

Submission

on the

Regulation of Brothels

to the

Regulation of Brothels Committee

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1. Introduction

On 25 June 2015, the regulation of brothels was referred to the Regulation of Brothels Committee for inquiry. The committee will examine and report on: appropriate local and state government regulatory and compliance functions for brothels, the demarcation in local and state government roles and responsibilities, and possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.

FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families can flourish, Australia’s Christian heritage is valued, and fundamental freedoms are enjoyed.

We work with people from all major Christian denominations. We engage with parliamentarians of all political persuasions and are independent of all political parties. We have full-time FamilyVoice representatives in all states.

Submissions to the inquiry are due by 19 August 2015.

2. Terms of Reference

- (1) A select committee, to be known as the Select Committee on the Regulation of Brothels, be appointed to inquire into and report on the regulation of brothels in New South Wales.
- (2) The committee is to examine and report on:
 - a) Appropriate local and state government regulatory and compliance functions for brothels;
 - b) The demarcation in local and state government roles and responsibilities; and;
 - c) Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels.
- (3) The inquiry should consider:
 - a) The current extent and nature of the brothel industry in New South Wales;
 - b) Current regulation of brothels in New South Wales and other states;
 - c) Penalties and enforcement powers required to close illegal brothels;
 - d) Options for reform including a scheme of registration or licencing system for authorised brothels;
 - e) The protection of sex workers, including issues around organised crime and sex trafficking;
 - f) Options to maintain the high level of public health outcomes;
 - g) Residential amenity and the location of sex services premises;
 - h) Any legislative changes that may be required; and
 - i) Any other related matters.

3. Prostitution in NSW

Following a massive police corruption scandal in the 1990s, NSW prostitution law was dramatically reformed and a decriminalisation model was adopted. As the focus was on police cover-ups of illegal brothels and prostitution, significant power was given to councils.

A 2012 NSW prostitution issues paper describes these new laws:

The Disorderly Houses Amendment Act 1995 legalised brothels and living off the earnings of a prostitute. The Act also amended the Summary Offences Act 1988 and Crimes Act 1900 to abolish the common law offence of keeping a common bawdy house or brothel and related common law offences. With the passage of the legislation, operating a brothel became a legitimate commercial land use subject to approval under planning laws in much the same way as any other business. Local councils became the determining authority of where such premises could be located and well-run brothels were no longer the concern of police.¹

But the *Sydney Morning Herald* reports these changes have resulted in another “nightmare” – councils like Hornsby Council have spent over \$100,000 to shut down just one illegal brothel and failed. Incredibly, the evidence Hornsby Shire Council obtained involved a private investigator actually having sexual intercourse with a prostitute – but the courts required evidence of two or more prostitutes.²

Hornsby Councillor Nick Berman is aghast:

To have to invest ratepayers’ money to pay private investigators to have sex with prostitutes is, in itself, ludicrous. But to now have to send two, three, even four men in is bordering on the unbelievable.³

After this case, some private businesses that councils rely on to gather evidence on illegal brothels are now questioning their ability to meet the high bar required for successful action.⁴

Even back in 2010 some councils found they were powerless, as the *Daily Telegraph* reported:

*Acting Lord Mayor of Parramatta, Mike McDermott, agreed councils did not have the ability to stop the spread of brothels: “We’ve been powerless to stop brothels starting up in our area.”
Mr McDermott has been unable to limit the 20 brothels in his area alone.⁵*

The reliance on private investigators is very strong in NSW, owing to the lack of power the NSW laws give:

Authorities have very limited power to access premises without a court order, so many are forced to pay private investigators to go undercover and report back with their evidence — in highly graphic, forensic detail.

John [a brothel buster] says his reports can run for up to three pages. Dates, times, people, places. Who, what, when, where, how much.

“It’s a document that will be used in court, so it has to be pretty detailed and very accurate. It’s not something you can waddle off in a couple of minutes,” he says.

