



Standing Committee on Justice and Community Safety

Inquiry into the operation of the Prostitution Act 1992



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I am pleased to lodge the submission for the Inquiry into the operation of the Prostitution Act 1992 by the Eros Association.

In summary, the Eros Association believes that:

- 1) A harm minimization approach should be adopted;
- 2) Criminalizing normal adult, consensual sexual behaviour is in breach of human rights;
- 3) The sex industry should be decriminalised in the ACT;
- 4) All words that are derogatory, degrading and discriminating should be removed from the Act, the word prostitution should be replaced with sex work;
- 5) If registration of a commercial brothel is deemed necessary, than this should be defined as an agency that operates with sex on the premises and have 2 or more workers. Sole operators who work from a hotel or home address should not need to register as a brothel;
- 6) The registrar should be required to permanently delete information about brothels and escort agencies that have ceased to operate;
- 7) Information kept on the register should be available only to police officers in the course of their duties investigating possible criminal matters and not to any public officer;
- 8) Locations for sexual services should be allowed in commercial areas such as Woden or Canberra City as long as their premises are discrete and non-identifying;
- 9) Sole operators should have the option to work with another worker and employ security/reception/housekeeping services as desired;
- 10) Proof of age of 18 years and Australian residency or working visas should be provided to brothel owners from new workers but that this information not be stored in any way;
- 11) The laws for 'knowingly infecting' of sexually transmissible infections are enough to regulate an infected persons' sexual practise. A separate law for commercial sexual services is unnecessary;
- 12) People working in the sex industry have a duty of care to themselves and to their clients to have medical examinations as required. It is a breach of human rights to attempt to enforce sexual health testing onto workers either by brothel owners or by the State;
- 13) Brothel inspection by fair trading should be guided by the inspection rights of officers in other professions and only investigate occupational health and safety requirements and

active complains from clients, workers or the public. Likewise, police should have the power to enter a premise only on the basis of investigating criminal activity.

Thank you for the opportunity to participate in the inquiry. I hope that the information contained is of benefit to the Standing Committee.



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Introduction

The regulation of the sex industry in the ACT needs to be considered in the context of local, national and global debates about the sex industry. While many jurisdictions have increased criminal sanctions in response to moral constructions of the sex trafficking trade, child prostitution and violence against women discourses, others have legalised or decriminalised sexual services. Criminalisation of buying and selling sex has been shown in a wide range of literature to cause harm to both workers and the community (Crofts and Summerfield 2008) and doesn't have the desired effect of reducing demand, trafficking or violence.

There is strong evidence from research to suggest that clients of the sex industry fit a broad cross-section of the community and do not differ from the community on demographic variables such as age, education, marital status or occupation (Grenz 2005; Perkins 1999; Pitts et al. 2004; Xantidis and McCabe 2000). Buying sex was considered a normal practise until the 1960's when buying sex became systematically demonised (Sullivan 1997). In a modern context, between consenting adults there is no philosophical difference between paid-for sex and any other sex between adults" (Brooks-Gordon 2010). Consumer economies in the last twenty years have transformed the culture of increasing commercialization of intimacy, pleasure and sexuality in the capitalist leisure society (Willman and Levy 2010), effectively mainstreaming the sex industry. For example, the financial, legal and ethical significance of sex industry businesses advertising in the yellow pages, on commercial television and radio, and in local newspapers indicates a level of community acceptance. The Australian position is presented in the IBISWorld sex industry report (2010) which estimates industry revenue for 2009-2010 to be AUD\$1,096.4 million, employing 21,634 people in 13,695 establishments.

The scope of the sex industry indicates the sexual needs of the community as many clients would choose free sex over paid for sex given the choice (Pitts et al. 2004). While the World Health Organisation is still debating official Human Sexual Rights, it is recognised that States have the obligation to respect, protect and fulfil sexual rights for all and that the only sexual rights that should be limited by law are those that recognise and respect the rights and freedoms of others. Commercial sex is consensual sex.

Regulating sexual services

In Australia, there has been a growing trend towards legalisation or decriminalisation of the sex industry which reflects changing moral attitudes to sex work, recognition of the need to provide sex workers with access to services and growing support for harm minimisation approaches (David 2008). The law reform initiatives have not been based on a philosophy or particular political platform, but on attempts to find rational and pragmatic solutions to actual problems (Jeffrey and Sullivan 2009).

