

Regulation of the Sex Industry in Tasmania

Discussion Paper

2012

**Hon. Brian Wightman MP
Attorney General
Minister for Justice**

INTRODUCTION

Background to the Discussion Paper

In 2008, a review of the *Sex Industry Offences Act 2005* was conducted by the Department of Justice. The Review was tabled in Parliament in 2009.

The Review contained feedback from key stakeholders who considered the Act had not been effective in achieving its objective of protecting sex workers from exploitation in the industry.

The Review recommended that Government consider the suitability of alternative legislative models for application in Tasmania.

Under Tasmanian law it has never been illegal to be a sex worker and a change to this is not being proposed. The Discussion Paper is intended to consider options to improve Tasmania's legislation in respect of sexual services provided for fee or reward to and by consenting adults.

Coerced and involuntary adult sex work or trafficking for purposes of sexual exploitation are criminalised already in Tasmanian law and no change to this is proposed. Discussion of this topic is therefore outside the scope of the discussion paper.

The sexual exploitation of children is illegal in this State and will always be illegal. Tasmania's *Criminal Code Act 1924* and the *Sex Industry Offences Act 2005* contain provisions prohibiting the sexual exploitation of children.

There is no debate on the need to protect children from involvement in the sex industry. In the wake of the horrifying case of child prostitution in late 2010, the then Attorney-General requested that the Tasmanian Law Reform Institute (TLRI) advise on whether there was a need to review sections 14, 14A and 124 of the *Criminal Code* and any other issues of law raised by the case.

Because the TLRI is already considering whether the laws protecting children from involvement in the sex industry require reform, this discussion paper does not address that issue. The TLRI is best placed to conduct an analysis of any shortcomings in the present law and the Government will act as necessary to strengthen existing provisions.

How to respond to the Discussion Paper

The Paper invites written submissions from relevant organisations and the general public on potential reforms to the *Sex Industry Offences Act 2005*.

The Paper can be accessed at www.justice.tas.gov.au

At that website you will also be able to access the following documents (or links to them):

- *Sex Industry Offences Act 2005* (Tasmania)
- *Prostitution Reform Act 2003* (New Zealand)
- Tasmanian Parliamentary Community Development Committee Report “*The Need for Legislative Regulation and Reform of the Sex Industry in Tasmania*” (Report No. 8 of 1999)
- *Report of the Review into the Sex Industry Offences Act 2005* (Tasmania)

Please ensure your submission reaches (either by post or email) the addresses below by 9 March 2012

Post: Project Manager
 Sex Industry Review
 Department of Justice
 GPO Box 825
 HOBART TAS 7001

Email: legislation.development@justice.tas.gov.au

For further information, you can phone the Project Manager on (03) 6233 2445.

- PART 1** **Legislative models (terminology)**
- PART 2** **The sex industry in Tasmania**
- PART 3** **Australian sex industry laws (summary)**
- PART 4** **Legislative approach in other jurisdictions
(Queensland, New South Wales, Sweden, New Zealand.)**
- PART 5** **Supplementary issues for discussion
(registration, planning, advertising)**
- PART 6** **Conclusion and consultation points**

PART I - Legislative approaches to the sex industry (terminology):

Legislative approaches to the sex industry are generally described in terms of criminalisation, decriminalisation, or licensing.

Criminalisation involves outlawing or prohibiting the sex industry by making sex work a criminal offence for either the client or the sex worker, or both, or by making it a criminal offence to operate a sex industry business. Sex work may be either wholly criminalised: for example in Sweden brothels are prohibited and the purchase of sexual services is a crime, or partially criminalised as is the case in Tasmania, where it is lawful to be a sex worker, but it is an offence to work as a street worker or run a business that employs sex workers.

Licensing involves determining the legal conditions under which the sex industry can operate. A government licensing authority or function is established to administer and regulate the industry. Non-compliance is a concern with this model and police are engaged to address non compliance. Sex industry operations are regulated through licensing in Queensland and Victoria (for example). New Zealand, although largely decriminalised, requires the operator of a business of prostitution to hold an operating certificate.

Decriminalisation involves the removal of criminal laws relating to sex work. Sex work is subject to general laws and sex worker businesses are regulated in the same way as other businesses in respect of occupational health and safety, industrial laws, taxation, immigration, planning laws and criminal laws. For example in New South Wales sex work is decriminalised and sex work businesses are subject to normal planning, building and occupational health and safety controls. In New Zealand prostitution is largely decriminalised enabling the businesses to operate under general health and employment laws.

PART 2 – The Sex Industry in Tasmania

It has never been illegal to be a sex worker in Tasmania. However, prior to 2005 some related activities, such as using premises as a brothel or living on the earnings of prostitution, were illegal.

In the 1990s most Australian jurisdictions made changes to their legislative approach to the sex industry, moving away from criminalisation, towards regulation.

In 1999 the Tasmanian Parliamentary Community Development Committee presented its report entitled *The Need for Legislative Regulation and Reform of the Sex Industry in Tasmania* (Report No. 8 of 1999).

As part of its consideration of the sex industry, the Committee received submissions and conducted public hearings around Tasmania.

The Committee concluded that:

“Public health concerns, the need to protect children from exploitation and evidence of criminal activity associated with the sex industry in Tasmania have led the Committee to conclude that reform and regulation of the industry is essential. The Committee does not condone or champion the cause of the sex industry but recognises that effective reforms cannot be enacted on an industry that operates ‘underground’ and is not accessible to health and other regulatory authorities.

The Committee sees the reform of the sex industry as a matter of harm minimisation and social justice. The protection of children from exploitation by the sex industry, the protection of public health and the welfare of sex workers will be strengthened through the legalisation of commercial sex services under strict planning and licensing controls that exclude unscrupulous operators.”¹

The summary findings and recommendations of its Report are contained in Appendix A to this Discussion Paper.

Current Tasmanian Legislation – Sex Industry Offences Act 2005

The current Tasmanian legislation:

- Includes offence provisions relating to the involvement of children in prostitution to ensure that Tasmania meets its international obligations under the United

¹ Community Development Committee Report on the Need For Legislative Regulation and Reform of the Sex Industry in Tasmania 1999 Report No.8 P 4

Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;

- Provides that it is illegal for a person to employ or otherwise control or profit from the work of individual sex workers;
- Allows two sex workers to work together in a partnership arrangement, provided neither controls or manages the other;
- Makes it an offence to offer or procure sexual services in a public place – making street prostitution illegal for both worker and client.
- The Act uses the term ‘sexual services’, which is defined as meaning:
 - (a) an act of sexual intercourse; or
 - (b) any activity where there is any form of direct physical contact between two or more persons for the purpose of the sexual gratification of one or more of those persons including, without limitation, the masturbation of one person by another.
- The Act defines a sexual services business as providing sexual services for fee or reward.
- The Act also establishes a range of offences relating to coercion of sex workers.

