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

Bernard Collaery
Attorney-General
Legislative Assembly
Australian Capital Territory

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

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Canberra.

Pinto, S., Scandia, A. & Wilson, P. 1990, *Prostitution Laws in Australia*, Trends and Issues No. 22, Australian Institute of Criminology, Canberra.

Scutt, J. 1990, *Women and the Law*, The Law Book Company, Sydney.

FEMINIST APPROACHES TO THE SEX INDUSTRY

Barbara Sullivan
Lecturer
Department of Government
University of Queensland

FEMINISTS ARE SOMETIMES REPRESENTED AS A BUNCH OF MAN-HATING wowsers who simply make life difficult for men and for those who earn their living in the sex industry. However, I think the real situation is somewhat more complicated than this. Rebecca West had this to say about the label 'feminist':

> I myself have never been able to find out precisely what feminism is. I only know that people call me a feminist whenever I express sentiments that differentiate me from a doormat (*The Clarion*, 18 April 1913).

By this definition most sex workers would have to be called feminists! And, over the last ten years, more than a few sex workers have publicly proclaimed their adherence to a feminist politics (*see*, for example, Margo St James in Phetersen 1989). It is probably the case then, that the labels 'feminist' and 'sex worker' are not mutually exclusive. Certainly feminists—like many other women in the community—have worked and do work in the sex industry. To varying degrees, however, most feminists disapprove of the pornography and prostitution industries, at least as they are presently organised. But this is a view that would be shared by a large percentage of the Australian population as well as a large proportion of sex workers. Feminists also disapprove of rape and domestic violence, child sexual abuse, sex discrimination, the lack of value assigned to most women's work (including housework) and the damage being done to the ozone layer by pollution. Of course, these are things that many ordinary people, including sex workers and Christian fundamentalists, would also disapprove of.

So what features are characteristic of feminist approaches to the sex industry and, perhaps more importantly, of what practical use are feminist analyses? In this paper attention will be directed primarily at the prostitution trade rather than at prostitution and pornography. This is not because the pornography trade is a less important aspect of the sex industry or less significant in terms of a feminist approach. It is because the author's geographical location is in Queensland where the processes of law reform are presently being directed at the prostitution industry.

This paper will also focus on Australian feminism which, since the mid-1970s, has developed a rather unique and practical engagement with sex industry issues. Thus, Australian feminist approaches to the sex industry have, to a significant degree, been

different from the approaches adopted by feminists in other countries. This is partly the effect of a specifically Australian history and political culture. This paper will begin with a historical perspective and show how feminists have engaged with some sex industry issues in the recent past. From this analysis some of the main features of feminist approaches to the sex industry will be drawn out and some practical uses for these suggested.

A Historical Perspective—Feminism and the Sex Industry in Australia

The prostitution industry arrived in Australia with the First Fleet. Many of Australia's 'founding mothers'—the convict women who were transported to the colony of New South Wales between 1788 and 1840—were probably working prostitutes in the home country (Robson 1965). Clearly, many of Australia's 'founding fathers' were also participants in the sex industry although, as clients, they were members of a historically invisible group.

These historical facts were explicitly linked to a feminist political analysis in 1975 with the publication of Anne Summers' *Damned Whores And God's Police*. This text, along with Germaine Greer's *The Female Eunuch* (1971), became one of the most widely read feminist texts in Australia during the 1970s. Summers developed an analysis of contemporary Australian society that was premised upon its historical roots in the sex industry. She argued that, in the early days of Australian settlement, all women—free settlers, Aboriginal and convict women—were subject to an 'enforced whoredom'; that is, they were forced to trade sex in exchange for food, clothing and shelter. Summers (1975) suggested that in contemporary society Australian women were still largely in this position. However, after the early days of convict settlement, women were increasingly separated into 'good' or 'bad', that is into 'damned whores' or 'God's police'. It was, Summers argued, the assigned social role of 'good' women (a category that included married women, celibate spinsters and the early feminists) to both discipline and divert 'bad' women from their evil ways. However, the overall effect of this process was to divide and classify women as 'either maternal figures who are not . . . sexual or as whores who are exclusively sexual'. Summers argued that these stereotypes in fact functioned to discipline all women for they ignored or actively repressed 'good' women's sexual needs ('good' women were represented as asexual) while all 'bad', sexually active, women were represented as prostitutes. Summers argued that it was in the interests of all women for these stereotypes of appropriate sexual behaviour to be broken down. She thought that one way this might be achieved was for 'good' women to refuse their traditional 'policing' functions and for feminists to publicly identify themselves with those who were designated as 'bad' women—a category that clearly included sex workers.

Strong links were forged between feminists and prostitute rights groups in the mid-1970s in Australia (Daniels 1984, Inglis 1984) and, as a result, some real advances were made in the area of prostitution law reform. Summers (1975) text was particularly important in this process. The 'damned whores and God's police' dichotomy was widely cited by Australian feminists as 'a form of social control of female sexuality' which 'makes the support of prostitutes by other women a matter of self-interest rather than moral imperative' (Jackson & Otto 1980, pp. 373-4). The laws controlling prostitution were described as property laws over women's bodies which simply aimed to prohibit women from selling something that men regarded as their property (Bacon 1976/77).

Like Summers, many Australian feminists in the 1970s drew out the connections, rather than the traditional distinctions, between marriage and sex work. Marriage was described, in many cases, as a poorly paid form of prostitution in which women were more vulnerable to violence (from their husbands) and had less control over their daily lives than sex workers (Scutt 1979). Thus, support for sex workers was combined with a critique of traditional social and sexual arrangements such as marriage.

Feminists also used socialist concepts to marshal support for prostitutes as workers. A major problem for prostitutes is that they are often disregarded as workers and are said to be involved in the sex industry only out of a desire to avoid 'real' work. In the 1970s feminists began to argue that sex work was a form of women's work (although sex work was not seen to be confined to the sex industry). They contended that the decriminalisation of prostitution and (for some authors) the unionisation of the prostitute workforce was a necessary pre-condition for immediate improvements in the working conditions of prostitutes who were simply workers who worked in the sex industry (Aitkin 1978; Jackson & Otto 1980).

The focus within Australian feminism on the prostitute as worker has been both theoretically and strategically productive. Shifting the central concern from issues of sexuality and ethics to industrial issues such as wages and working conditions facilitated a feminist support for sex workers at a time when the prostitution trade—and sex workers in particular—were becoming subject to a range of new cultural prohibitions and legal sanctions around Australia (Sullivan 1991).

It is perhaps ironic that one of the side effects of the 'sexual revolution' has been a renewed emphasis upon the importance of mutuality (if not monogamy) in 'normal' sexual relations. In this process, prostitution (as well as other forms of non-reciprocal sexual behaviour) have attracted a new stigma. While the prostitute has long been regarded as a deviant and unnatural woman within governmental and legal discourse, a similar classification of male clients did not occur until the post-war period. While the prostitution trade has become subject to increased legal surveillance and regulation over the last forty years, the evidence shows that it is female sex workers—and not to any great extent their male clients—who have borne the main legal burden of this process (Sullivan 1991).

The focus within Australian feminism on the prostitute as a worker has also facilitated an examination of the prostitution industry from an industrial perspective. Various feminist historians have produced research which emphasised the role of anti-prostitution laws, health and policing practices in the organisation of the industry (Daniels 1984; Allen 1984, 1990; Murnane & Daniels 1979; Saunders & Taylor 1984). This approach made visible hitherto unexplored aspects of the structural conditions within which sex work occurred. Judith Allen (1984), for example, has explored the changes which occurred in the organisation of the prostitution industry in New South Wales after the passage of the *Police Offences Act 1908* which outlawed street soliciting for the first time. Her work contains some important lessons for contemporary law reformers as she shows that legal measures designed to suppress prostitution usually produce a restructuring of the industry in ways that are both conducive to the growth of organised crime and police corruption and detrimental to the interests of sex workers.

Some feminists, however, have argued that there are potential disadvantages and unintended consequences of adopting a theoretical/political focus on prostitution as work. Socialist feminists, for example, have argued that prostitutes do not form an homogeneous group in class terms and 'can vary from the most extreme case of exploited and disadvantaged workers to . . . women who own and manage the brothel or parlour in which they work' (Biles 1980). Giving everyone who works in the sex industry the title 'sex worker' prevents a focus on class differences and on the struggle which we might expect to be waged within the industry between 'sex workers' and 'sex capitalists'.

Another disadvantage of addressing prostitution as work is that the primary object of analysis remains the sex worker and—as in traditional analyses of prostitution—the client is rendered invisible. Thus, the sexual desires and aspirations of clients—and the ways that these reflect broader cultural practices and patterns of masculinity—remain both unprioritised and assigned to the realm of natural male sexual needs (Overs 1989). Feminists (and others) argue that the visibility of prostitutes and the invisibility of clients is an important political

issue and one that needs to be addressed by future research on the sex industry (Sullivan 1991).

Despite the problems just discussed, the analysis of prostitution as work (and as simply a particular form of women's work) was widely adopted within Australian feminism in the mid- to late-1970s. It was an analysis that was compatible with both the 'labourist' orientation of the Australian Labor Party (ALP) and the feminism of the Women's Electoral Lobby (WEL). In 1974 the national conference of the WEL adopted a resolution which advocated the decriminalisation of all prostitution-related activities in Australia. Many members of WEL were also supporters or members of the Australian Labor Party (ALP). By the late 1970s, Labor Party feminists in both New South Wales and Victoria were lobbying within and outside the ALP for the decriminalisation of prostitution (*The Bulletin*, 5 December 1978, pp.20-4). In New South Wales, for example, the Labor Women's Committee passed a resolution in 1976 which characterised prostitution as a private sexual matter and argued for the removal of all prostitution-related laws. The advent of a Labor government in New South Wales in 1976 and continuing feminist pressure both from within the party and from the WEL eventually led to a focus by government on the 'sex discrimination' faced by sex workers. Prostitution laws were identified as 'discriminatory' because only female prostitutes were charged and not their male clients. Moreover, the particular discrimination faced by street workers (who were more prone to arrest and imprisonment than those who worked in parlours) was raised in terms of a class discrimination. Feminists argued then, that the decriminalisation of street soliciting was an urgent priority.