Lachlan Jarvis, managing director of private investigation firm Lyonswood, says roughly 10-12 councils around the state engage undercover sex investigators, and only in NSW.⁶

The lack of power and control has prompted rapid growth of the new legal sector but also the illegal sector, prompting this damning headline in 2010: “Sydney has become the Amsterdam of the South Pacific” with “at least 10,000 sex workers in NSW”.⁷

On top of this proliferation of prostitution, the original aim of reducing corruption has not been effective. As most power has shifted to councils, they are now being bribed by illegal brothel owners to keep quiet. A 2012 court case found Hornsby Shire Council’s building inspector “guilty of five counts of corruptly receiving a benefit”.⁸

If the inquiry chair, Alister Henskens, wants to “(close) loopholes”, total reform is needed.⁹

4. Comparing legal models

4.1. Criteria for evaluation

To measure which model of prostitution actually works requires a measuring stick. Various measures are discussed in evaluative reports including:

1. The number of prostitutes working (or the number of brothels)
2. The health and safety of the prostitutes
3. The level of corruption within the public bodies that enforce the laws
4. The associated levels of crime including human trafficking
5. The control of location of brothels especially around residences

The reality is that many in NSW would be concerned about each of these aspects.

4.2. NSW decriminalisation model

4.2.1. Numbers of brothels and prostitutes

Prostitution has exploded in size since decriminalisation, as a confidential 2010 report shows:

A confidential NSW Government document reveals Sydney alone has more than double the number of legal brothels than in the whole of Victoria and Queensland combined.

In Sydney alone, there were 244 legal brothels, with a further 90 complaints about "suspected" illegal brothels. By comparison, all of Victoria has just over 90 legal brothels, while Queensland has 24.

In total, NSW has 271 legal brothels, including full-service and "happy ending" massage brothels. ...

What is more alarming is that these numbers may be just the beginning. Just 56 of the state's 152 councils - or just over a third - responded to the survey by the NSW Government. The state's other 96 councils refused.

The statistics show 150 illegal brothels operate in the state, with hundreds more are believed to be going unreported. Several industry figures estimate that there are at least 10,000 sex workers in NSW alone - Putting the state on a par with Amsterdam.¹⁰

Assuming that the two-thirds of councils that didn't respond to the survey had a similar number of legal brothels, NSW has roughly 800 legal brothels – almost ten times Victoria and Queensland combined – in addition to “hundreds” of illegal brothels.

4.2.2. Health and safety of prostitutes

The 2012 NSW Prostitution Issues Paper notes that street prostitutes are likely to be more vulnerable than those indoors, since the latter enjoy the provision of greater safety controls such as lighting and intercom. They also make the case against pushing prostitution into industrial zones that have low lighting and little access to public transport.¹¹ In so doing, they argue a decriminalisation model provides greater protection, by bringing prostitution into safer areas.

However, the safety of NSW prostitutes is undermined when it is realised that the massive illegal sector has no such protection, and the legal sector is so saturated that prostitutes are also pushed into compromised positions in decriminalisation models (see also 4.4.4 “Level and nature of crime (VIC)”).

4.2.3. Corruption of authorities

As most power has shifted to councils, they are now being bribed by illegal brothel owners to keep quiet. A 2012 court case found Hornsby Shire Council's building inspector “guilty of five counts of corruptly receiving a benefit”.¹²

4.2.4. Level and nature of crime

The decriminalised NSW sex trade is out of control despite several amendments to tighten the law since 1995.¹³ In 2000 the then NSW Police Commissioner, Peter Ryan, said there had been 40 shootings in Sydney's south west suburbs in a three month period – all part of a “struggle between rival groups for control of the drugs and prostitution trades in parts of Sydney.”¹⁴ The shootings have continued.¹⁵

Former federal police officer Chris Payne said that, based on evidence he had seen, there were hundreds of trafficked Asian women being exploited in NSW brothels every day. He said, “On the scale we were seeing in Sydney, we used to hear some estimates of anything up to 500 (Asian) women illegally in Sydney at any given time on false papers, working in these brothels.”¹⁶ As *Four Corners* indicated in 2011, this problem remains unresolved.¹⁷

4.2.5. Location control

Councils are almost completely powerless to control the location of brothels, despite councils' zoning controls, as discussed in section 3 above, “Prostitution in NSW”.

