

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.

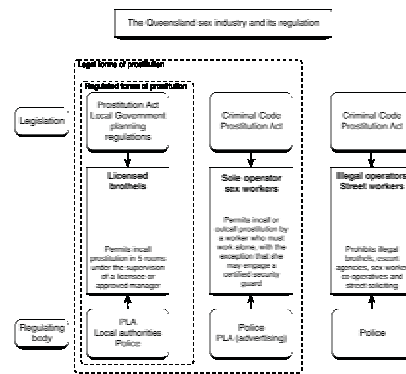


Figure 1: The regulation of prostitution in Queensland

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.



Under the Act, the PLA is responsible for:

- deciding applications for a brothel licence or manager's certificate and collecting associated fees;
- monitoring the provision of prostitution through licensed brothels, conducting associated disciplinary proceedings and reporting possible offences to relevant government agencies;
- receiving complaints about prostitution;
- liaising with relevant government agencies to assist them conduct their functions under the Prostitution Act;
- advising the Minister about promoting and coordinating programs to divert people from prostitution, raise public awareness about prostitution and promote sexual health care; and
- advising the Minister about the development of codes of practice for licensed brothels.

As indicated earlier in the report, the Prostitution Act has one objective which is to regulate prostitution. In order to review the effectiveness of the Act, in 2004 the CMC turned to the explanatory notes accompanying the Prostitution Bill which set out some broad objectives that could be reported on to demonstrate the Act's success (these objectives were repeated in the second reading speech for the Prostitution Act). These are to:

- ensure quality of life for local communities;
- safeguard against corruption and organised crime;
- address social factors which contribute to involvement in the sex industry;
- ensure a healthy society; and
- promote safety.

The CMC's review concluded that the Act had been successful in achieving the broad objectives set out above and that organised crime was not a feature of Queensland's licensed prostitution industry. But the reality is that while

the Prostitution Act may have succeeded in quarantining the regulated sector from organised crime, it is impossible to know what is going on in the other unregulated sectors of the industry, among sole operators and in the illegal brothels and escort agencies.

The 1991 report on which prostitution regulation in Queensland is premised, *Regulating Morality*, made the important point that 'an industry which operates underground is a potential target for involvement of organised crime. Once organised crime is involved, the potential for police corruption is increased'. In Queensland, this was a powerful rationale for decriminalisation of prostitution and the resulting regulatory framework. Some of the interviews conducted for this project have included unsubstantiated claims about possible involvement of organised crime in the illegal sector and also the potential for corruption. The project has no way of judging the veracity of such claims.

The objectives set out in the Bill's explanatory notes are weaker than the original principles set out in *Regulating Morality* which were that:

- irrespective of what option was selected, the protection of children from exploitation and coercion should be paramount;
- measures should ensure the protection of sex workers and their clients (and thereby the community) against health risks;
- any law reform should make sure that prevention of criminal involvement and corruption was given high priority;
- any system of control should ensure the prevention of exploitation of sex workers; and
- the option selected for dealing with prostitution-related activities should be cost-effective.

The Criminal Justice Commission (CJC) developed these principles after reviewing the literature as it then existed, examining in detail the models in place in other jurisdictions and with the results of a large survey of Queensland attitudes to regulation firmly in mind.

When changes to the regulatory framework are considered, it is impossible to make reasoned decisions within a policy context, because in Queensland, there is no policy context

in which to place the decision. This difficulty is seen nowhere more clearly than in the recent consideration of the issue of outcall prostitution. The initial drivers for this research project included concern about the need to enhance the viability of the existing licensed brothel industry to encourage illegal operators into the regulated sphere and calls from within the industry and from the PLA to review the CMC's 2006 findings on outcall prostitution. As indicated earlier in the report, Queensland is unique in Australia in that brothel prostitution is legal within licensed brothels but licences don't extend to outcall prostitution, where a prostitute visits a client. A number of brothel licensees had seen outcalls as a logical next step in their development; others had seen them as a necessity if they were to survive. There had been broad support for outcalls among stakeholders and the expectation had been that the CMC would recommend in favour of outcalls. But the CMC recommended against outcalls, primarily because it was unsure whether legalisation of outcall prostitution might lead to growth overall in the sex industry. The CMC was also unable to gain agreement with brothel licensees on a model for outcall prostitution (in its report the CMC said it would have been happy with a heavily regulated model but this was not acceptable to the industry).

