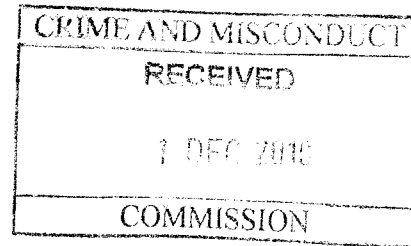




Prostitution
Licensing Authority
Queensland Government

30 November 2010

The Hon Martin Moynihan AO QC
Chairman
Crime and Misconduct Commission
GPO Box 3123
BRISBANE QLD 4001



Dear Mr Moynihan

Please find enclosed the Prostitution Licensing Authority's submission in respect of the Crime and Misconduct Commission review of the *Prostitution Act 1999*.

The submission particularly focuses on the risk of policy failure and the legalisation of outcalls.

Yours sincerely

Manus Boyce
Chairman



SUBMISSION TO THE CRIME AND MISCONDUCT COMMISSION REVIEW OF THE PROSTITUTION ACT 1999

Risk of policy failure

It is the considered view of the Prostitution Licensing Authority (PLA or Authority) that there is a very real risk of policy failure under the current regulatory regime of the *Prostitution Act 1999* (Prostitution Act). The PLA regulates a small and diminishing proportion of Queensland's sex industry. It was originally projected that there would be up to 80 licensed brothels in the state but more than a decade after the commencement of the regulatory regime there are just 23 brothels. For a period of about six months, until 20 May 2010, there were 26 brothels in the state, representing the peak of the licensed sector. Since then, four licensed brothels have ceased operation whilst one new brothel has opened. The sector is smaller today than it was in 2006-07, when there were 24 brothels. Effectively, the licensed brothel sector has experienced no net growth in the past four years. Moreover, the Authority is not currently considering any brothel licence application in respect of any proposed new brothel. The survival of all currently operating brothels cannot be assumed. For the foreseeable future, the prospects of growth of the licensed sector are limited if not almost non-existent. The risk of policy failure jeopardises the worthy objectives of the Prostitution Act.

This situation can be contrasted with the state of Victoria, which also has a licensing regime. According to Consumer Affairs Victoria (CAV) there are 94 licensed brothels operating in that state (albeit that its demographics and population are different to Queensland's). Putting aside demographic differences, there is one licensed brothel for every 58,819 persons in Victoria, whereas in Queensland, there is one licensed brothel for every 195,609 persons.¹ Based on the number of licensed brothels per capita in Victoria, there would be 77 brothels in Queensland (similar to the 80 originally projected). This would mean an additional 54 licensed brothels in the state.

What is a key difference between the licensing regime in this state compared to Victoria? In Queensland, brothels are prohibited from providing outcalls and escort agencies (as opposed to so-called 'social' escort agencies) are outlawed. Conversely, in Victoria, the Business Licensing Authority issues licences to suitable applicants to operate a brothel, an escort agency or a business providing both services. In other words, in distinction to Queensland, licensed brothels in Victoria that provide outcalls and escort agencies are both lawful. On the CMC's own reckoning, 75 per cent of the demand for

¹ This is based on an estimated population in Victoria of 5,529,000 with 94 brothels and an estimated population in Queensland of 4,499,000 with 23 brothels. Population estimates are from Australian Bureau of Statistics, *Australian Demographic Statistics*, March Quarter 2010.

prostitution in Queensland is for outcalls.² The effect is that the great majority of prostitution in the state occurs outside of the licensing regime.

With licensed brothels effectively restricted to just 25 per cent of the market, there is a risk that the effect of new entrants will merely be to cannibalise that market, to the detriment of the viability of current licensees and without any appreciable impact on the illegal sector of the sex industry. To date, the Authority's probity function has been effective in ensuring that only suitable persons may operate a brothel. There is no evidence of official corruption or links to organised crime in the licensed brothel sector. However, given the high profits that can be made through illegal escort operations, and their knowledge of the sex industry, there is an associated risk that brothel licensees will involve themselves in the illegal sector (or some other illegal activity such as money laundering). Whilst acknowledging that a person is entitled to the presumption of innocence, this is demonstrated by the alleged operation of an illegal escort agency by a person who held a brothel licence (this person has subsequently surrendered their licence following the sale of their brothel). Whilst a licensee, the individual was charged with a raft of offences under Chapter 22A (Prostitution) of the Criminal Code, in respect of the alleged operation of the escort agency, which to date have not been judicially determined. The alleged involvement of the individual in the illegal enterprise is inimical to the system of strict regulation of the licensed sector that applies in Queensland.

In order to avoid the very real danger of policy failure, and the associated jeopardising of the objectives of the Prostitution Act, it is recommended that there be an element of relaxation of the overly restrictive licensing regime. It is obvious that the current regime does not provide sufficient incentive to draw operators into the legal sphere. It is self-evident that there must be an examination of permitting outcalls from licensed brothels and the licensing of escort agencies.

Outcalls

If it is the case that 75 per cent of the demand for prostitution is for outcalls, as estimated by the CMC, confining licensed brothels to just 25 per cent of the market is anti-competitive and explains not only the small size of the licensed sector but also the lack of incentive for participation in the licensing regime. Only sole operator sex workers may lawfully provide outcalls. The prohibition on outcalls from brothels and the outlawing of escort agencies has left a void which has been filled by illegal operators. Independent research commissioned by the PLA has found that: "Many of the legal brothel operators are dissatisfied with the restrictive regulatory regime and the fact that they are competing with a large, illegal sector".³ Whilst it is clear from Ms Edwards' report to the PLA that there is not universal support amongst brothel licensees

² CMC, *Regulating Prostitution: An evaluation of the Prostitution Act*, 2004, p. 110.

³ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 4.

for the legalisation of outcalls, it is supported by a majority.⁴ The legalisation of outcalls would enable licensed brothels to more effectively compete against illegal operators, opening up the 75 per cent of the market which they are currently denied. Brothel operators have indicated that clients, or potential clients, have indicated a demand for outcalls. According to Ms Edwards' report: "Almost all [licensed brothel operator] interviewees commented on the number of calls they regularly receive seeking outcall services (some estimate these as very high, others as smaller)".⁵

Brothel licensees consistently raise with the PLA the difficulty of competing against the illegal sector, especially in the absence of the legalisation of outcalls. They point out that not only do illegal operators not have to pay fees but they do not face a regulatory or compliance burden. Informants to the 2004 CMC review of the Prostitution Act stated that illegal prostitution has, "continued unabated since the implementation of the Prostitution Act".⁶ The PLA has seen no evidence in the intervening period that makes it think this situation has changed. All indicators are that there is a thriving illegal prostitution sector, both in the form of illegal brothels and illegal escort agencies, which operate largely with impunity. The large profits to be made from illegal prostitution, as well as the perception that there is a low risk of discovery and prosecution, provide a powerful incentive for illegal operators. Irrespective of the status of the licensing regime, this highlights the need for effective enforcement and sufficient resources to make combating illegal prostitution a priority.

The PLA is confident that legalising outcalls would result in an expansion of the state's licensed sector at the expense of illegal operators. However, for this to happen, the incentives for participating in the legal sector must be greater than the incentives for participation in the illegal sector. The ability to operate openly, rather than in the shadows; with greater certainty of business continuity; a business asset that can be traded; and no risk of arrest for operators, sex workers, and clients are powerful incentives for operating in the legal sector.

Subjecting as much of the sex industry as possible to regulation is in the public interest, especially in terms of providing a barrier to the involvement of organised crime and official corruption, minimising the impact of prostitution on the community, and safeguarding the health and welfare of sex workers and clients. As a regular business, they would be subject to workplace health and safety obligations. The licensing of escort agencies by the PLA would also ensure that they are operated only by suitable persons.

Under present arrangements, outcalls may be lawfully provided by sole operator sex workers who are responsible for making their own arrangements for safeguarding their health and safety. The other alternative is outcalls provided by illegal escort agencies. Sex workers at these agencies are

⁴ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, pp. 7, 17, 19, 29, and 30.

⁵ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 30.

