



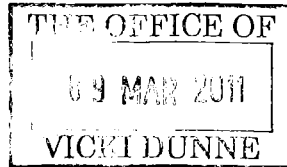
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AUSTRALIAN FEDERAL POLICE

**Chief Police Officer for the ACT
Roman Quaedvlieg**

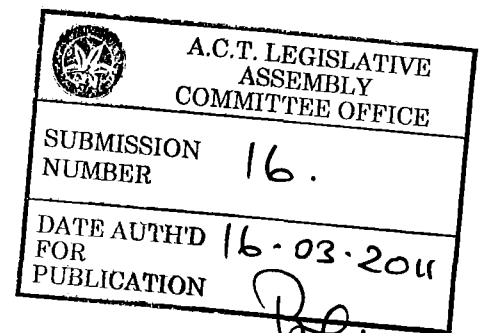
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Ms Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
Canberra ACT 2601



Legislative Review of the *Prostitution Act 1992*

Dear Ms Dunne

Thank you for the opportunity to provide a submission to the review of the *Prostitution Act 1992* (the Act).

In preparing this submission ACT Policing (ACTP) has reviewed reported crime statistics, intelligence and information reports, and engaged with various groups and businesses across the sex industry. During 2010 ACTP engaged with sex worker advocates and licensed brothel operators for the purpose of promoting safe business and personal practices through the distribution of 'Bizsafe' packs and 'Personal Safety' packs. This engagement served to enhance ACTP's understanding of some of the complexities of the ACT sex industry and has partially informed this submission.

As an introductory comment, it is our view that the ACT has not experienced the same levels of correlation between the sex industry and criminality as other jurisdictions. While we have not undertaken longitudinal criminological studies to corroborate this view, it is fair to state that we do not view the ACT sex industry as a provenance of significant criminality in this jurisdiction.

Similarly, we have not attempted to determine the causal factors for this lower correlative phenomenon. However, it is our view that it is probably due to two factors: firstly, the ACT's decriminalization of specific activities and the concomitant establishment of a regulated industry lessens the involvement of criminal entities in the industry. Secondly, the comparatively small size of the ACT sex industry enables more effective regulatory compliance and enforcement.

The Correlation between Crime and Prostitution in the ACT

An examination of records demonstrates that ACTP has encountered the following criminal activities in the ACT sex industry:

- the involvement of children in the sex industry;
- the provision of sexual services to under-age customers;
- the involvement of illegal immigrants in the sex industry;
- the presence of illicit drugs in licensed premises;
- business conducted outside the terms of a licence, e.g operating an unregistered brothel; and
- alcohol related offences, disturbances, and assaults

Offences recorded by ACTP specific to the *Prostitution Act 1992* between January 2005 and February 2011 are tabulated below.

OFFENCE	2005	2008	2009	2010
Aid/Abet Operate Brothel Other Than In Prescribed Location by virtue of Section 4	1	0	0	0
Failure to Give Registrar Notice of Operation	0	2	0	0
Failure to Give Registrar Notice of Operation (7 days)	0	2	0	0
Knowingly Infect with STD	0	2	0	0
Operate Brothel Other Than In Prescribed Location	1	0	1	1

OFFENCE	ARREST	CHARGED/ BEFORE COURT
Aid/Abet Operate Brothel Other Than In Prescribed Location by virtue of Section 4	1	0
Failure to Give Registrar Notice of Operation	2	0
Failure to Give Registrar Notice of Operation (7 days)	0	2
Knowingly Infect with STD	0	2
Operate Brothel Other Than In Prescribed Location	3	0

Although the level of crime associated with the ACT sex industry as reported to, and perceived by, ACTP is relatively low, the tragic death of a 17-year-old female from an overdose of illicit drugs in a registered brothel in 2008 precipitated wide public speculation and debate over the sex industry and the putative criminality associated with the industry.

While such high profile incidents may give rise to a public perception that crime is rife in the regulated sex industry, the evidence over the last six years has not supported this hypothesis. It is equally accurate to state however that the 2008 incident demonstrates that despite regulation, crime will still occur within the industry, including the participation of minors. In this particular incident for example, the

associated criminality included illicit drug offences and offences specific to the *Prostitution Act 1992*.

Police Role and Issues:

The role of ACTP in relation to the industry is divided into two categories of activity. Primarily, ACTP supports the Office of Regulatory Services (ORS) and the Department of Immigration and Citizenship (DIAC) in the conduct of regulatory activities such as compliance inspections and immigration inquiries.

Secondarily, ACTP investigates criminal activity involving industry personnel, or occurring on industry premises, through its investigatory mandate.

ACTP's primary contention in this submission is to seek increased powers to investigate criminality in the sex industry. Specifically, increased powers are sought to demand identifying particulars as well as enhanced powers of entry without warrant (expanded at points 1-2 below).

ACTP's secondary contention in this submission is to suggest a number of improvements to the Act to strengthen the regulatory framework, including enhanced compliance with provisions protecting minors from being co-opted into the industry (expanded at points 3-6 below).

Increased Police Powers Sought:

1. Power to demand name, address, and proof of identity

Legislation relating to certain activities which have mandatory age restrictions (such as alcohol consumption or tobacco purchasing) provide specific powers to police and regulatory officers to enter premises and demand details such as proof of age. For example, provisions of this nature are contained in the *Liquor Act 1975* and the *Tobacco Act 1927*.

While the *Prostitution Act 1992* does provide power of entry for police to a premises without warrant (N.B only for the purpose of investigating offences relating to children), the *Prostitution Act 1992* does not currently provide police (or inspectors) with a power to demand name, address, proof of age, or proof of identity, from any person on the premises once they have invoked a power of entry without warrant under the Act.