Review of the *Sex Industry Offences Act 2005*

The 2005 Act included a requirement that it be reviewed within three years of commencement. This review was undertaken in 2008 and the *Report on the Review of the Sex Industry Offences Act 2005* was tabled in Parliament in 2009. The conclusions and recommendations of the Report are set out in Appendix B of this Discussion Paper.

From the submissions received by the Review it was clear that the *Sex Industry Offences Act 2005* had not been effective in achieving its objective of protecting sex workers from exploitation in the industry.

The review concluded that businesses that may have some characteristics of a commercial sexual services business continued to operate in Tasmania and a significant number of sex workers chose to work collectively in these businesses.

Specifically, the Report recommended that Government consider the suitability of alternative legislative models for adoption in Tasmania.

What does the sex industry in Tasmania look like?

Tasmania is an island state with a small, relatively stable and regionally dispersed population. These factors impact on the extent of demand and supply in the sex industry.

There has been limited research on sex workers in Tasmania and the research that has been conducted is not comprehensive. It also has been mainly focused on sex workers rather than management or clients.

Scarlet Alliance (the Australian Sex Worker Association) states that the industry in Tasmania is relatively small scale and transient, with differences in the nature of the industry in each regional area. For example according to Scarlet Alliance, most of the industry in Hobart involves private workers working part-time, and workers who travel to Hobart from interstate and typically work for about a week, returning every few months.

Scarlet Alliance states that there are shared premises (not brothels) in Hobart, Launceston and Devonport but that workers in the North West are more transient.

Although the gender breakdown is unknown, there is little to suggest that Tasmania would not mirror other jurisdictions in Australia and overseas, meaning the majority of sex workers are female.

A 1998 study of Tasmania's sex industry noted that sex workers want a normal workplace environment with improved workplace standards and conditions, and greater acceptance and awareness of the sex industry in the community as a legitimate industry.²

The demand side of the sex industry also bears consideration but there is little data on the clients of sex workers.

An Australian survey conducted in the early 2000s showed that 15.6% of men aged 16-59 have paid for sex at least once in their life, and 1.9% had done so in the past year³.

² Curran, Nahmani & Gamlin *Study into the sex industry in Tasmania* Department of Community and Health Services 1998

³ Rissel, Richters, Grluch, Smith *Sex in Australia: Experiences of commercial sex in a representative sample of adults* Australian & New Zealand Journal of Public Health 2003

PART 3 – Australian Sex Industry Laws

Legislation

All Australian States, except South Australia, have legislated to decriminalise the sex industry to a greater or lesser extent. The following Table summarises relevant aspects of the current law:

State	Law	Independent Worker	Brothel	Outcall Agencies
NSW	<i>Restricted Premises Act 1943 and Disorderly Houses Amendment Act 1995</i>	No licence required No specific planning requirements	No licence required. Only planning law applies – Local government can apply to <i>Land and Environment Court</i> to close a brothel if there have been sufficient complaints.	No licence required
Vic	<i>Prostitution Control Act 1994</i>	No licence required but must register with Business Licensing Authority. Up to 2 people may work together.	Must be licensed. Limited to 6 rooms and must be personally supervised. N.B. Section 10(3)(b) requires planning permit as well as a licence to have been obtained before a business owner can avoid a charge of “living off the earnings” and section 80 requires licence and planning permit to avoid declaration as a “proscribed brothel”	Must be licensed
Qld	<i>Prostitution Act 1999</i>	No licence required but must work completely alone. No specific planning requirements	Must be licensed. Limited to 5 rooms and no more than 8 workers. S 15 provides that licence application need not be considered until (planning) development approval	Illegal

State	Law	Independent Worker	Brothel	Outcall Agencies
			given.	
ACT	<i>Prostitution Act 1992</i> (Currently under Review)	Registration required. No specific planning requirements.	Registration required. Restricted to certain areas.	Registration required. No specific planning requirements
NT	<i>Prostitution Regulation Act</i>	No licence required. No specific planning requirements.	Illegal.	Licence required No specific planning requirements
WA	<i>Prostitution Act 2000 & Criminal Code 1913</i> (New legislation currently being considered)	No licence required, no specific planning requirements.	Illegal to manage premises for purposes of prostitution under Code.	No licence required, no specific planning requirements
SA	<i>Summary Offences Act 1953</i>	No licence	Illegal	Illegal

The Table above is not comprehensive but illustrates the variation in sex industry laws in Australian States and Territories. For example brothels but not outcall agencies may be licensed in Queensland, but the opposite is true in the Northern Territory. In Western Australia and South Australia brothels and outcall agencies are illegal. These businesses exist, but operate outside the legislation. In a recent study published in the Australian and New Zealand Journal of Public Health, it was found that on a per capita basis the number of brothels in Melbourne, Sydney and Perth was broadly comparable despite the difference in the legal status of such establishments in each city⁴.

In both Victoria and Queensland prior planning permission is required to obtain a brothel licence which may mean that a number of businesses which are in all other respects eligible for a licence remain “illegal”.

⁴ Harcourt et al *The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers*
Australian and New Zealand Journal of Public Health 2010 Vol 34 No 5 P 482

PART 4 – Legislative models in other jurisdictions

This Discussion Paper outlines legislative models applying in Queensland and New South Wales, as well as Sweden and New Zealand as examples of different ways in which the sex industry has been regulated. You are welcome to discuss other legislative models in your submission.

Queensland

In the early 1990s, research conducted by the Queensland Criminal Justice Commission “revealed a strong view in the community that prostitution existed across Queensland communities, that it should not be illegal to sell sex from a brothel and that street-based sex work should be against the law.”⁵ In 1999, the *Prostitution Act 1999* was passed, coming into effect in 2000.

The five aims of the Prostitution Act, as nominated by the Queensland Government when the Bill was introduced were:

- ensuring quality of life for local communities;
- safeguarding against corruption and organised crime;
- addressing social factors which contribute to involvement in the sex industry;
- ensuring a healthy society; and
- promoting safety.

The *Prostitution Act 1999* established the Prostitution Licencing Authority (PLA) which is responsible for issuing brothel licences and managers’ certificates and generally monitoring legal brothels.

Under the Act, a single sex worker can legally work alone without a licence. Sex work conducted in a licensed brothel is also legal.

Street work is illegal as are outcall services except where provided by a single independent worker. It is illegal for two independent sex workers to share premises, even on a split-time basis.

