

## Introduction

Prostitution regulation is a fraught issue. It is charged with belief and ideology and there remains a dearth of evidence about the efficacy of various approaches. There is little systematic review and a wide disparity in results from the evaluations that have been done (Mossman 2007). Results are often found to support differences in ideology rather than differences in research findings. The findings about Sweden, for example, where buying sex has been criminalised, depend as much on the convictions of the researcher as they do on the evidence.

*Those in support (in particular feminists) [of Sweden's model] point to its success in reducing the number of women visibly working on the streets, and curbing of trafficking. Those opposed to it (sex workers and health organisations) suggest that the number of sex workers has not decreased but the proportion 'hidden' is larger. (Mossman 2007)*

Brooks-Gordon (2006) identifies three discourses that dominate writing and policy about prostitution. The first is a traditional moral discourse which views prostitution as immoral, prevalent in the 1900s and contemporised in the 1980s as the exploitation of female sexuality. This links to a second sexual domination discourse, inspired by radical feminism, which views prostitution as victimisation of women. 'In both the modernised moral discourse and the sexual domination discourse women are victims denied agency and sexuality...' In the third sex work discourse '...the prostitute becomes a sex-provider entering into a contract'. In the sex work discourse, Brooks-Gordon says, 'There is recognition... that prostitution law has never contributed to the improvement of women.'

### In Queensland, the discourse about prostitution has been primarily moral:

*Frequently, discussions about the sex industry and its workers start from the perspective of prostitution as a problem. "The problem", however, is often not articulated clearly and a variety of assumptions are made about the nature of the sex industry and the "causes" and consequences of prostitution. (Boyle et al 1997)*

The Prostitution Act 1999 has sat somewhat uncomfortably in the Queensland context at least in part because it attempted, for the first time, to impose a sex work

discourse in a public policy context still largely driven by morality, with the religious right opposed to prostitution on moral grounds finding fellowship among contemporary feminists who view prostitution as exploiting or victimising women. The Prostitution Act has one objective, which is to regulate prostitution. Its original provisions also included establishment of a body, the Prostitution Advisory Council (PAC), whose role was to advise the Minister about programs designed to help sex workers leave the sex industry, and this objective, albeit much weakened, remains part of the Act's current provisions. In a sense there are competing objectives here. On the one hand to regulate prostitution as an industry, as work. On the other, to encourage workers in the industry to leave, to prohibit any advertisement designed to recruit sex workers, implying the industry is harmful. It would be hard to find another industry that has been legitimated to this extent at the same time as people are discouraged to participate in it.

This report sets out key findings of a project undertaken in the second half of 2008 for the Prostitution Licensing Authority (PLA) that explored the question:

### How can Queensland better regulate the sex industry?

The project team has interviewed a range of stakeholders including sole operator sex workers (35), brothel licensees (23), clients (34), illegal sex workers (5), industry bodies, and relevant Government and other agencies including the Crime and Misconduct Commission (CMC), Queensland Health, the Queensland Police Service (QPS) and the Department of Premier and Cabinet (DPC). Interstate consultations have included regulatory authorities and sex worker support organisations. A full list of those consulted is included in Appendix A. A description of the key themes arising from the consultation phase of the project is provided at Appendix B.

The project has also had the benefit of studies of prostitution in Queensland which include surveys of the views of sex workers, clients and the community which were undertaken before as well as after the Prostitution Act was passed. In addition, two international jurisdictions have evaluated the outcomes of policy changes to decriminalise or legalise prostitution. These are the Netherlands and New Zealand where, importantly, evaluations have been undertaken recently (published in 2007 and 2008, respectively).

This research project, like others that have preceded it, initially intended to make recommendations about changes in the current regulatory framework based on stakeholder input and research. There are many things that could be recommended. Listening to brothel licensees, a regulatory framework might support outcalls from licensed brothels, although not all licensees would be in favour of such a move. It might support more sex workers or rooms for the brothel, alcohol, or other changes to make the licensed industry function more effectively (thereby curbing the illegal industry). Sole operators might be subjected to registration. But listening to sole operators and advocacy groups, a regulatory framework would support small, cooperative arrangements for sex workers outside the current licensed brothel system and no regulation of sole operators. It is difficult to make recommendations without a clearer statement of Government's position than is provided in the Act, particularly in an area like prostitution which is charged with ideology. The only area where there is absolute clarity about the way forward concerns the health and safety of sex workers which may be more at risk now than when the Prostitution Act was first passed, if for no other reason than the two bodies with some responsibility for their health and safety, the PAC and Self-Health for Queensland Workers in the Sex Industry (SQWISI), are no longer operating.

