



No.22

Prostitution Laws in Australia

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The subject of prostitution has long vexed criminal justice authorities in Australia, as in most other countries throughout the world. Law-makers are faced with the onerous task of attempting to appease the conflicting demands of various segments of society. On the one hand law-makers in Australia wish to uphold the principles of a liberal democratic society by allowing consenting adults to freely engage in sexual conduct, while on the other hand they are anxious to consider the demands of residents who object to the 'nuisance' aspects of prostitution, as well as those who object to prostitution on religious, moral or other grounds. The issue of AIDS has, in recent years, added a new element to the prostitution debate and has sparked concern in the community regarding the potential for prostitutes and their clients to spread the disease.

The confusion felt by law-makers about how best to cope with prostitution is reflected in prostitution laws themselves, which are clouded in ambiguity and contradiction. This confusion creates problems for both law enforcers and those employed in the industry who are often unaware of the precise legal status of some aspects of prostitution. Furthermore, the majority of Australian citizens are also ignorant of the legal status of prostitution in their state or territory.

This Trends and Issues represents an attempt to clarify the laws relating to prostitution in each state and territory in Australia. In order to obtain a practical insight into the problems associated with prostitution the perspectives of both prostitutes and the police were sought. The authors believe that there is an immediate need for governments to consider reforms of prostitution based on a realistic understanding of the issues involved. They have presented a range of legislative and policy options which could be employed to redress current problems faced by both prostitutes and police.

Duncan Chappell
Director

Prostitution is an enduring and ancient institution which has survived centuries of attack and denunciation.

In Western societies prostitution has not always been illegal, nor is it in some countries today. In Germany, Holland and Denmark, for instance, female prostitutes are accepted by the law as long as they ply their trade in designated areas and fulfil other requirements, such as licensing and payment of taxes.

In Australia, prostitution laws differ from state to state. Reflecting the difficulty that governments have with laws and enforcement practices relating to prostitution, the states of Tasmania,

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South Australia, New South Wales and Victoria have held inquiries into the topic. In addition, a Western Australian Royal Commission and the Fitzgerald Royal Commission in Queensland investigated corruption associated with prostitution. Despite proposals for reform offered by these inquiries and commissions, their recommendations have only been partially implemented.

In addition to the public and political interest in prostitution there is concern regarding the potential for the spread of the disease, Acquired Immunodeficiency Syndrome (AIDS). Publicity surrounding possible criminal involvement in brothel ownership in Victoria has increased public concern about existing legislation dealing with prostitution. In other parts of Australia conflicts between residents and prostitutes have

raised more general issues relating to the rights of prostitutes to work in suburban areas and the rights of residents of these suburban areas.

This paper focuses on female prostitutes and laws and practices relating to this section of the industry. Females undoubtedly comprise the largest proportion of sex for sale workers although a substantial number of males also engage in prostitution.

Prostitution Legislation

There are three main categories of laws which regulate the purchase and sale of sex: laws which punish prostitutes for selling sex; laws punishing those who are involved in the management and organisation of prostitution; and, although uncommon,

laws which punish those who purchase sex.

Laws Punishing Prostitutes

In Australia it is not illegal to sell sex. Table 1 shows that most jurisdictions have, however, passed laws which criminalise specific forms of prostitution. In all jurisdictions, except New South Wales, street prostitution is illegal and workers may be arrested for soliciting or loitering for the purposes of prostitution. In New South Wales prostitution "inhabits a confused 'twilight zone' between legality and illegality" (New South Wales 1986, p. xxv). In 1988 changes were made to laws in New South Wales which prohibit street prostitution in residential zones, but allow it on commercial streets.