A brothel licence or manager’s certificate will not be issued to anyone who has been convicted of a disqualifying offence. The PLA must also refuse to issue a licence or certificate if they are of the opinion that the person is not suitable, holds an interest in another brothel or holds a licence or permit under the *Liquor Act*.

The PLA holds a Register which records details of persons to whom a licence or certificate has been issued.

Advertisements for sexual services must be in an approved form. The PLA issues guidelines against which an advertisement can be self-assessed.

⁵ Queensland Crime and Misconduct Commission *Regulating Prostitution; an evaluation of the Prostitution Act 1999 (Qld)* 2004 P 2

Since the *Prostitution Act 1999* commenced there have been three reviews of the operation of the Act by the Crime and Misconduct Commission.

The first review in 2004 addressed the effects of the legislation generally while the second review in 2006 concentrated on whether or not brothels or escort agencies should be able to provide outcall services. The 2011 review was not intended to be as far reaching in scope as the previous one and focused on updating the picture of the sex work environment in Queensland with particular emphasis upon the extent to which the principles underlying the Act have been achieved⁶.

The 2004 reviews found that the Act had led to a safe and healthy licensed brothel industry in Queensland but also that “only about 10 per cent of all prostitution services available in Queensland (were) operating within the legal brothel system”⁷.

The 2004 Review also reported that “sole operators, because of the very nature of the insular environment in which they operate, are at greater risk of violence while providing sexual services than their counterparts who work in the licensed brothels”⁸.

“The CMC was told that the impact of licensed brothels on the community had been minimal, and that... the impact on the community of work undertaken by sole operators in their own homes was also thought to be minimal, but concerns about the impact on the community of street-based sex workers remained high”⁹.

It was also found that large-scale organised crime was virtually nonexistent in the Queensland sex industry.¹⁰

The 2006 review recommended against the legalisation of outcall services from licensed brothels or escort agencies. The CMC stated that it was “unable to find any evidence — and none was submitted to us — that legalising outcall services from licensed brothels or escort agencies in Queensland would improve the health and safety of sex workers providing these services, or minimise the size of the illegal industry. As a result, we are now firmly of the view that the risks associated with the legalisation of outcalls from either licensed brothels or independent escort agencies (which might include an expansion of the industry overall, and/or an increase in illegal activity either within the industry or more broadly across the state), are simply not worth taking”¹¹.

The 2011 Review was tabled in the Queensland parliament on 29 June 2011. It found that the position in Queensland has remained relatively stable, and that the legislative objectives are generally being achieved. It identified that licensed brothels:

⁶ *Regulating Prostitution – A follow up review of the Prostitution Act 1999*, Crime and Misconduct Commission Queensland p xi

⁷ Crime and Misconduct Commission, Queensland *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld) 2004* pxii

⁸ *Ibid*

⁹ *Ibid* p xiii

¹⁰ Crime and Misconduct Commission, Queensland *Regulating Outcall Prostitution 2006* pix

¹¹ *Ibid* p x

- have minimal impact on community amenity;
- show no evidence of corruption and organised crime (other than illegal prostitution);
- have access to exit and retraining programs for sex workers who may wish to leave the industry; and
- provide a safe workplace and a healthy environment in which to carry out prostitution.

However the CMC called on the government to action two previous recommendations, which although supported are yet to be fully implemented. They relate to the establishment of an inter-agency Ministerial Advisory Committee to address issues facing Queensland's sex industry, and a tightening of the legislation linked to advertising to prevent illegal operators masquerading as legal enterprises.

The review can be accessed at:

<http://www.cmc.qld.gov.au/asp/index.asp?pgid=10911>

The percentage of the sex industry that operates outside of the legal framework remains a major problem for the regulation of the Sex Industry in Queensland¹².

New South Wales

The *Disorderly Houses Amendment Act 1995* amended the *Disorderly Houses Act 1943* (renamed the *Restricted Premises Act 1943* in 2002) to decriminalise brothels.

The only objective set out in the Act itself (section 20) stated “The enactment of the *Disorderly Houses Amendment Act 1995* should not be taken to indicate that Parliament endorses or encourages the practice of prostitution, which often involves the exploitation and sexual abuse of vulnerable women in our society.”

However, at the time the Act was introduced, the Minister for Police stated that “The Government cannot legislate to control the moral values of the community, and prostitution per se is not illegal. However, the Government can and should legislate to reduce public health risks to both the prostitutes and their clients and to protect the community, particularly its young people, from the more undesirable aspects of prostitution.”¹³

Currently in New South Wales brothels, like any other business, are regulated through environmental planning instruments under the *Environmental Planning and Assessment Act 1979*, occupational health and safety requirements which are overseen by Workcover NSW and public health laws administered by NSW Health.

A Council can also apply to the Land and Environment Court under the *Restricted Premises Act 1943* for the closure of a brothel on the grounds that the brothel is having

¹² Prostitution Licensing Authority Annual Report 2010-11, Queensland Government, sighted 2/8/11, <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/annualReport/2010/documents/Environment.pdf>

¹³ NSW Hansard, 20 September 1995

a significant detrimental effect on the local community and that sufficient complaints have been received from nearby residents or occupiers to warrant its closure .

In New South Wales a brothel is defined as premises habitually used for the purposes of prostitution, or that has been used for that purpose and are likely to be used again for that purpose.

Currently, about half of the local councils in NSW have prepared Local Environment Plans to identify locations where brothels may operate. Where Local Environment Plans do not specifically define brothels or state where they are permitted or prohibited, then brothels are generally permitted where other commercial premises are permitted to operate. In some areas, this includes residential zones.¹⁴

Because brothels are required to comply with planning laws in New South Wales, references to “illegal” brothels in that State are references to brothels that operate without relevant planning permission or in an area where brothels are not permitted.

The Brothels Task Force was established by the NSW Attorney General and the Minister for Urban Affairs and Planning in January 2000, and reported in November 2001. The Task Force was commissioned to monitor the regulation of brothels by local councils and to assess the success of occupational health and safety programs for sex workers, their clients and the public. The Task Force found that:

- The objectives of the 1995 reforms were still relevant and appropriate, and the regulation of brothels through the planning system can be an effective means of control. However, local councils need further support to optimise the potential of the planning system and some councils were experiencing difficulties in enforcing the planning regulation of brothels.
- The 1995 reforms had a positive impact on access for workers to health services and occupational health and safety programs.