⁶ CMC, *Regulating Prostitution: An evaluation of the Prostitution Act*, 2004, p. 80.

basically reliant on unscrupulous operators to put in place arrangements for their health and safety. According to Ms Edwards' report to the PLA, "there is no evidence as to whether outcalls are more high-risk than in-house prostitution."⁷ However, she goes on to say that:

A risk management approach might suggest that outcall prostitution is more high-risk. The worker is on his or her own, in someone else's place. **In one sense, heightened risk makes for a compelling reason to include outcall prostitution within the regulatory framework rather than to leave it out, so that risks can be appropriately managed.**⁸

CAV has said that, "escort workers face a set of risks that are associated with working alone, in an unfamiliar environment, where they may face unpredictable behaviour".⁹ A report into the Victorian sex industry said that: "There were reports of escorts facing violence and aggression when clients were not carefully vetted or when the characteristics of the worker sent did not match those promised".¹⁰ However, the same report said that: "Workers undertaking this work generally felt comfortable with the security offered by agencies and by the employment conditions".¹¹

The CMC has previously indicated that it might be prepared to support a "heavily regulated" model for outcall prostitution.¹² If any industry is seen to be too highly regulated it provides an obvious disincentive to involvement in that industry. The profit motive is a central tenet of a market economy. If the burden of regulation outweighs the incentive for involvement in an industry then no one will participate in it. If outcalls are heavily regulated, and not profitable, then operators simply will not provide them legally. The illegal outcall sector will continue to flourish. Whilst it is certainly necessary to regulate outcalls (just as brothels are currently regulated) the right balance must be struck which caters for the health and safety of sex workers whilst also allowing for operators to be profitable with minimal compliance costs. It should also be noted that standard workplace health and safety obligations would apply to businesses providing outcalls.

If other jurisdictions can manage the risks of outcall prostitution, there is no reason that Queensland cannot. Section 7 of the *Sex Work Regulations 2006 (Vic)*, imposes a number of obligations on escort service providers, including that they must:

- ensure regular contact with the sex worker by requiring the worker to confirm their arrival at each new premises and the completion of each visit

⁷ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 13.

⁸ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 13 (emphasis added).

⁹ CAV, *A guide to the Prostitution Control Regulations 2006 for Licensees and approved brothel managers*, May 2007.

¹⁰ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 10.

¹¹ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 10.

¹² CMC, *Regulating Outcall Prostitution*, 2006, p. 34.

- provide each sex worker with a mobile phone to enable contact with the escort service provider
- provide assistance as soon as possible to the sex worker if the worker advises that a situation is potentially violent or unsafe, and
- provide the sex worker with a free supply of condoms and water based lubricant.

The Occupational Safety and Health Service of the New Zealand Department of Labour has published *A Guide to Occupational Health and Safety in the New Zealand Industry* which includes a fact sheet entitled, "Safety and Security Guidelines for Sex Workers Who Provide Outcall". It can be found at Appendix 1 of this submission.

Legalising outcalls would also have the merit of giving sex workers greater choice in their working arrangements. Currently, those workers who do not want to work in brothels, and for whatever reason do not want to run their own business as a sole operator, have no choice but to work for an illegal escort agency. These workers are compelled to choose work options that may be unsafe. Additionally, sex workers and clients of illegal operators are each liable to arrest and prosecution. As Jeffrey and Sullivan have said:

It is no small thing for sex workers to be less vulnerable to arrest, prosecution, fines, and imprisonment, to not have to be concerned about the life long impact of a criminal record or the removal of their children in the wake of criminal proceedings.¹³

Illegal prostitution occurs in the shadows. Operators and workers are not readily identifiable. To operate openly would invite unwanted attention from the police. Where prostitution occurs more openly (as it would if outcalls were legalised), it is easier for support services, like Respect Inc, to access sex workers, aiding health promotion and other activities.

Finally, the PLA would like to examine the logic of the conclusion of the CMC in its 2006 *Regulating Outcall Prostitution* report that there is a danger that legalising outcalls from brothels and escort agencies may lead to an overall expansion in the state's sex industry. In her report to the PLA, Ms Edwards' labelled this a "conservative approach" and made the eminently valid remark that it, "might have been made as an argument for criminalising all prostitution in Queensland, not just outcall prostitution".¹⁴ The Authority endorses this remark.

It is basic economics that the size of any industry is a reflection of supply and demand. In the case of the sex industry, the supply of and demand for sexual services. The motivations for entering sex work are discussed later in this submission. They are primarily financial. As Abel, Fitzgerald and Brunton have stated, "research done in many countries with different legislative

¹³ Leslie Ann Jeffrey and Barbara Sullivan, "Canadian Sex Work Policy for the 21st Century: Enhancing Rights and Safety, Lessons from Australia", *Canadian Political Science Review*, 3(1) March 2009, p. 64.

¹⁴ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 17.

systems regulating sex work indicates that people enter the sex industry primarily for economic reasons".¹⁵ In a sense, that is not surprising because it reflects why most persons work. They have a standard of living to maintain, dependents to support, needs (shelter, food, clothing, etc) that must be met, and wants, and bills which generally need to be paid. All of this requires a source of income. As the New Zealand Prostitution Law Review Committee rightly said: "The most effective way to ensure people do not enter the sex industry is to help them find other means of earning money".¹⁶ A secondary motivation for sex work is flexibility of work arrangements. The way to prevent individuals from selling sex is by maintaining a strong economy with a multiplicity of employment opportunities, especially jobs which have flexible working arrangements so that individuals can more easily cater for their family, educational, and other responsibilities. It would be more likely that women (sex workers are overwhelmingly female) would choose to sell sex during economic downturns when unemployment is rising and jobs are scarce. This is supported by a 2009 study of the sex industry in Victoria, which stated that:

The prevailing economic downturn has impacted upon the sex industry in several ways. A number of operators reported a recent increase in workers seeking entry or re-entry to the industry, driven in their view by current economic conditions. This includes workers with professional qualifications and university students. In addition, more women with children are seeking to enter sex work.¹⁷

There is no evidence that the legalisation of outcalls would increase the number of sex workers in Queensland. For a start, if a person wanted to perform outcalls they may already do so quite legally as a sole operator sex worker. In fact, this tends to be a favoured option because the person is essentially self-employed and does not have to share the spoils of their labour with anyone else. They also have greater control and flexibility over their working arrangements. Available evidence indicates that the legality or otherwise of sex work is not a determinant of supply or demand. Abel, Fitzgerald and Brunton have said that:

Despite a change from a criminalised to a decriminalised system in New Zealand, the incentives to enter the industry remain unchanged ... In any country, structural and personal factors such as health, family, housing, welfare and labour policies play a more important role in the decision individuals make to enter sex work than its legal status.¹⁸

The New Zealand Prostitution Law Review Committee has stated that: "Given the relatively static numbers of sex workers pre- and post- PRA [Prostitution Reform Act], the Committee considers **decriminalisation has not become a**

¹⁵ Gillian Abel, Lisa Fitzgerald, and Cheryl Brunton, "The Impact of Decriminalisation on the Number of Sex Workers in New Zealand", *Jnl Soc. Pol.*, 2009, 38, 3, p. 528.

¹⁶ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 15.

¹⁷ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 8.

¹⁸ Gillian Abel, Lisa Fitzgerald, and Cheryl Brunton, "The Impact of Decriminalisation on the Number of Sex Workers in New Zealand", *Jnl Soc. Pol.*, 2009, 38, 3, p. 529.

significant factor in people's decisions to enter the sex industry".¹⁹ Later in their report, the Committee expanded on this by saying that:

The fact that few of the sex workers who were interviewed by CSOM [Christchurch School of Medicine] indicated that decriminalisation of the sex industry in and of itself was the reason for entering the industry supports the conclusion drawn in chapter two: that the enactment of the PRA has not led to an increase in the number of sex workers operating in New Zealand.²⁰

Harcourt et al. conducted research in three Australian cities, Melbourne, Perth and Sydney, each of which have different legal climates for sex work. Perth is the most prohibitionist of the cities (most forms of sex work are criminalised), whilst Melbourne has a licensing model, and sex work has been decriminalised in Sydney. Harcourt et al. found that:

Despite the different legal climates, an active and diversified sex industry was present in each of the three cities. On a per capita basis the number of brothels was broadly comparable between the cities ... consistent with previous population-based data indicating that men in the three jurisdictions used commercial sexual services at roughly the same rate. **This suggests that the legal climate has no impact on the prevalence of commercial sex.**²¹

According to Donovan et al., "Australian men are among the least frequent consumers of commercial sexual services in the world".²² A large population survey found that the proportion of men who reported having, "paid for sex is generally similar to the international average".²³ 1.9 per cent of Australian men (clients of sex workers are overwhelmingly men) reported paying for sex in the previous year.²⁴ 1.8 per cent of men in Queensland reported that they had paid for sex in the past year, consistent with the national average.²⁵ Interestingly, in Western Australia, where most forms of sex work are illegal, 1.9 per cent of men reported paying for sex in the previous year.²⁶ This suggests that the legal climate has no impact on demand for sexual services.