Table 1: Laws punishing prostitutes

<i>State/Territory</i>	<i>Street Work</i>	<i>Brothel Work</i>
New South Wales <i>Summary Offences Act 1988</i>	Soliciting near or within view of a dwelling, school, church or hospital, or in a school, church or hospital; s.19. Taking part in an act of prostitution in or within view of a school, church, hospital or public place, or within view of a dwelling, s.20.	Not an offence unless premises are held out as available for massage, sauna, photographs etc; s.16.
Victoria <i>Prostitution Regulation Act 1986 Vagrancy Act 1966</i>	Soliciting and Loitering: <i>Prostitution Regulation Act</i> , s.5.	An offence except where premises have a town planning permit; <i>Vagrancy Act 1966</i> , s.1 1.
Queensland <i>Vagrants, Gaming and Other Offences Act 1931</i>	Soliciting or loitering, being a prostitute behaving in a riotous, disorderly or indecent manner in a public place; soliciting within view or hearing of a person in a public place; s.5.	Occupier of a house frequented by prostitutes; s.5. Using premises held out for other purposes, for prostitution; s.8A. "One-woman" brothel not an offence.
Western Australia* <i>Police Act 1892</i>	Common prostitute who solicits, importunes or loiters; s.59; wandering in streets or highways or being in a place of public resort or behaving in a riotous or indecent manner, s.65(8), s. 76G,	Could be prosecuted if occupier permits premises to be used as a brothel; s. 76F. Occupier of a house frequented by prostitutes; s.76(7). "One-woman brothel" not an offence.
South Australia <i>Police Offences Act 1953</i>	Accosting, soliciting or loitering for the purposes of prostitution in a public place; s.25.	Receiving money paid in a brothel in respect of prostitution; s.28(l)(b).
Tasmania <i>Police Offences Act 1935</i>	Common prostitute solicits or importunes in a public place or within view or hearing of a public place, or loiters for such a purpose, s.8 (i) (c).	Not an offence
Northern Territory <i>Summary Offences Act (as in force Aug 1987)</i>	Common prostitute accosting, soliciting, or loitering for the purposes of prostitution in a public place; s.53. Persistently solicits or importunes for immoral purposes (males only) s.57(ha). Being a common prostitute wandering in streets or highways or behaving in riotous or indecent manners; s.56 (b). Loitering may be asked to leave public place; s. 47A.	Could be prosecuted for permitting premises to be used as a brothel.
Australian Capital Territory* <i>Police Offences Ordinance 1930</i>	Persistently soliciting or importuning for an immoral purpose in a public place, s.23.	"One-woman brothel " not an offence

Note: In all jurisdictions, escort agency work is not an offence.

* At the time of writing Western Australia was considering introducing legislation based on the Victorian model of legal brothels. The Australian Capital Territory was considering options other than the criminalisation of prostitution.

Source: Consultation Paper No. 2 *Report of the Working Panel on Discrimination and Other Legal Issues - HIV/AIDS*, Dept of Community Services and Health, 1989. pp. 29-32. Adapted with the assistance of Gail Mason, Australian Institute of Criminology.

Table 2: Laws criminalising prostitution related activities

State	Living on Earnings	Brothel Keeping	Procuring	Permitting Premises to be used for Prostitution	Advertising	Other
New South Wales <i>Summary Offences Act 1988</i> <i>Crimes Act 1900</i> <i>Disorderly Houses Act 1943</i>	An offence; <i>Summary Offences Act 1988 s.15</i>	Allowing premises held out as available for other purposes, to be used for prostitution; <i>Summary Offences Act 1988 s.16.</i>	An offence; <i>Crimes Act 1900, s.91A, 91B</i> <i>Summary Offences Act 1988, s.18</i>	Appearing, acting or behaving as having management of a disorderly house which is habitually used for the purposes of prostitution; <i>Disorderly Houses Act 1943, s.3</i>	Advertising premises are used or a person is available prostitution; <i>Summary Offences ACT 1988 s.18.</i>	
Victoria Prostitution Regulation Act 1986 Vagrancy Act 1966	An offence, except where premises have a town planning permit; <i>Vagrancy Act s. 10.</i>	An offence except when premises have a permit; <i>Vagrancy Act, s.11.</i>	Only an offence where force or violence or child; Prostitution Regulation Act, ss. 10,11.	Tenant, lessee or occupier who permits premises to be used is guilty of an offence except where premises have a town planning permit; <i>Vagrancy Act s.12.</i> Similarly for landlords.	Advertising employment in a brothel; <i>Crimes Act 1958, s.59A.</i>	Gutter-crawling in order to enlist the services of a prostitute; Prostitution Regulation Act 1986, s.15(2).
Queensland <i>Vagrants, Gaming and Other Offences Act 1931-1987</i> <i>Criminal Code</i>	An offence; <i>Vagrants, Gaming and Other Offences Act s.5</i>	Keeping or managing a brothel; s.8 Keeping a bawdy house; Criminal Code, s.231.	An offence; Criminal Code, s.217	Tenant, lessee or occupier who permits premises to be used, landlord who knows premises to be used; <i>Vagrants, Gaming and Other Offences Act s.8</i>	An advertiser may be held as being a party to an offence of partly living on earnings of prostitution, or the keeping of a brothel by knowingly assisting in the operation thereof	Keeper of a lodging house permitting it to be the resort or place of meeting of prostitutes; <i>Vagrants, Gaming and Other Offences Act s.9.</i>
Western Australia* Police Act 1892 Criminal code	An offence; Police Act 1892 s.76G	Keeping or managing a brothel; Police Act 1892 s.76F Keeping a place for prostitution; Criminal Code, s.231.	An offence; Criminal Code, s.191	Tenant lessee or occupier who permits premises to be used for prostitution, landlord who knows premises used; Police Act 1892 s.76F		Occupier of a house frequented by prostitutes; Police Act 1892 s.65.
South Australia Police Offences Act 1953 Criminal Law Consolidation Act 1935	An offence; Police Offences Act 1953 s.26	Keeping or managing a brothel; Police Offences Act 1953 s.28(i)(a)	An offence; Criminal Law Consolidation Act, 1935, s.63.	Lets or sublets premises knowing to be used as a brothel; Police Offences Act 1953 s.29.		
Tasmania <i>Police Offences Act 1935</i> <i>Criminal Code</i>	An offence; <i>Police Offences Act 1935 s.8</i>	Keeping a bawdy house; <i>Criminal Code, s.143.</i>	An offence; <i>Criminal Code, s. 128</i>	Letting a house, knowing it is to be used as a brothel; <i>Police Offences Act 1935, s. 11</i>		Occupying a house and harbouring prostitutes; <i>Police Offences Act 1935, s.10(l)(b).</i> Lodging or entering a prostitute to the annoyance of the inhabitants; <i>Police Offences Act 1935, s.10(i)(d).</i>
Northern Territory <i>Summary Offences Act</i> (in force as at 17 Aug 1987) Criminal Code Suppression of Brothels Act 1907	An offence; <i>Sununazy Offences Act s.59(b)</i> <i>Suppression of Brothels Act 1907, s.7</i>	An offence; <i>Suppression of Brothels Act 1907, s.3</i>	An offence; <i>Criminal Code s.136.</i>	Leases lets, knowingly permits; <i>Suppression of Brothels Act 1907, ss.8,9.</i>		Person who keeps a house, shop, room where refreshments sold and permits prostitutes to meet together or remain there; <i>Summazy Offences Act s.66.</i>
Australian Capital Territory Police Offences Ordinance 1930 Crimes Act 1900 (NSW)	An offence; Police Offences Ordinance 1930 s.23(j)	Manages or conducts a brothel, or knowingly concerned in management; Police Offences Ordinance 1930 s.18	Only an offence if child under 16; Crimes Act 1900 (NSW) s.92N.	Leases, lets, sublets knowingly permits; Police Offences Ordinance 1930 s.19.		Person who keeps house, room, shop, where refreshments sold permitting prostitutes to meet or remain there; Police Offences Ordinance 1930 s.34.