In 2003, a briefing update prepared by the NSW Parliamentary Library Research Service stated that “Current debate centres not so much on the morality of legalised prostitution and brothels, although this is still an issue, but more on how to close down brothels that are illegal.”¹⁵

There is little reliable data on the extent of the sex industry in New South Wales. However, a recent study has found that “On a per capita basis the number of brothels was broadly comparable between the cities (Sydney, Melbourne and Perth), consistent with previous population-based data indicating that men in the three jurisdictions used commercial sexual services at roughly the same rate. This suggests that the legal climate

¹⁴ Smith, S *The Control of Prostitution: An Update* Briefing Paper 14/03 NSW Parliamentary Library

¹⁵ Ibid

has no impact on the prevalence of commercial sex”.¹⁶ However, the same study concluded that “The legal context appeared to affect the conduct of health promotion programs targeting the sex industry. Brothel licensing and police-controlled illegal brothels can result in the unlicensed sector being isolated from peer-education and support.”¹⁷

Those opposed to decriminalisation claim that the number of brothels in Sydney has increased dramatically as a result of decriminalisation. However, there is little empirical evidence for this and it sometimes appears that particular figures quoted in this respect gain credence simply by repetition:

“unsubstantiated statistics were also sometimes produced literally out of thin air, as when an Australian industry spokesperson remarked during an interview that the number of brothels in Sydney had increased by 400% since decriminalisation. When subsequently questioned about the source of this figure, she was unable to provide any means of substantiation – it had simply come into her head when she was asked the question and seemed like a good response (PRB 111B, 2001). Its origins left unexamined, this ‘statistic’ was subsequently used on billboards around New Zealand by those seeking support for their opposition to the bill (Maxim Institute, 2002). This was also despite pronouncements from Professor Basil Donovan of Sydney Sexual Health noting little or no increase in the number of sex workers in New South Wales following the passage of the *Disorderly Houses Amendment Act 1995* (Donovan, 2001, cited in PRB 111C, 2002, 7). What he did suggest, however, was some evidence following decriminalisation of a move by sex workers from larger venues to smaller or owner-operated premises, thereby giving the superficial impression of an increase.”¹⁸

¹⁶ Harcourt et al *The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers* Australian and New Zealand Journal of Public Health 2010 Vol 34 No 5p 485

¹⁷ Ibid

¹⁸ Jordan, J *The Sex Industry in New Zealand: A Literature Review* March 2005

Sweden

In 1999 a package of Swedish laws criminalising various types of violence against women came into effect. The package included criminalisation of the purchase of casual sexual relations as well as other measures such as widening the definition of rape, increasing punishment for genital mutilation, supplementing social welfare legislation, and providing more rigorous provisions on sexual harassment in the workplace.

Paying for casual sexual services is punishable by fines or up to six months in prison. An attempt to pay for casual sexual services is also an offence. The offence includes all forms of sexual services, whether purchased on the street, in a brothel, or in a massage parlour. Other aspects of the law make it illegal to enable sex work to take place. For example, there is a charge against a person renting a property to a sex worker, where sex work is to be carried out on the property.

In 2005, the legislation was extended to include criminalisation of cases where payment has been promised or made by another party. A new section was also added to the criminal law which criminalises the purchase of a sexual act with a child.

In 2008, the Swedish Government issued an action plan to provide greater support and protection for people at risk of involvement in prostitution. The Swedish law is based on the belief that prostitution is a form of male sexual violence against women. Female sex workers are seen as victims of male violence and are not penalised; instead, they are considered to have a right to assistance to escape the industry.

The legislation uses gender-neutral language, but the underlying philosophy does not take into account the diversity of sex workers – including male or transgender workers – or that workers may choose to work in the industry. The presumption is that the industry is innately an expression of male violence and exploitation of women.

At the time the law was introduced a fact sheet produced by the Swedish Government stated:

“By prohibiting the purchase of sexual services, prostitution and its damaging effects can be counteracted more effectively than hitherto. The government is however of the view that criminalisation can never be more than a supplementary element in the efforts to reduce prostitution and cannot be a substitute for broader social exertions.”¹⁹

¹⁹ *Fact Sheet on Violence Against Women* Swedish Ministry of Labour in Co-operation with the Ministry of Justice and the Ministry of Health and Social Affairs, Swedish Government Offices on Issues Related to Violence against Women

In keeping with this belief that criminalisation is chiefly supplementary to “continued and sustained social work to prevent and combat prostitution...”²⁰ Sweden has funded other measures to complement the ban on the purchase of sexual services.

In July 2010 Sweden published a report evaluating the application of the ban on the purchase of sexual services and its effects. The Inquiry which led to the report was headed by Anna Skarhed, the Swedish Chancellor of Justice.

The value of the Inquiry is somewhat tempered by the fact that the starting point was “that the purchase of sexual services is to remain criminalised”²¹.

The report states that:

- Street prostitution in Sweden has halved since the introduction of the ban on the purchase of sexual services.²²
- The number of foreign women in street prostitution has increased in Sweden.²³
- “(M)ost young people who are exploited sexually in return for payment came into contact with the purchaser via the Internet... The ban on the purchase of sexual services has not had an effect on the exposure of young people on the internet.”²⁴
- “There is nothing to indicate that the prevalence of indoor prostitution... has increased in recent years”²⁵

As the Swedish law is designed to suppress demand for, and therefore supply of, casual sexual services, a measure of its effectiveness will be whether there has been a reduction overall in the number of sex workers in Sweden. While the more visible street workers may have reduced, there is no robust data in respect to other forms of sex work. A Report published in 2007 by the National Board of Health and Welfare in Sweden stated:

“It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the “hidden prostitution” – we are even less able to make any statements.”²⁶

²⁰ Ibid

²¹ *Förbud mot köp av sexuell tjänst En utvärdering 1999–2008* Betänkande av Utredningen om utvärdering av förbudet mot köp av sexuell tjänst Stockholm 2010 P30

²² Ibid P 35

²³ Ibid P 35

²⁴ Ibid P 36

²⁵ Ibid P36

²⁶ Swedish National Board of Health and Welfare *Prostitution in Sweden 2007* p 63

Critics of the Swedish criminalisation approach cite a range of shortcomings with the law, including:

- Charges against men have to be evidence based, which is difficult to obtain and leads to intrusive police practices such as invading private apartments to film people in the act;
- Social workers found that sex workers became more difficult to contact and help;
- Sex workers have experienced difficulty in finding accommodation and are constantly worried about being discovered;
- Sex workers cannot increase their level of safety by working in pairs or groups;
- The law makes it difficult for sex workers to cohabit with a partner since it is illegal to receive any of a sex worker's income;
- It is hard for a sex worker to have a family since sex workers are considered to be unfit parents and therefore can lose custody of their children if it emerges that they sell sex;
- Sex workers say that it is now harder for them to assess clients. The clients are more stressed and negotiation outdoors must be done in a more rapid manner increasing the likelihood of ending up with a dangerous client;
- Because there are fewer customers, there is more competition for work, leading to lower prices; but this means that women take risks and are more likely to perform acts that they would have refused previously, including not insisting on condoms. This is particularly the case for street workers who are often the most vulnerable workers.²⁷

The recent submission of the Queensland Prostitution Licensing Authority to the Crime and Misconduct Commission's review of the Queensland *Prostitution Act* attaches a detailed critique of the Swedish model at Appendix 2.²⁸ This critique can be accessed at: <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10911>

²⁷ Ostergren P *Sex workers' Critique of Swedish Prostitution Policy* 2004

²⁸ Wallace, B *The Ban on Purchasing Sex in Sweden: The so-called 'Swedish Model'* Prostitution Licensing Authority, Queensland 2010

New Zealand

New Zealand's *Prostitution Reform Act 2003* largely removed voluntary adult prostitution from the criminal law, adopting a harm minimisation approach.