### The key findings of this project relate to three issues:

- the health and safety of sex workers;
- the policy framework underpinning regulation; and
- knowledge about the regulatory framework.

While the second of these issues provides a broad context for the other two, they are reported in priority rather than logical order. Government may not wish to embark on the risky and unpalatable task of developing a statement of principles upon which our sex industry can be regulated. It may not want to provide information for sex workers and clients about what is legal and illegal in Queensland. But the need to take steps to improve the network assuring the health and safety of sex workers, at the very least to bring it back to the levels of support offered at the time the Prostitution Act was first passed, is urgent and important. The review would be remiss not to start with the current situation of sex workers and the risks they face.

## The health and safety of sex workers

*I started two years ago. I'd never had sex for money so I went along to a brothel to find out how it all works. I didn't know about condoms, lube, none of that. I'd had one partner my whole life. I learned from the other girls...*

(Sex worker who started in 2007)

*Like all New Zealanders, workers in the sex industry have the right to come home from work safe and well.*

(Occupational safety and health services 2004)

*I was tied up in a situation where I could not move or get free. So I leave it for your imagination as to what happened. I can't explain what happened.*

(Sole operator)

A number of studies in Queensland have looked at various aspects of sex workers and the health and safety issues involved in sex work. The most recent local study of sex workers (Woodward et al 2004) interviewed 247 sex workers in 2003 and found:

- sex workers had a mean age of 32 years;
- the majority were born in Australia or New Zealand;
- the largest proportion of brothel and private workers were single, although about a quarter were married or living with a partner;
- more than half of the brothel and private workers had children;
- about a quarter of the brothel and private workers had a bachelor level degree;
- street sex workers had entirely different demographic and social profiles compared with brothel workers and sole operators. They tended to be younger, single, and had attained a lower educational qualification.

Studies vary in the extent to which they find that sex workers face violence and to the extent that they see this as a reason to help workers leave the industry or as an occupational hazard. A study of 240 female sex workers in Leeds, Glasgow and Edinburgh undertaken in 1999 found that 48 per cent of those who worked indoors had experienced violence in the previous six months, with 81 per cent of those who worked outdoors experiencing violence in the previous six months (Church et al 2001). A study of 72 street-based sex workers in Sydney in 2006 found, among other things, that all but one woman had experienced trauma, with the majority reporting multiple traumas that typically began in early childhood, including child sexual abuse. Just under half met the DSM-IV<sup>1</sup> criteria for post-traumatic stress disorder (Roxburgh et al 2006). Post-traumatic stress disorder in the Australian population is estimated at 3.3 per cent. In the Netherlands, where prostitution has been decriminalised, a systematic evaluation incorporating interviews with sex workers suggested that the emotional well-being of prostitutes was lower in 2006 than in 2001 when new legislation was passed. Distress was higher and the use of sedatives had increased. A comparison revealed that prostitutes in clubs and escort agencies experienced less autonomy in 2006 than in 2001 (Daalder 2007).

Evaluation of the Prostitution Reform Act in New Zealand included a survey of 772 sex workers. Over 90 per cent were aware they had increased occupational health and safety rights under the Act, although the majority didn't feel the Act could make a difference to the incidence of violence and 9.8 per cent had been physically assaulted in the previous 12 months, 15.9 per cent had been threatened with violence, 4.7 per cent had been held somewhere against their will and three per cent had been raped by a client (Prostitution Law Review Committee 2008).

Half of the 35 sole operator sex workers interviewed as part of this project reported having experienced violence or threats from clients including attempted rape or rape and physical assault. Some workers minimised their experience of violence, following their own story with the story of another worker who they saw as worse or better off. Others played down their experiences.