The *Prostitution Act 1979* decriminalised loitering and soliciting for the purposes of prostitution in New South Wales. It was the outcome of an effective campaign waged by feminists and prostitutes' rights groups. This success, however, was contingent upon feminists and sex workers being prepared to work within and alongside the established political parties in a way that related their concerns to existing areas of party policy. In New South Wales, for example, civil liberties groups and sections of the ALP had long been advocating the decriminalisation of 'victimless crime' (which included prostitution) (Buckley 1968). In addition, and partly as a result of libertarian campaigns around pornography in the 1970s, all expressions of sexuality–including the transaction between prostitute and client–were increasingly being regarded as 'private' sexual behaviour and not, therefore, a proper concern of government. As mentioned previously, the representation of prostitution as sex work meant that effective links could be forged with the labourist orientation of the ALP. For many reasons then, the Labor Party in New South Wales in 1979 was pre-disposed to accept feminist and sex worker arguments about the need to decriminalise prostitution. It was, however, the more public manifestations of prostitution–soliciting and loitering in a public place for the purposes of prostitution–that were decriminalised rather than 'private', off-street, prostitution (as was to occur in Victoria in the 1980s). This was consistent with the demands elaborated by feminists and sex workers that decriminalisation should not merely render prostitution invisible (and thus, simply reinforce the deviant status and oppression of prostitute women) (Johnson 1984) and should address the particular legal 'discrimination' faced by street prostitutes.

In the long run, however, this did not prove to be a viable political strategy for the ALP. In 1983, after a substantial and politically damaging campaign waged by inner-city resident groups, soliciting for the purposes of prostitution was recriminalised by the Labor government. The legal sanctions against street prostitution were again increased in 1988.

What are the Characteristics of Feminist Approaches to the Sex Industry?

Perhaps the most characteristic feature of feminist approaches to the sex industry is their focus on gender and on the connections between sex and power. Feminist analyses identify as significant the different structural locations which men and women tend to have in the sex industry (women as workers, men as clients). But they also connect this difference to an argument about power and to a wider theory of oppression which locates all women, whether they are sex workers or not, to a social system of male dominance and control.

Feminists advocate the establishment of non-oppressive work structures in the sex industry which empower workers in their interactions with clients and owners. They also argue for an end to the legal harassment of sex workers (Neave 1988). Feminists argue for the importance of an ongoing dialogue and support between feminists and sex workers. Feminists argue that the nature of client demand in the sex industry is a cultural construct (that is, client demand is not simply the expression of natural male needs) which has varied both across history and between cultures (McIntosh 1978). As such, it is open to changes which may or may not be in the best interests of women and sex workers in particular.

While feminists are supportive of sex workers they are critical of many aspects of the sex industry, particularly as it is presently organised. Some feminists would look to the long-term abolition of the sex industry whereas others would say that it might be possible to create a less oppressive prostitution (where, for example, sex workers had the same rights and privileges as other Australian workers and were not subject to harsh criminal sanctions) or pornography which addresses women's erotic interests and does not only represent women as sex objects.

Of What Use are Feminist Approaches to the Sex Industry?

The emphasis which feminists place on a gendered analysis of the sex industry makes visible some of the power mechanisms which operate both within and on the sex industry. Feminist approaches can, therefore, be used to identify and address some of the power structures that sex workers are subject to and to explain why these are unjust. In Australian political parties and parliaments there is usually some concern to address the issue of sex discrimination and gender based injustices. Feminist analyses can then be used to assist in the process of drawing such issues to public attention.

As an example of this it can be suggested that the Information and Issues Paper that was issued by the Criminal Justice Commission (1991) in Queensland is seriously flawed by its lack of attention to the gendered structures of the sex industry. The following is part of a submission which has been made by the author to the Criminal Justice Commission on this matter:

> 1.1 While prostitution is usually defined in gender-neutral terms, as the sale of sexual services for money or material gain, this is an approach that specifically disavows the gendered nature of the prostitution industry. The vast majority of 'sex workers' are women while the consumers of prostitution services are almost wholly men. The present configuration of prostitution-related laws in Queensland penalises those who sell prostitution services (that is, largely women) but not those who purchase such services (that is, men).
>
> 1.2 All prostitution-related laws in Queensland are couched in gender-neutral language. Thus, they are said to not directly discriminate on the basis of gender and 'whether homosexual or heterosexual activities are involved are of little consequence' (Criminal Justice Commission 1991, p. 10).

> 1.3 However, the law is in effect discriminatory for the vast majority of those prosecuted for prostitution-related offences are women. This is an issue which has not been addressed at all by the Criminal Justice Commission so far.
>
> 1.4 The fact that 'solicitation for the purpose of prostitution provides the only charge which can be levelled at the clients of sex workers' (Criminal Justice Commission 1991) (if considered in conjunction with the fact that most clients are male) is an indication that the present configuration of prostitution-related laws in Queensland institutionalises discrimination against women.
>
> 1.5 A gendered analysis on the prostitution industry appears in the Discussion Paper (Criminal Justice Commission 1991, p. 23). The argument is made that a disproportionate number of males (as compared to females) receive prison sentences for prostitution-related offences. No indication is given as to whether this, in fact, indicates differential treatment. Are men and women imprisoned at different rates for the same offences or is it that men are more likely to commit more serious offences? If it is the case that male sex workers are more heavily penalised in the Queensland criminal justice system than female sex workers then this would indicate that, in practice, the system does discriminate on the basis of a perceived hetero or homosexuality; in general, male sex workers are servicing a male clientele and engaging in homosexual acts. But the fact that a disproportionate number of men go to prison for prostitution-related offences also indicates that a disproportionate number of women (vis-a-vis men) are being arrested for these types of offences. Even if most women arrested for prostitution-related offences do not end up going to prison, their liability to arrest and financial penalties—together with their (male) clients relative immunity from prosecution—constitutes further evidence in support of the argument that the present configuration of prostitution-related laws in Queensland discriminates against women.

The argument that the present configuration of prostitution-related laws in Queensland constitutes sex discrimination was not used to argue that the laws needed to be extended to be more inclusive of men and clients. The sex discrimination claim was used to argue for a more equitable means of regulating the prostitution industry. The present method of wide-ranging criminal sanctions against prostitution-related offences and selective policing has proved susceptible to organised corruption; but it is also a system in which women have suffered particularly harsh and discriminatory penalties. (It is not suggested that male sex workers do not also suffer significant disadvantage in this system. Male sex workers are clearly punished for being prostitutes and for being men who service other men sexually.)

Feminist approaches to the sex industry are also useful in establishing a broad base of political support for prostitution law reform. Sex worker organisations already mobilise some feminist support; this could, however, be extended to encompass feminist networks in the ALP, the Liberal Party and the Australian Democrats, in the union movement, in state and federal bureaucracies and in the universities. As the experience in New South Wales in 1979 showed, the political support for prostitutes rights and for prostitution law reform can be broadened by feminist support. This could be an important factor in the process of law reform presently being undertaken in Queensland.

References

Aitkin, J. 1978, The Prostitute as a Worker, paper presented to the Women and Labour Conference, Sydney.

Allen, J. 1984, 'The making of a prostitute proletariat in early twentieth-century New South Wales', in *So Much Hard Work: Women and Prostitution in Australian History*, ed. K. Daniels, Fontana-Collins, Sydney.

---------- 1990, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, Oxford, Melbourne.

Bacon, J. 1976/77, 'The Real Estate Industry in Women', *Vashti*, vol. 17, pp. 5-6.

Biles, A. 1980, 'Propositions on Prostitution', *Scarlet Woman*, vol. 10, pp. 18-22.

Buckley, K. 1968, Vagrancy and Prostitution, Paper presented to the First Convention of Councils for Civil Liberties, Sydney.

Criminal Justice Commission (Queensland) 1991, *Review of Prostitution—Related Laws in Queensland*, Information and Issues Paper.

Daniels, K. (ed.) 1984, *So Much Hard Work: Women and Prostitution in Australian History*, Fontana-Collins, Sydney.

Greer, G. 1971, *The Female Eunuch*, Paladin, London.

Inglis, J. 1984, 'Working towards a collective of prostitutes', *Scarlet Woman*, vol. 18, pp. 16-19, Melbourne.

Jackson, S. & Otto, D. 1980, 'From Delicacy to Dilemma: a feminist perspective', *Scarlet Woman*, April, Melbourne.

Johnson, D. 1984, 'Prostitution: One Experience', in *So Much Hard Work: Women and prostitution in Australian History*, ed. K. Daniels, Fontana-Collins, Sydney.

McIntosh, M. 1978, 'Who Needs Prostitutes? The ideology of male sexual needs', in *Women, Sexuality and Social Control*, eds C. Smart & B. Smart, Routledge and Kegan Paul, London.

Murnane, M. & Daniels, K. 1979, ''Prostitutes as 'Purveyors of Disease': Venereal Disease Legislation in Tasmania 1868-1945'', *Hecate*, vol. 5, no. 1, pp. 5-19.

Neave, M. 1988, 'The Failure of Prostitution Law Reform', *Australian and New Zealand Journal of Criminology*, vol. 21, pp. 202-11.

Overs, C. 1989, 'Prostitution: We Call It Sex Work Now (A Comment)', *Lilith: A Feminist History Journal*, vol. 6, pp. 64-8.

Pheterson, G. (ed.) 1989, *A Vindication of the Rights of Whores*, Seal Press, Seattle.

Robson, L. 1965, *The Convict Settlers of Australia 1787-1852*, Melbourne University Press.

Saunders, K. & Taylor, H. 1984, 'To Combat the Plague: The Construction of Moral Alarm and the Role of State Intervention in Queensland during World War II', *Fourth Women and Labour Conference Papers*, pp. 491-533, Brisbane.

Scutt, J. 1979, 'The economics of sex: women in service', *Australian Quarterly*, vol. 51, no. 1, pp. 32-46.

Sullivan, B. (forthcoming), 'Film Censorship, Sexual Politics and Political Culture', *Melbourne Journal of Politics*.

---------- 1991, 'The Business of Sex: Australian Government and the Sex Industry', *Australian and New Zealand Journal of Sociology*, vol. 27, no. 1, pp. 3-18.

Summers, A. 1975, *Damned Whores and God's Police: The Colonization of Women in Australia*, Penguin, Ringwood.

The Bulletin 1978, 5 December, pp. 20-4.