4.2.6. Conclusion

NSW's decriminalised model was fatally flawed to begin with. It has allowed rampant and uncontrollable increase in prostitution, criminal activity, and health and safety concerns. Table 1, below, summarises the above research:

Table 1: Evaluation of NSW's decriminalisation model of prostitution law

Category	Evaluation
Numbers	271 legal brothels (in one-third of councils); hundreds of illegal brothels; at least 10,000 prostitutes (2010)
Health and safety	Improved in legal brothels, but many more prostitutes exposed; no evidence of change in illegal brothels
Corruption	Opportunity and established case history for council corruption
Level of crime	Criminal groups fighting (2000, 2012); up to 500 trafficked women in Sydney (2000, 2011)
Location control	Powerless to remove illegal brothels

The NSW model doesn't just have "loopholes", it has aided and abetted incredible increases in trafficking, violence against women, and prostitution overall.

4.3. QLD licensing model

Queensland introduced a licensing (partial legalisation) model through the *Prostitution Act 1999*. This aimed to:

1. Ensure quality of life for local communities
2. Safeguard against corruption and organised crime
3. Address social factors which contribute to involvement in the sex industry
4. Ensure a healthy society
5. Promote safety.¹⁸

4.3.1. Numbers of brothels and prostitutes

Very few legal brothels are active in Queensland. The Prostitution Licensing Authority records only 24.¹⁹

In terms of the success of moving the trade into the legal sector, the University of Queensland School of Law Human Trafficking Working Group found the illegal trade was booming:

The spirit of the Prostitution Act 1999 (Qld), which is to draw as many of the illegal operators and workers as possible into the legal industry, has clearly failed.

90% of prostitution remains unregulated in this state and most sex workers continue to work outside the regulated industry.²⁰

The low take up is due in part because of high license fees of around \$35,000 a year, but also because prostitutes can legally work alone with fewer restrictions.²¹

The *Brisbane Times* also report:

Contributing to the relatively high levels of illegal prostitution was the fact prosecutions and convictions of offenders were few and far between. LNP Member for Buderim, Steve Dickson, said legal brothel operators had told him that illicit sex rings were so common they were squeezing out the legal, tax-paying businesses.²²

4.3.2. Health and safety of prostitutes

Prevalence of violence against women

The Crime and Misconduct Commission (CMC) reports that even under a licensing model, prostitution is inherently violent:

Much national and international research has shown that female sex workers suffer high levels of violence, endorsing the view that violence is an inherent risk of the job (Woodward 2003). Research reveals that reported rates of physical or sexual violence among sex workers range from 65 to 94 per cent (Farley & Barken 1998; Hotaling & Farley 1995; Miller & Schwartz 1995; Millman 1980; Ward & Day 1999).²³

Such high rates of violence challenge assertions that prostitution can be treated like any other job.

Sexually transmitted infections (STIs)

Even in a highly regulated system, a person can contract a sexually transmissible infection from a single sexual act and then pass that disease on to the very next person they have sex with. In the case of prostitutes, it is not feasible to have a medical check-up between each client. In any case many STIs cannot be diagnosed until sometime after infection, even though the person is already infectious.

Panic buttons

The presence of “panic buttons” and “panic rooms” in legal Queensland brothels indicates that their business is not normal, and there is a significant risk that some customers will be abusive.²⁴

Regulation of health

There is no evidence that a semi-legalised prostitution trade has improved the health of those providing sexual services. As noted by the Queensland School of Law:

Given the unregulated and often clandestine provision of prostitution services outside licensed brothels, it is difficult to make conclusive observations about the health of sole operators. While their services are legal, their sexual health is not monitored and, specifically, there is no requirement for them to be tested regularly and to hold and/or display sexual health certificates. This issue has been the subject of fierce debate, but there seems to be general consensus that the introduction of mandatory health checks for sole operators remains difficult – if not impossible – to introduce, monitor, and enforce.²⁵

4.3.3. Level of crime

As discussed above, the overwhelming majority of the prostitution trade occurs outside the bounds of the law. Therefore, the model is powerless to curtail the serious criminal activities associated with brothels, such as: child trafficking, exploitation of women and men, sexual violence, and sexual servitude.