*This is not a big one, but I found he wanted to do more than I would let him and he held my hand so I could not go, but I did get away and left so the*

*outcome was not that bad, having said that I did not have control over the time there. Not nice.*

*I have had money stolen (\$26,000) by an illegal operator who was arrested and charged in the end. There were a lot of other workers involved and he was raping some of them. I was lucky!*

Discussion of the experience of sex workers quickly becomes mired in ideology. Those who see prostitution as work take the view that it is the criminalisation of prostitution that leads to violence: 'Name one industry that has been characterised by more violence and mayhem when it was legal than when it was illegal' (McArdle 2008). Those who oppose prostitution on moral or feminist grounds see the act of prostitution as inherently risky: 'From the author's perspective, prostitution is an act of violence against women: it is an act which is intrinsically traumatising to the person being prostituted' (Farley et al 1998). This makes an evidence-based approach to issues more difficult.

The notion that regulation should work to help sex workers leave the sex industry features in many jurisdictions. Approaches will reflect the dominant ideological stance about sex work, and whether prostitution is seen as an illegal activity, an immoral activity, a form of violence against women or a social problem (Mayhew & Mossman 2007).

The 1991 Regulating Morality, on which Queensland's legislation is based, saw prostitution as a social problem: 'The Commission believes that sex work is exploitative and should not be encouraged as an occupation' (Criminal Justice Commission 1991, p.21). In the Prostitution Act, advising the Minister about programs designed to help sex workers leave the industry was one of the roles for the PAC which is now defunct. The role has been subsumed within the functions of the PLA which has itself commented on the Jekyll and Hyde quality of opposing roles, regulating the legal brothel sector on the one hand while promoting programs to help sex workers leave the industry on the other.

Woodward et al 2004 found that more than half of 216 sex workers surveyed wanted to leave the sex industry. A study of 52 'indoor' sex workers in New York City found that the majority wished to leave the industry at some point (Sex

Workers Project at the Urban Justice Center 2005). The New Zealand evaluation of prostitution reform included a survey of 780 sex workers who were asked their reasons for entering the sex industry. Only 3.9 per cent felt they were made to work by someone, whereas 92.8 per cent sought money and this was also the reason they remained in the sex industry. The New Zealand research identified the three most common barriers to exit as worries about financial insecurity, reluctance to lose flexible working hours, camaraderie and sense of belonging (Prostitution Law Review Committee 2008).

In evaluating the reform of prostitution legislation in New Zealand, the Prostitution Law Review Committee points out that not all workers want to leave the sex industry and that '...some sex workers find it offensive that they should be being offered assistance to leave a job where they are quite happy.' Of those workers who do want to leave the industry, the Committee sees that given the most common reason for entering the sex industry is financial, 'The most effective way to ensure people do not enter the sex industry is to help them find other ways of earning money.' Exiting the industry is difficult and often involves several attempts. There are many reasons for entering and exiting the sex industry and a one-size fits all approach will not work (Prostitution Law Review Committee 2008).

The process of deciding to exit the industry is acknowledged as complex. In the Netherlands where legislation was designed to protect the position of prostitutes, including by giving sex workers opportunities to leave the industry if they wanted to, only six per cent of municipalities reported that their policy paid attention to the issue (Daalder 2007). A lack of occupational skills, combined with the rewards of continuing in prostitution, work as strong barriers to leaving the industry. This was certainly true for some sole operators interviewed for this project. One in particular spoke about having thought for years about how to get out of sex work without finding a practical alternative. Programs designed to help women leave the industry need to respond to the long-term and complex nature of the decision-making process involved, and the need for financial support while seeking a mainstream income. To date, very little is known about the costs and outcomes of Queensland's current exit and re-training programs. In a letter to the PLA dated 9 October 2008, Queensland Health reported there were 88 clients on the program, with

an additional 14 clients receiving post-program support, for an approximate cost of \$250,000 annually. What is unknown is the number of program participants who have dropped out of the program during their involvement, and how many program participants have subsequently re-entered the sex industry. The program is due to be evaluated by Queensland Health in 2009.

There is strong research evidence to suggest that street workers are more exposed to health and safety risks than other sex workers. Consultations with sex worker managed support organisations in New South Wales and Victoria suggested that street workers are statistically at greatest risk of being victims of violence while working. This finding was cited in the explanatory notes to the Prostitution Bill and has also been reported in the published research:

- Rates of sexual assault among street workers are reportedly higher than brothel or other workers (Quadara 2008).