Section 3 of the Act describes its purpose:

'The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that-

- (a) Safeguards the human rights of sex workers and protects them from exploitation;
- (b) Promotes the welfare and occupational health and safety of sex workers;
- (c) Is conducive to public health;
- (d) Prohibits the use in prostitution of persons under 18 years of age;
- (e) Implements certain other related reforms.

The Act makes a distinction between voluntary and involuntary prostitution. It remains a crime to coerce someone to provide sexual services.

In summary, the Act largely decriminalised sex work and in general put the industry under the same regulatory framework as any other industry type, including rights and obligations in terms of occupational health and safety, industrial relations and general legal rights.

Sex workers have the right to refuse to have sex with a client and cannot be fined for doing so. The Act further protects sex workers by:

- Allowing them membership of trade unions;
- Acknowledging employment contracts and legal contracts with clients;
- Ensuring the sex industry is covered by the Occupational Safety and Health agency and other relevant Government agencies;
- Reducing barriers to exiting the sex industry, for example by allowing immediate access to unemployment benefits.²⁹

The Act gives local government the right to make by-laws affecting the signage and location of brothels, although brothels cannot be banned outright by councils. Some councils limit brothels to certain areas, while others have labour regulations affecting any sex worker who works from home. All brothels must display health promotion messages. The Act does not deal specifically with street based sex work. Some councils apply local ordinances to control this category of the sex industry.

The Act established a category of 'operator' which is defined as any person who has any form of control over a sex worker. This includes brothel owners, directors of

²⁹ Barnett *Decriminalising Prostitution in New Zealand 2007*

companies, managers and may include receptionists. All operators are required to have an Operator Certificate. People who have previous convictions for violence, sexual offences or certain drug related offences may not be able to obtain a Certificate.

The Act also provides for up to four sex workers to work together without requiring an Operator Certificate, provided no worker is in charge of the others. However an Operator Certificate is required if more than four sex workers work together, including circumstances where no one employs another.

Statistics indicate that approximately 65% of New Zealand's sex workers work in brothels, 10% work on the streets and 25% work from home or in small groups from rental properties.³⁰

A Prostitution Law Review Committee was established when the legislation was enacted, to monitor the impact of the changes in the law after three to five years of operation. The Committee is required to review the operation of, and consider potential amendments to, the legislation. Committee members included a retired Assistant Police Commissioner; a nun; a former local government councilor; a PhD candidate with the Wellington School of Medicine and Health Sciences; a Senior Lecturer in Maori Health; the manager of a support service for sex workers; and three members nominated by the New Zealand Prostitutes Collective. The Committee's work has been informed by research undertaken by the Christchurch School of Medicine and reports from the Crime and Justice Research Centre.

In May 2008 the Committee published its first report, covering the following topics:³¹

Human Rights: The Committee found that by removing the illegality of their work, the Act has safeguarded the right of sex workers to refuse particular clients and practices although some instances of workers being required to provide services against their will had still occurred.

Health, safety and well-being of sex workers: In general, sex workers were found to practice safe sex with a very low rate of HIV/AIDS among them. The Act also brought the sex industry under New Zealand's *Health and Safety Employment Act*. The Committee noted that regular inspections of brothels were needed to ensure compliance with the legislation.

Avoiding or exiting the sex industry: The most common reason for entering the industry across all sectors is financial. As a result, exiting the industry is difficult with potential loss of income being a substantial barrier. The Committee also noted that not all sex workers wanted to leave the industry and its flexible working hours. Despite the perception that most sex workers are coerced to enter the industry, the Committee

³⁰ Ibid

³¹ New Zealand Government *Report of the Prostitution Review Committee 2008*

reported that only an average of 3.9% across all sectors reported having been forced by someone else either at the time of entry or thereafter.

Brothel operator certificate system: The Committee recommended the eligibility criteria for holding a certificate should be maintained, with an added condition requiring the certificate holder to facilitate inspections of premises.

Planning frameworks: The Committee did not recommend national legislation for the location of brothels, as each municipal area has its own considerations and issues.

Employment conditions for sex workers: The Committee considered that sex workers and brothel operators should negotiate employment status, with some workers preferring full employment status and others preferring the flexibility of independent contractor status. The Committee recommended that disputes should be dealt with through the usual employment resolution processes and the courts.

The Committee concluded that the sex industry had not increased in size during the operation of the Act and many of the social evils predicted by those opposed to decriminalisation had not eventuated. The Committee recommended that the Act be reviewed again in 2018 to assess the long-term impact, but noted that overall the Act “has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the *Prostitution Reform Act 2003* than they were previously”.³²

³² New Zealand Government *Report of the Prostitution Review Committee 2008*

PART 5 – Supplementary issues for discussion

Registration

An issue for consideration in relation to the sex industry is the question of who (if anyone) should be required to obtain a licence or certificate to operate in the industry and on what conditions.

The primary reason for a licensing or registration scheme for operators of sexual services businesses is to remove persons with criminal records for violent, drug-related or sexual crimes from a position of control in respect to sex workers. However, if a licensing or registration scheme is too onerous in terms of conditions and cost, a substantial number of persons are likely to choose to remain outside the system.

There is less justification for the licensing or registration of individual sex workers. Individuals working in other industries are generally only required to register in professions where the individual must prove a certain level of qualification (eg medical practitioner, architect, lawyer). This is not a consideration in relation to sex work.

Sex worker representative bodies including Scarlet Alliance are strongly opposed to registration for self-employed sex workers, stating that members “feared registration more than arrest”. Because of the stigma and discrimination surrounding sex work, it is claimed that most workers will not openly acknowledge that they work in the industry and will not register for this reason.

If individual workers are required to register there is likely to be almost universal non-compliance, meaning that the majority of sex workers would continue to work unregistered and thus in an “illegal” environment.

Registration of all sex workers would not of itself prevent children working in the sex industry as those who did would either simply not register or would register using false identification.