It is not as if by legalising outcalls a whole new dimension and potential source of demand would suddenly be available to clients in Queensland. The fact is that outcalls are already available to those clients that want them. They

¹⁹ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 39 (emphasis added).

²⁰ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 64.

²¹ Christine Harcourt et al., "The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers", *Australian and New Zealand Journal of Public Health*, 2010, Vol 34, No. 5, p. 485 (emphasis added).

²² Basil Donovan et al., "Improving the health of sex workers in NSW: maintaining success", *NSW Public Health Bulletin*, 2010, Vol. 21(3-4), p. 76.

²³ Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 196.

²⁴ Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 194.

²⁵ Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 194.

²⁶ Chris Rissel, "Sex in Australia: Experiences of commercial sex in a representative sample of adults", *Australian and New Zealand Journal of Public Health*, 2003, Vol. 27, No. 2, p. 194.

are legally provided by sole operator sex workers. They are illegally provided by operators of escort agencies which operate in the shadows and whose workers masquerade as legitimate sole operator sex workers and pass themselves off to clients as such. Accordingly, the PLA believes that there is no reason that demand should not remain static if outcalls are legalised.

The experience of New Zealand in decriminalising its sex industry in 2003 provides a valuable case study about the likely impact on Queensland's sex industry of legalising outcalls. At the time that decriminalisation was being considered, there was what can only be described as a scare campaign that decriminalisation would result in a massive expansion of the sex industry. It was claimed that there would be a 400 per cent increase in the numbers of sex workers despite the fact that there was no relevant statistical evidence that would support this.²⁷ Similarly, it has been asserted that decriminalisation has resulted in a 400 per cent increase in the number of street sex workers in Auckland.²⁸ The Prostitution Law Review Committee has said that: "This claim cannot be substantiated, and was not based on systematic or robust research".²⁹ The Committee then goes on to make a telling observation which reflects that all too often claims about the sex industry are based only on opinion (reflective of the ideological persuasion of the individual or organisation) rather than on fact informed by evidence: "The figure of a 400% increase has been re-reported several times, demonstrating the ease with which opinion can be perceived as 'fact'".³⁰

The Committee examined the claims about expansion of the sex industry, informed by statistical data, and found that they could not be substantiated. The Committee stated that:

Arguments that decriminalisation has increased the numbers of people in the sex industry are largely founded on the flawed assumption that decriminalisation would increase the numbers of people involved in prostitution. The Committee is satisfied that such assumptions have proved to be unfounded.

One of the consequences of decriminalisation has been the illumination of the workings of an industry which have historically been hidden. Sex workers and brothel operators can now be more open about their occupation. Similarly, street-based sex workers are now able to be more visible since soliciting in a public place is no longer illegal.

Greater visibility of the sex industry is not indicative of growth of that industry. Further, the Committee considers increased visibility to be a desirable consequence of decriminalisation for those who are most at risk in the industry, namely street-based sex workers and under age people involved in prostitution.

²⁷ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

²⁸ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

²⁹ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

³⁰ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 40.

Accurately counting the number of sex workers remains difficult. However, the Committee endorses the findings of the CSOM [Christchurch School of Medicine] that the enactment of the PRA [Prostitution Reform Act] has had little impact on the numbers of people working in the sex industry.³¹

The PLA has great difficulty in reconciling the conclusion reached by the Committee on the impact of decriminalisation in New Zealand with that reached by the CMC on the likely impact of the legalisation of outcalls in Queensland. The PLA also notes that, according to Donovan et al., decriminalisation of the sex industry in New South Wales did not result in an expansion of the state's sex industry. They have said that: "NSW has a diverse sex industry that is limited in its size by modest demand. There is no evidence that decriminalisation in 1995 increased the frequency of commercial sex in NSW".³²

The CMC *Regulating Outcall Prostitution* report made much of allegations that the licensing regime in Victoria had caused a "huge expansion" of the state's sex industry.³³ The CMC also appeared quite taken by the evidence of the Coalition Against Trafficking in Women, Australia (CATWA). It is worth recalling that this organisation's attitude to prostitution is informed by the radical feminist perspective by which all prostitution is abusive and exploitative and a form of male violence against women. CATWA is an unabashed supporter of the Swedish model, whereby the purchase (but not the sale) of sexual services is illegal. The agenda of the organisation is for the adoption of the Swedish model by all Australian jurisdictions. The evidence of CATWA cannot be regarded as objective. The Swedish model is comprehensively explored at Appendix 2 of this submission. Suffice to say that the rhetoric of the success of the model is not matched by the available evidence and all indications are that it has had a detrimental impact on the health and safety of sex workers.

Leslie Ann Jeffrey and Barbara Sullivan have rejected the claims made by CATWA about the expansion of Victoria's sex industry, referring to the dubious evidence presented by that organisation. They have stated that:

A particular set of claims about the consequences of prostitution law reform – derived from radical feminist ideology – were regularly repeated by witnesses at the Canadian inquiry [Canadian Parliamentary inquiry into the sex trade]. These claims included that legalising or decriminalizing the sex trade would lead to more trafficking, more child prostitution and an overall expansion of the sex industry. **However, there is no evidence that any of these scenarios have appeared in Australia in the wake of policy reform.**

Mary Sullivan [of CATWA] (2007, 139) has recently published a radical feminist analysis of the situation in Victoria and she argues that legalization in that state has created a "massive expansion of prostitution". But the 'evidence' she uses to support this claim is drawn from a set of independent

³¹ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 41.

³² Basil Donovan et al., "Improving the health of sex workers in NSW: maintaining success", *NSW Public Health Bulletin*, 2010, Vol. 21(3-4), p. 74.

³³ p. 22.

business publications that provide no sources or research-based references and no information about how their figures were actually obtained. As the publication also contains some glaring inaccuracies in its description of the sex trade it cannot be regarded as a reliable source. Other publications have used unsubstantiated assertions (see CATWA, 2005), newspaper commentary (see Mary Sullivan and Sheila Jeffreys [of CATWA], 2002) or cited increases in criminal prosecutions and/or the number of legal brothels as 'evidence' of an 'expansion' of the sex trade.³⁴

In her report to the PLA, Ms Edwards' said that the claims of Sullivan and Jeffreys of CATWA, "were not supported by regulators in Victoria. Interviews undertaken as part of this project ... suggested that if there had been growth in the industry since legislation was passed, it has been modest".³⁵ At a later point in her report, she stated that the majority of interviewees in Victoria and NSW did not think that there had been any expansion of the sex industry.³⁶ She said that: "Those interviewees who did think there had been an expansion were legal operators and their advocates".³⁷ It is in the self-interest of these persons to talk up the size of the illegal sector in calling for more police resources to be directed at combating illegal operators. The Authority has spoken independently to CAV about the size of the illegal sector in Victoria. An officer of CAV told the Authority that:

The unlicensed sector is quoted by the industry association as being around 350, however this number is unsubstantiated and we don't believe we are anywhere near that figure for unlicensed brothels in Victoria. To CAV's knowledge, there has not been any noticeable growth in the illegal sector.³⁸

A recent report into the Victorian sex industry has found that there are widely divergent opinions about the size of the illegal sector but limited evidence to support these opinions. The report stated that:

There is limited quantitative evidence of illegal activity. Estimates of illegal activity vary widely from low estimates amongst law enforcement agencies to higher estimates from industry representatives. However, it is possible that illegal activity is more widespread than some estimates based on evidence from respondents.³⁹

Available evidence indicates that there is no danger that by legalising outcalls, the size of Queensland's sex industry will be increased. However, greater openness and visibility of the industry may foster that impression. There are genuine public policy benefits of subjecting a larger proportion of the industry to regulation, as identified earlier in this submission. The PLA does not believe that if outcalls are legalised, there will no longer be an illegal sector. Irrespective of the state of the law, there will always be individuals who will

³⁴ Leslie Ann Jeffrey and Barbara Sullivan, "Canadian Sex Work Policy for the 21st Century: Enhancing Rights and Safety, Lessons from Australia", *Canadian Political Science Review*, 3(1) March 2009, p. 63 (emphasis added).

³⁵ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 17.

³⁶ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 51.

³⁷ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 51.

³⁸ email correspondence, 19 November 2010.

