

the illegal prostitution industry - a challenge for the prostitution act

The first PLA Annual Report contained a history of prostitution and early attempts at its regulation in Queensland.

In more recent history, particularly following the publication of the Fitzgerald Report in 1989, it was the Criminal Justice Commission (CJC) which generated further debate about the regulation of prostitution within Queensland with publication of its 1991 report *Regulating morality? A review of prostitution laws in Queensland*. The immediate government response to the CJC report was the enactment of the *Prostitution Laws Amendment Act 1992*. Whereas the CJC had recommended the licensing of brothels with a minimum of two and a maximum of 10 workers including a manager, receptionist and security personnel, the 1992 legislation confirmed only the legality of sole operators. Facilitating or participating in prostitution became an offence, police powers were increased and advertising was prohibited. No provision was made for licensed brothels.

The Prostitution Act has established, for the first time, a system of licensed brothels with a maximum of five rooms. The maximum permitted number of sex workers on the premises at any one time is limited to the number of rooms licensed; prostitution is prohibited, under the licence, at any place other than the brothel. Advertising is permitted but made subject to PLA approval.

It is worthwhile recording here the form of regulation and control which is currently in place in other states of Australia.

New South Wales	Prostitution is effectively deregulated and decriminalised by a process controlled by local government which decides where brothels are permitted. There is no statutory limit to the number of rooms and outcalls are permitted.
Victoria	Regulation and control is governed by a licensing system for brothels. The Queensland legislation is modelled on the Victorian framework with notable differences: <ul style="list-style-type: none">• The maximum number of rooms in Victoria is six• There is no restriction on the number of sex workers permitted on the premises at any one time• Outcalls are permitted.
Northern Territory	Regulation and control is effected by licensing 'escort services' only (escort services refers to outcalls). There is no provision for the establishment of licensed brothels.
Australian Capital Territory	Brothels are established by a process of registration rather than by a licensing process and certain areas are prescribed for the establishment of a brothel.

South Australia	A Bill providing for licensed brothels according to the Victorian model but providing for a maximum of eight rooms was passed by the lower House of the SA Parliament but defeated in the upper House.
Western Australia	The WA government is said to be currently considering plans for the regulation and control of prostitution in WA.
Tasmania	All forms of prostitution are illegal.

The different forms of regulation and control of prostitution across the national spectrum reveal a significant lack of uniformity. On the other hand, the considerations which favour regulation and control are relatively constant and uniform. Regulation, whatever form it takes, is essentially a community sexual health issue. It is also designed to ensure the physical safety of sex workers, particularly women; it seeks to avoid the exploitation of the vulnerable by the imposition of proper workplace arrangements in the brothel. By removing the prospect of illegality it seeks to minimise the incidence of official corruption which might otherwise support an illegal sex industry.

The PLA, since its inception, has been driven by the need to implement these principles through the licensing and regulation process under the Prostitution Act.

When the Prostitution Act came into operation on 1 July 2000, there was already in place a large, well-established and highly organised illegal sex industry. The 1992 Act and its aftermath had confirmed the legality only of sole operators. It had effectively closed a large system of illegal freestanding brothels and had dispersed and fragmented a thriving sex industry. The most optimistic expectations for the new legislation in 1999, with its re-introduction of the so-called boutique brothel, included the prospect of bringing the illegal industry 'out of the shadows and into the light of day'.

After two years of operation of the Prostitution Act, the illegal sex industry in Queensland remains alive and well. Some idea of its size and human resources can be gauged by a few statistics. In the year ending 30 June 2002 PETF closed 70 illegal premises, compared with 45 in the previous year. The number of persons charged with illegal prostitution increased from 141 to 218 and the charges laid from 265 to 504.

Law enforcement alone is largely ineffective in preventing illegal prostitution and yet the need for effective regulation and control has never been more urgent.

The fact, however much we may regret it, is that sex is a commodity. It sells. There are those who are anxious purchasers of it. There are many who are willing vendors. The fundamental social concerns about this particular market are based on matters of sexual health, personal safety, an effective workplace and the minimisation of official corruption. The case for proper regulation and control is compelling.