The ACT provides 1.6% of the national population, yet 4.5% of sex industry establishments, possibly because of the high proportion of business commuters and higher than average income levels (IBISWorld 2010), however Richters and Rissell (2005) found that only 11 per cent of men had paid for sex (nationally, 16 per cent of men have paid for sex), indicating that the ACT may have more 'regular' or repeat clients and that some clients do not reside in the ACT (Richters and Rissell 2005). It is also likely that the registration process in the ACT exposes sole operators as brothels, and many of these operate only spasmodically.

Arguments about regulating the sex industry in an attempt to reduce the number of workers, clients or establishments fail to recognise that like any other consumer industry, the sex trade operates on a principal of supply and demand. Services tend to remain static globally despite variance in laws (for example, in the USA where buying and selling sex is illegal, 18 per cent of men buy sex) and indeed, many people who are engaged in buying or selling sex, are ignorant of the laws in their own jurisdictions (Sanders 2007).

'The Swedish model', where selling sex is legal but buying sex in any form is illegal, is an effort to end the oppression of women and children through sex work which has been touted as a symbolic expression of morality (Sanders 2008). The impact of the law on the size of the sex industry has been minimal, with Swedish police stating in 2006 that street sex work has increased (Sanders 2008), and accounts from sex workers describe that their work has become more unsafe, as the clients are fearful of arrest (Ostergren 2010)

Although the legal framework that is experienced in the ACT allows workers legal protection from victimisation, it also makes possible a two tiered system where legal workers can access services and illegal workers are further discriminated against in legal and health services. Sole operators are fearful of the registration process and although they choose to operate within the law in every other respect, it is possible that many are unregistered and deemed illegal brothels. Legalising appears to offer legal rights to workers, however, legal rights are granted to every citizen making the law extraneous and possibly offering a false sense of security. In many cases, it is not the law itself that workers fear, but the discrimination and stigma experienced when attempting to access services.

The United National General Assembly Human Rights Council has recommended decriminalisation of sex work as necessary as part of a comprehensive right-to-health approach and that efforts to reduce stigma and discrimination should also be considered (2010). There should be no provision in law that prevents safe, sane, private and consensual adult sexual behaviour. The sex industry can be largely self-regulated in line with fair trading laws and that this does not lead to increased amounts or visibility of services, criminal activity or a reduction in occupational health and safety standards. The ACT should decriminalise commercial sexual activities.

Semantics of the Act

The word prostitution means both to sell sex for money and to compromise ones values. These meanings are not synonymous to sex workers who largely take pride in their work and have well defined morals and ethics (Perkins 1991; Perkins and Lovejoy 2007; Scarlet_Alliance 2010). To refer to sex workers as prostitutes is demoralising, stigmatising, and discriminatory. Victoria has already changed the language of the Sex Work Act to reflect these principals and the ACT needs to address language in a similar way.

Registration procedures and information handling

Working as a sex worker is a highly stigmatised activity even in legal climates. Therefore sex workers often use an alias and separate their working life from their other life. The registration procedures are extremely threatening to workers who fear that their personal information will be deliberately given, or leaked to others. The only difference between legal and illegal workers in the ACT is that of registration status as the business of being a sex worker does not change whether one is registered or not. There is a culture among workers that believes that the registration process is not safe and many have expressed that they would not register if working privately (personal communication with sex workers).

The Prostitution Act 1992 suggests that information 'may be' deleted on workers and brothels when they cease operation. This needs to be changed to ensure that workers who register will not have a lifetime of 'records' about their private occupation. Every piece of information collected should have a sound reason for doing so that is beyond statistic collecting or curiosity and these reasons should be transparent at the time of data collection. As it stands, the Registrar is also required to give personal information to any public officer (eg ATO and Family Services) when no criminal activity is suspected which is in breach of the privacy of the person, as ones occupation has no bearing on their income, criminal status, ability to parent effectively or their morals and ethics. The Prostitution Act needs to specify; what information should be stored and why, that identifying information may only be shared with police officers investigating a possible crime, and that the information will be permanently deleted at the request of the worker or the absence of a registration renewal.