WHY SHOULD WE OPPOSE THE 'SEXPLOITATION' INDUSTRY?

Reverend Fred Nile
National Coordinator
Australian Festival of Light
New South Wales

AS WE LOOK AT THE EVILS OF OUR DAY, INCLUDING THE WIDESPREAD dissemination of pornography, what shall we say? Shall we say it is not our business, and people should be free to go to hell in their own way? Shall we say the whole thing is a trivial issue and allow it to surround us, pervade our thoughts and corrupt our minds? Shall we continue with pornography, so that the Mafia may flourish? So that some may be satiated with sexual perversion?

The Nihilism of Pornography

If Christians are to put away sin and prove to be neighbours to others, then as we care for their souls, we must not disregard their minds and bodies. Rather, we must marshal our arguments for serious rational and spiritual confrontation with evil, so that we may both counter the prevailing destructive impact of pornography and replace the attitudes which foster it with those loving, caring responses which alone can eliminate the hunger for such material.

The first thing we can say, then, is that pornography is anti-life. To reject pornography is not to be negative towards life. On the contrary, it is pornography itself which is nihilistic, reductionist and destructive. It is a negative influence in society and in personal lives. Actively countering such a force, therefore, is positive. We need not apologise when we proclaim love not lust, and reject anything less than the best for men and women made in God's image.

In particular, pornography is anti-relationship and thus anti-family. Through its obsession with sexual function, pornography carefully avoids any recognition of the value of family relationships. Marriage is ridiculed, promiscuity promoted, homosexual relationships glamorised and group sex endorsed. Sexuality is integrally related to the family unit and its use for non-relational gratification is wrong. One modest benefit arising from the flood of pornography is that, against the sharp alternative of the pornographic society, the value of biblical family ideals is even more clearly evident.

Pornography is anti-human. By its preoccupation with organs and functions, pornography departs from the representation of real people. Stories lack plots with character, pictures portray anatomy often without the face whereby a human being might be

identified. By this subhuman approach, pornography dehumanises. It treats sexual behaviour between humans as of no greater significance than the copulation of animals. In fact, pornography presents sexual acts with animals as if they could be simply another variety of human experience. In Leviticus 18:23, such acts are condemned as 'perversion'.

Pornography is anti-woman. The outright degradation and humiliation of women are the central themes of pornographic stories and pictures. In soft pornography, the victimisation is less obvious but nonetheless present, as women are treated as sex-objects, disposable creatures to be ogled, used and abused, and then discarded in favour of another.

Many individuals who would resist the temptation to adultery and the use of prostitutes will fall for the substitute of pornographic publications to provide sexual gratification. In view of Jesus' teachings about lustful thoughts (Matthew 5:28), it is difficult to see how this is any more defensible morally. So there is a need to alert people to the dangers of promiscuity expressed in fantasy as well as in behaviour.

Pornography is anti-children. It creates an environment which is inimical to the psychological and moral development of children. It promotes a sexualisation of all relationships, so that it has become almost impossible for adults to meet, hitchhikers to ride or women to be out alone without the situation being construed as an opportunity for physical sex. Children are developing their view of the adult world in this context. A great deal of sex education is seeking to indoctrinate them from their earliest years with an amoral acceptance of promiscuity. They are bombarded with adult sexual images long before they are emotionally prepared. Far worse, a sizeable number are more grossly exploited as models and prostitutes, as victims of incest and the attacks of child molesters. No one has produced credible evidence that any of these risks has been reduced since pornography openly began to promote such ideas. The western world has not seen such deliberate and widespread abuse since the days of the industrial revolution, when children were physically maltreated in the mines and factories.

Paradoxically, pornography is anti-sex. To reject pornography is to take a stand for sex as a special way of expressing and deepening interpersonal commitment. Pornography fails to understand sex as a sacred gift intended for joy, intimacy and deep fulfilment in a loving, lasting relationship. Instead it makes a public spectacle of what should be intimate acts. It takes what should be deeply personal and exploits it commercially, thereby denying the dignity and spirituality of sex. It even undercuts any idea of sex being fun in relationships which are strong and secure.

Psychological analyses of *Playboy* philosophy have emphasised that the preoccupation of such magazines with the physical aspects of sexuality arises not from satisfaction or pleasure but from attempts to counter deep-seated fears of true sexual encounter. Everything is kept superficial and undemanding; ideas of commitment or marriage are avoided or deliberately ridiculed. It is not surprising, therefore, that recent content analyses of *Playboy* magazine have shown an increasing use of violent themes.

Pornography, by its influence on customs and conventions, is anti-social. Defenders of pornography will argue that the decision to read or see it is a private one, of no concern to anyone else. Yet all the indications are that use of pornography has social repercussions. Evidence is accumulating all the time concerning individuals whose anti-social behaviour (including sex crimes and crimes of violence) has led to a real growth in the incidence of sex crimes in recent years. The result is tragic not only for the victims, but for society, as it becomes permeated by fear and suspicion. The availability of pornography is strongly implicated as one of the factors in the corruption of society.

Victor Bachy, Professor of Communications at the University of Louvain, Belgium, after examining what has happened in Denmark over the last decade, came to the conclusion that statistics are largely meaningless there. What really matters is the widespread and

insidious corruption which spreads so much further than pornography itself. He describes Vesterbro, the porn centre of Denmark:

> In Vesterbro, most of the shops are barely a facade. What counts is the rest. The sale of porno texts and pictures is allowed, but the realities are not, and their exhibition is forbidden . . . All the necessary personnel is hired (from) among the socially handicapped and kept in place through the cement of drugs. The whole thing is managed, organised, kept under strict control by big bosses, high-class criminals, international gangsters and magnates of finance. The methods of recruiting the female personnel resemble those of international procurers and white-slavery . . . The liberalisation of pornography has not created Vesterbro, criminals, drugs, procurement. It simply has, in this area of Copenhagen, permitted the installation of criminality at the highest level. The disease that was prevailing has become a general cancer. The indirect consequences of the 1969 law might well be far more important and more serious than its direct effects.

Pornography is anti-environment. It is paradoxical and illogical to become angry at pollution of the natural environment and remain unmoved at the tawdry, garish, obscene and embarrassing displays of pornography on newsstands, outside movie houses and in the daily newspaper advertisements. We recognise the hazards of mercury in our water, fertilizer in our food and smoke in the air we breathe. Ought we not equally to be concerned at the visual pollution which assaults anyone who walks through Times Square, Hollywood, Piccadilly Circus or, to a lesser extent, almost any city in the western world?

The effects take such a long time to reveal themselves; it took a long time before people realised fully the dangers of car exhausts and cigarette smoking. Scientific evidence has now conclusively demonstrated these dangers. So, too, long before the evidence demonstrates all the ill effects, we may respond sensitively to the creeping pornographic pollution which threatens to stifle conscience and corrupt behaviour. And already the evidence is beginning to appear. Should we wait for the scientists' final proof (for it may never come), or shall we speak prophetically of the dangers of immorality?

In many places, the availability of pornography depends on the assumption that community standards have changed so that sensible mature citizens now accept its presence. There is really no evidence to sustain this proposition (polls of public opinion invariably indicate a wish for tighter controls), but so long as responsible citizens remain silent, certainly the appearance of change is there. So long as the aggressive minority shout for removal of restrictions and the voice of decency remains muted, the politicians and legislators may be forgiven for believing there has been a change.

On the other hand, there probably has been a change in attitudes—even among Christians. That is one of the insidious consequences of environmental pollution. We all experience a tolerance shift, so that what was unacceptable five years ago becomes marginal today, while the marginal of yesterday is the normal of today. We should take note of this and examine to what extent standards have been subtly but significantly lowered.

Pornography is anti-community. A whole new multi-million dollar industry has developed to supply the insatiable and ever-changing demand for pornography. Because it panders to human weakness, exploiting authors, models, publishers, retailers and customers alike, it has largely fallen into the hands of syndicated crime. Through close association with drugs and prostitution, a whole criminal subculture has begun to flourish. Inevitably, bribery of law enforcement officers, corruption in high places and violence against those who speak out have become commonplace where pornography prevails.

Removing criminal sanctions against pornography has not helped, as many claimed it would. It has simply made it easier for the criminal subculture to monopolise the market, maintaining an outrageous profit margin at lower risk. The bright hopes that people would lose interest and behave responsibly if only they were not constrained by the law rests firmly

on the humanist philosophy of the goodness of humanity, and denies the weaknesses of human nature. The biblical view of humanity as sinful could scarcely be more dramatically confirmed than by the escalation of corruption that has followed the removal of legal sanctions.

Pornography is anti-culture. Much debate has arisen over the assertion, made by its defenders, that pornography deserves the same protection as fine art and literature. One of the hallmarks of art is that it ennobles and enriches. Pornographic treatments typically degrade and destroy. Certainly there will be occasions when the effect, the possible cultural merit, of a particular work will be disputed. But the material classified as hard-core pornography makes no such pretensions.

One of the strongest objections to pornography is that it not only presents a distorted and false view of the world, but also, by its very presence, excludes more enriching presentations. Just as cancer cells multiply and overwhelm healthy cells, so art and literature are attacked by pornography. Theatre owners claim it is difficult to screen family entertainment because of competition from salacious films. Novels may be rejected unless spiced with heavy sexual content. Radio City, New York, claims it has had to discontinue its family entertainment after twenty-five years due to pressures from pornographic centres in nearby Times Square. The Tivoli Gardens in Copenhagen, and the traditional fine theatre and music of that city, lost patronage as sex shows and porno shops became a major tourist attraction. The promise that removal of legal restraints would lead to a flowering of culture has not been fulfilled. Indeed, as we have seen, people of culture rue the present impoverishment. There is little doubt that wide dissemination of pornography drives out true culture just as counterfeit currency drives out the true coin.

Pornography is anti-conscience. It is by conscience, enlightened by the Holy Spirit, that we become aware of the moral law of God and distinguish good from evil and right from wrong. Just as through constant exposure to violence in the media people lose sensitivity to real violence, so too our conscience can be blunted by pervasive pornography. We begin to accept the idea that people may be used as objects and that sex may be used indiscriminately. When we cease to care about the abuse of sexuality, we are losing concern for an essential part of human nature. If we are content with our own personal integrity and fail to care about the social impact of pornography, we may soon cease to care about other social problems as well—injustice and poverty, for example.