* At the time of writing Western Australia was considering introducing legislation based on the Victorian model of legal brothels. The Australian Capital Territory was considering options other than the criminalisation of prostitution.

Source: Consultation Paper No. 2 Report of the Working Panel on Discrimination and Other Legal Issues - HIV/AIDS, Dept of Community Service and Health, 1989, pp. 29-32. Adapted with the assistance of Gail Mason, Australian Institute of Criminology.

The law governing prostitutes employed in brothels is complex and is often contained in more than one statute. Brothel workers in Victoria may be charged under s12 of the *Vagrancy Act* which makes it an

offence for an occupier to use them for the purposes of prostitution. However, in Victoria, women who work in brothels which have town planning permits are exempt from prosecution. In New South Wales it is not an

offence to work in a brothel unless premises are purportedly used for other purposes. In Queensland, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory there are no specific

offences punishing those who work as prostitutes in brothels. However, prostitutes can be charged with assisting in management or permitting the premises to be used for prostitution. In Queensland, Western Australia, Tasmania and the Australian Capital Territory it is not an offence to work as a prostitute from your own home. In South Australia, however, police use the *Summary Offences Act 1953* s28(1)(b), which makes it an offence to receive money paid in a brothel in respect of prostitution, to prosecute women working from their own homes. The definition of a brothel is wide enough to include women working who work alone (*see Samuels v. Warland* (1977) 16 SASR 41 and *Oldfield v. Samuels* 18 SASR 156 (1978), cited in Neave 1988a, p. 212). It is not an offence for women to sell sexual services through escort agencies. However, a South Australian court found that a manageress of an escort agency could be convicted of "keeping a brothel" under s27 of the *Police Offences Act* which defined a brothel as any premises to which people of the opposite sexes resort for the purposes of prostitution (*Samuels v. Bosch* (1972) 127 CLR 517). In that case the men came to the premises to make arrangements to have intercourse elsewhere. The same argument cannot be made where the arrangements are entirely by telephone, which is the way most escort agencies now operate (Neave 1988a, p. 213). The managers of escort agencies can also be prosecuted for living on the earnings of prostitution.

Most jurisdictions make it an offence to consort with a prostitute. Thus, one prostitute could be charged with consorting with another. Licensing laws often make it an offence for the licensee to allow prostitutes to be on licensed premises, and police in most jurisdictions have wide powers to require "known prostitutes" to leave public places.

Laws Punishing Prostitution-Related Activities

Table 2 details the laws which are applicable to prostitution-related activities. Victoria is the only state which does not penalise those who live on the earnings of prostitution, provided that the brothel has a town

planning permit. The sitting of brothels is controlled by local governments which grant permits according to guidelines set by the State Planning and Environment Ministry. In all jurisdictions, except Victoria, it is an offence to keep or manage a brothel which is knowingly used for the purposes of prostitution.

