**

At present there is a discrepancy between the law and enforcement practice, due in part to the current policies of the Director of Public Prosecutions. According to the legislation, most activities associated with prostitution, such as running a brothel and procuring, are illegal. However, the police practice a policy of containment and control of the sex industry in Canberra.

To suppress prostitution, with the aim of eradicating it entirely, the legislation would need to be strengthened, but more importantly, the enforcement policy would need to change. In addition, the views of the majority of the community would have to be ignored.

*The repercussions***'Black market'**

Suppression would probably give rise to a "black market" in prostitution, since it does not address the client demand for prostitution, nor provide alternative employment for those currently employed as prostitutes. A "black market" provides an environment for corruption, and where there are opportunities for large profits, there is the potential for involvement by organised crime. It has usually been the case that policing acts less as a deterrent than as an accepted expense or hazard of the industry.

**Violation of rights**

Another consequence of suppression would be the further violation of civil liberties and human rights of the workers. This course of action ignores the social conditions which gave rise to the type of society in which men perceive women as saleable objects. It ignores the economic hardship and lack of education and opportunity which can lead to this occupation. As it is, workers in the sex industry have minimal industrial rights, and this course of action would further entrench the social stigma already associated with prostitution.

**Health and safety standards**

Another set of repercussions would be the reduction in standards of health and safety. With suppression, prostitutes' collectives and other organisations assisting sex workers would either no longer exist, or face extreme difficulty in disseminating information on sexually transmitted diseases, including HIV. Prostitutes would not be able to insist on safe sex. They would be less inclined to get regular medical checks for fear of detection and prosecution. And in the case of violence or assault, legal redress would be extremely remote.

**HIV, AIDS, AND THE SEX INDUSTRY**

Many people believe sex workers are instrumental in transmitting HIV, because of the large number of sexual contacts, and even more, because of the widely upheld stigma associated with the industry.

In fact, there is no basis for this at all. The last time an Australian prostitute was diagnosed HIV positive was in 1986. This indicates that the practices of sex workers are much safer than those of the general population. Prostitutes, particularly those working in brothels or with escort agencies (ie the majority of workers) are no longer regarded as a high risk group in terms of the spread of HIV. And, as workers point out, they do a lot of community education on safe sex through their clients.

- The Government can facilitate and encourage these responsible attitudes in workers,
- by enabling workers to receive free and confidential health checks, or to claim them as a tax rebate, as an essential occupational expense
  - by ensuring that WISE (Workers in Sex Employment, the ACT collective) is able to continue, by guaranteeing ongoing funding (This organisation helps workers by providing information and support, and advocating on their behalf. Peer education also plays a valuable part)
  - by officially accepting brothels, since they provide a much safer environment than the streets for prostitution.

The use of hard drugs appears to be rare among Canberra's sex workers, and the majority of brothels in this city do not employ workers with a drug habit.

As stated in the Sex Industry and AIDS Conference Recommendations (1989), "9.1.4 One cannot expect to have healthy workers in an exploitative and unsupportive environment. Therefore to limit STDs and AIDS the entire legal structure governing prostitution must be addressed." <sup>(1)</sup>

#### ETHICAL QUESTIONS

Our two initial premises are that repression of prostitution does not eradicate it, and that eradication itself is not possible in the foreseeable future.

Prostitution presupposes the exploitation of women, but there are two streams to this. On the one hand, prostitution is the direct exploitation of women, who must sell, by men, who can buy their services. To address this, prostitution should be eradicated; however, even if this were possible, it would further exploit these women by taking away their livelihood. On the other hand, prostitution is frequently seen as a lucrative and attractive career choice, especially in Canberra. But a society where prostitution is the most attractive career choice is inevitably an exploitative one. To legalise or officially condone the occupation of prostitute is to condone the assumptions that men have a right to women's bodies, that women can be saleable objects, and that men have these uncontrollable desires that society must provide for.