Links to organised crime

Organised crime in Queensland is closely connected with the prostitution trade, in both its legal and illegal forms. This is evident from the 2004 report of the Queensland Crime and Misconduct Commission, which states:

*At least 40 per cent of sex workers surveyed by the CMC, including both legal and illegal workers, indicated that they had been affiliated with members of organised crime groups at some stage during their career in the sex industry, two-thirds stating that this had occurred since the implementation of the Prostitution Act in 2000. A range of activities, such as importing and selling drugs, illegal immigration, child prostitution, dealing in stolen property and, of course, running illegal brothels and escort agencies, were reported. Legal brothel licensees also voiced a few concerns.*²⁶

Human trafficking

The CMC 2004 review of the operation of Queensland's *Prostitution Act 1999* found that the current model, among other things, led to:

- implied "normalisation" of prostitution and expansion of the industry,
- increased sex-trafficking of women and
- increased child prostitution.²⁷

4.3.4. Location control

Residential disturbances

Residents close to brothels often experience unpleasant disturbances at all hours of the day and night. For example, a Victorian town planner who moved to Queensland found the problems associated with a massage parlour next to his home so great that he was forced to move:

*In my own situation, the clients of my neighbour would arrive at all hours and many during the early hours of the morning. They would start their meeting off inside and then hang around in the back yard, and whatever else they were doing would often be associated with being quite rowdy. For months, two to three nights mid-week, I was kept awake or awoken in the wee hours of the morning, to the voices of strange men, loud bands and clangs, bursts of music and spontaneous outdoor entertainment activities. The unpredictability, together with over hearing certain threatening conversations and bangs in the night, left me feeling quite vulnerable and generally disempowered and unsafe in my own home.*²⁸

Control over illegal sector

With over 90% of prostitution operating outside of Queensland's licensing model, the government has little control over the situation, as evidenced by the above report.

4.3.5. Conclusion

Queensland has seen a normalisation and expansion of the prostitution industry with authorities having very little control over it.

Table 2, below, summarises the data detailed above, showing no improvements in the situation:

Table 2: Evaluation of Queensland’s licensing (partial legalisation) model of prostitution law

Category	Evaluation
Numbers	24 legal brothels (2010); 90% failure to move into legalised sector (2009)
Health and safety	Improved in legal brothels; no evidence of change in illegal brothels
Corruption	(No evidence seen either way)
Level of crime	40% of prostitutes affiliated with members of organised crime (2009)
Location control	Little control

Queensland's licensing model is inherently flawed and should not be replicated in NSW.

4.4. VIC licensing model

Victoria’s version of partial decriminalisation (licensing) is similarly flawed, with disturbing reports on the level and nature of crime.

4.4.1. Level and nature of crime

The 2012 NSW Prostitution Issues Paper says that the legalised model in Victoria provides little help with respect to trafficking:

*With the licensing system in Victoria, the expectation might be that the fit and proper person test for owners and operators would preclude trafficking offences taking place in licensed brothels. However, an inquiry by the Victorian Parliament’s Drugs and Crime Prevention Committee in 2010 found that “[t]here is a clear and close connection between sex trafficking and the legal and the unregulated sex industry”. The report noted that nearly all cases of trafficking or sexual servitude that have reached the courts in Australia were originally discovered in legal sex services premises (including the three cases of sexual servitude to date before Victorian courts, which all concerned legal brothels). The report cited research suggesting that Australian Federal Police investigators have detected trafficking cases in both legal and illegal sex services premises, and that “this distinction has little relevance from the perspective of investigating trafficking”.*²⁹

The Age has reported on Chinese organised crime syndicates that are running multi-million dollar prostitution rackets across Melbourne, bribing officials and exploiting poor 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.³⁰

Where brothels are legal, traffickers are more easily able to recruit women for sexual servitude. For example, a Korean pimp was reported to have used this approach:

The broker lured the women, saying that they could work without risk, since prostitution is legal in Australia, and make big money. He introduced 25 women to brothels in Melbourne and Sydney since 2007.³¹

Once the women arrive, pimps evade authorities by moving their captives from brothel to brothel and even interstate.