In New South Wales there is a common law offence of keeping a brothel, although it is not an offence to use premises for the purposes of prostitution, but rather to use premises for prostitution which are purportedly used for other purposes. Under the *Disorderly Houses Act 1943*, a declaration can be made that a premises is a "disorderly house". After such a declaration is made it is an offence for a person to be in, or to enter the premises without legal excuse. This Act applies in most Australian jurisdictions, although it appears that it is more commonly used in New South Wales as police elsewhere are reluctant to invoke it (Neave 1988b, p. 49). According to the New South Wales Vice Squad it is, however, difficult to obtain convictions for a "disorderly house" because by the time the application reaches a hearing the prostitutes have vacated the premises (Dennis, A. 1989, pers. comm., 12 October). Following concerns that the forced closure of some brothels may result in an increase in street prostitution, the New South Wales government is considering amending the *Disorderly Houses Act* to exempt well-run brothels.

It is an offence to procure a person for the purposes of prostitution in all jurisdictions except Victoria, where it is only an offence if force or violence is used, or where a person under the age of 18 years is involved. In the Australian Capital Territory the same applies, however the law relates to the procurement of a person under 16.

The advertisement of premises for the purposes of prostitution is only specifically mentioned in Victorian and New South Wales legislation. In Victoria it is an offence to advertise employment in a brothel, while in New South Wales it is an offence to advertise that premises or persons are available for prostitution.

Laws Punishing Clients

Except for New South Wales and Victoria, no state penalises the clients of prostitutes. In Victoria it is an offence to "gutter crawl" in order to enlist the services of a prostitute. In New South Wales, provisions were introduced in 1988 which allow the prosecution of persons taking part in the act of prostitution in or within view of a public place.

Practice Versus Legislative Intent

To focus on the legislation to the exclusion of practice is, however, only dealing with half the problem. The real issue, in a sense, is the contrast between legislative intent and practice.

To assess the extent to which the laws affect practice, discussions were held with prostitutes collectives and police representatives. All jurisdictions, except Tasmania, are represented by a prostitutes collective or a similar organisation.

Police Policy on Prostitution

Police policy on prostitution varies between jurisdictions. In Victoria, New South Wales, Tasmania and South Australia official police policy towards prostitution is within the framework of existing laws. In the Australian Capital Territory, the Northern Territory and Western Australia the police policy on prostitution is one of "containment and control". Although most aspects of prostitution are illegal in these jurisdictions, police allow the continuation of some forms of prostitution. In Queensland the official police policy on prostitution is now "eradication"; however, police indicated that prior to the Fitzgerald Inquiry their policy was also one of "containment and control".

Police were questioned on varying forms of prostitution. In all jurisdictions, except New South Wales, street prostitution is illegal and generally prohibited by police. In New South Wales, unlike other jurisdictions, street prostitution is perceived as a major problem by

**Table 3:
Number of Prostitution or Related Offences
Reported or Becoming Known to Police**

	83/84	84/85	85/86	86/87	87/88	88/89
Vic	688	539	412	428	366	493
Qld	858	907	748	920	472	468
S.A.	45	65	48	61	59	-

**Table 4:
Offences Proven for Prostitution
and Prostitution Related Offences**

	83/84	84/85	85/86	86/87	87/88	88/89
N.S.W.	662	325	209	269	-	-
W.A.	41	35	32	41	69	79
Tas	0	8	2	9	0	-
N.T.	0	0	0	0	0	2
A.C.T.	0	0	2	0	0	-

* Two tables were necessary as comparative data were unavailable from all states and territories.

Source: Official Police statistics, Police *Annual Reports* and Australian Bureau of Statistics.

police. According to the New South Wales Vice Squad, the investigation and prosecution of street prostitution takes up most of their resources. Hundreds of prosecutions are launched annually for prostitutes soliciting in residential areas, and arrests for street prostitution have increased by 1182% in the 1988-89 period (NSW Police Media Unit 1989). This has not, however, reduced the volume of residents' complaints. Whilst many of the prostitutes have relocated their activities elsewhere, many run the risk of prosecution and continue to work in residential areas (Dennis, A. 1989, pers. comm., 12 October).

Police responses to brothels, massage parlours and escort agencies vary between jurisdictions. According to Victorian, New South Wales, Queensland and South Australian police, their response to these forms of prostitution is in accordance with the legislation. The Tasmanian Police Force denied the existence of brothels and massage parlours, but accepted that escort agencies are operating.