Consultation Question:

Do you support any form of registration or licensing in the sex industry? If so, please indicate which if any of the following should require registration or licensing:

- The owner(s) of a brothel/escort agency;
- Any persons holding a managerial position in a brothel/escort agency;
- Any persons exercising day-to-day control over the activities of sex workers;
- Any sex worker employed in a brothel/escort agency;
- Any sex worker who is self-employed.

Planning

A further issue is whether there should be any special planning laws applicable to sex industry businesses or whether councils should regulate sex industry businesses within existing planning schemes

Victoria and Queensland require planning approval to have been given to a brothel as a pre-requisite to the granting of a licence. This ensures that such businesses must apply for planning approval to be “legal”, and may go some of the way to explaining the high level of illegal brothels in those states.

The linking of planning approval with obtaining a licence puts the onus of closing a business operating without planning approval on police rather than the Council as would normally be the case, thereby involving police in what would otherwise be a planning matter.

Linking planning approval with licensing would mean treating a sexual services business differently to any other business and may result in a business operator, who in every other respect complies with the requirements for registration, facing a criminal penalty effectively for the lack of planning approval.

Another means of controlling the location of brothels is to either specify areas where they may not operate or to specify areas in which all sexual services businesses must be located. For example, in Victoria a planning permit must be refused if the land is within 100 metres of various facilities, whereas in the ACT, sexual services businesses may only be established in either of two suburbs.

The types of limits adopted in Victoria are difficult to interpret and apply. It is not clear what would happen to an existing sexual services business if a listed facility, such as a child care centre, later applies to operate within the exclusion zone around the business.

Linear measurements can also be relatively meaningless if the character of an area changes quickly or if there is no direct route between a sexual services business which is within the excluded distance measured in a direct line of a hospital, school or similar.

In any Tasmanian city it may be extremely difficult to find a location that is not within 200 metres of a place regularly frequented by children, for example. Location based controls may also result in businesses being sited in isolated industrial areas which give rise to security concerns for workers and clients.

It can be argued that councils have responsibility for making planning decisions generally and there is no reason they cannot be relied on to make appropriate decisions in respect of sexual services businesses under normal planning laws which take into account safety and amenity issues such as traffic, parking and signage.

Concern has been expressed by self-employed sex workers that being forced to apply for a planning permit would publicise what they were doing, and attract unwelcome attention to themselves and their families. However, depending on the planning zone in which a self-employed worker operates, a requirement to lodge a development application for a small or home based business may already exist.

Consultation question:

If you support change in this area, please indicate what you prefer and why:

- That planning aspects of brothels be dealt with by councils under the existing planning schemes;
- That planning matters be dealt with by councils but there be specific statutory limitations on the location of sexual services businesses.

Advertising

At present in Tasmania there are no specific restrictions on advertising sexual services. Generally speaking there is no advertising at premises, largely because of the desire for anonymity by sex workers and clients alike.

Newspaper advertisements are the only form of advertisement in the traditional media, and these are generally small and with a brief description of the sex worker and contact arrangements. Sexual services are also advertised on the internet.

As with much of the sex industry, laws relating to advertising vary widely around Australia. In NSW there is no specific limitation on advertising. In Queensland, advertising by radio, television or video is prohibited and print advertisements must comply with guidelines issued by the Prostitution Licensing Authority. Any advertisement that implies that the sex worker is under 18 years of age or a virgin is also prohibited. The guidelines do not allow references to nationality except to the nationality of the sex worker. In contrast, in Victoria it is expressly prohibited to mention the race, colour or ethnic background of the sex worker. In both Queensland and Victoria compliance with these conditions requires extensive staffing and monitoring through a body established to track compliance.

In New Zealand, whether an advertisement is accepted is a matter of editorial policy for the individual newspaper.

Consultation Question:

Do you think there should be any change to the current situation for advertising sexual services in Tasmania?

PART 6 - Conclusion and consultation points

Legislating to regulate the sex industry is widely acknowledged to be difficult, with ideology and moral beliefs often taking centre-stage in the absence of empirical information about the industry itself, in terms of workplaces, clients and workers.

Each jurisdiction around the world seems to take a different approach based on the history of the sex industry in their community.

A study of legislation in Australia, New Zealand, The Netherlands, Sweden, England and the United States undertaken by the Canadian Library of Parliament in 2003, concluded that “There is little consensus as to how the state should monitor and/or control prostitution. Most countries appear to be grappling with one underlying question: what role should legislation (in particular, criminal law) play in regulating prostitution? Legislative directions have ranged from strengthening the criminal provisions relating to prostitution to repealing those same types of laws. There is little evidence that any particular approach has met all of its objectives”.³³

The 2008 review of Tasmania’s *Sex Industry Offences Act 2005* indicated that the legislation had failed in at least one key objective – protecting sex workers from exploitation, and that it may also have not been totally effective in preventing the operation of commercial sexual services businesses.

Sex workers also stated during the 2008 review that the Act was unclear and confusing in practice, because while it was legal for two self-employed sex workers to work together, it was illegal to manage or be in day-to-day control of another sex worker. Sex workers stated that they were unsure what would constitute management or day-to-day control– for example, would taking a booking for a co-worker fall within the concept of control or would paying the rent and placing advertisements on behalf of both workers be considered “management”?

Because the Act has not achieved at least one of its key objectives, the Government wants to consider whether other legislative models, or elements from other legislative models, are suitable for Tasmania.

Submissions should indicate which regulatory model (decriminalisation, criminalisation or licensing) would be preferable for Tasmania.

You may like to address issues such as how the model you support will achieve:

- The protection of sex workers’ human rights, health and safety?
- The protection of public health?
- The protection of people from being forced to work in the sex industry?

³³ Hindle, Barnett and Casavant *Prostitution: a review of legislation in selected countries* Library of Parliament Canada – first issued 20 November 2003 revised 19 November 2008

Are there other options for Tasmania which you feel Government should consider?

Tasmanian Parliamentary Community Development Committee

***The Need for Legislative Regulation and Reform of the Sex Industry in Tasmania
(Report No. 8 of 1999)***

Terms of Reference, Findings and Recommendations

I – TERMS OF REFERENCE

The need for legislative regulation and reform of the sex industry in Tasmania was considered by the Committee with regard to the following:

1. The need to safeguard public health;
2. The need to promote the general welfare and occupational health and safety of sex workers;
3. The need to protect the social and physical environment of the community by controlling the location of brothels; and
4. The need to protect young persons under 18 years of age from exploitation by the sex industry;
5. And other related issues.