In August 2008, when this project was commissioned, Government had not made any decision in relation to the CMC's 2006 recommendations and the project brief included a specific question about outcall prostitution. But during the research phase of the project, in October 2008, Government adopted the CMC's recommendations. The project was modified to focus primarily on the broader question of how the sex industry in Queensland might be better regulated. Invariably, outcall prostitution was raised as an issue within this context but the broader question has proven more relevant to Queensland's current situation. Considerations relevant to outcall prostitution are presented here to inform any future process of change.

The CMC estimated in its 2004 review of the Prostitution Act that 75 per cent of all prostitution in Queensland was outcall prostitution. This included legal outcalls by sole operators and illegal outcalls by illegal brothel and escort agency workers. At the time of its 2004 review, in spite of strong advocacy from the legal brothel industry, the CMC decided not to recommend any change in the legislation to allow outcalls from legal brothels at that stage. The CMC did undertake to conduct a specific inquiry on the issue of outcalls which was completed during 2006. Following this inquiry, the CMC decided to recommend against allowing outcall prostitution, based on an argument that

outcalls might increase overall the amount of prostitution in Queensland, applying a self-defined 'precautionary' principle:

There is no way of predicting whether the legalisation of outcall services from licensed brothels and/or independent escort agencies in Queensland would contribute to an increase in demand in Queensland. However, there is also no evidence on which to assert that this will not occur; nor that any such increase in demand could be controlled in some way. Applying the precautionary principle, therefore, we are not prepared to make recommendations that could force that risk on Queensland. (CMC 2006)

The CMC's 2006 recommendation, together with recommendations designed to toughen up policing of illegal operations, have recently been approved by Cabinet. At the time of writing, they are yet to be implemented. They have been roundly criticised within the industry. Except for a minority of brothel licensees and about half of sole operator sex workers, none of the stakeholders interviewed as part of this project had any objections to the legalisation of outcalls. These included PETF within QPS, the Department of Justice and Attorney General (JAG) and the Local Government Association of Queensland (LGAQ).

The CMC's primary argument against legalising outcalls, its conservative approach, might have been made as an argument for criminalising all prostitution in Queensland, not just outcall prostitution. The CMC report on outcalls makes much of the situation in Victoria, where the regulatory model allows for brothels providing outcalls, escort agencies, sole operators and sole operators working in pairs. The argument is that despite the regulatory framework in Victoria the industry has grown overall, the illegal industry has been pushed underground, criminal involvement has increased and the industry is more dangerous (Sullivan & Jeffreys 2002). These claims were not supported by regulators in Victoria. Interviews undertaken as part of this project (see Appendix B) suggested that if there has been growth in the industry since legislation was passed, it has been modest. There is a flow-on argument, referred to in the CMC's report and a feature of Sullivan's work for the Coalition Against Trafficking in Women, that when there is increased demand for prostitution, which outcalls might encourage, brothel owners are more likely to fill the gap with trafficked women and girls (Sullivan 2005).

This argument is hard to sustain. By all accounts, the illegal prostitution sector in Queensland – escort agencies and small illegal brothels – is healthier than ever and currently operates with impunity, as a cursory review of any weekend personal advertisements or search for internet sites reveals. In 2004, the CMC estimated that 75 per cent of all prostitution in Queensland was outcall prostitution. No one could claim to know what involvement, if any, organised crime, trafficking and underaged workers have in this largely ignored sector.

In the Netherlands, a ban on brothels and pimping was lifted in 2000 – legalising voluntary prostitution – concomitantly with changes to the Criminal Code to crack down on involuntary forms of prostitution (trafficking and underage prostitution). Before 2000, prostitution itself was not nor had it ever been illegal but there had been a general ban within the Criminal Code on brothels and pimping (third party involvement), regardless of coercion. The changes aimed to make it possible to reorganise the prostitution sector and purge it of criminal activities. There are general regulations for sex business owners on the working conditions and safety of employees, and a municipal licensing scheme that has proven effective for location-bound prostitution (brothels, windows, clubs). Regulation of non-location-bound prostitution (escort services) is less well-developed, with some municipalities providing no licensing of escort services.

An initial evaluation was carried out in 2001 and a second in 2006. The 2006 study was large, combining the results of a questionnaire completed by 384 municipalities (which have much of the responsibility for regulation of prostitution), a qualitative study in six municipalities (67 interviews with officials, licensees, sex workers and police), in-depth interviews with sex workers (354) and owners (49) in the licensed sector and a study of the illegal sector, using informants and desk research to locate 190 people involved who were interviewed.