Pornography is anti-God. It is completely opposed to the teachings of Jesus about purity and love. His teachings set men and women free from enslavement to lust. Pornography, in the name of liberation, enslaves to an obsessive preoccupation with lust. Further, it deliberately attacks that which is sacred to the Christian faith. The violation of nuns, perversions practised by priests and the use of churches for sacrilegious orgies are favoured themes. The person of Jesus himself is desecrated by obscenity and blasphemy with the purpose of ridiculing Christian beliefs. The hate and anger directed against women in so much pornography is also vented against God himself.

When Danish pornographer, Jens Thorsen, proposed to make a pornographic film about Jesus Christ, the Christians of Denmark finally took action against what had been occurring for some years in that country. They said, 'If we allow this, then as a country we deserve judgement'. They fought and won. Others have done similarly. When an attempt was made to make the film in England, the producer was refused entry to the country. In an unprecedented way, through the initiative of concerned Christians, public reactions against the film came from the Prime Minister, the Archbishop of Canterbury, the Catholic Archbishop of Westminster and the Queen herself. Should we do less to protect the name of Jesus Christ?

LEGAL PERSPECTIVES IN CLARIFYING THE ISSUES OF THE SEX INDUSTRY

Carolyn Pickles
Member of Legislative Council
South Australia

THE SUBJECT OF PROSTITUTION HAS PROVEN TO BE A DIFFICULT QUESTION FOR criminal justice authorities in Australia and in most parts of the world. Law-makers have attempted to come to terms with the almost impossible task of satisfying the needs of all sections of the community, often with far from satisfactory results.

Prostitution, it is generally agreed, is the carrying on of a trade or business by a person who submits her/himself to another for hire or gain for the provision of sexual services. Much of the present law relating to prostitution had its origins in legislation passed in the late 19th Century. Apart from offences relating to soliciting, no attempt was made to penalise women who practised prostitution. Therefore, the act of prostitution is not illegal. The law deals with prostitution-related activities and penalises the activities of those who promote prostitutes, encourage others to become prostitutes and exploit prostitutes for their own financial advantage.

From the debate to date, it is obvious that there is a dichotomy of views on prostitution. It is still regarded as an immoral and undesirable activity by one section of the community. These people tend to be of the view that it is the duty of the state to keep prostitution in check and to minimise its effects through the criminal law. This view stems from a premise that the state should be responsible for establishing and maintaining moral standards.

The contrary view is that the state should not interfere with the sexual activities of consenting adults unless there are compelling reasons to do so, such as coercion and other criminal activity. Both these viewpoints acknowledge that aspects of the practice of prostitution require some legal restraint. The point of disagreement is the type and extent of these restraints.

This paper aims to provide a background to the legal perspective of prostitution, setting out the current laws in Australia and outlining new developments.

Current Legal Position in Australia

The criminal law relating to prostitution is under the jurisdiction of each state/territory government, giving rise to a wide variety of legislation. In amending prostitution-related laws,

some states or territories have tried to 'borrow' legislation from others, but the law-makers have always been constrained by existing legislation and the prevailing sociopolitical climate.

Table 1 sets out the current laws in Australia which punish prostitutes and the laws in Australia which criminalise prostitution-related activities are detailed in Table 2.

Options for Change

In all states and territories the option for change to the current laws are generally identified as follows:

- maintaining the status quo;
- strengthening the present laws;
- legalisation and regulation; and
- decriminalisation and decriminalisation with appropriate safeguards.

Maintaining the status quo

Five jurisdictions within Australia are currently reviewing laws relating to prostitution. This would indicate some problems associated with the administration of existing laws. Some of the difficulties associated with prostitution are discussed in more detail later in this paper.

The maintenance of the status quo would also mean that the existing inequality of the law is maintained whereby the prostitute is prosecuted and the client is not. Only New South Wales and Victoria have existing laws punishing clients. In Victoria it is an offence to 'gutter crawl' and, in New South Wales in 1988, provisions were introduced which allow for the prosecution of persons taking part in the act of prostitution in or within the view of a public place.

Strengthening existing laws

Complete suppression of prostitution would involve the passage of legislation aimed at eliminating all aspects of prostitution. The arguments in favour of strengthening the criminal law in relation to prostitution are as follows:

- prostitution is widely regarded as immoral and degrading. The criminal law should reflect and reinforce community standards;
- criminal penalties are justified because prostitution harms both prostitutes and their clients;
- criminal penalties reduce the incidence of prostitution and its harmful effects on the community. These include the public nuisance caused by street soliciting and brothels, links between prostitution and drug abuse, control by organised crime, spread of sexually transmitted disease and the exploitation of the young.

Arguments against strengthening present laws are:

- there is clear evidence that strengthening of criminal penalties does little to reduce prostitution. Penalties tend to have a greater effect on the form of prostitution than on its incidence;

- resources needed to pursue a suppression of prostitution could be more fruitfully deployed into programs which address the social and economic disadvantage of prostitutes;

- strengthening the law would tend to exacerbate existing problems, making working conditions worse for prostitutes.

Legalisation

There have been conflicting views on whether legalisation and decriminalisation are one and the same. However, there is a difference in law and interpretation. Commissioner Fitzgerald's report provides definitions in the following terms:

> Legalisation and decriminalisation are not the same. Legalisation means that activities are made legal and are no longer regulated in any way. Decriminalisation means the activities are no longer crimes, and the participants are no longer liable to criminal penalties, but their activities are regulated by law and transgressions can still be penalised. (Queensland 1989.)

Legalisation would enable the control of prostitution and the conditions under which it is carried out. Licensing would give official status to prostitution and the community could be seen as condoning it.

Arguments in favour of the legalisation of prostitution are as follows:

- as prostitution can never be entirely eradicated, it is preferable to protect the community from its adverse effects by, for example, controlling the location of brothels or the areas in which street soliciting occurs;

- prostitution, when conducted discreetly, does not harm the community. Adverse effects on residents and local areas can be prevented by proper controls;

- if prostitution were regulated in the same way as other forms of commercial activity it would be possible to ensure that prostitutes had better working conditions, were protected against violence from customers or pimps and were properly paid for their work. It would also be possible to guard against sexually transmitted disease by a system of health checks.

Arguments against legalisation are:

- it tends to institutionalise prostitution and give state support to the industry;

- there is resistance from prostitutes who consider the option inconsistent with human dignity and who may refuse to comply with the imposed regulations;

- prostitution is immoral and can have harmful effects on the community, including public nuisance, links between prostitution and drug abuse, control by organised crime, spread of sexually transmitted disease and exploitation of the young.

Decriminalisation

The other possible approach would be to decriminalise prostitution with appropriate safeguards. Prostitution would then be subject to controls to prevent abuses and those normally governing the operation of businesses. Some of the safeguards which could be

included would be prohibition on soliciting, underage prostitution and living off prostitution in some situations, limitations on advertising and restrictions on location.

Arguments in favour of decriminalisation are as follows:

- the criminal law should be confined to preventing activities which clearly cause harm to others. The criminal law should not, however, be involved in the enforcement of sexual morality;
- prostitution is a crime which does not cause direct harm to anyone. The costs of making such acts criminal are likely to outweigh the gains;
- criminal penalties for prostitution-related activities are ineffective. Past experience has shown it is impossible to eradicate prostitution no matter how the law is framed, or how rigourously it is enforced. Because demand for prostitution is likely to continue, legal prohibitions may lead to police corruption and the involvement of organised crime to supply this demand.

The arguments against decriminalisation are as follows:

- prostitution is immoral and an exploitative business which should not be encouraged in any way;
- prostitution can have a harmful effect on the community including public nuisance, links between prostitution and drug abuse, control by organised crime, spread of sexually transmitted disease and exploitation of the young.

Problems Associated with Prostitution

Difficulties of Enforcement

Transactions between prostitutes and their clients occur in private. In the case of brothels, a potential client is rarely asked to provide money for services until after the client has undressed. Likewise, escort agencies do not usually mention the provision of sexual services in discussion with a potential client. This causes evidentiary problems in linking the payment of money to provision of sexual services.

Any laws relating to living off the earnings of prostitution and the ownership and management of brothels are also difficult to enforce. The legislation is outdated and based on the notion that brothels are easily identifiable as such. The increased security in brothels and the virtual anonymity of escort agencies makes it difficult for the law to be policed.

A major criticism of current laws is that they penalise the prostitute rather than the client or the promoter, even though the client may have actively sought out the prostitute. The client is often used as a witness by the police in bringing a charge against a prostitute.

Drugs

Some prostitutes use drugs and see prostitution as a means of obtaining money to maintain the habit. Some brothels may provide a distribution outlet for drugs, although persons involved in prostitution have indicated that drugs are generally discouraged and are regarded as a liability by the operators of brothels.

Violence

It is difficult to assess this problem as acts of violence against prostitutes by pimps or bodyguards are rarely reported to the police for fear of further violence or cessation of employment. However, it is known that prostitutes are vulnerable to sexual violence and that, because of the illegality of their occupation, it is difficult for them to establish charges such as rape, theft or assault.

Health

Prostitution has always been linked with the spread of venereal disease, as it has in more recent years with the spread of AIDS. However, many prostitutes are well aware of health implications and voluntarily have regular medical check-ups.

The potential for the spread of sexually transmitted diseases depends upon:

- the amount and type of sex with prostitutes;
- the protective measures used; and
- the availability and use made of specialised medical care.

Nuisance

This problem varies from state to state. People who live near massage parlours or brothels give examples of annoyances such as customers knocking on the wrong door, the noise of car doors slamming throughout the night and general nuisance.

Juvenile prostitution

Police indications in most states are that children are becoming more in demand in brothels and escort agencies.

Exploitation

As a form of employment, prostitution can be viewed to be exploitative both by its nature and its failure to meet industrial standards. While it is illegal there is no possibility of establishing regulated working conditions, no controls on remuneration or worker health and safety.

Causes of Prostitution

The laws related to prostitution cannot operate in isolation from other laws which affect the state. Prostitution exists because there is a demand. The evidence gathered by Professor Marcia Neave (Victoria, Inquiry into Prostitution 1985) and from other states and overseas, suggests that the main incentive for women entering prostitution and supplying the demand is economic. Poor education, limited job skills and employment opportunities are continually cited as the overriding reasons for women and juveniles becoming prostitutes.

