



	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	50
DATE AUTH'D FOR PUBLICATION	20.04.11 Bel.

Submission

on the

Operation of the ACT Prostitution Act 1992

to the

ACT Legislative Assembly

Standing Committee on Justice and Community Safety

GPO Box 1020

Canberra ACT 2601

Email: committees@parliament.act.gov.au

by

FamilyVoice Australia

4th Floor, 68 Grenfell St

Adelaide SA 5000

Telephone: 1300 365 965

Facsimile: 08 8223 5850

Email: office@fava.org.au

Website: www.fava.org.au

4 April 2011

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1. Introduction

The prostitution trade has been legal in the Australian Capital Territory for nearly two decades, ever since the passage of the Prostitution Act 1992. During that time successive governments have claimed that the law is working well.

For example, a February 2005 ACT WorkCover report on “planned” inspections of 16 legal brothels, possibly with prior warning, gave a glowing account in most cases.¹ It found that cleaning, laundering and condom disposal regulations were being observed by “100%” of workplaces; that drugs and under-age workers were not allowed in any brothels.

So it would have come as a shock to ACT residents to read in *The Canberra Times* (1/11/08) that a 17-year-old girl, Janine Cameron, had been found dead in a legal Fyshwick brothel on 15/9/08 after overdosing on heroin.

This inquiry has been called in response to concern by the Cameron family and the general public that the ACT Prostitution Act is not working² – that police are not adequately dealing with such problems as child prostitution, drugs and other abuses associated with the sex trade.

The inquiry’s terms of reference are:

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

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

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

Submissions to this inquiry, referred to the ACT Legislative Assembly’s Standing Committee on Justice and Community Safety on 28 October 2010, were due by 26 February 2011. FamilyVoice Australia has sought an extension of time.

This submission will address terms of reference numbers 1, 2, 3, 5, 6 and 7 in a general way.

2. Police concerns

A recent report in *The Canberra Times* (24/3/11) of evidence given to the Standing Committee on Justice and Community Safety revealed deep disquiet by ACT authorities about “what goes on in the city’s illegal sex-for-sale operations”.³ This suggests that the prostitution trade is out of control in

Canberra, just as has been claimed of the trade in Sydney.⁴ *The Canberra Times* report on 24 March said:

Canberra's prostitution laws leave police almost powerless to rescue children from sexual exploitation in brothels, according to the territory's police chief.

More than two years after a 17-year-old girl died of a heroin overdose in a Fyshwick brothel, police say their ability to investigate children working in legal sex venues remains limited, weak and constrained.

Authorities are also worried that they remain almost completely in the dark about what goes on in the city's illegal sex-for-sale operations.

Chief Police Officer Roman Quaedvlieg told an Assembly committee investigating Canberra's sex industry that he wants an overhaul of the Prostitution Act to give his officers more power to protect children from exploitation.

The first review of the Prostitution Act, the landmark law legalising prostitution passed in 1992, was prompted in part by concerns over the death of the Queanbeyan teenager who died of a heroin overdose in a room in the Exotic Studio venue in September 2008.

Mr Quaedvlieg told the panel of politicians yesterday that he wanted a greater onus on brothel owners to identify minors looking to work at their venues, arguing that the present laws are vague and create a "low threshold for compliance" for operators.

As part of his six recommendations to reform Canberra's sex industry, Mr Quaedvlieg also wants greater access to brothels for his officers, in the course of their duties, and more power to ask questions when they get into a venue.

"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," he wrote in his submission.

"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."

"The authorities are constrained in their capacity to identify minors working, or accessing services in the sex industry," Mr Quaedvlieg wrote.

Police have the power of entry to a brothel without a warrant while investigating allegations of child prostitution but once on the premises, they cannot demand proof of age from workers.

Another problem Mr Quaedvlieg identified was the difficulty in accurately estimating the scale of illegal brothel activity in Canberra at any given time.

The Chief Police Officer told the Assembly committee that a simple tweak to the Prostitution Act could force the vast majority of unlawful operators to become legitimate or leave the business.