- A study of 30 street-based sex workers in New York City found 80 per cent had experienced violence or threats while working (Sex Workers Project at the Urban Justice Center 2003) whereas less than half of the 52 'indoor' sex workers surveyed in New York City had experienced threats or violence (Sex Workers Project at the Urban Justice Center 2005).

- A Queensland study found that 27 per cent of the 33 street workers interviewed had been raped once by a client, while this was reported by only seven per cent of the 82 private workers and none of the 101 legal brothel workers. Street workers also reported higher rates of having been bashed by a client (21%) than did private workers (7%) or legal brothel workers (4%) (Woodward et al 2004).

Woodward et al (2004) also found that while street workers experienced similar physical health to brothel or private workers, and to the general population, they had significantly poorer mental health than either of the other groups. Street workers were more likely to have used cannabis, amphetamines, heroin, or benzodiazepines, and were more likely to have injected an illicit drug. They were more likely than brothel or private workers to report

<sup>1</sup> The Diagnostic and Statistical Manual for Mental Disorders (DSM) provides diagnostic criteria for mental disorders and is used widely by clinicians, researchers, pharmaceutical and insurance companies, and policy makers in the United States and around the world.



having been a victim of childhood sexual abuse, and were more likely to have been raped or bashed since the age of 16. Street sex workers were much more likely to report having been a victim of violence while working than other groups of workers.

This is supported by studies elsewhere in Australia and overseas (Roxburgh et al 2006, Church et al 2003). Evaluation of prostitution reform in New Zealand found a difference in adverse experiences among street and indoor workers:

- 13.4 per cent of street workers had been physically assaulted by a client in the previous 12 months, compared with 10.4 per cent of managed indoor workers and 7.3 per cent of private indoor workers;
- 39.5 per cent of street workers had been threatened with physical violence, compared with 9.3 per cent of managed indoor workers and 16.3 per cent of private indoor workers;
- 10.2 per cent of street workers had been held against their will compared with 4.2 per cent of managed indoor workers and 3.2 per cent of private indoor workers; and
- 5.3 per cent of street workers had been raped by a client, compared with 3.3 per cent of managed indoor workers and 1.5 per cent of private indoor workers.

There are no programs in place supporting street workers in Queensland. Queensland Health advised the project team that discussion is currently underway to expand the Special Circumstances Court to incorporate diversion of

street workers into relevant programs rather than imposing a punitive sanction. A 2004 UK report makes a range of recommendations about programs aimed at tackling street prostitution by women and young people (Hester & Westmarland 2004). This report addresses both the need for prevention and diversion for street sex workers themselves, but also for the need to work with local communities to address the community impact of street prostitution on local areas.

The principles for prostitution regulation in Queensland set out in Regulating Morality included the protection of workers and clients (and therefore the community) from health risks and the prevention of exploitation of sex workers. These mirror those in other places that have legalised or regulated their prostitution industry, including New Zealand, Germany, the Netherlands and Victoria.<sup>2</sup> In Queensland, these principles were never translated into legislation. The Prostitution Act does not include detailed objectives although initially it did provide for the establishment of the PAC, separate from the brothel licensing framework, whose functions were to:

- disseminate information about the dangers inherent in prostitution and how to improve personal security;
- coordinate the development of codes of practice for licensed brothels;
- promote and coordinate programs that promote sexual health and help prostitutes leave prostitution; and
- advise the Ministerial Committee on issues related to the regulation of prostitution.

<sup>2</sup> Victoria's Prostitution Control Act 1994 cites nine objectives which include the protection of sex workers from health risks, violence and exploitation.

The explanatory notes accompanying the Prostitution Bill stress that the Council would be a completely separate entity from the PLA and that it would report to the Ministerial Committee which would comprise the Ministers responsible for the Prostitution Act, Health Act 1932, Family Services Act 1987 and Liquor Act 1992. The Ministerial Committee never formally met. The intention was that the PAC would focus on the underlying social problems that lead to an involvement in prostitution, that it would provide information and support to sex workers to encourage them to explore alternative employment options, and that it would provide advice to individual sex workers to help them improve their personal safety.