Some causes of prostitution were identified in the *Report of the Select Committee of Inquiry into Prostitution* (South Australia 1980). The factors referred to in that report still appear to be major reasons for persons entering prostitution today. Evidence put to the Select Committee suggested that women entering prostitution can be placed in four general groups:

- women who are severely disadvantaged socially and economically;
- women who are poor and/or in debt or supporting children, or are unemployed;
- women who are subjected to coercion by partners or acquaintances through threats or by use of drugs; and
- women who seek money for a specific purpose, for example to support themselves while studying, to pay for a large debt or to acquire an expensive item (South Australia 1980).

The 1985 Victorian Inquiry into Prostitution (the *Neave Report*) suggests that similar reasons exist for males entering into prostitution.

The Social Justice Commission of the Uniting Church in Australia, Synod of South Australia (1986), gave the following reasons for prostitution:

- lack of sexual equality in Australian society;
- insufficient financial and community support for unemployed people and single parents;
- inadequate recognition of the true costs of raising children in levels of income maintenance;
- inadequate levels of remuneration for jobs undertaken by people with low skills and low educational achievements;
- the high level of commercialisation of human sexuality which is accepted as normal in Australian society;
- the demand for prostitution within the community.

New Developments in Legislation

As previously indicated, five jurisdictions are currently reviewing legislation related to prostitution: Australian Capital Territory, Northern Territory, Queensland, South Australia, Western Australia and New South Wales.

Australian Capital Territory

On 18 April 1991, the Select Committee on HIV, Illegal Drugs and Prostitution tabled its *Prostitution in the ACT: Interim Report*.

The report recommends partial decriminalisation and:

- introduction of strong sanctions to prevent child prostitution;
- control exercised through one enactment only;
- establishment of a licensing board to license the ownership and operation of brothels and escort agencies;

- retaining prohibitions of soliciting or loitering in a public place for the purposes of prostitution.

Northern Territory

On 6 December 1990, the Northern Territory Attorney-General tabled a draft Prostitution Regulation Bill in the Northern Territory Parliament for public comment. The Bill proposes:

- licensing of escort agency operations and managers;
- establishment of an escort agency licensing board;
- brothels to remain illegal (except single prostitute brothels);
- more effective provisions against pimps and the offence of procuring;
- introducing stronger sanctions to prevent child prostitution;
- retaining prohibitions of soliciting or loitering in a public place.

Final legislation is not envisaged until at least the second session of the Northern Territory Parliament 1991.

Queensland

On 1 March 1991, the Criminal Justice Commission of Queensland released a discussion paper on prostitution. The paper made no specific recommendations but suggested that changes were necessary (Queensland 1991).

South Australia

Following the recommendation made by the National Crime Authority (1991) to review the options of the criminal law in South Australia as it applied to prostitution—taking into consideration the law and practice in other states—a review of prostitution laws in South Australia is being conducted by Mr Matthew Goode, Senior Lecturer in Law at the University of Adelaide. An option paper is to be prepared by Mr Goode to be presented to Parliament by the Attorney-General in the spring session of 1991.

A Bill to legalise prostitution was introduced in State Parliament in April 1991 by the Leader of the South Australian Democrats, Ian Gilfillan. It is understood that the Bill will be re-introduced in the new session of State Parliament in August 1991. The Bill proposes:

- a brothel licensing board;
- retention of offences relating to soliciting;
- introduction of strong sanctions to prevent child prostitution;
- legal sanctions against prostitutes and clients of prostitutes who fail to take reasonable precautions against infection by sexually transmitted diseases and against transmission of sexually transmitted diseases.

Western Australia

In November 1990, a State Government appointed community panel completed a report on prostitution for the Police Minister, Mr Graham Edwards. The report recommends:

- a seven-member licensing board to register premises for prostitution, brothels, escort agencies or single operator's premises;
- retaining offences of soliciting in a public place in any new legislation.

New South Wales

In 1989 a delegation from the New South Wales Attorney-General, Mr Dowd, visited Victoria to study the Victorian system of legalised brothels. Mr Dowd commented that the system created more problems than it solved. He has acknowledged, however, that reform of the *Disorderly Houses Act 1943* (NSW) was required (but this has been given a low priority, especially leading up to the state elections).

Victoria

The regulation of prostitution in Victoria is in a state of flux. Following a report by Professor Marcia Neave in September 1985 containing 90 recommendations, Victoria enacted the *Prostitution Regulation Act 1986* implementing virtually all those regulations. Part III of the Act set up a Licensing Board comprised of a mixture of community representatives to regulate the brothel industry. The Act excluded single prostitutes working from home (on Neave's recommendation that such women should not be drawn into the industry unnecessarily). The Upper House made various amendments to the Act, especially Part III, including specifying that single prostitutes working from home should be regulated under the Act. The Upper House also inserted a provision giving local councils the right to veto approval for brothels.

The government responded by passing the Act but not proclaiming Part III or the provisions empowering the councils to veto. Camberwell Council has taken commercial legal action against the Victorian Attorney-General, seeking a declaration that the action of the government in not proclaiming these provisions is invalid (it is believed the Council is arguing that the government has 'thwarted the intention of Parliament').

In the meantime, in the vacuum caused by the non-establishment of the proposed Licensing Board, applications for siting of a brothel will be first considered by the local council. If the local council refuses approval, the applicant appeals to the Planning Appeal Division of the Victorian Administrative Appeals Tribunal. That body makes a decision based on various planning criteria, but it is obviously not a body equipped to adequately consider the many other aspects of the sex-worker industry.

Conclusion

It is apparent that difficult social, moral and legal issues connected with prostitution have hampered effective legislation in Australia.

Professor Neave has argued that government policies should be designed to increase the occupational choices of women and to expand employment opportunities in order to reduce prostitution. The state government enquiries—referred to previously—and other research have found that economic factors were the overwhelming reason for women entering prostitution. As by far the greater majority of prostitutes in Australia are women, then the need for women to enter this occupation can only be significantly reduced by long-

term economic and social measures and not by legal restraints. Sweden has adopted such an approach. The aim of the Swedish Government is to reduce prostitution by social rather than legal means by providing women with sufficient economic and social security for them to leave the trade if they wish.

Hostile and discriminatory attitudes on the basis of race, gender and sexuality prevail in Australian society. The role of the law-makers should be to address this discrimination. Legislation on prostitution in isolation may only serve to further entrench existing discriminatory practices. Prostitution law reform should recognise the right of adults to participate in consensual sexual activity in private; it should protect minors; it should safeguard individuals against corruption, violence and exploitation and it should preserve some rules about public decency.

In introducing a Private Member's Bill to decriminalise prostitution an attempt to address these issues was made. Whilst most churches adopted a position that prostitution was immoral and should therefore not be condoned, the Social Justice Commission of the Uniting Church in Australia, Synod of South Australia took a more liberal and thoughtful stance on the Bill, and prostitution in general. If legislation relating to prostitution is to be effective in Australia then law-makers and the community should also adopt these attitudes.

> The Social Justice Commission supports the intention and basic direction of the proposed legislation for the following reasons:
>
> - We find existing social policy inadequate in that it does not minimise prostitution and it promotes exploitation.
>
> - We find existing social policy promotes a false sense of moral rectitude in the community, a consequent complacency in relation to problems relating to prostitution and an attitude that does not take full account of the humanity of prostitutes and regards them as expendable.
>
> - We find existing legislation inadequate because it is founded on an inadequate social policy.
>
> - We find that punitive legislation such as the existing law only serves to alter the form of prostitution rather than its incidence.
>
> - We find that the present law is discriminatory and serves to lock prostitutes into a criminal subculture which makes it difficult for them to break with prostitution.
>
> - We find the arguments that have been advanced for the retention of criminal penalties to be unconvincing.
>
> - We support a social policy that takes into account the proposals of the United Nations' Special Rapporteur.
>
> - We find the provisions of the proposed legislation to be a significant step towards the enactment of such a policy.
>
> - We are aware that no constructive steps can be taken towards empowering prostitutes who wish to leave the industry but find themselves unable to do so until criminal penalties are repealed.
>
> The legislation should not be passed in isolation. The government should develop a comprehensive social policy which:

1. promotes the elimination of discrimination against women, including the sexism and commercialisation of human sexuality that is promoted by parts of the advertising industry;

2. addresses the inadequate levels of income maintenance provided for unemployed people and single supporting parents;

3. addresses the low levels of remuneration for employment available to people with low levels of skill and educational achievement;

4. enables prostitutes who wish to leave the prostitution industry to find other employment;

5. promotes educational programs in schools and the wider community which provide information on sexuality, emphasise the value of non-exploitative relationships and counter sexist and discriminating attitudes. Such programs in schools should be placed on a equal footing with other major curriculum areas by:

   - allocation of time;

   - allocation of adequate resources for curriculum development;

   - provision of adequate training for teachers in this area;

6. promotes programs which enable parents to take a lead in educating their children in matters of sexuality and the value of non-exploitative relationships;

7. researches the demand for prostitution services and begins to address the issues as a client problem rather than a prostitute problem;

8. provides more support for young people who are forced to become part of a street subculture or whose self esteem has been shattered by abuse they have received as children (Social Justice Commission Uniting Church in Australia, Synod of South Australia, 1986).

References

Australia. National Crime Authority 1991, *Operation Hydra South Australia: Reference Number 2*, National Crime Authority, Canberra.

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Canberra.

Pinto, S., Scandia, A. & Wilson, P. 1990, *Prostitution Laws in Australia*, Trends and Issues No. 22, Australian Institute of Criminology, Canberra.

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

Queensland. Criminal Justice Commission 1991, *Review of Prostitution-Related Laws in Queensland*, Information and Issues Paper.

Social Justice Commission Uniting Church in Australia, Synod of South Australia 1986, 'Issues Relating to the Decriminalisation of Prostitution', Response to the Introduction of the Prostitution Bill by Hon. Carolyn Pickles MLC, August.

South Australia. Select Committee of Inquiry into Prostitution 1980, *Report of the Select Committee of Inquiry into Prostitution*, Government Printer, South Australia.

Victoria. Inquiry into Prostitution 1985, *Inquiry into Prostitution: Final Report*, [the Neave Report], Government Printer, Melbourne.