³⁹ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. vii.

choose to operate outside of the law. As Ms Edwards' has stated: "All jurisdictions report having a 'legal' and an 'illegal' industry, and that there is great tension between the two".⁴⁰ Again, to the extent that legalisation of outcalls makes the industry more visible combined with the continued existence of an illegal sector it is likely to give rise to superficial perceptions of an overall expansion of the sex industry which will be seized upon by opponents of the sex industry. The PLA is not alone in its support for the legalisation of outcalls, as is obvious from Ms Edwards' report:

Except for a minority of brothel licensees and about half of sole operator sex workers, none of the stakeholders interviewed as part of this project had any objections to the legalisation of outcalls. These included PETF within QPS, the Department of Justice and Attorney-General (JAG) and the Local Government Association of Queensland (LGAQ).⁴¹

Room numbers at brothels

Under August 2007 amendments to the Prostitution Act, the maximum number of sex workers permitted at a licensed brothel at any one time increased from five to eight for a five room brothel (s. 78(2) of the Act). The number of permitted staff on premises also increased from 10 to 13 (s. 78(1)(b) of the Act). However, the maximum number of allowable rooms did not increase in line with the increase in the number of sex workers. Brothel licensees have informed the PLA that they are unable to fully utilise the increase in the number of sex workers in the absence of an increase in the number of rooms. In her report to the PLA, Ms Edwards' said that, "all interviewees [brothel licensees] commented that the ability to have as many as eight workers on the premises had never worked, with problems then arising with an inadequate number of rooms to match the number of workers".⁴² Even with a full complement of sex workers, during busy periods clients have to wait. It has been the experience of licensees that clients are unwilling to wait for lengthy periods and will instead go elsewhere.

Accordingly, it is submitted that the maximum number of allowable rooms in each licensed brothel should be increased to 8. This will restore the ratio of sex workers to rooms which originally applied under the Prostitution Act (that is, one room for each sex worker). An increase in rooms would not be expected to result in an increase in demand for sexual services at brothels. Rather, it would have the effect of allowing brothels to better cope with demand at peak periods. In addition, permitting a greater number of rooms will allow clients a greater range of choice in rooms ('theme rooms') and permit a further degree of differentiation between brothels. Licensees would continue to cater for the occupational health and safety of sex workers by ensuring that rosters provide appropriate rest breaks.

⁴⁰ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 51.

⁴¹ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 17.

⁴² Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 19.

Not all brothels will have the capacity to increase the number of rooms, because of physical or financial limitations. However, the vast majority of licensed brothels have the physical capacity to increase the number of rooms, and should not be precluded from doing so because a relative few do not have that capacity.

For the PLA, there would be a slightly increased compliance burden because the compliance officers would be required to check a greater number of rooms to ensure that licensees are complying with their statutory and regulatory obligations. However, the compliance officers would have to conduct an audit of the brothel regardless of the number of rooms. In any case, the additional fee revenue from extra rooms would more than offset any additional compliance costs. The measure would not create any additional probity burdens or costs to the PLA.

● Brothel licence fees

The PLA is heavily reliant on fees to fund its operations. Fees for brothel licences and approved manager's certificates represent a contribution to the cost of probity and the regulation of brothels. Originally, the total fees payable for a brothel licence for a five-room brothel were \$16,500. Currently, the total of those same fees stands at \$28,663. Consistent with government policy, fees increase annually in accordance with the CPI. These fees are a large impost on brothel businesses and it is open to question whether they are both an inhibitor to entry and a financial burden which makes it more difficult for brothel operators to stay in business.

● The Queensland Adult Business Association (QABA), an organisation which represents the interests of brothel licensees, has previously argued that high licence fees and regulatory burdens are a disincentive to involvement in the licensed sector and mean that most prostitution occurs illegally.⁴³ In his second reading speech, the then Minister for Police and Corrective Services, the Hon Tom Barton MP, rejected arguments that the cost of brothel licences would be prohibitive.⁴⁴ The Minister's reference to this indicates that issues of cost-effectiveness were contemplated by the Government at the time of enacting the Prostitution Bill. The issue of cost-effectiveness was also considered in the Regulatory Impact Statement for the original *Prostitution Regulation 2000*, which stated that, "in establishing fees caution must be exercised to ensure they do not act as a disincentive for potential brothel licensees or approved managers".⁴⁵

When the PLA commenced operation on 1 July 2000 there was an expectation that it would become self-funding through revenue derived from brothel licence and manager's certificate fees, based on an assumption of up to 80 licensed brothels operating in Queensland. Self-funding of the

⁴³ QABA RIS response, p. 10.

⁴⁴ *Hansard*, 10 November 1999, p. 4832.

⁴⁵ p. 4.

administration and regulation of the licensed sex industry was a key plank in its establishment. A decade on, the licensed brothel sector is still not self-funding. The PLA continues to rely on an annual government grant. For the PLA to be self-funding through revenue derived from brothel licence and manager's certificate fees, it is estimated that the annual brothel licence fee would need to be increased to \$58,226; an increase of approximately 103 per cent of the current licence fees. If there were a greater number of brothels, the costs of licensing could be apportioned amongst that larger number, with the likelihood that fees could be reduced accordingly.

Whilst some brothels are very profitable, others are experiencing genuine financial hardship. QABA has previously acknowledged that there are brothels in the state that are struggling financially.⁴⁶ In May 2008, a brothel closed following the automatic cancellation of the brothel licence as a consequence of the insolvency under administration of the licensee. From the perspective of the PLA, there have been instances where licensees have not been able to pay their fees on time. There are community benefits which accrue from the licensing regime and to the extent that the whole community benefits it could be argued that should be reflected in the fee structure. This would involve revisiting the (so far unrealised) intention that the licensed sector should be self-funding. Any going back on the commitment to self-funding would inevitably entail a greater reliance on government funding by the PLA.

Licensed brothel location and community amenity

For any business, location is a crucial determinant of success. Restrictions on the permitted location of licensed brothels mean that they are effectively confined to industrial areas. This means that some of them are in unappealing, out of the way, and difficult to find locations. This may limit their appeal to clients or potential clients. It is no accident that the most successful brothels are the most favourably and conveniently located. On the one hand, it might be argued that restricting licensed brothels to industrial areas is incongruous given the permitted location of sex-on-premises venues, swingers clubs, adult entertainment venues, and adult shops. Unlike brothels, adult shops and adult entertainment venues have a tendency to be highly visible. On the other hand, community perceptions about brothels, sex workers and clients, although not reflective of the reality, would make it difficult to relax restrictions on the permitted location of brothels.

Restrictions on building style, signage and lighting mean that licensed brothels are extremely discreet. From the perspective of clients, the last thing they want is for the building they are entering to be immediately recognisable to all and sundry as a brothel. In Queensland, brothels are so discreet that most people would drive past them without any idea as to their function. There are two brothels on Abbotsford Road, Bowen Hills, for example, that thousands of persons would drive past everyday without the slightest idea that they are brothels. In fact, the only reason that they might stand out is because

⁴⁶ QABA RIS response, p. 8.

of their lack of signage in comparison to surrounding businesses. Experience has shown that licensed brothels have no appreciable impact on community amenity. In the decade long history of the licensed sex industry there has not been a single complaint from any person regarding the impact on amenity of any operating brothel in the state.

Registration of sex workers

Ms Edwards' said in her report to the PLA that some brothel licensees had said that registration of sole operator sex workers should be required.⁴⁷ The PLA does not support registration of sex workers, be they workers in brothels or sole operators. There is no compelling policy rationale and is a basic issue of civil liberties. It would further stigmatise sex workers, and raises key concerns in respect of privacy. It would be overwhelmingly rejected by sex workers. It is likely that there would be a low level of compliance and most workers would choose not to register. If you were to ask any sex worker organisation what is the most important issue facing workers they would nominate stigma and discrimination. This was an issue raised by sex workers in the recent Victorian study, which said that:

The single biggest issue for sex workers is the challenge of stigma. Workers resented perceptions of sex workers as diseased, criminal, victims, drug addicts, promiscuous and without a moral code or values. They felt they are looked down upon by the broader community.⁴⁸

Respect Inc, the Queensland sex worker organisation, has told the PLA that: "Stigma and discrimination is possibly the main health issue for sex workers. How can you have a sense of wellbeing when you feel despised?" Stigma associated with selling sex is so extreme that most sex workers keep their participation in the industry a secret even from family members and close friends. Requiring their registration would merely add to the stigma and discrimination they already experience and intensify the sense of the 'otherness' of sex workers.

The likely impact of registration is that sex workers would be driven underground. This is extremely problematic from a harm minimisation perspective. The deleterious impact of driving sex workers underground is well known. It is more difficult for support services to access them, it leads to reluctance to undergo sexual health checks, it makes them more vulnerable to violence, coercion and pressure to have unsafe sex, and it compromises their ability to seek the assistance of police. Depending on the penalty that applies for non-registration, it may also mean that sex workers would have a criminal record which would affect their ability to exit the industry by finding other employment.

⁴⁷ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 19.

⁴⁸ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 17.