How then does one implement regulatory legislation so as to entice within its influence the unregulated and uncontrolled illegal sex industry? It cannot be assumed that all sections of the illegal industry have no respect for sexual health standards, safety and the like. Indeed it is well known that many operating illegally do. But equally there is a valid concern that an unregulated illegal sex industry pays, and will pay, less respect to the standards and values which underpin an effectively regulated and controlled industry which is licensed and subject to continual review and compliance auditing.

What is the nature and form of the present-day illegal industry?

Paradoxically, it was the 1992 legislation which has largely determined the form and practices of the present-day illegal industry operating in Queensland. The legality of sole operators was confirmed by the 1992 amendments to the Criminal Code which made prostitution by one person legal. It was illegal for any other person to participate in the provision of that prostitution. Any receptionist, driver, provider of accommodation, a recipient of phone calls or anyone who in any other way assisted or participated in the provision of the sexual services made available by a sex worker committed an offence. The only exception was a fully qualified and certified security person. Therefore sole operators, or the perception of legal sole operation, became the norm. Deceptive advertisements flourished. Because the 1992 Act prohibited the advertisement of sexual services, various forms of deception, such as references to massage services and the like, were regularly used as more than obvious fronts for advertising prostitution.

But, more importantly, there quickly became attached to the concept of sole operation a whole matrix of support services which transformed what was simplistically legal into a complex, well-organised network of persons and services with significant infrastructure which rendered the old freestanding brothel an anachronism. From this time, the illegal 'brothel' became less frequently a freestanding building in the traditional mode which the clientele visited or from which the service providers visited the client. Rather, the business of the 'brothel' has come to consist of a network of people and services in various locations supported by a central administrative infrastructure which participates in the provision of prostitution by a large number of individual workers at a variety of locations, each of whom attempts to present as a legal single operator. The reality is that the owner/controller conducts a well-organised business which delivers sexual services over a wide area, at different locations, through a network of people connected by mobile phone to the central console or telecommunications service centre, which takes the 'booking' and then diverts it to a particular worker located in either a city accommodation unit or similar facility, or even by the roadside or more convenient parking facility to which the centre is linked by personal mobile phone. This is the modern-day 'brothel without walls'. The 'centre' need not necessarily be located at a Queensland address or location. It may just as well be located in Sydney, Melbourne or elsewhere. The dominant form of service delivery is service to the client who is visited by the service provider who, during his/her shift, will usually be mobile rather than located in one place, although some will. In short, the illegal 'brothel' centres upon the provision of the outcall (or 'escort' service) business which, if provided by a licensed brothel under the Prostitution Act, is unlawful.

Another form of illegality is well recognised. The 'brothel' for the purposes of the Prostitution Act means 'premises made available for prostitution by two or more prostitutes at the premises'. Therefore, if two (or more) persons use premises for prostitution without a licence the premises are an illegal 'brothel'.

The PLA is well aware of a cooperative arrangement usually entered into by two sex workers who share the use of the same premises for their business. The premises will usually be rental accommodation. One worker, because of other commitments (not unusually family or other employment), will prefer to work during the day; the other for his/her own reasons would prefer to work in the evening. They share a common phone number or contact person. They will typically service clients at the 'premises' or drive or be driven to outcall locations. They present as sole operators. In fact, they are unlawfully engaged in prostitution in Queensland if the premises are not a licensed brothel. Invariably, given that local government approval is required, such premises will most likely never be licensed, if for no other reason than such premises are usually located in a residential area. It is relevant to mention in this context that

In Victoria the minimum number of rooms/workers required for a brothel if it is to be licensed is three - the maximum is six. In Queensland the minimum is two and the maximum is five. In Victoria, like sole operators, two workers together are regarded as exempt.