III – SUMMARY OF FINDINGS

1. The Committee found that the manner in which the sex industry currently operates in Tasmania is incompatible with the need to safeguard public health, prevent the exploitation of minors, and protect sex workers from violence and intimidation.
2. The Committee found that there is a need for legislative regulation of the sex industry to provide controls and standards in the operation and location of brothels.
3. The Committee found no legal impediments that would prevent the legalisation of certain aspects of the sex industry to facilitate harm minimisation to sex workers and the community.

4. The Committee found that the level of criminal activity in the sex industry in Tasmania redefined the objectives for reform and would necessitate more stringent regulation.
5. The Committee found that potential public health risks exist in the operation of commercial sex services and that legislation for the control of the sex industry is required to minimise these risks.
6. The Committee found that whilst incidence of sexually transmissible diseases amongst sex workers is very low, provisions should be enacted to prohibit sex workers with STD infections from continuing to work whilst infected.
7. The Committee found that an industry code of practice will enhance the occupational health and safety of those involved in the industry.
8. The Committee found that sex workers are exposed to significant risks of violence and disease and require ready access to specialist services that deal with sexual health, sexual assault, counselling and referral services.
9. The Committee found that local governments were generally in favour of sex industry reform and regulation. Their support however was contingent on the application of normal planning approval processes through the Resources Management and Planning System and the *Land Use (Planning and Approvals) Act 1993*.
10. The Committee found that whilst normal planning approvals procedures were appropriate for larger commercial sex enterprises, self-employed operators would not participate in a process that jeopardised their anonymity. A more discreet approach is needed to ensure that this sector of the industry complies with the proposed regulations.
11. The Committee found that the extent of criminal involvement in the sex industry in Tasmania warranted stringent controls on the ownership and management of brothels. The Committee found that a registration system as is in place in the ACT would not adequately address this need and that a licensing model in line with the Victorian legislation would be more effective in minimising criminal involvement in the sex industry.
12. The Committee found that while direct evidence of under-age involvement in the sex industry is difficult to access, ample anecdotal evidence points to a significant and growing problem.
13. The Committee found that under-age sex workers operating in Tasmania were primarily involved in opportunistic and survival prostitution.

14. The Committee found that lack of social support and dysfunctional families tend to be the main risk factors leading young people into prostitution.

IV – SUMMARY OF RECOMMENDATIONS

1. The Committee recommends legislation to allow for the legal operation of brothels with strict guidelines that promote harm minimisation to sex workers and the community, and provide for scrutiny and control over the participants in the industry and the suppression of criminal elements.
2. The Committee recommends that any legislation for the regulation and control of the sex industry should encompass a broad definition of commercial sexual services that captures all aspects of the industry including escort agencies and massage parlours.

The Committee recommends the adoption of the ACT *Prostitution Act 1992* definition of – “Sexual Services” means:

- (a) An act of sexual intercourse as defined in the *Criminal Code Act 1924*;
- (b) the masturbation of one person by another; or
- (c) any activity which involves the use of one person by another for his or her sexual gratification.

The definition adopted in the Victorian *Prostitution Control (Amendment) Act 1999* should be considered if a more precise definition is deemed necessary.

3. The Committee recommends that all sex workers should be registered. Registration will provide greater transparency and allow for more effective regulation of the sex industry. Registration will give sexual health services greater access to isolated independent workers who are not supported by a peer group and may be less aware of safe sex practices and public health issues. Registration may also help to monitor the age of individuals entering the sex industry.
4. The Committee recommends that such a register should be private to protect the identity and personal details of sex workers, and that only authorised officials with sufficient cause should be allowed access.
5. The Committee recommends that sex industry legislation should make it an offence for brothel operators to provide commercial sex services with a person who is infected with a sexually transmissible disease. The Committee recommends the adoption of provisions as contained in the *Prostitution Act 1992* (ACT), sections 15 and 16:
Infected Persons: The operator of a brothel or escort agency shall take reasonable steps to ensure that a prostitute does not provide commercial sexual

services at the brothel or from the escort agency if the prostitute is infected with a sexually transmitted disease.

Knowingly Infecting: A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows, or could reasonably be expected to know, that he or she is infected with a sexually transmitted disease.

6. The Committee recommends the compulsory use of prophylactics in providing or receiving any commercial sexual service and recommends strong penalties against any person who discourages the use of prophylactics or attempts to remove, damage or misuse such prophylactics.
7. The Committee recommends mandatory regular health checks for sex workers to protect sex workers and ensure public health safety.
8. The Committee recommends the adoption of the ACT sex industry code of practice to regulate environmental hygiene aspects of commercial sex services. Strong penalties should apply to operators, clients and sex workers who fail to observe the requirements of industry codes of practice.
9. The Committee recognises the right of workers in the sex industry to conduct their trade without prejudice and stigma. The Committee recommends that legislation for the reform of the sex industry in Tasmania makes provision for a safe and fair working environment which upholds the industrial rights of sex workers.
10. The Committee recommends the creation of an industry advisory group as exists in the ACT and Victoria to monitor the industry and advise the Minister of issues or problems that may arise and to facilitate access to appropriate services and programs for sex workers.
11. The Committee strongly encourages government support for outreach programs designed to address the needs of marginalised women who may be forced into prostitution through drug addiction, poverty and abuse. The Committee recommends the provision of counselling services, life skills training, education and vocational training programs and child support to help both vulnerable women avoid the industry and to assist current sex workers who wish to exit the industry.
12. The Committee recommends strong sanctions against the use of coercion to induce a person to provide commercial sex services. The Committee recommends the adoption of section 8 of the ACT legislation that provides:

Duress (1) A person shall not, for the purpose of inducing a person to provide or to continue to provide commercial sexual services –
(a) intimidate, assault or threaten to assault any person

- (b) supply or offer to supply a drug of dependence to any person
- (c) make a false representation or otherwise act fraudulently.

(2) A person shall not

- (a) intimidate, assault or threaten to assault a person; or
- (b) supply or offer to supply a drug of dependence to any person; or for the purpose of inducing any person to provide him or her with payment derived, directly or indirectly from the provision of commercial sexual services.

- 13.** The Committee recommends the prohibition of drugs and alcohol on premises used to provide commercial sex services.
- 14.** The Committee recommends that a State Planning Policy be developed to provide uniform location criteria for commercial sex services Statewide. Where brothels are determined to be a permitted land use local government planning approval processes should apply.
- 15.** The Committee recommends the following location criteria for commercial sex services:
- Brothels are not to be permitted in residential zones.
 - Brothels are not to be permitted within a 100-metre radius of places of worship, schools, childcare centres, playgrounds, and other places frequented by children or deemed to be socially sensitive.
 - Small to medium scale brothels employing 2 to 10 sex workers should be a permitted land use in light industrial zones or with local government discretion in commercial zones.
 - Larger brothels employing 11 or more sex worker should be a permitted land use only in industrial zones.
 - Normal planning approval processes should apply to these categories of commercial sex services. Planning approval applications should be assessed on objective planning criteria and applications should not be refused on moral grounds.
 - Local government should determine the number of brothels permissible in any particular street within a designated zone in order to avoid the establishment of a 'red light' district.
- 16.** The Committee recommends that single sex workers using domestic premises on a systematic or regular basis for prostitution should be allowed to operate within the following guidelines:
- Only one registered sex worker who is a permanent resident may operate from the premises.