The US State Department has drawn attention to the link between legalised prostitution in Australia and trafficking for sexual servitude since 1999:

Trafficking in East Asian women for the sex trade is a growing problem. Immigration and federal police have developed profiles and identified trends in the industry, but lax laws – including legalized prostitution in parts of the country – make enforcement difficult at the working level.³²

A legalised sex trade has created a prostitution boom in Australia with a high demand for women and children from Asia – without making them safer.

According to the business research company IBISWorld, the Australian sex industry has ballooned over the past decade. High growth has forced pimps to forge international supply routes to source their “product”, which, in the case of the sex industry, is mostly women and children. Asian women in particular are a consumer favourite.

Legalisation has not made women safer. A 1998 study found 40 per cent of clients do not use condoms. In 2011 a woman in a Blackburn brothel was threatened by a client with a gun after she refused sex acts without a condom.³³

Three academics who interviewed women in legal brothels in 2011 found that “physical safety” was one of their biggest concerns.³⁴

4.5. Other evidence regarding (full or partial) legalisation models

4.5.1. Legalisation disempowers police

The problems associated with a legal prostitution trade have a long history, as Professor Eileen Byrne's submission to the Queensland Criminal Justice Commission Inquiry into Prostitution Laws in 1991 shows:

In London, we found both in the 1960s and the late 1970s that only when there was a hard crackdown on brothels and other organised forms of prostitution, could we cut back the traffic in young boys and girls and help social welfare agencies to get young people aged 12-20 out of the system. Public tolerance or a legal blind eye created increased traffic in the innocent and the vulnerable...

The rescue of the young is often less possible under a legalised prostitution system. Evidence not only from international committees of inquiry, but from social welfare agencies who work across European country boundaries, shows a consistent pattern in Europe of a poor history of police-welfare attitudes towards young prostitutes of under 18 who attempt to leave the system...

We could not have acted to close the London brothels, break the syndicate and discover and rescue the girls, without the sanction of the illegality of prostitution. We must have the law on our side.³⁵

In March 2011, police in Canberra admitted they had limited ability to investigate children working in legalised brothels:

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.³⁶

Police must be properly empowered if crime is to be reduced, and this can only occur when the prostitution trade is unlawful.

4.5.2. Legalisation is exploitative

Advocacy groups such as the Scarlet Alliance claim that decriminalisation of the sex trade would lead to greater safety and status for sex workers – but they ignore the reality that prostitution would become a normal business where “the customer is always right” and “he who pays the piper calls the tune”.

Studies reveal that men who pay for sex believe that the payment entitles them to sex on their terms. In a series of interviews with clients (conducted by women employed by massage brothels) it was noted that, on the one hand they believed that commercial sex was a mutually pleasurable exchange, but on the other hand asserted that payment of money removed all social and ethical obligations. One client said: “It’s like going to have your car done, you tell them what you want done...”³⁷

Clients interviewed in research confirmed that the relationship in prostitution is one of dominance and subordination. One man stated that “prostitution says that women have less value than men... I paid for this. You have no rights.” Another client said: “Guys get off on controlling women... If you look at it, it’s paid rape... She has to do what you want.”³⁸

Twenty-seven percent of the interviewees in a 2009 London study explained that once he pays, the customer is entitled to engage in any act he chooses with the woman he buys. Forty-seven percent expressed the view to a greater or lesser degree that women did not always have certain rights during prostitution.³⁹

4.5.3. Legalisation increases human trafficking

Citing a UN Save the Children report, the UK Home Office said in 2004 that:

*Victoria and New South Wales were the two worst states for the abuse of children through prostitution. The trafficking of East Asian women for the purpose of prostitution was also found to be a growing problem.*⁴⁰

A 2012 international study of the effect of legalising prostitution on human trafficking found that the net effect was increasing human trafficking inflows.⁴¹ *The Guardian* reported:

*In the European countries where it's been tried, it has largely failed to bring the industry out of the shadows and improve life for sex workers. Legalising prostitution seems to increase demand, which in turn increases trafficking. A 2012 paper in the journal World Development found: "Countries with legalised prostitution have a statistically significantly larger reported incidence of human trafficking inflows."*⁴²

In contrast, a model that reduces demand also reduces human trafficking inflows, as evaluation of the "Nordic model" shows.