The only ground on which registration of sex workers could be justified is that it is in the interests of public safety. The policy rationale for requiring registration of health workers is to ensure that they hold qualifications from an accredited institution and are fit to practise because otherwise they are likely to present a danger to the public. There are no similar considerations for sex workers. There is no cogent reason that the registration of sex workers is required in the public interest.

Sex worker health and safety

Violence is a wholly unacceptable hazard of sex work. Sex workers are just as entitled as any community member to a safe and healthy work environment. Any legislative regime should have the principle of harm minimisation at its core.

Workers in the illegal sector are more prone to the risk of intimidation, coercion, violence and pressure to have unsafe sex. It is the illegal sector which poses the greatest risk of the exploitation of minors and sex trafficking. Workers in this sector must rely on unscrupulous operators to cater for their health and safety. Moreover, client perceptions of the ability of these workers to access the protection of the police makes them more vulnerable to intimidation and violence. Sex workers in the illegal sector are hardly likely to approach the police to make a complaint about a violent client out of fear that they will instead be arrested by the police for involvement in illegal prostitution. Street sex workers are widely acknowledged to be the most vulnerable to acts of violence from clients and passersby.

Sole operator sex workers are self-employed and responsible for making their own arrangements to safeguard their health and safety. Except in a limited number of circumstances, they must work alone, which is an obvious source of vulnerability. The PLA welcomes recent amendments to the Criminal Code which give sole operator sex workers a couple of additional tools to enhance their health and safety. The amendments permit sole operators to employ the services of a driver or a message taker (a person who receives a message directly from a sole operator sex worker about the worker's location or activities).

The advantage of legalising an industry is that it can then be regulated. Apart from any sex industry specific regulations, businesses that lawfully provide prostitution are legally obliged under workplace health and safety legislation to provide a safe work environment. A variety of academic literature demonstrates that lawfully operated brothels provide the safest and healthiest work environment for sex workers.

Quadara has said that:

indoor environments are subject to a range of controls that inhibit the likelihood of violence. The environmental design of sex work premises (lighting, security doors, intercom and surveillance systems) can increase workers' ability to control the interaction ... and increase awareness of

encounters that are not going well ... The presence and skill of other staff is another feature that increases safety. In brothels, the receptionist is a key 'gatekeeper' who can assess the potential danger a client might present (for example, if he is intoxicated), respond to violent encounters or monitor situations.⁴⁹

Seib et al. have stated that: "There is little doubt ... that sex workers in legally regulated brothels are safer and healthier than those who work in illegal indoor venues or on the streets".⁵⁰

Sullivan has asserted that:

Brothels ... offer the safest working environment for sex workers – as evidence from Australia and elsewhere in the world clearly demonstrates. In brothels, sex workers are far less vulnerable to violence, including sexual assault, because of a number of proven safety measures including the presence of other staff, increased possibilities for screening clients (in reception areas), and the provision of alarms. Workers in brothels are also more likely to feel they are able to complain to police if problems do occur.⁵¹

There are a range of statutory and regulatory requirements to maximise the safety of sex workers in Queensland's licensed brothels, including:

- brothels must be personally supervised at all times
- each room used for prostitution must have a concealed alarm
- there must be electronic surveillance of the brothel, and
- ensuring that the risk from harm in the workplace is controlled and minimised.

Compliance officers of the PLA conduct announced and unannounced audits and inspections of each licensed brothel throughout the year to ensure that they are complying with their statutory and regulatory obligations. Sex workers at licensed brothels may also complain to the PLA about the operations of the brothel or their treatment by a brothel licensee or an approved manager. The PLA will investigate these complaints and take appropriate action.

The autonomy of sex workers is a paramount consideration for the Authority. Section 77 of the Prostitution Act prohibits a person from applying duress to another person to continue to provide prostitution. There is the potential for the exploitation of sex workers by licensees and managers. Sex workers in brothels have additional protections by way of licence conditions, so that licensees and approved managers must:

⁴⁹ Antonia Quadara, "Sex workers and sexual assault in Australia", *Issues*, No. 8 2008, Australian Institute of Family Studies, p. 12.

⁵⁰ Charlotte Seib et al., "Commercial Sexual Practices Before and After Legalization in Australia", *Arch Sex Behav*, 2010, 39, p. 980.

⁵¹ Barbara Sullivan, "When (Some) Prostitution is Legal: The Impact of Law Reform on Sex Work in Australia", *Journal of Law and Society*, Vol. 37, No. 1, March 2010, p. 93.

- observe the rights of a sex worker as an independent party. This includes not coercing, directing, bullying, threatening or unfairly penalising a sex worker, by whatever means, express or implied, and
- not either, directly or indirectly, compel a sex worker against their wishes to provide an introduction, to see a client or to provide a particular service.

Because sex workers have a significantly higher number of sexual encounters than the average person, there is a much greater likelihood of exposure to sexually transmissible infections (STIs) and a higher risk of transmission. However, despite community perceptions of sex workers as vectors of disease, studies consistently show that the sexual health of sex workers is comparable or even superior to that of the general community. Wilson et al. have said that: "Female sex workers have one of the lowest prevalences of HIV (and other STIs) in Australia, compared with levels in other groups of the general sexually active population".⁵² The main source of risk of the acquisition of STIs by sex workers is from their private partners.⁵³ The *Second National STI Strategy 2010-2013* says that:

Despite the occupational risks, the incidence of STIs in sex workers in Australia is among the lowest in the world. This has largely been through the establishment of safe-sex as a norm, the availability of safe sex equipment and community-driven health promotion and peer-based interventions.⁵⁴

Similarly, the *Sixth National HIV Strategy 2010-2013* says that: "Despite the occupational risks, the incidence of HIV in sex workers in Australia is among the lowest in the world".⁵⁵

The peer education of sex worker organisations has been invaluable in impressing the importance of safe sex on sex workers so that safe sex is the norm in the industry. As Donovan et al. have said: "Since the mid-1990s repeated surveys of female sex workers working privately or in brothels ... show almost universal condom use with clients".⁵⁶ In a sense, this is not surprising. Sex workers are motivated to stay healthy and well because their livelihood depends on it. In conducting examinations of clients for any visible signs of STIs, sex workers also perform a valuable educative and public health role, especially in terms of encouraging clients with a suspected STI to seek medical attention.

In respect of legislative and regulatory requirements for licensees and sex workers regarding sexual health and education, all sex workers in Queensland are legally required to use prophylactics. The requirement to observe safer sex practises is not just restricted to sex workers but also

⁵² David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 11.

⁵³ David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 3.

⁵⁴ Department of Health and Ageing, *Second National STI Strategy 2010-2013*, p. 16.

⁵⁵ Department of Health and Ageing, *Sixth National HIV Strategy 2010-2013*, p. 16.

⁵⁶ Basil Donovan et al., *The Sex Industry in Western Australia: A Report to the Western Australian Government*, 2010, p. 4.

extends to their clients. Under s. 77A of the *Prostitution Act 1999*, it is an offence for:

- a sex worker to provide prostitution involving sexual intercourse or oral sex unless a prophylactic is used
- a sex worker to offer to provide such a service without the use of a prophylactic
- a person to accept such an offer from a sex worker
- a person to ask a sex worker to provide prostitution involving sexual intercourse or oral sex without the use of a prophylactic, or
- a person to obtain prostitution involving sexual intercourse or oral sex unless a prophylactic is used.

Because the licensed brothel sector is sanctioned by the state, and it is in the public interest and consistent with community expectations to have high standards of health and safety in licensed premises, sex workers in brothels are subject to a number of requirements not imposed on sex workers in other sectors of the industry. Section 90 of the *Prostitution Act* prohibits a sex worker from providing prostitution at a licensed brothel during any period in which that person is knowingly infective with a STI. The sex worker will be taken to have known, unless they can prove that, at the time the offence is alleged to have been committed:

- they held a current sexual health certificate of attendance (evidence that they had submitted to a sexual health examination); and
- they believed on reasonable grounds that they were not infective with a STI.