Table 1

Laws Punishing Prostitutes

State/Territory	Street Work	Brothel Work
New South Wales *Summary Offences Act 1988*	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 *Prostitution Regulation Act 1986* *Vagrancy Act 1966*	Soliciting and Loitering, *Prostitution Regulation Act*, s. 5.	An offence except where premises have a town planning permit, Vagrancy Act 1966, s. 11.
Queensland *Vagrants, Gaming and Other Offences Act 1931-1987*	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* *Police Act 1892*	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 *Police Offences Act 1953*	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(1)(b).
Tasmania *Police Offences Act 1935*	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(1)(c).	Not an offence.
Northern Territory *Summary Offences Act* (as in force 17 Aug 1987)	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* *Police Offences Ordinance 1930*	Persistently soliciting or importuning for an immoral purpose in a public place, s. 23.	'One-woman brothel' 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.

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

Source: Department of Community Services and Health cited in Pinto, Scandia & Wilson 1990.

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 *Summary Offences Act 1988* *Crimes Act 1900* *Disorderly Houses Act 1943*	An offence; *Summary Offences Act 1988*, s. 15.	Allowing premises held out as available for other purposes, to be used for prostitution; *Summary Offences Act 1988*, s. 16.	An offence; *Crimes Act 1900* s. 91A, 91B *Summary Offences Act 1988*, s. 18.	Appearing, acting or behaving as having management of a disorderly house which is habitually used for the purposes of prostitution; *Disorderly Houses Act 1943*, s. 3.	Advertising premises are used or a person is available for prostitution; *Summary Offences Act 1988*, s. 18.	
Victoria *Prostitution Regulation Act 1986* *Vagrancy Act 1966*	An offence, except where premises have a town planning permit; *Vagrancy Act*, s. 10	An offence except when premises have a permit; *Vagrancy Act*, s. 11.	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; *Vagrancy Act*, s. 12. Similarly for landlords.	Advertising employment in a brothel; *Crimes Act 1958*, s. 59A.	Gutter-crawling in order to enlist the services of a prostitute, *Prostitution Regulation Act 1986*, s. 15(2).
Queensland *Vagrants, Gaming and Other Offences Act 1931-1987* *Criminal Code*	An offence; *Vagrants, Gaming and Other Offences Act*, s. 5.	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 premised to be used, landlord who knows premises to be used, *Vagrants, Gaming and Other Offences Act*, s. 8.	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, *Vagrants, Gaming and Other Offences Act*, s. 9.

Table 2 cont'd

State	Living on Earnings	Brothel Keeping	Procuring	Permitting Premises to be used for Prostitution	Advertising	Other
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. 64.	Lets or sublets premises knowing to be used as a brothel, *Police Offences Act 1953*, s. 29.		
Tasmania *Police Offences Act 1935* *Criminal Code*	An offence, *Police Offences Act 1935*, s. 8.	Keeping a bawdy house, *Criminal Code*, s. 128.	An offence, Criminal Code, s. 128.	Letting a House knowing it is to be used as a brothel, *Police Offences Act 1935*, s. 11.		Occupying a house and harbouring prostitutes, *Police Offences Act 1935*, s. 10(1)(b). Lodging or entertaining a prostitute to the annoyance of the inhabitants, *Police Offences Act* 1935, s. 10(1)(d).
Northern Territory *Summary Offences Act* (in force as at 17 Aug 1987) *Criminal Code* *Suppression of Brothels Act 1907*	An offence, *Summary Offences Act*, s. 59(b) *Suppression of Brothels Act 1907*, s. 7.	An offence, *Suppression of Brothels Act 1907*, s. 3.	An offence, *Criminal Code* s. 128.	Leases, lets, knowingly permits, *Suppression of Brothels Act 1907*, ss. 8,9.		Person who keeps a house, shop, room, where refreshments sold and permits prostitutes to meet together or remain there, *Summary Offences Act*, s. 66.

Table 2 cont'd

State	Living on Earnings	Brothel Keeping	Procuring	Permitting Premises to be used for Prostitution	Advertising	Other
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: Department of Community Services and Health cited in Pinto, Scandia & Wilson 1990.

PORNOGRAPHY, SEX CRIME, AND PUBLIC POLICY

Berl Kutchinsky
Professor of Criminology
Institute of Criminology and Criminal Science
University of Copenhagen
Denmark

PORNOGRAPHY IS A CURIOUS EXAMPLE OF AN ISSUE WHICH HAS GROWN VERY quickly from a state of insignificance to become a major social issue—at least in some parts of the world. From the very beginning—in the early 1960s—of what has been termed the 'modern pornography wave', there has been controversy over nearly all aspects of the topic: definition, amounts and contents of material, uses and users, economy and, most importantly, effects.

This paper outlines the development of pornography in a historical perspective and from a Danish point of view. It will then deal with the issue of the possible effects of pornography on sexual offences.

Historical Background

Erotic art is probably as old as art itself. Sexual themes appear in the artistic creations of all times and cultures. The first erotic paintings, sculptures and writings were probably produced by the first painters, sculptors and writers in the early youth of humanity, and every milestone in the arts usually saw new developments in the field of erotica.

For example, Johann Gutenberg developed the art of printing around 1448, and one of the very first books to appear in print was *Il Decamerone*, Boccacio's erotic masterpiece. Suppression of freedom of the press—a phenomenon which is a significant part of the history of eroticism—followed immediately after. In 1497, sections of the *Decameron* were thrown into Savonarola's 'bonfire of the vanities' in Florence.

The next giant step towards mass media production, the invention of the photographic process in 1832, had very similar consequences. Forty years later, in 1874, 130,000 'obscene' photographs and 5,000 slides were seized by police in a raid on two houses in London owned by photographer Henry Hayler. By this time, pornography was beginning to broaden its appeal beyond the narrow literate class that had been its primary audience.

When Edison invented the moving pictures, the pornographic potential of this new media was, of course, too obvious to be overlooked, and very soon a prosperous, underground production of 'blue movies' began, particularly in South America. In fact, Edison himself produced an erotic motion picture as early as in 1886; called *The Kiss*. It created a public scandal, and was a tremendous success. The film was not pornographic, of course, but heralded a new era in the erotic industry—which has now, in very recent years, reached another stage with the video tape, cable and satellite television productions of pornography.

So, erotic art has a long history, and even if we restrict ourselves to speaking about commercial pornography—that is, a commodity depicting explicit nudity and sexual behaviour, produced and sold with the sole purpose of creating sexual arousal—even this product has an age of more than 300 years. The starting point seems to be the appearance in about 1650 of *La Puttana Errante—The Wandering Whore*. Although this was not the first book to describe the life of a prostitute in intimate detail—hence the word *pornographos* (there is a classic Greek and renaissance Italian tradition of 'writing about prostitutes'). This book was the first which skipped the social, philosophical, satirical, and artistic aspects in order to concentrate on the only thing that mattered: the titillation of the reader.

In the eighteenth and nineteenth centuries, Europe experienced a 'porno wave' which as far as the number of different publications were concerned, can match the present times. Alfred Rose (alias Rolf S. Reade) listed more than 5,000 English, French, German, Italian and Spanish titles in his *Register Librorum Eroticorum* in London in 1936.

Nevertheless, there are certain unique features about the pornography situation which has developed during the last twenty-five years and is now prevailing in most countries of the Western world, Japan and some other developed countries in Asia, and is now quickly developing in the former communist countries of Central and Eastern Europe. One important feature is that pornography has become easily available to people in general, while earlier it was mostly restricted to the economic and intellectual upper class. Another feature is that, to a large extent, pornography at least in some forms, has become morally and socially acceptable and in a few countries even legal, which has not been the case for about 200 years.

An important factor in this development is that new technologies have made possible the mass production of colour magazines, films and videos of high technical quality at a very low cost. Another, and perhaps the most important factor, has been the emergence of a more liberalised view of sexual behaviour, which has exonerated the naked body and the sexual act from earlier indictments of sinfulness. This new sexual liberalism, the so-called 'sexual revolution', has been influential in several different ways. It has awakened and strengthened a latent need for erotica among many people. It has also made possible the economic exploitation of this new attitude. And it has paved the way for a more lenient enforcement and eventual abolition of existing bans.

In most countries, the emergence of pornography as an everyday commodity has stirred relatively little controversy—although at times great public interest. This is true of Denmark, which was the first country to legalise pornography, and most other continental European countries. In other countries, such as Norway, Great Britain, the United States, Canada and Australia, pornography has continued to be an issue of sometimes considerable controversy, giving rise to heated debate, mass demonstrations, violent actions, citizens' associations and rallies, criminal prosecutions as well as civil law suits, legislative initiatives, and numerous conferences and commission reports.

The Danish Situation

Before the mid-1960s, there was nothing particular about Denmark in relation to pornography. Denmark had absolutely no history as a pornography producing or consuming nation. Danish laws against pornography were very similar to those of other European countries. Both in the late nineteenth and early twentieth centuries books and pieces of art were prosecuted and convicted in Denmark as in other countries, which by later standards would seem perfectly innocent. In as late as 1959 an imported English version of the famous pornographic classic, Cleland's *Memoirs of a Woman of Pleasure*, was convicted.

During the 1960s, however, public attitudes began to change, and in 1964 an unexpurgated Danish translation of the *Memoirs*, under the title of *Fanny Hill*, was published for the first time, prosecuted—and acquitted first by the High Court and, in 1965, by the Supreme Court. Since *Fanny Hill* is, if anything, pornographic in the true sense of this word, that is, extremely explicit and graphic in its erotic descriptions, this meant that the penal law banning pornographic literature had become obsolete. The Minister of Justice asked the Permanent Criminal Law Committee to investigate the issue, and this Committee, after consulting criminologists, psychologists, educators and psychiatrists presented a report in 1966 which recommended decriminalisation of pornographic writings.

The point made by the Criminal Law Committee was that public attitudes towards moral legislation had changed so that it was no longer reasonable for the state to interfere with what people should be allowed to publish or read, as long as no clear harm was done. As far as harm is concerned, it was generally agreed by the experts that all available evidence pointed in the direction of pornography not being directly harmful to individuals. Particularly influential was the statement of the Medico-Legal Council, a distinguished body of leading physicians, which concluded:

> On the basis of general psychiatric and child psychiatric experience it cannot be assumed that the sexual orientation, the psychological development or attitudes toward sexual life and sexual-ethical norms in adults or in children can be influenced in a harmful direction through . . . pornographic literature, pictures or films. Whether these media may have a beneficial influence on a group of inhibited and sexually shy neurotic personalities is doubtful, but can hardly be totally excluded. What has been said here, holds true no matter whether the pornographic publications, pictures, etc. describe normal or perverse sexual relations (Penal Law Committee 1966, p. 80).