Whatever form the illegality takes, it is to be contrasted with the host of illegal brothels which existed before the Fitzgerald Inquiry and prior to the enactment of the 1992 legislation. The easily identifiable characteristics of the more modern forms of illegal prostitution are that it is more discreet; it is designed to present as legal by taking advantage of legal sole operation. It is very mobile. It can exist at the same time at a variety of locations as part of the same business. Law enforcement efforts to 'close the brothel' necessarily involve 'raids' on a variety of locations and persons. How different that process is from that which operated immediately pre- and post-Fitzgerald and prior to the enactment of the 1992 legislation!

The nature of the illegal industry presents considerable difficulties for law enforcement. An operation to 'close' an illegal brothel is a major piece of law enforcement. The prosecution of the illegality is complex, detailed and time consuming; upon conviction the penalty imposed is hardly a deterrent. But, more importantly, the closure of the police operation, the arrests and the prosecution are soon forgotten. The wheels of the well-organised, mobile brothel business quickly commence to turn again. The illegal operation is soon back in business at different locations with newly numbered mobile phones and supported by the same infrastructure. In a relatively short time, nothing has changed.

The frustration for law enforcement is obvious. The QPS through PETF has, particularly since January 2001 under the leadership of Detective Inspector John Hartwell, been active in policing illegal prostitution. But even PETF would question whether competent professional law enforcement will in the long term have the desired impact on the illegal sex industry. That is not to say that law enforcement processes are superfluous. Once a licensed sex industry is developed pursuant to legislation, those who have chosen to be part of it and who accept the process of probity investigation, regulation and licence fee payment deserve law enforcement protection from the illegal industry. In short, the integrity of the licence has to be protected. But law enforcement alone can never provide an effective deterrent to the illegal industry. Law enforcement, however, is much more likely to provide a more efficient and effective response if more of those who operate illegally can be persuaded to become part of the licensed sex industry, and this is more likely if the licensed industry is able to operate and compete within the market in a way which is as commercially effective as that already available to the illegal industry. The current provisions of the Prostitution Act substantially hinder the achievement of such an objective.

Does the Prostitution Act provide an effective antidote which will encourage legality and discourage illegality?

The answer to this question is no. The PLA is very conscious of the disadvantages to which licensed brothels are presently subject and which heavily impact on their present ability to capture the market which is largely serviced by the illegal prostitution industry. Since the enactment of the Prostitution Act there is anecdotal evidence that some sections of the illegal industry would value the opportunity to operate legally. Both workers and clients have reported their preference to be involved in the legal commercial brothel industry which is facilitated by the licensing scheme, rather than be continually subject to the threat of police action. It should be noted that amendment of the Prostitution Act in December 2001 has made more effective the 'prohibited brothel' procedure in the Magistrates Court, which potentially has serious consequences for operators, workers and clients alike. But these are of superficial effect only and will not assist law enforcement to disable the substantial commercial interests and operations of those who are involved illegally.

The PLA is firmly of the opinion that legislative review of the Prostitution Act is required if the Act is to achieve its objectives, harness illegal prostitution and entice those involved in it to become subject to the operation of the Act. The PLA goes as far as to say that unless there is legislative review, the prospects in the longer term of substantially affecting illegal prostitution are minimal. The additional risk is that the licensed industry will falter and become even less acceptable because of an inability to cope with unfair competition.

After all, the purpose of the Act is 'to regulate prostitution in Queensland'. That objective cannot be achieved to an acceptable degree as long as the present major restrictions which are imposed upon the licensed industry are maintained.

We reiterate the disadvantages to which licensed brothels are currently subject and which, for no apparent or logical reason, place in a position of disadvantage those licensees who have been prepared to subject themselves to the rigours of probity checking, who accept the need to pay the appropriate licence fee and who otherwise are prepared to subject themselves and their business to controls inherent in the regulation of prostitution.