4.6. Evaluation of Sweden's Nordic model

In 1999 Sweden adopted a new approach to the prostitution trade, which was later adopted in Norway and Iceland and has become known as the Nordic model.⁴³ In addition to laws against procuring, pimping and operating a brothel, this model makes it illegal to buy sexual services but not to sell them.

Furthermore, the Swedish government developed programs for:

- *Prevention*, to reduce the risk of girls being enticed into the trade;
- *Exit*, to help prostitutes leave the trade – on the basis that the healthiest place for prostitutes is in other work; and
- *Client education*, to help clients (or "johns") understand the physical and psychological damage their actions cause the prostitutes.⁴⁴

While no model can completely eliminate prostitution, the Nordic model has been shown to reduce the illegal trade and help women exit sex-work. This model has recently been endorsed by the European Parliament because of its effectiveness in European countries.⁴⁵

4.6.1. Numbers of brothels and prostitutes

In April 2004, Swedish MP Tuve Skånberg reported that his country's new prostitution law had begun to deter brothel clients. At that stage there had been few prosecutions because police merely warned first-time offenders.⁴⁶

In later years, following special police training, the law became even more effective. Patrik Cederlof, Swedish coordinator for the prevention of prostitution and human trafficking, spoke with WA MP Peter Abetz who visited Stockholm on a fact-finding tour in February 2011.⁴⁷ Mr Cederlof reported that Swedish police were aware of some 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.

An official review of the first ten years of the operation of the law in Sweden found that:

- Street prostitution had halved in Sweden since the law came into effect while remaining the same in neighbouring Nordic countries;
- While the overall incidence of prostitution, including prostitution where contact is made through the internet, had increased in neighbouring Nordic countries, it had decreased, or at least not increased, in Sweden.
- The proportion of men in Sweden that purchase sexual services had decreased with a number of men reporting that the ban had deterred them from continuing to purchase sex.⁴⁸

Overall, the official report concluded that “the ban on the purchase of sexual services has had the intended effect and is an important instrument in preventing and combating prostitution.”⁴⁹

4.6.2. Health and safety of prostitutes

Many prostitutes are caught in the double trap of prostitution and drug addiction – so any suppression policy should include a determined effort to help women (and men) quit the sex trade.

The successful Swedish exit program, which includes an effective drug rehabilitation program with a drug-free emphasis, provides a good model.

4.6.3. Corruption of authorities

As with anything enforced by authority, corruption is a possibility through bribery and other means. Corruption was not an issue pre-1999 (before adoption of the Nordic model) in Sweden and no subsequent evidence has been uncovered any corruption. However, see section 4.7.2 “Corruption”.

4.6.4. Level and nature of crime

The official review found that trafficking in human beings for sexual servitude is less of a problem in Sweden than in neighbouring Nordic countries and the National Criminal Police consider that the ban on purchasing sexual services is a barrier to human traffickers and procurers establishing business in Sweden.⁵⁰

The 2010 review found they had the lowest number of trafficking victims in the entire European Union.⁵¹

4.6.5. Location control

As cited above, Sweden has been to cut street prostitution in half, and remove all brothels nationwide. This level of control is unparalleled in comparison to other models of prostitution.

4.6.6. Conclusion

The Swedish model of prostitution is demonstrably effective on at least four of the five categories.

Table 3: Evaluation of Sweden's "Nordic" model of prostitution law

Category	Evaluation
Numbers	500 brothels in 1999 to 0 in 2011; 50% drop in street prostitution; lower or no increase in overall incidences of prostitution
Health and safety	Thorough exit programs
Corruption	Opportunity for police corruption, but no evidence of it
Level of crime	Lowest trafficking in EU
Location control	Removal of all brothels

The Nordic model should be seriously considered as the preferred option for reform for NSW.