The Penal Law Committee's proposal was adopted by the Danish Parliament in 1967 by 159 votes to thirteen. During the debate in Parliament on this amendment, there was a widespread inclination to extend the repeal to also include obscene pictures, objects, and performances, 'if experiences with the present amendment turned out to be as favourable as expected'. The expected result was mainly a waning of interest in such material when such an interest was no longer spurred by the illegality. By 1969, politicians had become convinced that a favourable effect had in fact occurred, and without once again asking the Penal Law Committee's advice, the decriminalisation of pictorial pornography was adopted in Parliament by 125 votes to twenty-five.

Section 234 of the *Danish Criminal Code* (1969), reads whoever 'sells indecent pictures or objects to a person under 16 years of age' is to be punished by a fine. Section 235 (1980) has a special provision concerning the reproduction and sale of child pornography, that is, sexually explicit photographs of persons who appear to be under 15 years (the taking of such pictures was always a criminal offence).

This means that, in Denmark, any kind of pornography, except child pornography, can be produced and sold, or shown in cinemas, to persons who are 16 years or older. It does not mean that there can be pornography everywhere; thus, police regulations forbid the

public display of pornography, for instance in porn shop windows, or to send or hand out pornography to someone who has not asked for it.

As to legalisation of pornography, Sweden followed suit in 1970, and the Federal Republic of Germany (West Germany) in 1973. West Germany, however, kept certain provisions regarding violent pornography and recently Sweden also introduced such restrictions. Today, Denmark seems to be the only country which does not have any legal restraints on sadomasochistic pornography. This does not mean that it is not available elsewhere. The situation today seems to be that wherever hard-core pornography is easily available, sadomasochistic material is available also.

The Effects of Pornography on Sex Crimes

The issue of pornography is extremely complex, and so is the question of public policy regarding pornography. Numerous commissions and committees have produced several thousands of pages contemplating the issue and scrutinising several hundreds of research reports. More than a handful of scholarly books in English appear every year, usually not producing new information, but trying to organise and analyse research data already available.

In this complexity, one issue stands out as particularly important: the claim that pornography, or certain forms of pornography, can lead to serious sex crimes, in particular forcible rape. If this can be proved, then there is consensus that pornography, or these particular forms of pornography, should be forbidden. If it cannot be proved that pornography leads to rape, then there is no such consensus. All other forms of alleged harm or offence, such as pornography degrading women, either as models or bystanders, leading to sexual callousness to women, causing moral outrage, encouraging sexual perversion, or causing marital distress, are usually considered too intangible, or unsupported, or problems that call for a variety of restrictions rather than the total prohibition of (the critical forms of) pornography. The rest of this paper, therefore, concentrates on the relationship between pornography and rape.

One of the first authoritative bodies to spell out an unequivocal verdict of not guilty for pornography was the Danish Medico-Legal Council whose 1965 report to the Danish Penal Law Committee concluded that, to the Council's knowledge, based on criminological and clinical evidence 'there exists no scientific investigations to form a basis for the supposition that pornography . . . can contribute to normal adult's or young persons' committing sexual offences' (Penal Law Committee 1966, p. 80). This distinguished body of forensic physicians and psychiatrists explicitly mentioned that the statement referred to pornographic writings, pictures and films describing normal as well as perverted sexual phenomena.

Five years later the United States Commission on Obscenity and Pornography (1970, p. 53) (or rather twelve of the seventeen participating members) arrived at a similar conclusion, stating that 'empirical research designed to clarify the question has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behaviour among youth or adults'. Another verdict of not-guilty–but this time based on overwhelming amounts of research: careful reviews of earlier research and thirty-nine additional effect studies sponsored by the Commission.

According to these studies, sex offenders generally reported sexually repressive family backgrounds, immature and inadequate sexual histories and rigid, conservative attitudes towards sexuality. During adolescence they had less experience with erotica than other groups. As adults, sex offenders seemed to catch up with other categories, but did not use pornography more frequently than others; and sex offenders did not differ significantly from other adults in their reported arousal or reported likelihood of engaging in sexual behaviour during or following exposure to pornography.

The problems with these studies was, of course, that they had to rely on the subjects' own reports about their reactions to pornography and did not study experience with and reactions to aggressive pornography. Both of these shortcomings were overcome by a number of researchers in the late 1970s who, applying modern sexological laboratory techniques, were able to measure erectile responses in convicted rapists and normals who were watching, listening to, or reading depictions of sexual activities including consenting and coercive sex. The first results (several studies by Abel, Barbaree, Marshall, Quinsey and others) seemed very promising: while normals showed greater arousal to scenes of mutually consenting sex than they did to similar scenes involving coerced sex, rapists appeared to be equally aroused by the consensual and the coerced scenes.

However, subsequent large-scale replications of these studies, as well as a more recent intensive study have shown that among a group of rapists, arousal to forced sex was significantly lower than it was to consenting sex; moreover, the rapists did not differ in this regard from groups of ordinary men (Kutchinsky 1991; forthcoming).

Meanwhile, despite the negative findings of the United States Obscenity Commission, which were later reiterated by the British Williams Committee in 1979, the idea that pornography may be the direct cause of rape had continued to gain support among anti-pornography groups; and since the mid-1970s the Christian/Conservative moralists viewpoints (which had been voiced, among others, by the minority of the U.S. Obscenity Commission) were joined by feminist oriented groups and authors in the USA. Leading figures included Brownmiller, Lederer, Russel, Dworkin and Morgan, who publicised the slogan: 'Pornography is the theory, and rape is the practice'.

Feminists' claimed that the growing availability of increasingly more violent and misogynous pornography was the direct cause of increasing numbers of increasingly violent rapes. And this, in turn, was a major inspiration to a new wave of research, mainly in the USA, seeking to demonstrate such a connection. The authors of this research—Malamuth, Donnerstein, Zillmann, Check and many others—criticised the Obscenity Commission for not taking into consideration the long-term effects of aggressive pornography. This criticism is not altogether justified, since the Commission had in fact solicited relatively long-term studies of pornography which included sadomasochistic varieties.

Methodologically, the inspiration for the new wave of experimental pornography research came from a long tradition of experiments on the effects of non-sexual violent media. Unfortunately, the pornography/ aggression research had inherited the fundamental weakness of the original aggression studies, namely that both the stimulation was administered and the reactions measured under extreme laboratory conditions which are far removed from real life situations. These studies have, therefore, been severely criticised through the years in several reports, including several articles on the effects of pornography in a special issue of the *International Journal of Law and Psychiatry*, vol. 14. Thus, William Fisher and Azy Barak (1991, p. 79) in their article conclude that:

> problems with theoretical naivete, inconsistent evidence, failures to replicate, and limited ecological validity leave us with far more questions than answers with respect to the . . . effects of pornography and erotica.

Reported Rape in Four Countries

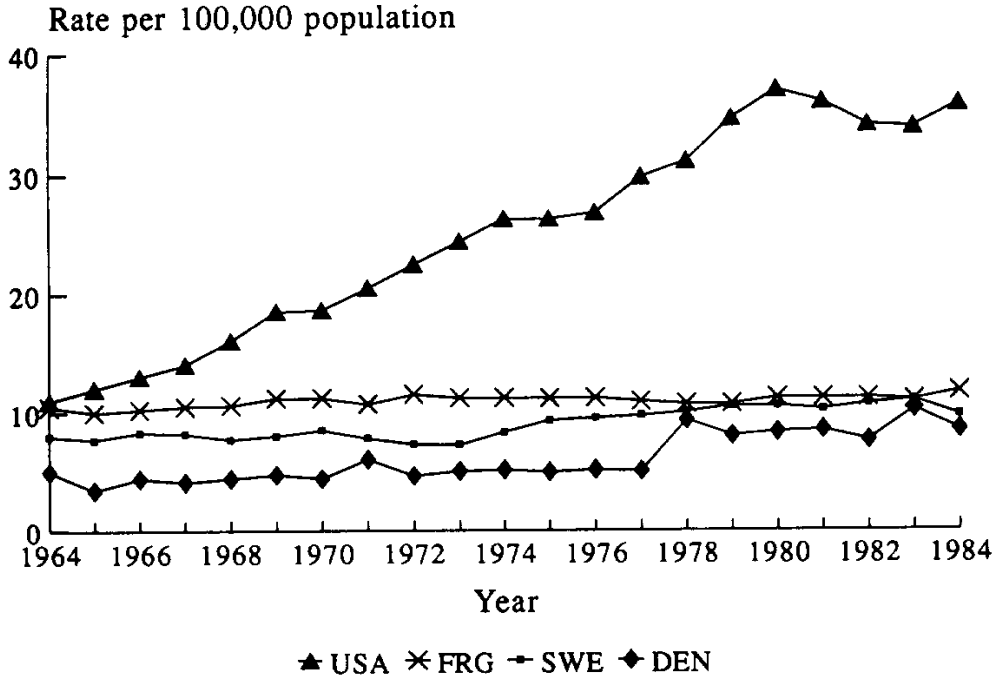
Is it possible to find a valid answer to the question of causality between pornography and rape? It is—at least to the extent that causality is meant to be a substantial empirical fact and not just an expression of emotional and ideological dissociation from two equally detestable phenomena. It is possible to test the necessary consequence of a substantial causal relation

between rape and pornography, namely that the appearance and growing availability of increasingly hard-core pornography, including aggressive pornography, coincided with or was followed by a growth in the number of rapes—not that the finding of such a temporal correlation in itself would be sufficient proof of a causal relation (many social problems have grown in these years without being directly causally related, for instance theft and pollution). But a temporal correlation is a necessary condition for accepting the assumption of a causal connection; without it we shall have to discard this assumption.