For this reason, sex workers in licensed brothels are required to undergo three-monthly sexual health testing and to present evidence of that to the brothel at which they are working in the form of a current sexual health certificate of attendance. There is no similar requirement for sole operator sex workers. For workers in the illegal sector, evidence of the conduct of a recent sexual health check may be taken into account by a court in mitigation of sentence (s. 229I(3), *Criminal Code*). Mandatory testing of all sex workers in Queensland would be likely to attract opposition from sexual health clinicians and sex worker organisations. There are clinicians who view compulsory testing as a human rights issue and an unnecessary violation of a person's bodily integrity. Clinicians point to the generally low levels of STIs experienced by sex workers and high rates of condom use in questioning the need for compulsory testing and point to the likely impact it would have on demand for services at sexual health clinics. The attendance of greater numbers of sex workers would likely be at the expense of higher risk groups, such as men who have sex with men, and of highly questionable public health benefit. One study has pointed to the high cost of mandatory testing and argued that it is not cost-effective.⁵⁷ In questioning the need for mandatory sexual health

⁵⁷ David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 2.

testing of the sex worker population, clinicians point out that in those jurisdictions where testing is voluntary, STI prevalences are as low as jurisdictions with mandatory testing.⁵⁸ Regular sexual health examinations of sex workers, at intervals consistent with their risk of acquiring a STI and in consultation with their clinician, are industry best practice and encouraged by the PLA. It is, of course, the case that all sexually active individuals are responsible for practising safe sex – the burden does not just fall on sex workers.

Whilst there is a legal requirement for the use of prophylactics for all acts of prostitution involving sexual intercourse or oral sex which all sex workers in Queensland must observe, sex workers in licensed brothels must ensure that prophylactics are used for all contact sexual services, including masturbation. This is achieved by way of a brothel licence condition which requires licensees to have such arrangements in place.

Section 77A of the Prostitution Act prohibits brothel licensees or approved managers from discouraging the use of prophylactics at the brothel. Section 13 of the *Prostitution Regulation 2000* requires brothel licensees to prominently display a sign in the brothel's reception area stating, "only safe sexual activities are practised on these premises". Brothel licensees and approved managers must also take reasonable steps to ensure that:

- a person does not provide or obtain prostitution involving sexual intercourse or oral sex without the use of a prophylactic, or
- a person does not offer to provide, or ask a sex worker to provide, such a service without the use of a prophylactic.

Section 89 of the Prostitution Act prohibits brothel licensees and approved managers from permitting a sex worker to provide prostitution at the brothel during any period in which that person knows the sex worker is infective with a STI. There is also a requirement in the Prostitution Regulation that each room in the brothel must have enough lighting to enable sex workers to check for clearly visible signs of STIs. Additionally, there are a range of brothel licence conditions to promote and facilitate safe sex in brothels, including that:

- sex workers are provided with relevant information about sexual health and the detection of STIs
- written information about STIs is available in client waiting areas
- sex workers must hold a current sexual health certificate of attendance
- direct and immediate access to a supply of personal protective equipment must be provided in each room, and
- clinical waste must be properly managed.

⁵⁸ David Wilson et al., "Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia", *Sex Transm Inf*, published online 20 October 2009, p. 11.

Sex trafficking

Australia has ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. People trafficking is the physical movement of persons across borders through deception, coercion or force, with the intention of exploiting those persons in the destination country.

Due to the clandestine nature of people trafficking, its extent in Australia is difficult to establish. Most cases brought to official attention have involved the trafficking of women into Australia, predominantly from South-East Asia, for the purpose of sexual exploitation. According to the Australian Institute of Criminology report, *Trafficking of women for sexual purposes*:

Between 1999 and 31 December 2007, the Department of Immigration and Citizenship (DIAC) referred 221 matters (relating to 208 people) about trafficking in persons to the Australian Federal Police (AFP). 196 of these referrals (relating to 174 persons) related specifically to the sex industry.⁵⁹

Not all of these referrals resulted in an investigation. Between 2004 to 29 February 2008, the AFP investigated more than 150 human trafficking allegations.⁶⁰ Moreover, according to the report, by "31 January 2008, seven defendants had been sentenced for offences related to slavery and conducting a business involving the sexual servitude of others in Australia".⁶¹

The *Trafficking of women for sexual purposes* report notes that there are a variety of cultural factors at play when it comes to sexual servitude, and the cases discovered in Australia have rarely conformed to stereotypes of women kidnapped from a rural village, or held at gunpoint, or chained to a bed, or even locked in a room. The cases have been more complex, subtle and multi-dimensional than these stereotypes would indicate. The report says that:

In many cases, the suspected victims of trafficking have known they are coming to Australia to work in the sex industry; many have had access to mobile telephones while here in Australia; and only some have been physically restrained, through detention in brothels and safe houses. However, in all cases, coercion and control has involved a range of subtle methods such as threats of violence, obligations to repay debt, isolation, manipulation of tenuous or illegal migration situations and a general sense of obligation.⁶²

The Commonwealth Criminal Code was amended in 1999 to introduce a variety of relevant offences, including:

- slavery (penalty of up to 25 years imprisonment);
- sexual servitude (up to 15 years);
- deceptive recruiting for sexual servitude (up to seven years);
- trafficking (up to 12 years); and

⁵⁹ Fiona David, *Trafficking of women for sexual purposes*, p. 6.

⁶⁰ Fiona David, *Trafficking of women for sexual purposes*, p. 6.

⁶¹ Fiona David, *Trafficking of women for sexual purposes*, p. 7.

⁶² Fiona David, *Trafficking of women for sexual purposes*, p. 39.

- debt bondage (up to 12 months).

There are also a range of relevant offences which may apply under Queensland law in relation to forced prostitution, assault, sexual assault, and deprivation of liberty.

It is noted in the Australian Government *Trafficking in Persons* report that: "Opportunities to traffic people into Australia are low because of our strong migration controls and geographic isolation".⁶³ The PLA is rightly proud that during the past decade there has not been a single incidence of the discovery of a trafficked person for the purposes of sexual servitude in any licensed brothel in the state. It is considered that the Authority's probity and compliance functions present a low risk of sex trafficking in licensed brothels. Nonetheless, the PLA is aware that there have been instances of trafficking in legal brothels in other states, albeit that they do not have the same level of probity checking and monitoring of brothels as we have in Queensland, and that it cannot afford to be complacent. The Authority's compliance officers are vigilant for indications of trafficking and the Authority works in conjunction with other agencies where appropriate.

There are now five specialist Asian brothels in the state. The business model associated with these brothels is that the sex workers are from interstate and travel to Queensland for periods of typically two weeks duration. During this time they tend to be housed on-site at the brothels. This presents an obvious risk of sexual servitude. The Authority manages this risk through its probity of brothel licence applicants and by conducting announced and unannounced inspections and audits of brothels. If it is warranted, the PLA will conduct inspections with other relevant agencies including the Australian Federal Police and the Department of Immigration and Citizenship. To further minimise any risk, the PLA is currently developing a code of practice for culturally and linguistically diverse (CALD) sex workers.

It is in the illegal sector of the sex industry where there is the greater risk of sex trafficking. A case involving a Gold Coast hairdresser, Dobie, is relevant. After experiencing difficulty in repaying 'loan sharks', he had apparently lured two Thai prostitutes to Australia with false promises about their earnings and working and living conditions. On arrival, the women were forced to provide prostitution and see clients against their will. Dobie was apparently verbally and physically abusive to the victims of his deception. The money they earned was confiscated and they were given just \$20 a day for food and other necessities. In addition to pleading guilty to two counts of people trafficking, Dobie also pleaded guilty to one count of handling proceeds of crime, and four counts of presenting false documents.

The CMC *Regulating Outcall Prostitution* report referred to evidence from CATWA that legalising prostitution creates a demand for sex trafficking, referring in particular to the sex industry in Victoria.⁶⁴ In recent years, there

⁶³ Australian Government, *Trafficking in Persons: The Australian Government Response 1 May 2009 – 30 June 2010*, p. 3.