He wants the inquiry to consider forcing anyone advertising sex-for-sale services in the media to include their licence number in the advertising material.

*"If you look at the statistics for registered sole operators in the ACT, it is in the low teens at this point of time and one needs only to open the pages of *The Canberra Times* [to see] that there are many more advertisements than 14," he said.*

Mr Quaedvlieg said that the use of trafficked or under-age sex workers in the unregulated industry would remain almost impossible to assess until the problem of unlicensed sex workers was brought under control.

Clearly, ACT Police are not happy with the operation of the Prostitution Act 1992. They are not able to estimate the degree of illegal prostitution activity which is occurring, but evidence from other states provided below indicates that illegal brothels are likely to greatly outnumber legal establishments.

3. 'Tweaking' the law has not worked elsewhere

The ACT Police statement quoted above, that "a simple tweak of the Prostitution Act would force the vast majority of unlawful operators to become legitimate or leave the business", is absurdly optimistic. Similar tweaking has not solved problems in other states or countries which have regulated their prostitution trade.

Tweaking does not address the fundamental problem of regulated brothels – that regulating legalises and legitimises prostitution, making it much easier for illegal operations to flourish.

The NSW government "tweaked" its 1995 prostitution laws in 2007, but media research later showed the amendments had failed to stem the flood of illegal brothels.⁵ The Victorian Kennett government's 1997 planning amendments⁶ which were supposed to achieve greater control of prostitution have also proved ineffective. A recent article in *The Age* reported:⁷

Chinese organised crime syndicates are running multimillion-dollar prostitution rackets across Melbourne by bribing officials and exploiting abysmal regulation. The syndicates are linked to human trafficking and arrange for dozens of Asian women to travel from interstate and overseas - often on student visas - to work in brothels.

In several instances, figures linked to the illegal prostitution syndicates - including Mulgrave woman Xue Di Yan - are also licensed by the Victorian government to run legal brothels.

There is a similar story in Queensland, where the *Sunshine Coast Daily* reported (27/9/07):⁸

Illegal prostitution on the Gold Coast is out of control and the Sunshine Coast is probably not far behind, according to the Australian Adult Entertainment Industry.

In January this year, *The Courier-Mail* editorial addressed the problem, saying:⁹

When then-premier Beattie's new prostitution laws started in 2000, he said they were the toughest in the country and the reforms would not "tolerate criminals, street walking and escort agencies".

While that sentiment was well meaning, the reforms have faltered because they failed to keep ahead of criminal elements that quickly adapt... questions need to be asked as to why there is a "thriving illegal prostitution sector" in Queensland.

None of the governments in these three states seems to have realised that when the sex trade is legalised, it is legitimised. Legal brothels become just another business, and police do not normally go near them. Inspections by WorkCover or councils generally take place after advance notice so that any drugs or underage workers can be concealed beforehand.

Illegal brothels tend to thrive in this prostitution-friendly climate, attracting workers who do not comply with the strict rules of legal brothels as well as customers who prefer the lower prices of illegal establishments with lower overheads.

One of the biggest problems in states and territories with legal brothels is that male customers and vulnerable young women are more readily drawn to what is promoted as a respectable legitimate business.

Organised crime, sex trafficking and the general demeaning of women are all able to flourish in such an environment. It is not surprising that attempts at "tweaking" regulated prostitution laws have failed to promote either justice or community safety.

A far more radical approach, such as that adopted by Sweden in 1999, is required.

4. Sex trade push would make a bad situation worse

Submissions to this inquiry by sex trade representatives indicate the failure of the Prostitution Act 1992 to achieve its aims. However the SWOP and Eros Association recommendations would exacerbate this failure, and would inevitably lead to the uncontrolled growth of prostitution, including child prostitution, in the Territory.

A recent article in *The Canberra Times* (6/3/11) reported:

The sex industry is pushing for changes to ACT laws that would allow brothels to be established in Civic and in 22 suburbs across the ACT.