The PAC was disbanded in 2002 through amendment to the Prostitution Act. The reasons are not entirely clear, although the CMC's 2004 review of the Act and interviews with stakeholders conducted as part of this project suggest the group was large and unwieldy (the PAC had 13 members) and found itself unable to carry out its functions effectively. The CMC's 2004 review of the Prostitution Act also reported perceived conflict between the then Minister for Police and the PAC, as well as the breadth of the PAC's role and the inability of its members to reach consensus given the diversity of views represented on the Council. Interestingly, Regulating Morality hadn't intended that prostitution regulation would fall within the ambit of the Minister for Police. That report recommended that regulation be a responsibility of the Minister for Health.

When New Zealand decided to decriminalise prostitution in 2003, it did so with the support of only 40 per cent of the population. A commitment to the human rights and health and welfare of sex workers was the driving force behind the reform process and continues to inform its review and evaluation. The legislation set up a Prostitution Law Review Committee with a brief to undertake a statutory review of the Act three to five years after its inception, with specific questions about the impact of the legislation on the numbers of sex workers and the arrangements for helping people avoid or cease working as sex workers. 'The Committee comprised a nun, sex workers, brothel operators, a general practitioner, an academic, a city councillor, a criminologist, a public health official, social workers, representatives of non-governmental organisations and a retired policeman... the basis for working collaboratively was established through concentrating our efforts on the human rights, welfare, occupational health and safety of sex workers, and the prohibition of the use of young persons in prostitution' (Prostitution Law Review Committee 2008).

After the PAC was disbanded, some of its functions were subsumed within the responsibilities of the PLA. In addition to its probity and regulatory functions, and without additional funding, the PLA was charged with responsibility to:

- liaise with the QPS and other agencies prescribed under a regulation with a view to helping them carry out their functions in relation to prostitution;
- advise the Minister about ways of advancing and coordinating programs that –
  - (i) promote sexual health care;
  - (ii) help prostitutes to leave prostitution;
  - (iii) divert minors and other vulnerable persons from prostitution (especially opportunistic prostitution); or
  - (iv) raise awareness among prostitutes, judicial officers, police, community workers and the community about issues relating to prostitution; and
- advise the Minister about the development of codes of practice for licensed brothels.

The PLA itself has drawn attention to the conflict this raises, that the body with responsibility for regulating the legal prostitution industry is now also responsible for advising the Minister about ways to assist workers to leave the industry.

The CMC's 2004 review of the Prostitution Act mentions an inter-agency committee, formed informally in 2004, and recommends that a whole-of-government approach for addressing prostitution-related operational, inter-agency and emerging issues be formalised, and that the inter-agency committee receive continuing support from all of the government agencies involved, to ensure there is effective cooperation and open communication between them. Stakeholder consultations undertaken as part of this project indicate that the inter-agency committee had been a useful body but had only been convened on an 'as-needed' basis, and hadn't met in recent times. The Committee had been convened initially in response to Queensland Health's concerns about the operation of sexual health certificates. Having worked through this issue and having provided advice to the relevant ministers about how to resolve specific operational problems, some interviewees speculated that there was simply no further need for the



Committee to meet. One interviewee commented that the group lost momentum because, despite further follow-up of their recommendations about sexual health certificates, no action was ever taken.

In addition to the PAC, the Ministerial Committee and the inter-agency committee, there was the sex worker support organisation (SQWISI), which originally emerged in the 1970s as a volunteer, peer-based organisation. SQWISI was funded by Queensland Health from 1988 to provide a range of health and other services to sex workers. SQWISI had offices in Brisbane, the Gold Coast, Townsville and Cairns. It provided training for sex workers, brothel licensees and managers, and information, supplies, equipment, sexual health clinical services and an ugly mugs list<sup>3</sup> for sex workers. SQWISI also operated a website and undertook outreach services to brothels and street prostitution areas.

It is hard to get a clear picture of exactly why, in May 2007, SQWISI's Board of management decided to wind up the organisation and sack all staff. Some stakeholders claim there was conflict within the board and organisation about core business – focusing too much on licensed brothels and legality and too little on sex worker needs. Others say that SQWISI had lost its way, relying too heavily on health-based funding but delivering a range of services outside a strictly health-related scope. SQWISI had withdrawn its membership from a national body, Scarlet Alliance<sup>4</sup>, possibly indicating a move away from its traditional client base. Some say the management committee was unable to determine an appropriate strategic direction for the organisation and so voted to close down.