- The premises must not be located in a residential zone but may operate as a discretionary use in a mixed-use zone.
- The operation must comply with local government 'home occupation'/'home activity' requirements.

17. The Committee recommends the creation of a brothel licensing board within the Department of Justice to regulate the ownership and management of brothels. Members would be appointed by the Attorney-General and should include representatives from health, local government, police and the sex industry.

Function of the Board should include the following:

- To approve the licensing of all owners and operators of commercial sex service involving more than one sex worker – requiring probity checks of all such applicants, their families and associates.
- To maintain a register of all sex workers including self-employed individuals and brothel workers.
- To regulate advertising.
- To make determinations on 'socially sensitive' locations from which a brothel must be set back a minimum of 100m.
- To monitor brothels for compliance with regulations, with the power to investigate complaints and impose conditions or revoke licences when necessary

18. The Committee recommends that commercial sex service operations where more than one sex worker is involved must be licensed. Owners and managers must be licensed.

19. The Committee recommends that the prohibition on street prostitution and soliciting in public should be maintained, with penalties applying to both sex worker and client.

20. To ensure greater accountability the Committee recommends that a brothel licence holder must be on the premises while business is being conducted.

21. To allow for effective monitoring of the sex industry the Committee recommends that all advertising should display a licence number in the case of brothels and a registration number in the case of individual sex workers. Pictorial content and advertising for the recruitment of sex workers should be prohibited.

22. The Committee recommends that sex industry legislation should contain provisions that make it an offence for a person to franchise a network of

- prostitutes as if they were operating independently.
- 23.** The Committee recommends that if a person causes or permits a child to provide commercial sex services in any capacity this should constitute an offence and carry severe penalties.
 - 24.** The Committee recommends that if a person receives payment that, is derived, directly or indirectly from commercial sex services provided by an under-age child this should constitute an offence which attracts severe penalties.
 - 25.** The Committee recommends a minimum age of 18 years for any person providing commercial sex services, with the onus being on the operators of commercial sex services to take all reasonable steps to find out the age of the person concerned.
 - 26.** The Committee recommends the automatic forfeiture of the brothel licence and the application of strong penalties if a child of any age below 18 years is found on premises used for conducting commercial sex services.
 - 27.** The Committee recommends that licensing provisions should be tightened up to prohibit any person under the age of 18 years from working in any capacity at a venue where sexually explicit entertainment is provided.
 - 28.** The evidence presented to the Committee suggests that the majority of child prostitutes are engaged in opportunistic and survival sex outside the organised sex industry. This implies that sex industry regulation will only address part of the problem. The Committee recommends greater government and community resources to support children and families at risk in order to provide these children with opportunities and choices that may divert them from the sex industry.
 - 29.** The Committee recommends strengthening of outreach programs by specialist services to promote harm minimisation strategies and provide counselling and referral services to under-age sex workers.

Report on the Review of the Sex Industry Offences Act 2005

Conclusions

From the submissions received the response to each of the terms of reference is as follows:

1. It would appear that businesses that may have some characteristics of a commercial sexual services business continue to operate in Tasmania. As there was no conclusive evidence of the number of these businesses prior to the commencement of the Act, and there is no conclusive data now, whether the number of these businesses has decreased is unknown. However, there does seem to have been some effort to change the way these businesses operate to comply with the terms of the Act and this may have resulted in some operators having a less “hands on” role in the operation of the businesses.

A significant number of sex workers choose to work collectively in what may be a commercial sexual services business, even though they are uncertain whether they are breaking the law in doing so.

2. There is no conclusive evidence of children being exploited in the sex industry in Tasmania either before or after the commencement of the Act. There is likely to be some involvement of vulnerable children in the industry, but it is most likely on an informal or opportunistic basis.
3. From the submissions received, neither side of the sex industry debate believes that the *Sex Industry Offences Act 2005* has been effective in achieving its objective of protecting sex workers from exploitation in the industry. Submissions from groups and individuals like ACL believe that any sex work is exploitative, and because the Act provides for self-employed sex workers, then those workers are necessarily being exploited.

On the other hand, sex workers themselves believe they are still exploited because they either work collectively and therefore are concerned about their legal status or because they are forced to work in virtual isolation. In either case the sex workers do not feel able to access the normal occupational health and safety safeguards available to other employees.

4. According to DHHS there is a high rate of awareness of sexually transmitted infections among sex workers and accordingly there is a very low rate of infection. However, in respect to health more generally, the confusion of some sex workers regarding their legal status, the possible illegality of some of the places of work and the continuing stigmatisation of and discrimination against sex workers may lead to higher levels of psychological stress.

There are no easy answers in respect of dealing with the sex industry. The legislative options range from legalising and deregulating the industry to making it completely illegal. The current Tasmanian Act is a half-way option that supports neither of the two fundamental positions and is therefore roundly criticised by both.

To the public at large the sex industry is all but invisible and consequently it is a matter about which the general public rarely expresses an opinion, leaving the proponents of two diametrically opposed views to argue their cases. There is very little knowledge about the industry or the people who are involved in it as workers, clients and managers. Most people, to their knowledge, have never met a participant in the industry, so most perceptions of the industry are based on media stereotypes or general assumptions. This ignorance is not a good basis for informed public policy decisions. However, it is unlikely that further information will be forthcoming about the industry while it remains partially illegal in the state.

Recommendations

1. Produce a pamphlet that outlines the legal status of sex work for distribution to sex workers. This will help to address some of the confusion and misconceptions about the legal status of sex workers who work collectively and encourage them, where necessary, to seek the assistance of authorities such as Tasmanian Police and Public Health services.
2. Work towards a dedicated community-based sex worker health initiative as included as part of a broader proposal for a Sexual Health Promotion Strategy put forward by Population Health. The aim of this initiative is to “focus on education and other preventative measures that will raise overall health and safety standards within the sex industry, minimise the risk of violence and illness, and increase the ability of workers to make informed choices regarding entry and exit from the industry”.
3. Consider inclusion of “occupation” in section 16 of the *Anti-discrimination Act 1998*, to make it an offence for a sex worker to be discriminated against because of his/her means of earning a living.
4. Consider the suitability of alternative legislative models for adoption in Tasmania.