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Legal advice re sole operator sex workers providing prostitution from motel rooms

The Prostitution Licensing Authority (PLA) occasionally receives queries from both sex workers and motel operators on the legality of sole operator sex workers providing prostitution from motel rooms. That is, a room booked by a sex worker for the purpose of providing prostitution (it does not encompass outcall prostitution whereby a sex worker attends the motel room of a client). This situation generally occurs where an out of town sex worker goes to a town for a short period of time with the intention of providing prostitution from a motel room.

The PLA recently sought the advice of its legal counsel, McInnes Wilson Lawyers, on the legality of this practice. For the benefit of the PLA's stakeholders, an edited extract of that advice is provided below.

Disclaimer: Please note that this advice is the opinion of McInnes Wilson Lawyers only. Another lawyer might provide a different opinion. Potentially, the courts might take a different view of the law to that provided by McInnes Wilson. Neither McInnes Wilson Lawyers, nor the PLA accepts any liability for reliance on this advice.

This is an edited extract of the advice provided by McInnes Wilson Lawyers:

The first consideration in respect of this advice, is the extent by which any of the activities conducted by sole operator sex workers, operating from a motel room, may be impacted by the provisions of the Criminal Code (Chapter 22A Prostitution) ...

The Criminal Code ... relevantly deals with offences for procuring prostitution [s. 229G], the knowing participation in the provision of prostitution [s. 229H], and the having of an interest in premises used for prostitution [s. 229K]. The application of the various provisions of Chapter 22A of the Criminal Code are crafted in such a way, that sole operator sex workers do not transgress the penalty provisions merely by engaging in prostitution on their own volition, provided there is no other party either procuring the prostitution or knowingly participating in the provision of the prostitution ...

For the purposes of this advice unless otherwise stipulated, it is assumed that the sole operator sex worker who seeks motel accommodation, has absolutely no arrangement with any other person or entity in connection with the provision of prostitution services from the proposed motel room accommodation which would breach the Criminal Code ...

A motel operator in offering accommodation to and accepting a sole operator sex worker as a guest, in our opinion would not offend against the law merely if the motel operator knew that the

guest was going to, or likely to engage in prostitution in the accommodation. This is on the proviso that the accommodation contract arose in the usual course of business and without any special solicitation by the motel operator for sex workers to take up accommodation at the premises. If the motel operator acted in a discriminatory way to deny accommodation to a sex worker by reason of that person being a sex worker, then the provisions of the Anti-Discrimination Act 1991 ADA would apply ...

Under s. 7 of Part 2 [of the ADA] discrimination is prohibited among other things, on the basis of the attribute of 'lawful sexual activity' ...

It is clearly the case that the ADA would prohibit any motel operator from applying any discriminatory impositions or forbearances upon a sole operator sex worker in respect of any accommodation arrangement merely on account of the intending guest being a sex worker or having the attribute of 'lawful sexual activity'.

There is a possibility that a motel operator might seek to impose by contractual terms, prohibitions upon guests carrying out business or earning income from the accommodation. If a motel operator attempted to impose such a condition, in our opinion it would have to apply equally to all guests, and to all forms of business, so as not to be in breach of the ADA as a facet of potential indirect discrimination.

The above observations, in our opinion, apply equally to the position of multiple sole operator sex workers providing prostitution services from

separate rooms at the same motel, provided there is no consensus or meeting of the minds between any of the sole operator sex workers in the provision of prostitution services, for example referring clients to each other. If there were a meeting of the minds in connection with the activities of prostitution from the premises, including by the motel operator, then in our opinion that would give rise to a breach of the provisions of the Criminal Code as mentioned above.

In our opinion, even if the motel operator is aware that the guest is a sex worker engaging in prostitution from the motel room, provided the motel operator did not engage in any conduct which would amount to a knowing participation either directly or indirectly in support of that conduct, then the motel operator would not be in breach of the Criminal Code or the provisions of the Prostitution Act 1999. This opinion is also subject to the motel operator not wilfully allowing the prostitution as occurring in the accommodation to cause a nuisance to another person in breach of s. 76 of the Prostitution Act.

In our opinion, it would not be lawful for a motel operator to charge a sole operator sex worker a higher tariff for the same services than other guests, as it would be contrary to the provisions of the ADA. Similarly, it would, in our opinion, not be lawful for a motel operator to demand a 'kick back' from the sex worker, as that would also in our opinion, be contrary to the ... provisions of the ADA. Further we are of the opinion that the request for a monetary 'kick back' would potentially be in breach of s. 229H [knowingly participating in the provision of prostitution] of the Criminal Code. This is predicated on the basis there would be a meeting of minds between the motel operator and the sex worker on the understanding that prostitution may be carried

out on the premises as a basis for a financial uplift in the accommodation tariff.

The PLA has published the advice of McInnes Wilson Lawyers in full on its website: www.pla.qld.gov.au.

The advice raises a number of matters relevant to anti-discrimination law in Queensland. Sex workers who believe that they have been discriminated against are entitled to make a complaint to the Anti-Discrimination Commission Queensland. Further information about making a complaint to the Commission can be obtained by calling the Commission on 1300 130 670 or by going to www.adcq.qld.gov.au.

Safer sex

Anyone who is sexually active is potentially at risk of acquiring a sexually transmissible infection (STI) unless they are in a STI-free monogamous relationship. The more sexual partners a person has, the greater the risk of infection. STIs may be passed on through close body contact or the exchange of body fluids via unprotected vaginal, anal or oral sex.

Whilst there is no 100% effective means of preventing the transmission of STIs, safer sex practises can significantly reduce the risk. This means always having protected sex by using condoms and dams for vaginal, anal or oral sex. In particular, herpes can be spread by oral sex, as well as bacterial infections like gonorrhoea and syphilis. Practising safer oral sex means using condoms for fellatio (penis to oral contact) and dams for cunnilingus (vagina to oral contact) and anilingus (anal to oral contact).

Whilst there are symptoms associated with some STIs, others have no symptoms. This means that a person could have an STI but not be aware. Undiagnosed STIs can have serious and enduring health implications, such as acute and chronic pain, infertility, cancer, and in extreme cases (HIV/AIDS) even death. This

underscores the importance of regular sexual health check-ups. Many STIs are curable – like chlamydia, gonorrhoea and syphilis – and easily treated with antibiotics. Whilst there are other STIs that cannot be cured, they can be managed to reduce symptoms.

In Queensland, it is illegal for a person to ask a sex worker for unprotected sex (vaginal, anal or oral) or for a sex worker to make an offer of unprotected sex. Acts of prostitution involving unprotected sex are also illegal.

For more information on safer sex and STIs visit:

- www.health.qld.gov.au/sexhealth
- www.australia.gov.au/STI

2009 PLA meeting dates

The PLA Board generally meets on the first Monday of each month. Meeting dates for the remainder of 2009 are: 2 November, and 7 December. *Whilst current at the time of printing, these dates are tentative and subject to change without notice.*

Vacancies for Approved Manager positions

Cleo's on Nile: 12 Nile St, Woolloongabba. Seeking an approved manager for a busy inner city brothel – beautiful premises and undercover parking. Flexible hours with great conditions – Open 24/7. Contact Lyn on 3393 1678 or admin@cleosonnile.com.

Please note that approved manager advertisements may be submitted at any time for inclusion in the next edition of the newsletter. They should be emailed to plaadmin@iprimus.com.au