The industry wants brothels allowed in the five town centres Gungahlin, Tuggeranong, Belconnen, Woden and the city as well as the territory's 17 group centres.

The sex sector wants to change the law so it can move out of industrial areas and into business districts.

Such a move could spell the end of Fyshwick and Mitchell being the territory's suburbs of sin.

If successful, the lobbying would put brothels next door to white-collar professionals such as doctors, real estate agents and accountants.

The first review of the ACT Prostitution Act is under way in the Legislative Assembly since the landmark law legalising prostitution was passed in 1992.

The inquiry has received a submission from the sex industry's lobby group, the Eros Association, pushing for the legalised spread of brothels.

As part of its lobbying, the sex industry is also pushing for the ACT Government's register of sex workers to be scrapped.

Figures suggest the Government's register of private sex workers has been a failure.

The Office of Regulatory Services has 14 private sex workers registered. But the Sex Worker Outreach Project (SWOP) estimated there were hundreds of private sex workers in the ACT in any one year alone breaking the law.

ACT SWOP spokesman Andrew Burry said, "The number of sex workers registered is low to the point of absurdity.

"We estimate there are 600 to 1000 sex workers in the ACT in any given year and a large number would be private operators."

His organisation is one of the groups lobbying for the register to be ditched.

One Canberra sex worker who worked from a residential area said she had concerns over who had access to the sex worker register.

"What if a bank is able to find out?" she asked.

The 44-year-old sex worker also wanted to work with a partner but was not allowed to.

SWOP and the Eros Association want Canberra prostitutes working on their own in residential areas to be able to expand their operations without being shifted to industrial estates.

These recommendations would inevitably "mainstream" the prostitution trade – with sex customers frequenting suburban shopping and residential areas. Drunk or drug-affected clients would mistake the brothel address and harass young families. There would be no guarantee of safety for sex workers or their neighbours.

The current requirement for panic ("duress") buttons in brothels – detailed in the 2005 ACT WorkCover report mentioned earlier – is clear evidence of the ongoing risk of serious violence in any prostitution context, legal or illegal.

Former Perth madam Linda Watson, who now runs a rescue ministry for prostitutes who want to quit the sex trade, has told FamilyVoice Australia that so-called "protection" measures instituted by brothel management cannot be relied upon to stop assaults by abusive customers.¹⁰

"Prostitution is all about sexual activity in private," Ms Watson said. "You can have panic buttons and panic rooms in your brothel, but they are not much use if the girls can't reach them before they are attacked. I've seen girls raped and beaten up in high class establishments.

"Young 18 year old girls are being anally raped in legal brothels. Duress or panic buttons won't stop that – the girls are helpless. I myself have been anally raped. It is a particularly painful and dangerous form of rape. When men are strong and overpower you, there is not much you can do to prevent it," Ms Watson said. She is prepared to give verbal evidence to the Committee about her knowledge of the sex trade if requested.

The ACT government would not countenance the legalisation of any other industry (such as asbestos mining) with a high risk of harm to workers. The Prostitution Act 1992 should be repealed and replaced by laws similar to those operating with success in Sweden, Norway and elsewhere.

Caroline Norma, a member of the Coalition Against Trafficking in Women Australia, made the following observations in her article published in the ABC's *The Drum Unleashed* on 21 March 2011:

The ACT government is reviewing its 1992 Prostitution Act, and has called for public submissions. Not surprisingly, the sex industry has been quick to submit its wish-list on prostitution, and Phillip Thomson's article in The Canberra Times nicely summarises the demands the industry is making of the ACT government. These include:

- *Normalise prostitution as a legitimate business activity by removing zoning restrictions on brothels that are currently relegated to industrialised areas*
- *Open up more opportunities for organised escort prostitution networks by lifting the one-person 'sole-operator' restriction for prostitution businesses operating outside of industrial areas*
- *Remove official registration requirements for one-person 'sole-operator' prostitution businesses*

Through lobby organisations like the EROS Foundation and ACT SWOP in Canberra, the sex industry pursues its demands under the rhetoric of 'safety for sex workers'. This rhetoric runs along the following lines:

- *Women risk danger if they must commute to brothels in industrial areas, because these areas are 'dark' and unpopulated at night*
- *Women risk danger if they must operate prostitution businesses as one-person 'sole-operators' from home, because they can't employ drivers to act as security guards*
- *Women risk exposure and social discrimination if they must register with government as 'sex workers'*

While the sex industry pursues its business aims under the rhetorical guise of 'safety for sex workers', its profits are derived from the sexual degradation and exploitation of society's most vulnerable people.