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

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

2. Power of entry without warrant

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

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

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

Obtaining the necessary supporting information to ground an application for a judicial warrant authorizing police to enter a sex industry premises for the purpose of investigating an offence under the Act has historically proven difficult due to the reluctance of industry operators, employees, and indeed clientele, to provide information to police. The latter cohort in particular has proven reticent and reluctant to cooperate with police due to the stigma associated with brothel patronage and the desire to protect reputations and extant relationships. This lack of cooperation from public sources is often an impediment to police seeking to acquire sufficient grounds to pursue intelligence leads relating to crime in the sex industry.

It is the view of ACTP that police officers should have legislated powers of entry without warrant to any premises for the purpose of investigating any offences or undertaking any other activities under the Act.

Other Suggested Legislative Improvements:

3. Increased Onus on Operators to Identify Minors

Under the Act the onus to ensure no person under the age of 18 years enters the premises as either a worker or a client lies with industry operators. The compliance regimen around this obligation is neither definitive nor consistent with other regimens such as the financial industry where a 100 point identification process has been instituted.

The Act states it is a defence to a prosecution under section 19 (2) or 20 (offences involving children) if it is established that the defendant (a) took reasonable steps to ascertain the age of the child concerned; and (b) believed on reasonable grounds that the child had attained 18 years of age. Similarly, Section 23 of the Act states that an operator or owner of a brothel or escort agency shall not, without reasonable excuse, permit a child to be on the premises.

Neither the Act nor the *Prostitution Regulation 1993* provides guidance as to what is considered 'reasonable steps' or 'reasonable grounds'. ACTP contends that the lack of definition and guidance around the 'reasonableness' test, and the absence of

precedent relating to this defence, creates a low threshold for compliance by industry against these provisions.

The ability of police and regulators to detect the presence of a person under the age of 18 years on sex industry premises is limited. While police and regulators have some limited powers to investigate offences involving minors, they do not have the immediate and constant interface with persons moving through the sex industry that operators do in the course of conducting business. Therefore the authorities are constrained in their capacity to identify minors working, or accessing services, in the sex industry. Intelligence leads and subsequent investigative efforts relating to this crime type are also limited as discussed above, and consequently the resilience of the industry against the participation of children, and indeed the ability to more accurately gauge the extent of child participation in the industry, is weak.

It is the view of ACTP that a strengthened onus on operators -through a robust and enforceable compliance regimen - to identify the age of sex industry participants, will galvanise the industry's resilience against the involvement of minors. Potentially such regimen could be complemented by enhanced powers for police and regulators relating to the detection of minors participating in the sex industry.

4. Clarifying Section 21 - Proceeds from Child Prostitution

Section 21 of the Act provides for an offence against the receipt of proceeds derived from child prostitution. It also provides a defence in circumstances where proceeds are derived from what is described as 'business as usual'.

It is the view of ACTP that Section 21 could benefit from clarification around this defence provision as it is drafted ambiguously and may inadvertently provide exculpatory grounds for offenders in receipt of proceeds derived from child prostitution.

5. Expanding the Range of Disqualifying Offences

Section 15 of the Act provides that persons convicted or found guilty of a 'disqualifying offence' must not become, or continue to be, an interested person in relation to a commercial brothel or commercial escort agency. Section 6 provides the definition of a disqualifying offence and references certain schedules of the Act.

It is the view of ACTP that the list of disqualifying offences is too narrow in scope to prevent infiltration of the industry by serious and organized crime entities. It is the experience of police that the polycriminal nature of contemporary organized crime entities is such that disqualification criteria based on traditional 'sex industry crime types' alone, will not preclude certain entities which, by virtue of their criminal convictions and associations, ought to be prevented from entering the industry as legitimate operators.

It is the view of ACTP that expanding the list of disqualifying offences to include a broader array of offences likely to be associated with serious and organised crime, may provide an element of insulation against potential infiltration of the ACT sex industry by criminal elements. ACTP is willing to work with legislative drafters to propose a number of offences which could be included for consideration as designated disqualification offences.

6. Advertising to include Licence Number

ACTP notes there is currently no restriction on advertising sexual services in the ACT via a range of media.

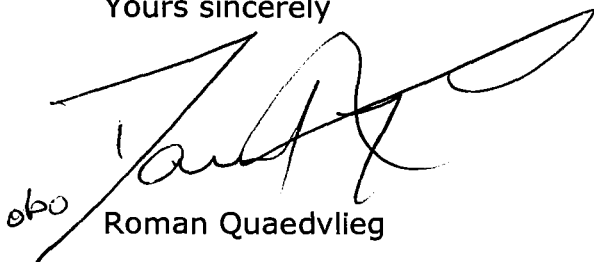
The imposition of a requirement for industry to include their approved licence numbers in accompaniment to their media advertisements could prevent the unlicensed elements of the sex industry from competing for market share of consumers. This in turn would have the likely effect of legitimately concentrating the consumer cohort within the regulated sex industry, which enables enhanced compliance, not just with legislative and regulatory obligations, but also with health requirements, enhancing the regulated industry domain.

In summary, ACTP offers six recommendations for strengthening the Prostitution Act 1992:

1. Expanded powers to demand name, address, and proofs of age and identity
2. Enhanced powers of entry without warrant for police
3. Increased onus on operators relating to identifying children
4. Clarification of the defence provision under Section 21
5. An expanded list of disqualifying offences and
6. The inclusion of licence numbers with advertisements for sexual services.

Thank you for the opportunity to provide a submission to the review team. ACT Policing would also welcome the opportunity to participate should any public or in camera hearings be conducted in relation to this review.

Yours sincerely


Roman Quaedvlieg