Although brothels and massage parlours offering sexual services are illegal in the Australian Capital Territory, Northern Territory and Western Australia, police allow their

existence, provided they operate within the "containment and control" system. In these jurisdictions police surveillance of brothels limits the number of operations and their location: police are primarily concerned with monitoring the industry to prevent the entry of organised crime and drugs, minimising public nuisance and preventing the exploitation of juveniles. In the Northern Territory most women working as prostitutes are involved in the escort business, and women are interviewed, photographed, and checked for prior convictions by police

Difficulties With Enforcement

Police throughout Australia complained of the difficulties associated with enforcing prostitution laws. Transactions between prostitutes and their clients occur in private and under various guises. In massage parlours without permits a potential client is not usually told the cost of sexual services on entry but is quoted a price for massage only. Discussion of costs does not occur until the client and the prostitute enter the massage room and often not until after the client has undressed. Proper ethical behaviour does not permit a police officer to strip

naked in an attempt to obtain evidence (Dennis, A. 1989, pers. comm., 12 October). Police, seeking convictions for the use of premises for the purposes of prostitution need to pose as clients and trick the prostitute into discussing a price for sexual services. A technique that is often used is to ask whether use of a condom is necessary. The prostitute's answer, whether negative or positive, represents an admission that sexual services are provided (Victoria 1985, p. 131).

Enforcement of the laws relating to living on the earnings of prostitution and ownership and management of brothels also causes difficulties for police in obtaining evidence. Rarely will prostitutes provide police with information concerning the identity of persons to whom they are paying money (Dennis, A. 1989, pers. comm., 12 October). In order to obtain evidence that premises are used as a brothel police watch premises and search newspapers for advertisements. However, there may be difficulties in identifying the owner, and title searches may reveal that the property is owned by a company registered overseas. Even if the individual owner is identified (s)he may deny any knowledge that premises are being used for prostitution. Operators may

claim that only massage and sauna are offered and that masseurs are instructed not to provide sexual services. Persons charged with managing premises for the purposes of prostitution are more likely to be receptionists (Victoria 1985, p. 131).

Prostitutes' Perspectives

Prostitutes in most jurisdictions complained that vague laws regarding street prostitution confer a broad discretion on police by permitting the prosecution of known prostitutes who are believed to be loitering for the purposes of prostitution, regardless of whether the worker approaches a client.

Street prostitutes in New South Wales are currently facing difficulties as a result of police crackdowns. Attempts by police to clean up Kings Cross have forced prostitutes to other parts of the city. The AIDS scare has also reduced business in Kings Cross. Prostitutes who have moved to Canterbury Road are repeatedly coming into conflict with police and residents. According to prostitutes, police interpret legislation relating to soliciting any way they see fit. For example, prostitutes claim to have been arrested for soliciting near a dwelling, school, church or hospital when they have merely been walking past these places.

According to prostitutes in New South Wales, the partial decriminalisation of prostitution laws has resulted in several problems. Although brothels are only illegal if they are purportedly used for other purposes, police use the *Disorderly Houses Act 1943* to close them down. Under section 3, a police superintendent may submit an affidavit to the Supreme Court which may declare the premises in question "disorderly". The Vice Squad has recently applied to the Supreme Court to close another 40 parlours under the provisions of this statute (Prostitutes Rights Organisation for Sex Workers 1989, p. 2). The Attorney General of New South Wales, Mr. Dowd, has announced that the state government is considering the introduction of legislation to exempt all charged with prostitution offences from community service work in lieu of payment of fines (Bita 1990).

The crackdown on brothels raises important health issues, and, according to prostitutes in New South Wales, will force more prostitutes onto the streets, thus making the task of reaching them with information about AIDS prevention more difficult. The AIDS Council has called upon Governments to put aside prejudices against sex workers in the interests of public health (Prostitutes Rights Organisation for Sex Workers 1989, p. 12).

Prostitutes Collective of Victoria representatives claim that legalisation has forced many of the state's 4,500 prostitutes to work in uncontrolled escort agencies or on the streets. Prior to 1984 there were about 150 brothels in Victoria. Currently there are 58, all with permits. The surplus of prostitutes created by this system have either had to retire or risk working in illegal prostitution. The restriction in the number of brothels has caused the market value of permitted brothels to sky-rocket to such a degree that prostitutes cannot afford legal houses of their own (Perkins 1988, pp. 60-1). Women working in legal brothels have to submit to "house rules" which includes the operators taking 60 per cent of all client fees and some have been asked for money up-front for employment in brothels. Owners have increased their profits by imposing a system of fines for various misdemeanours such as lateness, not shaving legs and not having matching nail polish on fingers and toes.

Professor Marcia Neave, who headed the Victorian Inquiry into Prostitution, has argued that the failure of the government to introduce the licensing provisions in the Act has meant that there are no controls over the operation of brothels. "I had hoped that the effects of my recommendations would have been to reduce the powerlessness of men and women who work in prostitution but the combination of these events seems to have had the opposite effect" (Neave 1988b, p. 54).