⁶⁴ p. 29.

has been a trend internationally to conflate prostitution with trafficking, so that every migrant sex worker is immediately regarded as trafficked and exploited (for more on this phenomenon refer to Appendix 2 of this submission). For the moment, the following observation from Leslie Ann Jeffrey and Barbara Sullivan will suffice:

In relation to trafficking Mary Sullivan [of CATWA] (2007, 219-27) argues that the reforms in Victoria have created a “growing market for sex trafficking victims” – as legalization fuels men’s “demand” – and that there is a “connection” between the incidence of trafficking and the “tolerance” of prostitution in domestic policy which has exacerbated the problem of dealing with trafficking. But the whole field of trafficking research suffers from a number of now well-known problems including widely varying definitions of trafficking and the conflation of (forced) trafficking with sex work (B. Sullivan 2003). Di Nicola (2007: 49) has recently argued that such trafficking research is “weak”, the data collected (even for official statistics) is of dubious quality and “based more on emotions, political or dogmatic bias than on strong and substantiated research work.” Mary Sullivan certainly presents no substantive evidence to support her claims of a link between legal prostitution and trafficking. Moreover, in the Australian context, there is good evidence which tends to call her claims into question. While there are certainly migrant sex workers working in Australia this is not a new phenomenon (Frances, 2004) and most are not trafficking victims who have been coerced or duped into sex work (Scarlet Alliance, 2008; Brockett and Murray, 1994).⁶⁵

Further, of the sex workers interviewed for the study of the Victorian sex industry:

many stressed the autonomy of overseas workers as global economic migrants, and noted the significantly higher levels of pay available for sex work in Australia. None of the workers from overseas directly described being coerced by brokers or agents but rather indicated that the drivers for entering sex work were social and economic.⁶⁶

Finally, Dr Nick Mai from the London Metropolitan University conducted a study of 100 migrant male, female, and transgendered sex workers.⁶⁷ He found that only six per cent of female respondents, “felt that they had been deceived and forced into selling sex in circumstances within which they had no share of control or consent”.⁶⁸ Other key findings revealed by the study were:

- Working in the sex industry is often a way for migrants to avoid the unrewarding and sometimes exploitative conditions they meet in non-sexual jobs
- By working in the sex industry, many interviewees are able to maintain dignified living standards in the UK while dramatically improving the living conditions of their families in the country of origin

⁶⁵ Leslie Ann Jeffrey and Barbara Sullivan, “Canadian Sex Work Policy for the 21st Century: Enhancing Rights and Safety, Lessons from Australia”, *Canadian Political Science Review*, 3(1) March 2009, p. 64.

⁶⁶ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 27.

⁶⁷ *Migrant Workers in the UK sex industry*.

⁶⁸ Nick Mai, *Migrant Workers in the UK sex industry*, p. 4.

- The stigmatisation of sex work is the main problem interviewees experienced while working in the sex industry and this impacted negatively on both their private and professional lives
- Interviewees generally describe relations with their employers and clients as characterised by mutual consent and respect, although some reported problematic clients and employers, who were disrespectful, aggressive or abusive
- Most interviewees feel that criminalisation of clients will not stop the sex industry and that it would be pushed underground, making it more difficult for migrants working in the UK sex industry to assert their rights in relation to both clients and employers.⁶⁹

Sex worker exit programs

The PLA, quite appropriately, takes a neutral stance on the sex industry. It neither encourages nor discourages individuals from entering or exiting the sex industry. As far as the Authority is concerned, it is very much a matter of individual autonomy and freedom of choice to be left to freely consenting adults.

The PLA supports the availability of sex worker exit programs for those workers that choose to leave the industry of their own accord. It does however note that some sex workers find the very concept that they require 'saving' to be patronising and offensive, whilst others are eager for assistance to leave the industry. In one sense, that some workers should express a desire to leave sex work is unsurprising. The same would be true of workers in any industry.

Not surprisingly, studies have consistently revealed that the primary motivation for involvement in the sex industry is financial. In comparison to other low skilled occupations, large amounts of money can be earned over a relatively short period. A recent study of the Victorian sex industry, involving interviews with 55 sex workers from a variety of industry sectors found that:

Many workers cited the potential for significant financial rewards as a key motivator for entering the industry. As other studies have found, **there are no other forms of semiskilled labour that can produce comparable income.** The financial independence made possible by working in the sex industry is highly valued by all workers. It is seen as a source of confidence and security.⁷⁰

Other significant factors are the independence, autonomy and flexible working hours afforded by prostitution. As made clear by the Victorian study, the flexibility offered by sex work makes it attractive to parents (especially single

⁶⁹ Nick Mai, *Migrant Workers in the UK sex industry*, p. 5.

⁷⁰ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 12 (emphasis added).

mothers) and students who can more easily accommodate their parenting responsibilities or study commitments than with most other forms of work.⁷¹

The barriers to exit are essentially the same as the motivations to entry, especially financial considerations. After all, financial considerations tend to be the major barrier to exit for any person dissatisfied with their job. More than 90 per cent of all sex workers in a New Zealand study conducted by the Christchurch School of Medicine in 2007, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* said that money was a reason for staying in the industry.⁷² Another significant barrier to exit that has been identified is the camaraderie and sense of belonging experienced by some sex workers. A lack of employment history or the existence of a criminal record may also act as inhibitors. Some workers might acquire a criminal record as a result of participation in the illegal sector. It is ironic that this very same record may make it harder for them to leave the sex industry.

Studies have also demonstrated that leaving the sex industry is very difficult and is generally characterised by several attempts. Money continues to be a powerful attractant to those persons with few skills or qualifications. The Christchurch School of Medicine study found that 67 per cent of respondents who had taken a break from the industry returned because they needed the money, and half of the participants reported that money was the one thing they missed most when not working.⁷³

The New Zealand Prostitution Law Review Committee has summarised what it regards as best practice principles for exiting interventions. These are:

- *Holistic interventions:* A range of different service providers need to be engaged.
- *Dealing with changes of mind:* Interventions need to be patient and accept that sex workers trying to exit may take small, incremental steps.
- *Facilitating free choice:* Sex workers need choices, but have to make their own decisions.
- *Dedicated services and brokerage:* Dedicated services are needed to broker the provision of mainstream services. One-to-one support from a 'key worker' seems to work best.
- *Building trusting relationships:* Relationships of trust can provide the basis for exploring routes out.
- *Adequate resourcing:* To ensure good service provision. Continuity of resourcing is also important.

⁷¹ Pickering et al., *Working in Victorian Brothels: An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector*, 2009, p. 13.

⁷² Cited in New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 67.

⁷³ Cited in New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 66.

- *Public education:* To raise awareness about the issues associated with prostitution, and that support services aim to develop routes out.
- *Outreach:* Outreach maximises the chances of engaging those who might be considering exit and who need extra reinforcement.
- *Location of services:* Services should be close, but not too close, to areas of prostitution.⁷⁴

In 2007, a report by the Victorian Prostitution Control Act Ministerial Advisory Committee recommended to the Victorian Government that it fund a career transition program for sex workers who wished to exit the industry. The report stated that:

The committee favours a case management approach that builds linkages and non-judgemental referral pathways for sex workers to other programs and services delivered by government agencies, education and training institutions and community organisations. This model allows the case manager to tailor support to the needs of individual participants.⁷⁵

This demonstrates that a 'one size fits all' approach would be impractical and ineffective in meeting the needs of all sex workers. The needs of individual sex workers will be different, and so too will the needs of sex workers from different sectors of the industry. For example, street workers are more likely to require assistance with basic life skills, homelessness, mental health, and illicit drug and alcohol dependence, and may require emergency funding.

At the commencement of the Prostitution Act, recurrent funding of \$217,718, commencing 2000-01, was specifically provided to Queensland Health to fund appropriate programs for sex workers who may wish to exit the industry. Queensland Health has entered into a service agreement with Southern Edge Training (SET) to provide an exit and retraining program to sex workers in the state. The service offered by SET is voluntary and confidential and targets sex workers and those who are likely to enter or re-enter sex work. It provides career transition and employment training programs and involves the provision of one-on-one career counselling and assistance. The program consists of competency based modules covering basic computer skills, resume writing, job search training, interview techniques, job preparation and basic first aid. The training needs of individual sex workers are assessed and services cover living skills training, and literacy and numeracy skills, as well as accredited vocational training. In addition, the program provides support and referral to other agencies for specific problems unrelated to employment, such as drug and alcohol providers. Training and advice provided to sex workers includes, but is not limited to: health; TAFE; crisis counselling referral; life skills and training services for work placement preparation; identification, motivation and goal setting; referrals to sex worker organisations; Centrelink; job network agencies; senior first aid; computer skills; OH&S; customer service; budgeting; literacy and numeracy; and change management.

⁷⁴ New Zealand Government, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, p. 78.

⁷⁵ Victorian Prostitution Control Act Ministerial Advisory Committee, *Improving the Regulation of the Sex Industry and Supporting Sex Workers Who Want to Move On*, 2007, p. 5.

Participants in the SET program have been employed in areas such as hospitality, education, retail and sales, travel, community services, and health.

The PLA has been advised that the program is promoted in a number of ways, including through state-wide print media, local, and industry-specific newspapers. Representatives of SET might also attend licensed brothels, adult shops, and engage in outreach to street workers via Drug Arm and by 'cold calling' sole operators who advertise their services in newspapers. The PLA has promoted the SET program in its newsletter, *In Touch*, and has a link on its website.

The PLA understands that Queensland Health has contracted with an organisation to undertake a review of the sex worker exit and retraining program and this review is in its early stages.

Prostitution advertising

In order to limit the impact of prostitution on the community, advertisements for prostitution in Queensland are strictly regulated. Advertisements must be in an approved form and may not:

- describe the services offered
- be published through radio or television, or by film or video recording
- state directly or indirectly, that the person's business provides or is connected with massage services, or
- be worded such that the advertisement might induce a person to seek employment as a sex worker.