Given this, we can choose a solution which is idealistic or more or less pragmatic. If we tend towards idealism, it is the civil liberties of, and the range of choices available to, prostitutes which have traditionally been ignored. A pragmatic approach should concentrate on the minimisation of harm to everyone involved in the industry. This includes rehabilitation possibilities for workers wishing to leave the industry, and formalised industrial rights for those who wish to remain. It does not involve extensive policing or prosecutions, since these are not in the least cost effective, in social or economic terms.

Attention has recently focused on the discrimination involved in victimless crime. Because there is no victim, the police are relied on to prosecute, and this involves discretion, and therefore inevitably some degree of discrimination. The most visible offenders are usually punished, and the organisers and profiteers of the sex industry are left to continue their activities. Those who are visible are frequently the already disadvantaged, subjected to further exploitation by society.

But why is prostitution bad? It seems its badness has its origin in the Judaeo-Christian elevation of monogamy and its necessary equation of exclusivity in sex and love. Many people oppose prostitution because of the unfeeling nature of the transaction, especially on the part of the woman (ie an exercise of power on her part). Originally men had strong social reasons for being sure of the legitimacy of their children, especially sons, because of inheritance and family dynasties, so adultery and sex for women outside of marriage were punished very severely. The same did not, and does not, apply to men. People upholding the institutions of marriage and the family might disapprove of adultery, but the main problem

<sup>1</sup> First National Sex Industry Conference, Melbourne 25 – 27 October 1988 – Report and Conference Papers, p. 25

with this view is that men are not stigmatised for being clients and creating a demand for prostitution, nor in general are they stigmatised for any extramarital sex, while prostitutes are reviled and denied basic rights.

Community attitudes to prostitution vary widely, partly because of the wide diversity of cultural backgrounds represented in society. So with the varying degrees of acceptability, it is up to individuals to choose whether or not they find involvement in prostitution acceptable. In fact, most people, whatever their views on prostitution specifically, do not support the enforcement of moral values by criminal penalties. If morality is enforced in this way, does it lessen the value of adherence or obedience to these values? We should perhaps question the role of the criminal law, and whether its function is to enforce the morality endorsed by a section of society, or to protect society at large from definite or tangible harm.

The rights of all parties should be examined. This not only includes the rights of owners and managers to run profitable businesses, and of clients to see prostitutes in safe surroundings, but also of prostitutes to reasonable industrial rights and status in society, and of residents and members of the public not to be subjected to unreasonable noise, traffic, health risks, etc. Naturally prostitution should be subject to some controls like any other small business enterprise.

The problems of the sex industry are largely to do with the sexist nature of society. Although currently it is the case, it is a contingent fact, resulting from social conditions, that the demand of women for the services of prostitutes is negligible, while that of men is considerable. This may be because women's sexual needs never get expressed, or because men's are socially produced. The difference is not biological, but a social one of power relationships.

It can be argued that *de facto* the private nature of sexual morality has been legally enshrined in that the act of prostitution itself is not an illegal activity, most of the activities one associates with prostitution, such as keeping a brothel, soliciting, and its other public aspects, are, however, illegal. On the other hand, this legal paradox could be interpreted as sexist and hypocritical, as it facilitates the prosecution of the service providers, the prostitutes and managers, and enhances the immunity of the service users, the clients.

Overall, it becomes clear that prostitution is a political question first and foremost, not a moral one. In looking at the possible revision of prostitution law, the most important things are to question our assumptions, and to look at the practical outcomes of any changes.

*Police Offences Act 1930*

## PART I – PRELIMINARY

1. The Act may be cited as the *Police Offences Act 1930*.
2. This Act shall commence on a date to be fixed by the Attorney-General by notice in the *Gazette*.
- 3.(1) The Acts of the State of New South Wales specified in the Schedule to this Act, in their application to the Territory, in this section referred to as "the Acts", are repealed.
  - (2) The repeal of the Acts shall not—
    - (a) revive anything not in force or existing at the time at which the repeal takes effect;
    - (b) affect the previous operations of the Acts, or anything duly done or suffered under the Acts or any one of them;
    - (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the Acts or any of them;
    - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the Acts or any of the, or
    - (e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Acts had not been repealed.