Brothels in Victoria have become high risk areas for prostitutes who are often exposed to physical violence, AIDS and sexually transmitted diseases. Prostitutes collective representatives suggested that safe sex is not popular among the clientele of most brothels, with the result that a

prostitute's good intentions regarding safe sex will often lapse if she has been waiting all night for a client and someone wants sex without a condom.

In South Australia the Vice Squad has been disbanded and prostitution is now policed by regional branches. Prostitutes collective representatives said that harassment of women occurs irregularly and police response to prostitution varies between regions.

In Western Australia, the Australian Capital Territory and the Northern Territory, prostitutes perspectives on "containment and control" differed. A prostitutes collective representative in Western Australia said the policy of "containment and control" has had negative implications for prostitutes in that state. This policy was established in Western Australia 20 years ago as a response to police corruption. Police closed down most of the establishments operating at that time, but allowed 16 to stay open. It became difficult to obtain employment in a brothel, which placed the brothel-keepers in a powerful position and they could make unreasonable demands on prostitutes. According to a collective representative, police harassment is also a problem. Although it is legal for women to work in their own homes, those who do are constantly intimidated and frightened by police. Because the women do not generally know their legal rights, police threaten them with prosecution. In Kalgoorlie the rights of women working as prostitutes are limited as they are required to live in the brothel in which they work and are not permitted to frequent public places.

In both the Northern Territory and the Australian Capital Territory prostitutes collective representatives suggested that the "containment and control" policy does not cause any major difficulties. Police are generally polite and do not harass the women. According to the collective representative in Darwin, prostitutes in the Northern Territory are beginning to question the unofficial right of police to photograph and interview women wishing to work as prostitutes. The Northern Territory Attorney General and the government are taking steps to formulate legislation which legitimise the monitoring function of the police.

Prostitutes collective representatives explain that when the Fitzgerald Inquiry began in Queensland, the police gave parlours seven days notice to close. Only two parlours stayed open, saying they only offer massage. Continuing police harassment of prostitutes is a problem in this state. If a particular prostitute is disliked, she will often be harassed on a 24-hour basis. Prostitutes have been arrested while at the supermarket simply for being known prostitutes. Some women who had planned to work as prostitutes for a short time to save money have been forced to continue working to pay fines. Although women in Queensland can legally work from their own homes, police have had phones cut off, making work difficult. Most of the women have neither the courage nor financial means to fight prosecutions and prefer to pay the fines.

According to Jennifer James, this lack of respect and concern by law enforcement personnel towards prostitutes often prevents prostitutes from seeking legal help when they are abused or assaulted by customers. Faced with the attitude that she was "asking for it", or "had it coming to her", a prostitute who reports a customer or a pimp to the police is likely to feel more victimised by the legal system than by the violence of individual men (James 1978, p. 190), Milman (1980), Edwards (1984), Erbe (1984) and Perkins and Bennett (1985) also report high levels of victimisation by women who work as prostitutes.

In all jurisdictions, except in legal brothels in Victoria, the law dealing with prostitutes' earnings does not distinguish between coercive, intimidating and exploitative pimps and prostitutes lovers/husbands and brothel auxiliary staff.* Collective representatives throughout Australia felt that this law is misguidedly paternalistic and should be repealed as there are other laws which adequately protect prostitutes from coercive and exploitative behaviour. They also suggested that husband and wife teams are becoming increasingly common and prostitutes are often required to give evidence against husbands and lovers, which they are unwilling to do.

* At the time of writing the Northern Territory government was initiating legislative measures

which would distinguish "living off the earnings" from the voluntary sharing of income within the family.

Policy Options

The following points highlight the need for change.

- Prostitution laws are ineffectual - they have little lasting effect on those who choose to buy and sell sexual services. Changes in prostitution laws determine whether those working as prostitutes seek their clients on the streets, in brothels or through escort agencies (Neave 1988a, p. 205).
- In New South Wales and Victoria women are increasingly seeking work on the streets and are working in unsafe conditions. In the current climate of AIDS and sexually transmitted diseases, this is of serious concern.
- In other jurisdictions, problems exist in relation to police harassment or resentment of police involvement in prostitution.
- Feminists argue that prostitution laws discriminate against women. Men and women are both participants in prostitution yet laws and law enforcement have traditionally been directed only against the prostitutes and not the clients (Neave 1988a, p. 204).

Several policy options have been considered by governments for dealing with prostitution and these are discussed below.

Criminalisation

Criminalisation of prostitution is favoured by those who believe prostitution is wrong by its very nature and should be stamped out. However, this approach does not achieve the desired effect of ridding society of prostitutes, nor does it prevent the demand for prostitutes. Restrictive laws which seek to prohibit behaviour for which there is a substantial demand and which is profitable encourage the involvement of organised crime and corruption (Queensland 1989, p. 186).