Until 30 May 2008, licensed brothels and sole operator sex workers were required to seek approval from the PLA for all proposed prostitution advertising. As a result of legislative amendment, the PLA issued *Guidelines for prostitution advertising*, enabling the industry to self-assess advertisements for prostitution against the approved form. The guidelines apply to:

- general print publications, including newspapers, magazines and tourist publications
- adult publications
- print directories
- business cards
- flyers, brochures, posters and coasters
- internet advertising, and
- merchandising, gift vouchers, corporate gifts and other promotional signage.

The guidelines have been welcomed by the sex industry and publishers alike. They have resulted in a simpler, more efficient and streamlined advertising approval process, which in the vast majority of cases circumvents the need to submit advertisements to the PLA for approval. The PLA has gone from approving thousands of advertisements each year to just a handful.

In response to complaints about advertising, the Authority developed an Advertising Surveillance Program in 2003. The PLA compliance unit examines a sample of approximately 500 print media advertisements per month. This program provides an opportunity for the PLA to communicate with advertisers and publishers in respect of the requirements of the guidelines. Where appropriate, the PLA refers suspected advertising breaches to the Prostitution Enforcement Taskforce (PETF) of the Queensland Police Service (QPS) for investigation. Since the inception of the surveillance program, with its strong emphasis on the proactive provision of information on the requirements of the Act, the advertising surveillance results have indicated a 95 per cent improvement in print media advertising compliance. Significantly, advertising complaints have not increased since the inception of the *Guidelines for prostitution advertising*.

As a result of recent amendments to the Prostitution Act which have not yet been proclaimed, the PLA will assume responsibility for the regulation of 'social' (i.e. non-sexual) escort advertising, which will involve the issuing of advertising guidelines. This has been prompted by concerns that illegal prostitution operators are masquerading as social escort agencies, and advertising as such. Whilst the Authority does not want to be unduly pessimistic, it is aware that the illegal sector has proven quite adept at altering its business operations to cater for changes in the law. The likely impact will be that these businesses will no longer masquerade as social escort agencies but instead their workers will advertise as legitimate sole operator sex workers whilst in reality operating as part of an illegal escort agency.

Finally, the PLA is aware from Ms Edwards' report that there is some support amongst brothel licensees for a registration number to be attached to sole operator advertising.⁷⁶ Presumably, this would be a registration number obtained as a result of the registration of sex workers. As stated earlier in this submission, the Authority is opposed to the registration of sex workers. Furthermore, it does not believe that this proposal would be effective in combating advertising by illegal operators. Sex workers would simply make numbers up and/or share numbers. How are publishers expected to reconcile a registration number with a sex worker? How are they supposed to know that a sex worker is who he/she claims he/she is?

Youth involvement in prostitution

Section 229L of the Criminal Code provides that it is an offence, carrying a maximum penalty of 14 years imprisonment, for a person to knowingly cause

⁷⁶ Anne Edwards, *Selling Sex; Regulating Prostitution in Queensland*, 2009, p. 30.

or permit a minor to be at a place used for the purposes of prostitution by two or more sex workers. This effectively precludes minors either from providing prostitution at a licensed (or unlicensed) brothel or from accessing the services of a sex worker at a licensed (or unlicensed) brothel. By way of condition of brothel licence, licensees or approved managers are required to sight and record evidence that a sex worker is at least 18 years of age before they can provide sexual services at the brothel. The PLA's compliance activities have revealed no evidence of minors working in the state's licensed brothel sector. The Authority has no jurisdictional responsibility for minors that engage in prostitution outside of licensed brothels. The PLA is unaware of how many minors in Queensland might be involved in prostitution at any one time. The Queensland Commission for Children and Young People and Child Guardian last year advised the Authority that it was not aware of any relevant statistics.

The PLA identified that the Criminal Code was deficient in not criminalising persons who purchase sexual services from minors. This left 16 and 17 year olds, who are of the age of consent (except for anal intercourse), vulnerable to approaches from persons seeking to pay them for sexual services. The Authority considers that a threshold of 18 years of age for involvement in sex work is appropriate because it acknowledges the vulnerability and immaturity of minors and the risk of potential harm. There is a significant difference between commercial sexual activity and other activity. Whilst a young person in Queensland aged 16 or 17 years is legally able to have consensual sex, the exchange of sex for money or some other consideration raises genuine concerns about exploitation. The inherent nature of prostitution makes it suitable only for adults. In response to these concerns, it has recently been made an offence under s. 229FA of the Criminal Code for a person (a client) to obtain prostitution from a person who is not an adult and who the client knows, or ought reasonably to know, is not an adult. This offence carries a maximum penalty of imprisonment for seven years. In circumstances where the person who provides prostitution is under 16 years, the offender is liable to a maximum penalty of 14 years imprisonment. Minors engaging in prostitution should be regarded as victims, in need of protection, and it is appropriate that their behaviour not be criminalised.

The involvement of minors in prostitution tends to be opportunistic in nature and is generally what might be termed 'sex for survival' (shelter, food, to support drug addictions) and occurs outside of the mainstream sex industry. Often it is the case that young people involved in prostitution do not identify as a sex worker. Their involvement in prostitution is the culmination of a range of complex and interwoven social factors. Known pathways to prostitution are homelessness, social disadvantage, family breakdown, illicit drug and/or alcohol use, abuse (sexual, physical and psychological), unemployment (and lack of employment potential), and leaving school prematurely. Some young people start out performing sex for favours (accommodation, food, drugs) before moving on to paid sex work. Often they are introduced to sex work and drugs by other individuals in a similar life situation.

Child Wise, an organisation working to prevent the sexual abuse and exploitation of children, has conducted research into the phenomenon of the involvement of minors in prostitution. A 2004 study of 30 young Melbourne sex workers, *Speaking for Themselves*, found that all had started sex work while age 16 or younger. Eighteen had started by the age of 14 and four had started at age 12.⁷⁷ All participants in the study were supporting expensive drug habits, and preferred sex work as an alternative to dealing drugs or other crimes.⁷⁸ Studies have shown that drugs are used as “emotional anaesthesia”.⁷⁹ All of the participants claimed to have suffered abuse (sexual, physical and neglect) either in the family, the state care system or both.⁸⁰

Participants in the *Speaking for Themselves* study had begun to engage in sex work soon after leaving home or while within the state care system.⁸¹ Street sex work is acknowledged as the most dangerous form of sex work. Street sex workers are prone to violence and sexual assault, not just from clients but by other sex workers and passersby. Young people on the streets are even more vulnerable, especially as they are unlikely to be aware of risk management techniques. Almost all of the participants in the study indicated that they had been sexually assaulted or exposed to another form of violence at least once since they started working.⁸² ‘Tim’, a 16 year-old participant in the study, had been attacked the night before he was interviewed and had a black eye and cut lip as a result. He had reached only Year Six in his education, his mother had died when he was five, he was placed in foster care at age seven, and claimed that his foster father was sexually abusing him so he ran away at age 12. He started out doing sex for favours and moved on to commercial sexual acts.⁸³

Young people engaged in sex work are also more prone to unsafe sex practices, potentially exposing themselves to a range of STIs. They lack life-experience and negotiating skills, especially considering that they are likely to have a low level of education. Homelessness tends to be incompatible with attending school. Drug and alcohol abuse also makes them prone to risk taking and desperate behaviours. For a person hanging out for their next ‘fix’, safe sex practices are hardly likely to be uppermost in their thoughts.

To address the problem of youth involvement in prostitution early intervention and diversion is required. Ideally, that intervention should come in the earliest stages of their vulnerability, so that they do not get caught in the trap of prostitution to begin with. Programs that divert youth at risk of homelessness should therefore be seen as a priority. The less desirable point of intervention is when young persons are engaged in prostitution. Participants in the *Speaking for Themselves* study nominated two crucial points of intervention.

⁷⁷ Child Wise, *Speaking for Themselves*, 2004, p. 6.

⁷⁸ Child Wise, *Speaking for Themselves*, 2004, p. 32.

⁷⁹ Grant, David and Grabosky, 2001, cited in Child Wise, *Speaking for Themselves*, 2004, p. 19.

⁸⁰ Child Wise, *Speaking for Themselves*, 2004, p. 37.

⁸¹ Child Wise, *Speaking for Themselves*, 2004, p. 42.

⁸² Child Wise, *Speaking for Themselves*, 2004, p. 51.

⁸³ Child Wise, *Speaking for Themselves*, 2004, p. 69.