5. In this Act, unless the contrary intention appears –

"Brothel" means—

- (a) premises, a vehicle or a caravan to which persons of opposite sexes resort for the purposes of prostitution; or
- (b) premises that are occupied or used, or a vehicle or caravan that is used, by any person or persons for the purposes of prostitution;

"Court" means the Court of Petty Sessions established under the *Court of Petty Sessions Act 1930*;

"Public place" or "place of public resort" means any street, road, public park within the meaning of the *Public Parks Act 1928*, or reserve or any building, premises or other place which the public are entitled to use or which is open to, or used by, the public, whether on payment of money or otherwise.

## PART III – OFFENCES GENERALLY

18. A person who—
  - (a) manages or conducts a brothel; or
  - (b) is knowingly concerned in the management or conduct of a brothel,
 is guilty of an offence and is punishable, upon summary conviction, by imprisonment for a period not exceeding twelve months.
19. A person who –
  - (a) knowingly permits premises, a vehicle or caravan to be used as a brothel; or
  - (b) leases, lets or sublets premises, knowing that the premises are to be used as a brothel,
 is guilty of an offence and is punishable, upon summary conviction by imprisonment for a period not exceeding six months.
- 19A.(1) Where—
  - (a) a person is convicted of an offence against section 18 of this Act; and
  - (b) the person occupies or uses the premises in relation to which the offence was committed under a lease, sublease, tenancy, subtenancy or licence,
 the person by whom the lease, sublease, tenancy, subtenancy or licence was granted may, by instrument in writing that is delivered to the first-mentioned person or affixed to the premises and which purports to be given under this section, require the first-mentioned person to quit the premises or, in the case of premises used under a licence, to cease to use the premises.
  - (2) Where notice is delivered in person, or affixed to premises, in pursuance of the last preceding subsection, the lease, sublease, tenancy, subtenancy or licence to which the notice relates is, by force of this section, determined at the expiration of seven days from the date on which the notice is so delivered or affixed.



- (3) Where—
- (a) a person is convicted of an offence against section 18 of this Act;
  - (b) the offence was committed in relation to premises used or occupied by the person under a lease, sublease, tenancy, subtenancy or licence;
  - (c) the person who granted the lease, sublease, tenancy, subtenancy or licence –
    - (i) on becoming aware of the conviction of the first-mentioned person, fails to determine the lease, sublease, tenancy, subtenancy or licence; or
    - (ii) having determined the lease, sublease, tenancy, subtenancy or licence, fails to take reasonable steps to prevent the continued occupation or use of the premises by the first-mentioned person; and
  - (d) the first-mentioned person is afterwards convicted of an offence against section 18 of this Act in relation to the same premises,

the person who granted the lease, sublease, tenancy, subtenancy or licence is guilty of an offence unless, before the commission of the offence to which the conviction referred to in paragraph (d) of this subsection relates, he has disposed of his right or title to, or his interest in, the premises.

(4) A person who commits an offence against the last preceding subsection is punishable, upon conviction, by a fine not exceeding one hundred dollars.

(5) In the preceding provisions of this section, "lease" does not include a lease granted by the Commonwealth.

(6) Nothing in this section affects a right to determine a lease, tenancy, subtenancy or licence otherwise than in pursuance of this section.

23.(1) Any person who—

- (j) knowingly lives wholly or in part on the earnings of prostitution;
- (ja) in any public place persistently solicits or importunes for immoral purposes,

shall be guilty of an offence.

Penalty: Imprisonment for three months.

(3) Where a male person is proved to live with, or to be habitually in the company of, a prostitute, and has no visible means of support, he shall, for the purposes of paragraph (j) of subsection (1) of this section, unless he satisfies the Court to the contrary, be deemed to be knowingly living on the earnings of a prostitute.