According to the Fitzgerald Report, the criminalisation of prostitution has encouraged significant criminal activity for several years (Queensland 1989, p. 66). The criminalisation of prostitution has resulted in serious health and welfare problems and has made it difficult for women in the industry to seek help for these problems. It has led, in many cases, to the legal harassment of women while syndicates and pimps controlling the trade have generally been left untouched. Furthermore, heavy criminal sanctions have led to greater police corruption and criminal involvement in prostitution.

Prostitutes collectives were unanimously opposed to criminalisation and pointed to the effects of such a policy in Queensland. They argued that laws criminalising prostitution have provided an environment for corruption by a range of people involved in their enforcement.

Rather than acting as a deterrent to those involved in the commercial sex industry, corruption costs or periodic policing become accepted as baseline operating expenditure for the industry (Self Help for Queensland Workers In the Sex Industry 1989).

Legalisation

Legalisation involves formal recognition and state sanctioning of the trade. Legalisation appears to generate more problems than it solves, and is unappealing to prostitutes (Perkins 1988, p. 62). It has, in most cases, led to direct state control over the women such that their economic and personal rights are severely restricted. The women are usually denied any control over their working conditions. Another argument against legalisation is that the state, in effect, becomes the pimp and benefits through taxes (Cheney 1988, p. 253).

Prostitutes collective representatives suggested that based on the Victorian experience, they would oppose the legalisation of most forms of prostitution. They felt that legalisation ensures total police

control of the prostitution industry and would not necessarily change police attitudes towards prostitution; harassment will continue, whether prostitution is legal or illegal.

Decriminalisation

The distinction between legalisation and decriminalisation is largely a matter of degree. For example, those who support removal of penalties for street soliciting but suggest that it should be permitted in certain areas favour both decriminalisation and legalisation (Victoria 1985, p. 179). Decriminalisation means that activities are no longer crimes and participants are not subject to criminal penalties. Decriminalisation of prostitution would mean the removal of all prostitution specific laws and no police regulation of the trade. Decriminalisation offers advantages to prostitutes, and could relieve the criminal justice system of the burden of policing and penalising large numbers of females (Perkins 1988, p. 62).

Prostitutes collectives in all states supported the introduction of a system of decriminalisation. They generally agreed that this is the most workable, realistic and compassionate option. Prostitutes do not favour differentiation between brothels and other businesses; they believe they should be permitted to operate with similar business regulations. Several collectives suggested that prostitution should be based on a "cottage industry" model which would allow prostitutes to work together on a small scale, without pushing the industry towards big business as has emerged in Victoria.

One of the disadvantages of removing the sanction of law is that many more people might then take part in potentially harmful activities, particularly if they are profitable (Queensland 1989, p. 189). Complete decriminalisation of prostitution would not allow for local government controls on the location of brothels and street prostitution. It is unrealistic to accept that the needs of the community can be discounted when formulating prostitution policies.

Decriminalisation With Controls

Decriminalisation with controls involves legal recognition with full government controls. This option, which broadly conforms to recommendations made by the New South Wales and Victorian Committees of Inquiry into Prostitution and the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949), represents a reasonable working compromise between prostitutes, clients, residents and the community. The Fitzgerald Report also endorsed a policy of decriminalisation with controls (Queensland 1989, p. 188).

A policy of decriminalisation with controls would aim to:

- remove prostitution from the ambit of the criminal law while retaining provisions against agglomeration of business interests, advertising prostitution or recruitment of prostitutes, sexual exploitation of minors, intimidation, procuring, blackmail and assault of prostitutes;
- reduce the demand for prostitution through social welfare reform;
- control street prostitution by permitting soliciting only in certain areas;
- avoid the formation of red-light districts and;
- treat prostitution as a planning matter with regulations to control noise and nuisance aspects of the trade.

Health issues would also be best served by decriminalised or controlled prostitution where women would undergo health checks without fear of prosecution. Safe sex practices might also be enforced, preferably by those employed in the industry, as part of a regulated system of prostitution. Brothels could be required to hand out literature on the risks of sexually transmitted diseases.

Professor Neave has argued that policies should be designed to increase the occupational choice of women and to expand employment opportunities. The New South Wales

Committee of Inquiry into Prostitution found that economic factors were the overwhelming motivating force for women entering prostitution (New South Wales 1986, p. 130-36). Most of the women surveyed (97 per cent) by Perkins and Bennett (1985, p. 214) also stated that their reasons for entering prostitution were purely economic. Prostitution in most countries is the only occupation in which women can earn, on average, more than men (Cheney 1988, p. 242). Although it is acknowledged that some women will enter prostitution for reasons other than financial, the need for women to enter prostitution can only be significantly reduced through long-term economic and social measures and not through legal restraints. Such an approach has been implemented in Sweden in conjunction with a social and economic reform program. The goals of the Swedish government were to reduce prostitution by social rather than legal means by providing women with sufficient economic and social security for them to leave their trade if they desired. The women were provided with accommodation, money, emotional support and alternative employment (Cheney 1988, p. 243). The results proved to be positive as the number of women entering prostitution in Sweden has been significantly reduced (Canada 1983, p. 115-16).