4.7. Other evidence regarding criminalisation models

4.7.1. Targeting exploitation

The United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, which came into force in 1951, targets people who are involved in the organised crime that controls this vicious trade: those who procure, traffic and exploit women and girls for the purpose of prostitution.⁵²

One aspect of dealing with those who exploit women and girls is that of providing witness protection and assurance. Jody L. Williams, founder of Sex Workers Anonymous, an organisation helping people leave the sex industry, believes:

*If you really want to stop trafficking - you won't be able to get a prosecution going against a trafficker while the witness's (sic) can't come forward for fear of being arrested. Period.*⁵³

This is basically correct, though conceivably laws can be constructed to help trafficked and coerced women, as opposed to those not trafficked, such as the modified Nordic model adopted by South Korea.⁵⁴

4.7.2. Corruption

The 2012 NSW Prostitution Issues Paper makes the case that certain laws enable police corruption:

In light of the 1995 Wood Royal Commission evidence showing a clear nexus between police corruption and the operation of brothels, NSW sex industry laws were amended in late 1995 to remove the basis for closing a brothel which was not otherwise disorderly. In permitting well-

run brothels to operate, the amendments closed off a potential opportunity for corrupt conduct on the part of police and reduced incentives for sex workers to solicit in the streets.

Prior to the 1995 changes all brothels were considered to be 'disorderly houses' and could be closed down. Such laws, it was considered, enabled police corruption and even orderly, well-run brothels could be closed and the sex workers could be forced onto the streets.⁵⁵

Through criminalising brothels, incentives are created for police to accept bribes and so not report the 'disorderly houses'. Therefore, decriminalisation will in part remove the incentive for bribery. The logic is sound, but the solution is profoundly irresponsible.

By way of analogy, suppose an obviously wrong crime such as murder was subject to the same corruption scandal. Police were accepting bribes to destroy evidence and keep silent on murders that were happening. Clearly, to reduce incentive for police to do this, murder could be made legal, but making murder legal would be absurd. In the same way, decriminalising an inherently violent and demeaning practice is absurd. Corruption then must be dealt with in a different way, such as through properly empowered independent commissions.

The evidence put forward in the 1995 Wood Royal Commission appears to be that it was the culture of the police force, rather than the nature of the prostitution model, that was the issue:

(Former Detective Sergeant Kim Thompson) did, however, acknowledge that he had shared in substantial payments from the club operators at Kings Cross from 1987. He accepted that money because he assumed 'it went with the position' as second-in-charge of detectives, a comment which somewhat neatly encapsulates the culture of the time and the abrogation of any sense of responsibility of supervisors to ensure the ethical and professional performance of detectives.⁵⁶

If the culture of the police force was the problem, the answer to corruption is not a change in prostitution laws.

Further, corruption is clearly still possible with a council building inspector accepting free sexual services in return for silence:

A recent case where Hornsby Shire Council failed in court to shut down a massage parlour offering sexual services was the "straw that broke the camel's back", he said.

It was Mr Seage's dossier of evidence that sparked an ICAC investigation into corruption at Willoughby Council. The inquiry found the council's building inspector Edward Karkowski had been accepting free sexual services at the Chatswood-based Oriana Bath House in return for his ongoing silence about the true nature of the business.

In 2012, he was found guilty of five counts of corruptly receiving a benefit and sentenced to six months' jail, though he was deemed "suitable" to serve the term in home detention. The Land and Environment Court ordered the parlour be shut. However in September last year, The Sun-Herald found that an illegal vice den was again thriving at the same address under the guise of a "ladies only" Korean sauna, which was also offering private health insurance rebates on "remedial massages".⁵⁷

This provides evidence that the presence of corruption in one particular model is not necessarily an indicator that the model itself promotes corruption. Evidently, corruption is still an issue in the current decriminalisation model.

Corruption is a separate issue that needs to be dealt with through other mechanisms. Corruption commissions, such as the Police Integrity Commission and the Independent Commission Against

Corruption, have effectively dealt with corruption in the past. Other accountability and transparency measures may be available too.

