THE SEX INDUSTRY IN THE AUSTRALIAN CAPITAL TERRITORY: A LAW REFORMER'S PERSPECTIVE

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In her recent book, Women and the Law, Jocelyn Scutt said that prostitution is regarded as 'the oldest profession'. She suggests that this only goes to show that the economic position of women has always been lamentable, and that women are far from being the 'new poor': they have always been 'the poor'.

The law relating to prostitution in the Australian Capital Territory (ACT) at present is archaic and inefficient. It no longer reflects the aims of the progressive community in terms of law enforcement and human rights. Although the current police policy of 'containment and control' seems to be working, it is not satisfactory to have a law and not enforce it. It leads to confusion and the police have expressed concern that they may be perceived as not doing their job. A reformed ACT prostitution law could serve the community and protect the welfare of sex workers far better than the present arrangements.

In 1991 in the ACT, the Police Offences Act 1930 deals with prostitution. While it is not actually illegal to be a prostitute or to accept money as payment for sexual services, it is an offence to keep a brothel, to persistently solicit in a public place, or to live on the earnings of prostitution. Although the legislation is clearly intended to prohibit prostitution and prostitution-related activities, in fact the consent of the Director of Public Prosecutions is required before prosecutions can be initiated under the Act. This consent is given rarely, and only when there are 'aggravating circumstances', such as the involvement of illegal drugs or minors, operation of a brothel in a residential area, or complaints from the public. The Australian Federal Police, as a result of the Director of Public Prosecutions' policy, have adopted a policy of 'containment and control'.

One group which is particularly disadvantaged by the legislation as it stands is the sex workers. Laws aimed at eradicating prostitution are obviously not concerned with prostitutes' rights or working conditions. There are currently no minimum wages for prostitutes, no occupational health and safety standards, and no sick leave or holiday pay. This makes the industry unstable and fosters the dependency of workers on their employers. Current laws also do not offer protection for those coerced into prostitution.
Another important group whose interests must be considered are the residents of Canberra. The *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991) by the Select Committee on HIV, Illegal Drugs and Prostitution noted that the police reported a low number of public complaints about brothels, which would seem to indicate a lack of public opposition to them. The public have complained in the past, however, when brothels were set up in neighbourhood shopping centres or in residential areas. Perhaps the fact that prostitution in Canberra is, at present, far less visible than in some other cities means that it is perceived as less of a problem.

The current laws relating to prostitution in the ACT are not satisfactory. The existing laws are harsh but are not generally enforced. They punish the sex workers, while ignoring the involvement of their clients. They prohibit brothel work but do not deal with street prostitution or escort agencies. The current laws reflect outdated views and policies: not enforcing the law is simply a way of avoiding the problem rather than dealing with it directly.

In considering the reform of prostitution law in the ACT, two important factors must be taken into consideration. Firstly, there is a considerable demand for prostitution. The *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991) estimated that approximately 4,000 clients engage the services of sex workers each week in Canberra. Secondly, most efforts to eradicate prostitution, both in Australia and overseas, have been unsuccessful.

The options the Select Committee on HIV, Illegal Drugs and Prostitution considered for law reform were decriminalisation and legalisation. Decriminalisation alone would mean that prostitution would be treated like any other business: criminal sanctions would be removed and police would not regulate it. It would not, however, allow for our local government to regulate the location of brothels, or street prostitution. Legalisation is another choice: it involves formal recognition of prostitution in legislation and its regulation by government. This has been tried in Victoria since 1986 and has been described as a 'failed experiment' (*The Age*, 7 April 1991). The provisions which only allow sex workers to work in licensed brothels have led to worse working conditions for prostitutes, who frequently earn less money and work longer hours than in the illegal industry. Illegal brothels are being set-up again, and the incidence of street prostitution is increasing as sex workers leave the licensed brothels. There is a middle ground between these two options: decriminalisation with controls.

This means that, although the criminal penalties are removed from prostitution, there are still some controls over the location of brothels and street prostitution. This is the option recommended by the Select Committee on HIV, Illegal Drugs and Prostitution. However, the Alliance Government is yet to respond to the Committee's report. It should be an interesting if not lively debate given the experience to date of sex-related issues brought before the Assembly.

**References**