Exploitation of women would best be prevented by laws which prohibit coercion, but not by laws which assume that all men who get money from prostitution are at fault. Prostitutes should have the same rights to enter into voluntary relationships as do other citizens. Unfortunately, controls of prostitution, as proposed above, would continue to limit the freedom of women to become prostitutes and police involvement would be substantial. This approach to prostitution would be regarded as a provisional solution, until efforts are made to address the reasons as to why women enter prostitution.

Legislative and policy changes are not enough on their own. Education programs are also required to work

towards changing the ideas of the general public on prostitution. It is necessary to educate the community to support prostitution reform and recognise that although not necessarily condoning prostitution, changes to the law are required.

Widespread and fundamental changes in the way the community understands prostitution is, therefore a necessary component of change. Without it prostitution law reform is a fruitless exercise of simply reworking the incorrect assumptions which underpin the criminal law into modern administrative provisions (Overs 1989, p. 116).

Prostitution as we know it today can no longer be considered the oldest profession in the world. We are now witnessing the emergence of women who are establishing their own prostitutes collectives, writing submissions to government inquiries and openly and successfully operating their own "sex for sale" businesses. Prostitutes are demanding a voice in their own employment. Society must accept the choices made by these women and respond accordingly.

References

Bitu, Natasha 1990, 'Prostitutes to face jail if they don't pay fines', *Sydney Morning Herald*, 29 January.

Canada 1983, *Report of the Special Committee on Pornography and Prostitution* (Fraser Report), Toronto.

Cheney, Belinda M. M. 1988, 'Prostitution - A Feminist Jurisprudential Perspective', *Victoria University of Wellington Law Review*, vol. 18, pp. 239-57.

Department of Community Services and Health 1988, *Consultation Paper No 2. Report of the Working Panel on Discrimination and Other Legal Issues - HIV/AIDS*, Department of Community Services and Health, Canberra.

Edwards, Susan M. 1984, *Women on Trial*, Manchester University Press, Manchester.

Erbe, S. 1984, 'Prostitutes: victims of men's exploitation and abuse', *Law and Inequality: Journal of Theory and Practice*, 2, pp. 607-23.

James, Jennifer 1978, 'The Prostitute as Victim', in Jane R. Chapman & Margaret Gates eds, *The Victimization of Women*, Sage Yearbooks in Women's Policy Studies, vol. 3, Sage Publications, Beverly Hills, CA.

Milman, J. 1980, 'New rules for the oldest profession: should we change our prostitution laws?', *Harvard Women's Law Journal*, vol. 3, pp. 1-35.

Neave, Marcia 1988a, 'The Failure of Prostitution Law Reform', *Australian and New Zealand Journal of Criminology*, vol. 21, no. 4, December, pp. 202-14.

Neave Marcia 1988b, 'Overview of National Legal Responses to Prostitution - Prostitution Laws - Strategies for the Future', in *Sex Industry and the AIDS Debate '88: Report and Conference Papers*, 25-27 October 1988, Prostitutes Collective of Victoria, St Kilda, pp. 45-55.

New South Wales 1986, *Report of the Select Committee of the Legislative Assembly upon Prostitution* (P. Rogan - Chairman), Government Printer, Sydney.

New South Wales Police Media Unit 1989, 'Prostitution Crackdown Results In More Arrests', October, New South Wales Police Headquarters, Sydney.

Northern Territory Legislative Assembly 1989, Prostitution in the Northern Territory, Statement by Mr Manzie, Attorney-General, Thursday 31 August.

Overs, Cheryl 1988, 'Changing Legal and Administrative Responses to Sex Work - Fact and Fiction', *Sex Industry and the AIDS Debate '88: Report and Conference Papers*, First National Sex Industry Conference, 25-27 October 1988, Prostitutes Collective of Victoria, St. Kilda, pp. 108-17.

Perkins, Roberta & Bennett, Garry 1985, *Being a Prostitute. Prostitute Women and Prostitute Men*, George Allen & Unwin, Sydney.

Perkins, Roberta 1988, *Working Girls*, MA thesis, Macquarie University, Sydney.

Prostitutes Rights Organisation for Sex Workers (New South Wales) 1989, vol. 1, no. 2. June.

Queensland 1989, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Report of a Commission of Inquiry Pursuant to Orders in Council, (Fitzgerald Report), Government Printer, Brisbane.

Self Help for Queensland Workers In the Sex Industry 1989, Submission to the Fitzgerald Inquiry from Self Help for Queensland Workers In the Sex Industry, March 13, 1989.

Victoria 1985, *Inquiry into Prostitution, Final Report*, (M. Neave - Inquirer) vols 1 & 2, Government Printer, Melbourne.



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