34 Every person who has or keeps any house, shop, room, or place of public resort wherein provisions, liquor, or refreshments of any kind are sold or consumed (whether they are kept or retained therein or procured elsewhere), who –

- (c) knowingly permits or suffers prostitutes or persons of notoriously bad character to meet together and remain therein,

shall be guilty of an offence.

Penalty: Ten dollars

35.(1) Where a police officer has reasonable grounds for believing that a person in a public place has engaged, or is likely to engage, in violent conduct in that place, the police officer may direct the person to leave the vicinity.

(2) A person shall not, without reasonable excuse, contravene a direction given in accordance with subsection (1).

Penalty: \$200

(3) Subsections (1) and (2) do not apply in relation to a person who, whether in the company of other persons or not, is—

- (a) picketing a place of employment;
- (b) demonstrating or protesting about a particular matter; or
- (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publish the person's view about a particular matter.

(4) In this section—

"violent conduct" means—

- (a) violence to, or intimidation of, a person; or
- (b) damage to property.

## PART VI – MISCELLANEOUS

89. The Attorney-General may make regulations, not inconsistent with this Act, prescribing all matter which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

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THE SCHEDULE

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Reference to Act	Short title of Act
1901, No. 5	<i>Police Offences Act, 1901</i>
1902, No. 74	<i>Vagrancy Act, 1902</i>
1905, No. 35	<i>Vagrancy (Amendment) Act, 1905</i>
1908, No. 12	<i>Police Offences (Amendment) Act, 1908</i>

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## APPENDIX G

## Range of Sexual Services Offered

<i>Dominance:</i>	use of whips, chains, leather, ropes etc on customer.
<i>French:</i>	oral sexual stimulation of the customer
<i>Golden showers:</i>	worker urinating on customer
<i>Greek:</i>	penetrative anal intercourse
<i>Lesbian sex:</i>	demonstration of sexual acts between two workers
<i>Masturbation:</i>	manual sexual stimulation of the customer
<i>Straight sex:</i>	penetrative vaginal intercourse

## Extract from a Brothel Price List

The following prices are STUDIO fees for your time:

\$35 for 1/2 hour, \$45 for 3/4 hour and \$55 for one hour.

Ladies' fees are as follows:

<b>For the Beginners on a Budget</b>	<b>\$35</b>
This involves orgasm through genital contact, which may be sampled in many various ways.	
<b>Spanish Massage</b>	<b>\$55</b>
Part breast massage and part slip–n–slide. Oils are spread over every inch of your body, not by hand, but by breast (be sure to choose the right lady!) The arousal is generated by two breast slithering over you, finishing off with a creamy orgasm contained between them.	
<b>Part French and Sex (half and half)</b>	<b>\$45</b>
Stimulating oral sex topped off with sexual intercourse.	
<b>Cinderella's Syndrome</b>	<b>\$55</b>
The gentleman rubs the lady's shoe against his genitals as a form of masturbation, perhaps fondling the lady's satiny breasts with the other hand. Close to orgasm, the lady will finish him off by manually coaxing him into orgasm.	

<b>Full French</b>	<b>\$55</b>
Oral appreciation of the male sexual organ, the gentleman's semen is not swallowed.	
<b>Humiliation</b>	<b>\$55</b>
Many forms exist, such as cross dressing, dog leashing, performing menial, in house tasks, ie washing the lady's underwear, etc etc.	
<b>Dildos</b>	<b>\$55</b>
When used on a man, the instrument is usually inserted into his rectum at preferred stages of intercourse. A common substitute is a small salami or pepperoni. For the vegetarian, a cucumber is the natural food substitute.	
<b>Golden Showers</b>	<b>\$70</b>
This involved the lady urinating on the gentleman's ... head, back, stomach or whatever! ... the stronger the stream ... the better. This also includes a complimentary hand relief. At least one hour's notice and a deposit is required for this one.	
<b>Dominance</b>	<b>\$90</b>
Whips, chains, leathers, and ropes. There are many variations falling under this category, please ask your lady if you have any special requests.	
<b>Double Trouble (All inclusive)</b>	<b>\$240</b>
The gentleman picks two ladies, who will fondle, caress and spoil you during a luxurious spa and massage. To experience sex with one lady, while the other is fondling and licking your genitals ... waiting patiently for her turn ... is worth the price.	
<b>Lesbians (All inclusive)</b>	<b>\$320</b>
Sex between two of our ladies, or between a wife (anybody's wife!) and one lady. The gentleman often chooses to masturbate manually while watching.	