Research shows overwhelmingly that people in prostitution suffer rates of post-traumatic stress disorder equal to that of war veterans (see Melissa Farley, 2004). So, it's unlikely the industry gives a damn about the personal security, integrity and individual growth of the women it sells as live sex dolls.

Notably, the industry is not lobbying the ACT government to set up 'exit' programs to assist women to leave prostitution if they wish. The industry's real agenda is obscured by its 'safety for sex workers' rhetoric, but understanding this agenda is important if any changes are going to be considered for the ACT's Prostitution Act.

The business logic behind the sex industry's first aim—to remove planning restrictions on brothels—is fairly obvious; the more prostitution is integrated into mainstream Australian society, the greater profits the industry will earn through customers who are no longer inhibited by the social condemnation of their peers. But the reasoning behind aims two and three might be less clear to the general observer.

To understand these two aims, one has to be aware that a big growth market for the Australian sex industry is escort prostitution. Escort or 'outcall' prostitution currently contributes over half of the industry's earnings. This model of prostitution is profitable because it runs with few overheads, falls under the radar of most government regulation, and operates flexibly over large geographical areas and in response to movements in male populations (eg, toward mining areas).

If the ban on one-person 'sole-operators' operating in conjunction with another party is lifted, Canberra's sex industry will be able to tap into a large population of poor and vulnerable women (often living with small children) who are currently bought for prostitution through rented suburban flats. The head of the Adult Entertainment Industry in Victoria was quoted

recently as saying that as many as 7000 'sole operators' in that state are currently being organised into networks by criminal groups who, he speculates, might be drug dealers.

They could be involved in abuse of the migration program, including the trafficking of women. They might be engaging in inducing under-age persons into the sex industry.

Canberra's sex industry is lobbying to have restrictions on sole-operators lifted so that 'legal' prostitution businessmen, too, can start to profit from these women. Large-scale escort prostitution businesses aim to recruit these women into their networks by offering them 'drivers' (for the sake of their safety!) and free mobile phones. This will allow escort business operators to expand the number of women they have on their books, cater to a geographically expanded male population, and recoup overheads and licensing costs incurred in running legal and 'legitimate' brothel businesses. Lobbying for the lifting of restrictions on 'sole operators' is therefore an important task of the industry, and one tied to its future profitability.

The industry that seeks to profit from prostitution is a business that has devastating consequences for women used within it, as well as Australian society at large. It is an industry that preys on young women who have been made socially vulnerable through childhood sexual abuse, poverty, mental illness, drugs, and homelessness. It is an industry also renowned for prostituting underage girls.

Janine Cameron was found dead in a Canberra brothel ('Death of innocence', 1 November 2008). She was 17. Women are trafficked from overseas to meet the demands of the domestic sex industry. The lives of so many women and girls are destroyed by this industry. Violence and abuse is just part of the job. And Fiona Patten, representing a voracious industry, only wants to expand it into Canberra's suburban backyards.

The Coalition Against Trafficking in Women Australian (CATWA) argues the sex industry needs to be properly understood as imposing on Australian society an unacceptably high level of harm. Like the approach taken toward the tobacco industry, we believe state and territory governments should begin to introduce legislative measures that have as their ultimate goal the industry's demise.

CATWA supports the "Swedish Model" of sex industry legislation which sees all forms of prostitution as violence against women. The purchaser of sex is penalised, and women are offered 'exit' programs to help get them out of the industry and find non-harmful ways of supporting themselves and their children.