5. Protecting prostitutes

5.1. Reducing harm

Partially or fully legalising prostitution simply does not protect prostitutes. As noted by the Crime and Misconduct Commission in Queensland, “reported rates of physical or sexual violence among sex workers range from 65 to 94 per cent”.⁵⁸ Canberra police noted they were powerless to stop trafficking even in legal brothels (see section 4.6.1 “Legalisation disempowers police”). Even if the legalisation could bring perfect health in the legal sector, the massive unrestrained illegal sector that it encourages undermines any health initiative.

On the other hand, criminalising the purchase of sex puts the power of control in the hands of the prostitutes. A feminist reports on the situation in Sweden:

*Men in Sweden, on the other hand, are afraid to commit violence because they know the women they are buying sex from have more power in the situation than they do. They know they will be charged if the woman calls the cops and so they behave better.*⁵⁹

In South Australia, where the prostitution trade remains illegal, MPs have noted during previous prostitution debates:

*Under our present laws (banning the sex trade), the incidence of sexually transmitted diseases among South Australian prostitutes is remarkably low. Part of the reason for the low incidence of disease is simply because prostitution is minimised in this State and is, therefore, a seller’s market. The prostitute can impose his or her terms on condom use and what acts she or he will or will not do. It is in the highly competitive situation associated with legal prostitution that buyers can shop around for particularly dangerous and offensive practices.*⁶⁰

*The more brothels you have, the cheaper it becomes and the greater the risk the girls are prepared to take because, when the competition is tough, they will throw away the condom.*⁶¹

The Nordic model similarly creates a “seller’s market”, with low competition and higher “standards”.

5.2. Reducing trafficking

As discussed in section 4.6.3, countries with legalisation models increase their trafficking inflow, and countries with criminalisation models decrease them. This is due to the lower demand for sexual services in countries where buying of sex and living off a prostitute’s earnings is punishable.

The 2012 NSW Prostitution Issues Paper states:

*As they fear being arrested themselves, clients are less willing to assist in cases involving coercion, trafficking or underage persons involved in the sex industry.*⁶²

Yet a lack of willingness on the part of clients is not comparable to the emboldening of prostitutes themselves, and the statistics on the end result speak for themselves.

6. Conclusion

NSW should note the failure of decriminalisation models and consider adopting the effective Nordic model.

Table 4: Comparison of different models of prostitution

Category	NSW (Decriminalisation)	QLD (Licensing / Partial Legalisation)	Sweden (Nordic / Partial Criminalisation)
Numbers	271 legal brothels (in one-third of councils); hundreds of illegal brothels; at least 10,000 prostitutes (2010)	24 legal brothels (2010); 90% failure to move into legalised sector (2009)	500 brothels in 1999 to 0 in 2011; 50% drop in street prostitution; lower or no increase in overall incidences of prostitution
Health and safety	Improved in legal brothels, but many more prostitutes exposed; no evidence of change in illegal brothels	Improved in legal; no evidence of change in illegal brothels	Thorough exit programs
Corruption	Opportunity and established case history for council corruption	(No evidence seen either way)	Opportunity for police corruption, but no evidence of it
Level of crime	Criminal groups fighting (2000, 2012); up to 500 trafficked women in Sydney (2000, 2011)	40% of prostitutes affiliated with members of organised crime (2009)	Lowest trafficking in EU
Location control	Powerless to remove illegal brothels	Little control	Removal of all brothels

Partial or full legalisation – including licensing and registrations models – are not appropriate models for prostitution law reform. They are a counsel of despair – for society and for those trapped in prostitution as “workers” or as “clients”. A criminalisation model such as the Nordic model, while realistic in its expectation that there will always be those who seek to exploit human weakness through selling sex, supports significant community values by seeking to reduce this exploitation to a minimum.

Recommendation 1:

In order to empower police, provide effective safety and care to prostitutes, reduce trafficking and demand, and discourage criminal activity, NSW should adopt the Nordic model, which prohibits the purchase of sexual services as well as procuring, pimping and operating a brothel.

7. Endnotes

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