- Section 78(1) of the Act makes it an offence if a licensee provides prostitution under the licence 'at a place other than the brothel'. This provision should be removed. At present, all clients must come to the brothel, which is prevented by law from providing services to the client at his/her home, hotel or other location. Clearly, some clients will prefer to visit the brothel, many others will prefer not to visit the brothel but to receive a visit from a service provider at a more discreet location. Contrast this with the manner in which this market is serviced by the illegal industry. Services are provided much more readily and conveniently by sole operators and those who are heavily engaged illegally in the provision of outcalls or 'escort services'. The fact is that the large proportion of sexual services are delivered in this mode. Sole operators can do so legally, large illegal operations are in fact doing so. Why then is the licensed brothel excluded from this market?
- Since for the most part licensed brothels will be located in 'industrial areas', clients who will necessarily have to visit the brothel will suffer a degree of inconvenience in having to travel to inconvenient locations. Rather than suffer that inconvenience, the prospective client is more likely to turn to the illegal industry, which can more easily service his/her needs. In short, the client is diverted from the legal to the illegal operator.
- Those licensed brothels which operate in the Gold Coast area suffer the additional commercial disadvantage of having to compete with NSW (Tweed Heads) brothels which are also lawfully able to service outcalls and in fact do so not only in their own area but also in Queensland. In short, NSW brothels can lawfully provide outcalls in Queensland. Queensland licensed brothels cannot.
- The PLA is now well aware of an anomaly whereby outcalls can be lawfully serviced by an individual worker from the premises of the licensed brothel in Queensland. Most, if not all, sex workers are engaged pursuant to contractual arrangements which exclude employer/employee relationships between licensee and worker. Many workers in licensed brothels also operate as sole operators when they are not engaged in shifts at a licensed brothel. Many such operators have their own telephone number advertised and their own clientele who are familiar with the sole operator's telephone contact details. It is not unlikely therefore that a sole operator, at the time a call is received on the mobile phone, is engaged on her shift at the licensed brothel. The practice is for the worker to leave the brothel to provide the service at some other location and

to return to the brothel for the remainder of her shift. There is no illegality apparent in such an arrangement because the licensee is not involved in the provision of the relevant prostitution. In short, an independent contractor/worker in a licensed brothel is able to lawfully provide service to an outcaller at a place other than the brothel, but the licensee of that brothel is prohibited by law from doing so.

The Victorian legislation, which provided the model for the Queensland Act, permits licensed brothels to provide outcalls. One major licensed provider in Melbourne has advised the PLA that at least 50 per cent of the business consists of the provision of outcall services. That businessman had intended to establish a quality business in Queensland but decided against it because of the law that prohibits outcalls. Why this feature of the Victorian model was rejected is not known.

Finally, the provision of outcall facilities from the licensed brothel is much more likely to better achieve the core objectives of the legislation than the provision of the same service by either a sole operator or a person working illegally. The service provider from the licensed brothel has the advantage of being supported by the infrastructure of the brothel. The worker is accompanied to the location. The location is therefore known by others and, if concern arises, appropriate relief can be summoned. Given the requirements of the licence for safe sex practices, it is less likely that a worker in servicing outcalls would depart from the required standards.

The requirement that licensed brothels be prohibited from participating in a very significant section of the market is illogical and not easily intelligible. The PLA's considered view is that without change there can be no serious prospect that the Prostitution Act can effectively regulate prostitution in Queensland and the Act in its present form will accordingly have no real impact on the thriving illegal sex industry.

Any legislative review of the Prostitution Act will need to address other matters which also impact adversely on the operation of licensed brothels such as restricting the numbers of workers to the number of rooms, a restriction which imposes unacceptable workplace arrangements in the brothel.

The reality is therefore that, after two years of the Prostitution Act, a small licensed brothel industry has developed and will develop but the limitations to which it is subject will mean that it will be of doubtful financial viability in the longer term. The Prostitution Act in its present form will have no appreciable impact on the flourishing trade in illegal prostitution. In short, the Prostitution Act, as currently enacted, cannot achieve either its stated objective or those objectives which underpin the legislative initiative for the regulation and control of prostitution.

The issue of illegal street prostitution has not been involved in the above review. It raises quite specific and different issues which are not relevant in this context and require separate consideration.



"Russell"
aged 33 years

"I definitely insist on condoms with every client, not only for their health but for mine. I go to SQWISI every six weeks for health checks. I have never had a client offer me money to not wear a condom."