We find it disturbing that the ACT's sex industry is using the current Prostitution Act review to call for more brothels in the territory when there is not one exit program in place for prostituted women in Canberra. As the ACT government accepts submissions on its Prostitution Act, it should be aware that a profitable and highly sophisticated sex industry with its own lobby organisations is making demands that are wholly aimed at expanding the industry's profits.

If the government listens to these demands it abrogates its responsibility to its most vulnerable female constituents, and permits the sex industry even greater reign to damage the wellbeing and social status of women in Australia's capital.

Caroline Norma's comments deserve serious attention by the Committee.

5. The Swedish solution

National President of FamilyVoice Australia Dr David Phillips and his wife Roslyn visited Sweden in 2004 and spoke to Tuve Skånberg, a member of the Swedish Riksdagen (parliament). Mr Skånberg

said that Sweden's new prostitution laws which came into operation in 1999 have made a positive impact. Earlier laws against pimping, procuring and running brothels remain, and new laws against buying or attempting to buy sexual services have been added. He said there had not been many prosecutions for buying sex, because warnings were given at the first offence. The new laws have had a significant deterrent effect.

This view was reinforced recently by Patrik Cederlof, who is the Swedish coordinator for the prevention of prostitution and human trafficking. He spoke with Peter Abetz, a member of the WA Legislative Assembly, who recently visited Stockholm on a fact-finding tour.¹¹ Mr Cederlof reported that Swedish police were aware of around 500 brothels operating in their country in 1999. He now challenges opponents to show him a brothel – but they have not been able to do so. There is still some prostitution in Sweden, but it mainly involves women operating from apartments who advertise on the internet and provide a mobile phone number. Police track these women and encourage them to join exit support programs.

6. Normalising prostitution in the ACT

Linda Watson, the former Perth madam cited above, visited Hobart in June 2005 to give evidence to Legislative Councillors about proposals to legalise brothels in Tasmania.¹²

Ms Watson was accompanied by two women who had earlier worked in the sex trade and been deeply damaged by their experience. One was Linda Harrison, a young Canberra woman who had viewed her first pornography at age 11, on X-rated videos – legally available in the ACT but not the States – which her stepfather had left lying around her home.

Linda Harrison said she was “intrigued and repelled at the same time” by the porn videos. Ultimately they destroyed her sense of who she was and how women relate to men.

Thus conditioned by pornography, when Linda Harrison turned 18 and needed money it seemed logical to seek work in a brothel in her home city of Canberra where prostitution is legal and publicly accepted. But drug abuse soon set in and Linda Harrison's downward life spiral began.

Linda Watson says that in her experience as a madam, the vast majority of her girls were taking drugs of one kind or another – including cannabis, heroin, cocaine and amphetamines.¹³

Some girls enter prostitution because they already have a drug habit. Many others are like Linda Harrison – they begin working in brothels simply because there is no longer a taboo against prostitution and the money seems good.

“But I have watched them change – they find they cannot cope with the physical and mental pain of what they are required to do. Too often, sooner or later, drugs become their way of coping,” Linda Watson says.

Linda Harrison's experience of prostitution in Canberra also followed this path, leaving her with a drug problem and chronic depression.

Her problems may not have occurred if hardcore pornography and prostitution had not been normalised by legislation passed by ACT governments.

If the current ACT government genuinely wants to act in the best interests of its citizens, it will abandon proposals to tinker with the regulation of a dangerous trade and instead adopt a radically different approach. This should include programs such as Linda's House of Hope in Perth which helps workers quit the sex trade, as well as a ban on the buying of sexual services.

7. Conclusion

The Australian Capital Territory government should repeal the Prostitution Act 1992, replacing it with laws similar to those operating in Sweden and elsewhere, which prohibit the exploitation of prostitution by third parties (eg owning or running a brothel, advertising sexual services, renting out property for prostitution, pimping and procuring) as well as buying or attempting to buy sexual services. In addition, the government should support or institute special programs to rehabilitate workers damaged by their involvement in the sex trade, helping them become drug-free and train for a safe, fulfilling career.

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