Currently in Queensland, there are two volunteer organisations, Crimson Coalition<sup>5</sup> and the United Sex Workers of North Queensland (USWNQ)<sup>6</sup>, which have been operating since 2004 and 2007 respectively to provide telephone counselling and email support to sex workers

as well as web resources. Neither of these organisations has funding from Government or any other source. The interim service established by Queensland Health in 2007 – which is now coming into its third year of operation – is Workers in the Sex Industry (WISI), run through Family Planning Queensland and available to answer telephone and email enquiries. WISI is one part-time worker who resides outside Brisbane. Whatever the reason for the ultimate failure of SQWISI, the effect has been that sex workers are now largely without independent, dedicated counselling, health services and advice. The PLA reports that many workers have turned to the PLA for information and support, but that almost all the issues raised relate to the Criminal Code and are therefore outside the PLA's scope. Other workers are turning to peers or brothel managers for support and advice.

This issue arose as part of this project because interviews with sex workers themselves indicated a gap in knowledge. The team interviewed a number of workers who were relatively new to the industry. These workers had never heard of SQWISI but they mentioned specifically, without prompting, how difficult it had been to access information about health and safety issues as well as support services and an understanding of the regulatory framework.

Lack of information is not only an issue for non-brothel workers, but for workers within the regulated framework as well. One brothel licensee informed the project that the one key source of information they have used to educate sex workers about sexually transmitted infections (STIs), the STD Handbook, is now out of print and considered by Queensland Health to have errors in the clinical information it contains. The licensee was advised by Queensland Health to use the internet as the most up-to-date source of STI information, but the licensee's experience is that sex workers do not all have access to the internet and are unlikely to access the SQWISI website in a public area such as a library<sup>7</sup>.

The HIV/AIDS, Hepatitis C and Sexual Health Coordinator in Queensland Health has advised the project team that some sexual health services have experienced a drop in the number of non-brothel sex workers attending clinics since SQWISI ceased operation. This is anecdotal but of concern in terms of worker and community health. Some sex workers interviewed commented on the difficulty of accessing sexual health checks. Some were unclear about particular legal issues and did not have a service where they could seek answers to their questions. At least two had learned about the industry by relying on other sex workers they met in a licensed brothel, before going out on their own. This included training in basic occupational health issues as well as dealing with difficult clients and providing for personal safety<sup>8</sup>.

Of sole operator sex workers, those from culturally and linguistically diverse (CALD) backgrounds are especially vulnerable, as they often have little or no connection with other workers in the industry. As a result, workers in these groups may be misinformed about the legal framework for prostitution, and have no connection with sexual health services. The Ethnic Communities Council of Queensland (ECCQ) reports having increased involvement with sex workers from CALD backgrounds who currently do not have access to appropriate services. ECCQ reports that these workers are reluctant to access existing health services, particularly because of fear of exposure, thus putting themselves and the community at risk.

Other issues, related to the regulatory framework itself, may be contributing to a lack of worker safety. The fact that outcall prostitution, from brothels and escort agencies, is not included in the current regulatory framework in Queensland is discussed later in this report. While there is no evidence as to whether outcalls are more high-risk than in-house prostitution, New Zealand's guide to occupational health and safety in the sex industry (Occupational Health and Safety Service 2004) makes the point that sex workers providing outcalls have safety and security issues particular to this form of sex work. The views of brothel owners and sex workers in Queensland are mixed, with some (generally those in favour of legalising outcalls) saying there is no difference in risk and others (those opposed) saying sex workers are more at risk doing outcalls. 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.