The researchers found that both the demand and supply of prostitution services had declined in the period between studies, rather than increased. This was attributed to economic downsizing and growth in the internet rather than the lifting of the brothel ban. It was suggested that prostitution had been overtaken by other options, such as web-cam sex and couples clubs (Daalder 2007).

The researchers found no evidence of involuntary prostitution in the fieldwork in the legal sector, although

they acknowledge that voluntariness is difficult to assess absolutely. There did not appear to be a reduction in the number of pimps. In the illegal sector, there were indications of involuntary prostitution, in small numbers. There was no evidence of underage prostitution in either the legal or illegal sectors, although once again it was accepted that it is difficult to get clear answers about the occurrence of underage prostitution (Daalder 2007).

Like the Netherlands, New Zealand's 2003 prostitution reforms led to decriminalisation of prostitution but the New Zealand reforms had a different emphasis from those in the Netherlands. In New Zealand, a commitment to the human rights and the health and welfare of sex workers was the driving force behind the reform process and continues to inform its review and evaluation: 'While the Prostitution Reform Act expressly takes a neutral stance on the sex industry (decriminalising it while not endorsing or morally sanctioning it), it implicitly promotes exiting the industry' (Prostitution Law Review Committee 2008).

The Prostitution Reform Act established the Prostitution Law Review Committee with a brief to undertake a statutory review of implementation of the Act three to five years after its inception. Specific research questions included the impact of the legislation on the numbers of sex workers and the arrangements for helping people avoid or cease working as sex workers. New Zealand's experience has thus been the subject of evidence-based research into a range of issues including the impact of decriminalisation on sex worker numbers as well as sex worker health and safety, licensing arrangements and underage prostitution and trafficking.

The Prostitution Law Review Committee was able to provide meaningful comparative data for Christchurch between 1999 and 2006. While there was a trend for workers to move from the managed to the private sector, the increase overall in sex workers was small (from 375 to 392). Comparisons were not possible for other cities and the Report points to the difficulties in accurately estimating the total number of sex workers. When the Prostitution Reform Act was passed, a 400 per cent increase in the number of sex workers had been predicted. This had not come to pass.

Arguments that decriminalisation has increased the numbers of people in the sex industry are largely founded on the flawed assumption that decriminalisation would increase the numbers of people involved in prostitution... the enactment of

the Prostitution Reform Act has had little impact on the numbers of people working in the sex industry. (Prostitution Law Review Committee 2008)

It is beyond the scope or role of this project to suggest a policy position for Government and it is difficult to recommend ways forward outside a policy position. There can be no going back from a regulated model in Queensland – we have 23 licensed brothels operating (current at time of writing), some comfortably, others not so comfortably, still others struggling to stay afloat. There are a number of possible ways forward, including expanding the legal sector to include outcalls, sex worker collectives and effective programs to help workers leave the sex industry. Studies undertaken in international jurisdictions, conducted since the CMC completed its 2004 and 2006 reviews, are the first attempts to systematically evaluate new regulatory frameworks. They provide some interesting ideas and have been included here to inform further work in this area. Further work is surely needed.

What licensees want

There was wide diversity in the views of the interviewed licensees and managers about what would improve the regulation of prostitution. The issue of outcalls clearly divided the group in two, with some strongly in favour of adding outcalls to the current licensing framework, and others strongly against. Several interviewees were more in favour of increasing the number of rooms, although all interviewees commented that the ability to have as many as eight workers on the premises had never worked, with problems then arising with an inadequate number of rooms

to match the number of workers. Allowing alcohol and allowing some flexibility in the types of entertainment that can be provided for waiting clients were other suggestions that would make the operation of the brothel more client-friendly.

A number of licensees and managers felt there was a need to regulate sole operators and require them to have in place the same degree of health and safety measures as currently exist in a licensed brothel. Some also suggested sole operators should be required to register which would make policing illegal operators easier. Some wanted there to be no provision for sole operator prostitution.

Most licensees and managers agreed there needs to be a higher level of enforcement of illegal operators, including through advertising. Many licensees feel they cannot compete with illegal operators who seem to run their business with impunity, are able to offer outcalls and who have no overheads.

Many interviewees wanted less regulation, or a model of self-regulation for the licensed industry, with reduced fees and the ability to advertise for workers. In other words, they expressed a desire to see prostitution operating just like any other business.

It is interesting that, despite having a body to represent their views (the Queensland Adult Business Association), there was great disparity in the views and concerns expressed by brothel licensees and managers. A number of licensees indicated they did not feel the Association represented their interests.