Prescribed locations

Brothel and escort services that are located outside of industrial districts have a vested interest in discretion. Clients are generally not comfortable to advertise their patronage, so businesses should be able to operate from commercial and suburban areas without attracting attention from the general public. The sexual practises of commercial sexual services are no different from the sexual practises of the general population (Perkins 1999), and when conducted in private, pose no threat to the community. There is no evidence from other jurisdictions in Australia that allow commercial sexual services in business districts to indicate that these services cause any problems for local residents, other businesses or the general public. The restriction of brothels to Fyswick and Mitchell raises safety and accessibility issues as these areas are often isolated and have poor public transportation after business hours.

Sole Operators

Under the Prostitution Act 1992, sole operators are discriminated against in several ways; they have to pay the same fee for registration as large commercial enterprises, they are unable to work together or even in pairs which denies them peer support and company. These restrictions make it difficult for independent workers to afford to employ drivers, cleaners and other support staff. This creates isolation which increases the risk of violence and depression from being unsupported. Many workers in Canberra are also under the misapprehension that it is in fact illegal for them to employ ancilliary staff. They are also denied the opportunity to offer 'doubles' or other services which require more than one worker and denied the right to rent out space to other workers when they are choosing not to work. Sole operators already submit to the laws regarding home based occupations, such as vehicle access and car parking and advertising, and also have a vested interest in discretion. Changing the Act to allow for 2 workers and staff from a private residence will not result in mega-brothels in the suburbs creating a public nuisance but will increase the occupational health and safety of those workers and allow them the same privileges as other home based occupations.

Proof of Age and residency status

Due to the highly stigmatised nature of being involved in the Sex industry, sex workers are reluctant to share their personal details even with their employers and co-workers. As it is deemed necessary to eliminate underage workers and workers who are not Australian residents with working visas, brothel owners could sign a document to state that they are

satisfied that they have sighted evidence of proof of age or visa status, without keeping any supporting documentation. If sex workers are forced to disclose personal information they are likely to falsify documents even when over 18 and permanent residents of Australia.

Sexual Health Testing

Brothel owners are unable to assess if a person might be infected with a sexually transmitted infection and should have no responsibility to know the health status of the workers. As per the Prostitution Act 1992, safer sex equipment should be available and information about the usage of condoms, dams and lubricants should be available in several languages. In an examination of mandatory STI testing for sex workers, Wilson et al (2010) found very low rates of STI's among sex workers and almost universal condom use, indicating that the actual risk of STI contagion during commercial sex to be very low (Wilson et al. 2010). In regards to HIV infection, there has been no recorded cross infection of HIV between sex worker and client in Australia (Jeffreys et al. 2010; Scarlet_Alliance 2010). Sex workers have a vested interest in remaining STI free and take advantage of sexual health screening programs. Any attempt of State to control the frequency of these tests does not account for different working styles including opportunistic sex work and sex work practises that do not involve penetrative sex, the sex workers skills and experience to ensure safer sex practises or the sex workers agency to decide how often to screen for STI when no symptoms are experienced. Therefore, the Prostitution Act should be clarified to suggest screening practises rather than mandatory testing and that brothel owners have no responsibility in testing.

Laws that prevent a person from 'knowingly infecting' another with HIV/AIDS are already in place. To criminalise sex workers living with HIV is to further discriminate against a small and marginalised group. A condom is an effective barrier against HIV, as is a glove for health workers who care for people who are HIV positive. There are a growing number of clients who have HIV and who deliberately seek out workers who also have HIV. Clients with HIV should have the right to sexual services and to be able to choose a worker they feel comfortable with. The United National General Assembly on Human Rights has found a failure of laws that criminalize HIV transmission to achieve public health aims or objectives and have far-reaching impact on the enjoyment of the right to health for those affected and concludes that only intentional, malicious HIV transmission can be legitimately criminalized (2010).

Inspection Rights

If a culture is created that gives powers to government officials or to police to regularly inspect brothels without cause, workers and clients alike will feel victimised and be at risk of police or official corruption. The reasons for inspections should be transparent and in line with the laws of fair trading.

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