There are other systemic issues which may contribute to a lack of worker safety. In Queensland, sex workers can only work on their own or within licensed brothels. There are no provisions for sex worker co-operatives, where two or more workers provide support and backup for one another. If two workers provide even telephone answering services for one another, this is illegal. One sex worker interviewed for the project had been prosecuted for answering another worker's phone while the worker was in the shower. 'I took the booking because she was in the shower. It was a police officer. I'll have that conviction my whole life and all I did was answer a phone.' Sex workers and their advocacy organisations have made the point that Queensland's legislation, which makes it illegal for two or three workers to back one another up, creates a situation where legal sex workers are unsafe in their workplace. The response is often given that workers can join together to apply for a brothel licence, but the fees – currently at \$18,399 for a two-room premises<sup>9</sup> – would likely be prohibitive for three workers wanting simply to back each other up.

Amendments made to the Criminal Code in 1999 enabled sole operator sex workers to engage the services of a certified security guard. While it is unknown how many sole operators in Queensland have elected to engage a security guard, it is not a common practice. Certainly none of the 35 sole operators interviewed for this project had chosen to engage a security guard. As part of its recommendations regarding outcall prostitution, the CMC recommended that sole operator sex workers also be allowed to employ a driver or receptionist, provided that person is not a current sex worker. With Government's endorsement of these recommendations, legislation will now be amended to put this in place. It remains to be seen whether these changes will have an impact on worker perceptions and experience of safety in the workplace.

<sup>3</sup> The ugly mugs list formerly maintained by SQWISI provided a list of violent or threatening incidents experienced by sex workers and included a description of the client perpetrator. It was a resource provided to sex workers to assist them to avoid potentially dangerous clients.

<sup>4</sup> Scarlet Alliance is the Australian Sex Workers Association and aims to achieve equality, social, legal, political, cultural and economic justice for past and present sex workers.

<sup>5</sup> Crimson Coalition is the former Sexual Service Providers Advocacy Network (SSPAN) which changed its name in mid-2007 following SQWISI's closure. It is described as a group of current and former Queensland sex workers who work together to:

- uphold basic rights of sex workers;
- have input into Queensland sex industry law reform, health and safety services, industrial relations and community attitudes;
- keep each other informed about what is going on in the Queensland sex industry;
- find out the legalities of working in different venues;
- establish a safe network of sex industry professionals; and
- attend peer networked social outings.

<sup>6</sup> USWNQ is a group of concerned sex workers and ex-workers who gather to provide a support network to sex workers in North Queensland. The group was established in the wake of SQWISI's closure, based around the efforts of one ex-SQWISI staff member to maintain a support service, albeit unfunded, for local workers. USWNQ distributes a newsletter and provides bulk personal protective equipment (PPE), information and workshops (if required).

<sup>7</sup> The PLA has advised that a licensee is required to provide this information as a condition of their brothel licence. The onus is therefore on licensees to ensure sex workers are provided with up-to-date information about STIs.

<sup>8</sup> While it is probable that these workers had also undergone a formal induction at the licensed brothel where they were working (it is a condition of a brothel licence that an induction is provided to sex workers), it was their relationships with fellow workers that provided them with the peer insight and support that allowed them to feel confident working in the industry.

<sup>9</sup> This comprises an application fee of \$5,500, a licence fee of \$2,165 and a room fee of \$2,867.

Queensland Health commissioned a study of sex worker needs which reported in 2008. It is understood that the recommendations of that report – which found almost universal agreement among stakeholders about the need for a sex worker organisation and the services it should provide – are under consideration by Queensland Health, which is in the process of replacing the sex worker support program. But a new service is not expected to be up and running until late 2009 and Queensland Health has articulated its intention to balance the needs of a range of at-risk groups in an environment where funding is scarce and hard-won. The low prevalence of STIs among sex workers was provided as evidence by Queensland Health that scarce dollars might be better spent on higher risk groups such as gay men.

In summary, a number of changes to the regulatory framework in Queensland which might serve to improve safety for sex workers, including provision for two or three workers to work cooperatively, have not thus far been included in the framework. Sex workers are potentially more vulnerable in 2009 than they were when the Prostitution Act was passed if for no other reason than the two bodies with some responsibility for their health and safety, the PAC (through legislative amendment) and SQWISI (through a decision by the SQWISI Management Committee), are no longer operating. While there are moves to provide for a SQWISI-like service for workers, there is no plan to replace the PAC with an independent body which can carry out the PAC's functions. If they are working within the regulated brothel system, Queensland's sex workers must rely on managers, licensees and other workers for support. If they are outside the brothel system, they are on their own. If they are working in the street-based sector, they are almost certainly at increased risk of harm.