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**ADDITIONAL COMMENTS – Mr Bill Wood, MLA**

At the beginning of this inquiry I had expected that I would support recommendations to prohibit prostitution in the ACT. I find that activity degrading of men and women, and it does nothing to promote the steps we must always take towards a more humane and civilised society.

Yet I am supporting measures to decriminalise and regulate prostitution. There is no alternative. It is clear that attempts to prohibit prostitution have never been successful and will not be. The present situation in the ACT cannot continue as the police are placed in the untenable position of policing illegal activities.

So I reluctantly support decriminalisation and regulation. Indeed, I would support a stronger line than that proposed. The Report envisages the police having no more authority over brothels and prostitutes than they would over businesses and the public at large. The nature of prostitution is such that it can readily attract undesirable and illegal elements seeking its considerable profits. It does require more than ordinary policing.

The recommendations, if implemented, strongly regulate prostitution. This is necessary as the decriminalisation process must not allow undesirable trends to develop.

**ADDITIONAL COMMENTS – ROBYN NOLAN**

Whilst aware of the existence of prostitution, as a member of the Select Committee on HIV, Illegal Drugs and Prostitution, I have encountered a very different side of human nature than originally anticipated.

In adopting the Interim Report on Prostitution, the committee was, for the most part, able to establish a consensus view. There are sections of the report, however, that I am not in agreement with the other committee members, and it is in this light these additional comments are made. I would, however, at the outset wish to emphasise that I neither condemn nor condone prostitution.

In considering law reform relating to prostitution, the potential threat of the HIV virus to the community was of paramount importance. Thus, public health as and must take precedence over any moral judgement on this issue.

This Interim Report is a timely one given the number of other jurisdictions where inquiries have or are being held. However, there is a substantial difference between a report making recommendations, and those recommendations being implemented by government.

Only in Victoria has law reform occurred in recent years, and then only by partial adoption of the recommendations in the report after the inquiry into prostitution conducted by Professor Neave. The ACT, however, should be considered in a different context to other states.

The following sections are where there was not consensus within the committee and each section will be commented on separately.

**Section 9 – Law Reform**

While it is appropriate for the control of prostitution in the ACT to be exercised through one enactment only, it is the issue of how that law will be maintained that I have disagreement with. While accepting a licensing board would be the appropriate mechanism to grant, reissue and monitor licences I consider it should only be an advisory body and any recommendations should be made to the relevant Minister. It would not be appropriate for the licensing body to have statutory power.

The recommendation at 9.41 that to be eligible to own and operate a brothel and/or an escort agency, or to have a licence issued or transferred, a person must be a resident of the Territory is inappropriate. ACT is a small island surrounded by NSW and therefore, the licence

holder should be able to reside outside the ACT. I also believe this could raise a constitutional question.

Provided all other recommendation in relation to the licensing body are referred to the Minister, then recommendations as contained in the body of the report are appropriate.

### **Section 12 – Social Concerns**

I do not agree that it is appropriate that the interests of workers can be protected through a union, nor will it significantly add to the monitoring of operations of brothels and escort agencies.

I am hopeful that over the coming months the debate on this issue will continue and will lead the ACT to implement a policy of law reform on prostitution.