In one sense, conflict about the role of SQWISI and about the role of the PAC was inevitable. It would be difficult even in a climate of general agreement about the role of prostitution regulation to organise and manage sex worker advocacy and support services. In Queensland, it has been made more difficult because the original legislation, and subsequent amendments, have sought to respond to competing interests rather than to establish a logical policy position. For sex workers within the licensed brothel

industry the recent changes mean that the PLA is now the body with responsibility for ensuring their health and safety. And for both these workers and sexworkers in illegal brothels and escort agencies, the changes mean there is currently no dedicated, independent, government-funded health and counselling service available to Queensland sex workers. In this respect, Queensland is nearly alone in Australia, with all other jurisdictions but Tasmania having a service of this nature in operation. Because Queensland's regulatory framework is not based on a set of principles or policy objectives which can guide regulators it becomes increasingly difficult to chart a course into the future.

### The policy framework underpinning regulation

*There is no doubt Queensland now has a safe and effective legal brothel industry... better, we believe, than that of any other state in Australia.*  
(CMC 2004)

*It's like we're trying to run an industry with both hands tied behind our backs.*  
(Queensland brothel licensee)

Queensland's regulatory framework for prostitution is unique in Australia and possibly the world. Sole operator sex workers have always been able to work from their own premises or provide outcall prostitution services. Since 1999, they have been able to employ a certified security guard and soon they may be able to employ a driver or receptionist (albeit with certain conditions), but, as discussed above, they cannot work with another sex worker in a cooperative arrangement unless they apply for and are successful in attaining a brothel licence. Since 2000, prostitution has also been legal within licensed brothels that can now have up to five rooms and up to eight sex workers but cannot do outcall prostitution. Following Government's October 2008 acceptance of the CMC's 2006 recommendations, outcalls will remain illegal, at least for the foreseeable future, both from licensed brothels and escort agencies which, in Queensland, cannot provide sexual services. Outcalls will continue to be legal for sole operator sex workers.

Figure 1 below depicts the current regulatory framework in place in Queensland.

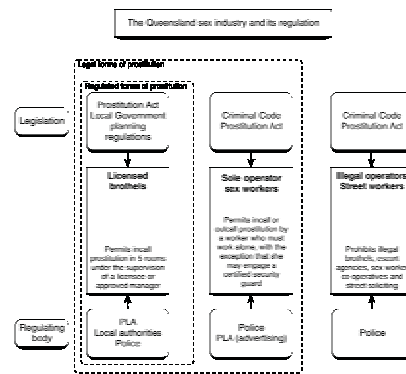


Figure 1: The regulation of prostitution in Queensland

#### Other states have different regulatory frameworks:

- NSW has decriminalised prostitution but elements of it are regulated under various legislation.
- Victoria has a licensed framework, similar to Queensland (although permitting outcalls), although up to two sex workers are able to work together legally and escort agencies are included as a licensed business.
- The ACT has a registration model in place, requiring both brothels (which must be sited within particular areas) and sole operators to register.
- The NT only permits escort agencies, which must be licensed, and requires sole operators to register with police.
- Legislation in WA, which provides a licensing scheme for 'sexual service businesses' and allows up to two workers to work together in a 'small sexual service business', was passed in 2008 but has never been proclaimed.

- Prostitution is still criminalised in South Australia and Tasmania.

Unsurprisingly perhaps, the legal prostitution sector in Queensland is small. While the expectations of prostitution regulation were that there would be over 80 brothels across the state, there are currently 23. According to the CMC's 2004 review of the Prostitution Act, only 10 per cent of the State's prostitution occurs within licensed brothels. The rest is through legal but unregulated sole operators and illegal and unregulated operators, both escort agencies and brothels.

Licensing and auditing of brothels is the responsibility of the PLA which is a statutory authority whose Board reports to the Minister for Police. The Authority's Chief Executive Officer reports to the Board. The Authority's probity function is supported by QPS, through the Prostitution Enforcement Task Force (PETF), which undertakes particular probity tasks in relation to potential licensees and investigates any criminal activity in relation to licensed brothels as well as in relation to the illegal industry.