To test the hypothesis of a substantial causal connection between pornography and rape, the incidence of rape was looked at in four different societies where pornography, including the aggressive variety, has become widely available. Denmark, Sweden and West Germany are the only countries to have legalised pornography (in 1969, 1970 and 1973, respectively). In the United States pornography has not been legalised, but is easily available at least in all major cities and through mail order. In these four countries as a whole, the period of rapid growth in quantity and variety of hard-core pictorial pornography was from the late 1960s to the mid-1970s, although since the late 1970s the video has increasingly become a favourite medium. A twenty-year period would therefore be sufficient to trace any influence of the 'porno wave' on the rape statistics.

Figure 1

Cases of Rape Known to the Police in the USA, Denmark, Sweden and the Federal Republic of Germany, 1964-84*



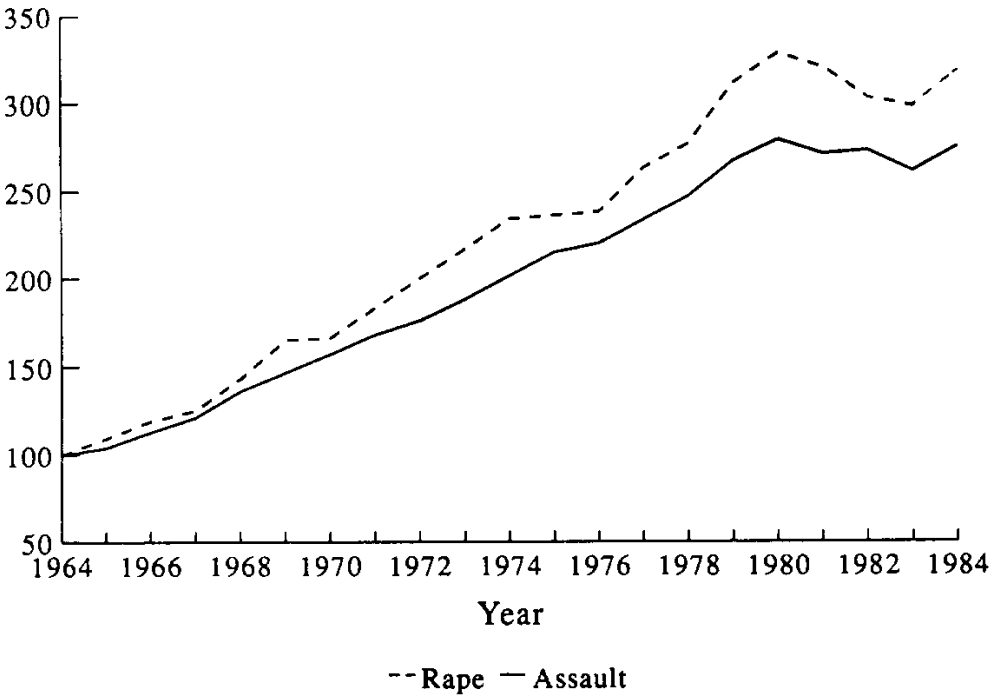
*Number of offences per 100,000 population.
Sources: Official national reports on crime statistics.

Figure 1 presents the development from 1964 to 1984 of reported rape in the four countries. Although one should always be cautious when comparing crime statistics from different countries, it can safely be said that the only country in which there has been a marked increase of officially recorded incidents of rape during this period is the USA (where, on the other hand, neither of the plateaus in the mid-seventies and since 1979 is easily explained with reference to pornography). In West Germany, the level has remained remarkably steady throughout the period. In Denmark and Sweden there are moderate increases from or after the mid-seventies. In both cases it is likely that at least some of the increase is due to increased reporting and registration of rape, as a result of growing awareness of the rape problem among women as well as the police. There are strong indications that even in the USA, the increase of rape since the mid-1970s may be due to increased reporting/ registration (Kutchinsky 1991).

Rape, however, cannot be considered as an isolated social phenomenon. For a criminological appreciation of the development of reported rape over time, it is necessary to look at trends in incidence of other crimes during the same period. Since forcible rape is, by legal definition, both a violent crime and a sex crime, a comparison with non-sexual crimes of violence and with non-violent sex crimes would seem reasonable. Such a comparison has been made for each of the four countries—to the extent accessible data permit (*see* Figures 2, 3, 4, 5 and 6). To enable comparisons of crime rates of very different sizes, indexes have been computed, in all cases departing from index 100 in 1964.

Figure 2

Cases of Rape and Aggravated Assault Known to the Police in the USA, 1964-84*

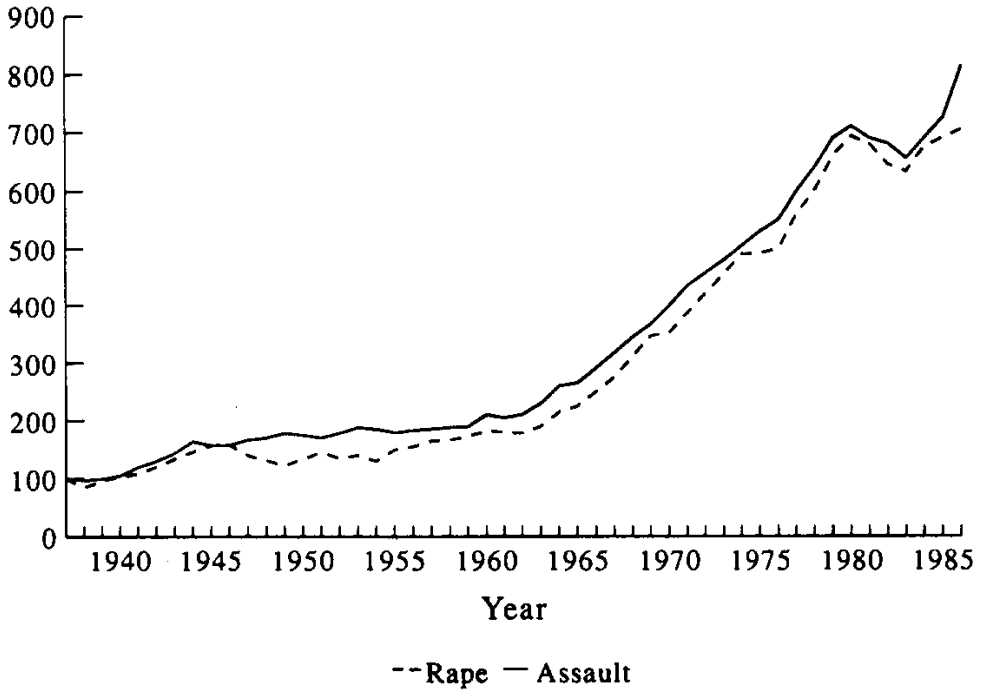


*Indexes of offences per 100,000 population. Index 100: Rape=11.2; aggravated assault=106.2.
Source: Uniform Crime Reports, various years.

Figure 2 compares the development of forcible rape with that of aggravated assault in the USA. Although rape increased slightly more than assault during some of the period, the similarity between the two curves is striking. This suggests that the two developments are related and should be explained in the same terms, a suggestion which is compatible with the dominant viewpoint in most of the recent US research and theory about rape (for example, the works by Groth and Alder), that rape is an act of aggression rather than a sexual act. That pornography should be the common explanatory factor in the development of both sexual and non-sexual violence (the latter being more than nine times as frequent and directed primarily against men) makes little sense. Moreover, as can be seen in Figure 3, the almost perfect correlation between the two developments is not a recent phenomenon.

Figure 3

Cases of Rape and Aggravated Assault Known to the Police in the USA, 1937-1986*



*Indexes of offences per 100,000 population. Index 100: Rape=5.3; aggravated assault=42.3.
Sources: Unified Crime Reports, various years.

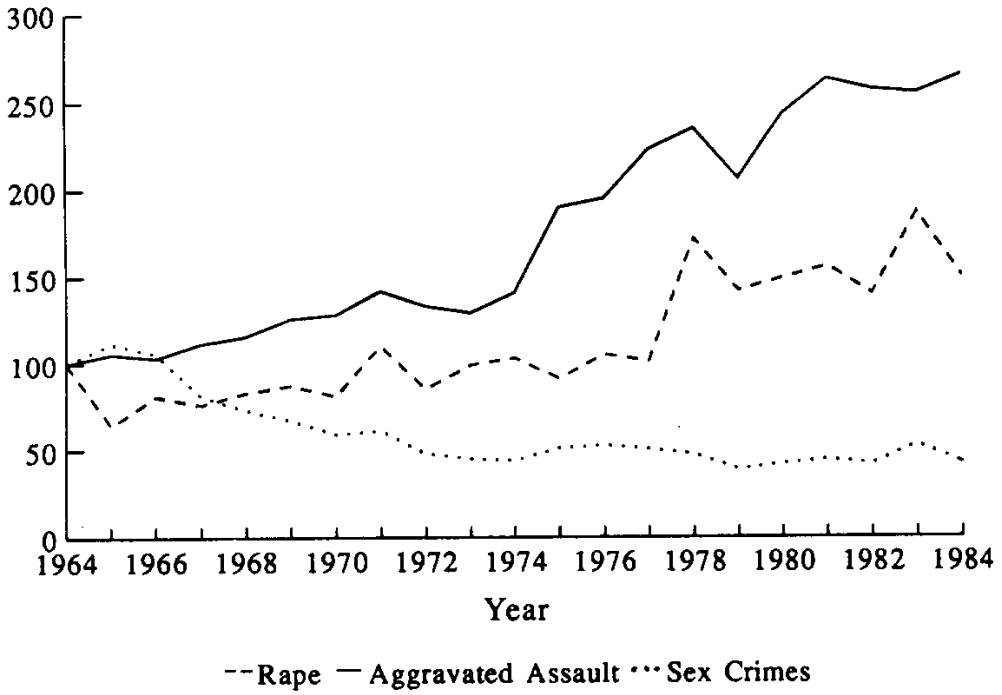
Unfortunately it has not been possible to compare assault and rape in the USA with non-violent sex crimes since the Uniform Crime Reports do not include these types of offences. Such a comparison has been possible for the three other countries.

In Figures 4, 5 and 6 it can be seen that the similarity of development patterns for rape and assault found in the USA is not repeated in Denmark, Sweden or West Germany. In all three countries, assault has been rather strongly increasing during 1964 to 1984 (in fact at rather similar rates, all being between 225 and 300 per cent), whereas rape has increased more modestly or, with regards to West Germany, not at all.

Analyses of crime statistics not presented here suggest that the developments of non-sexual violent crimes in these countries are roughly similar to those of the overall crime patterns, which are of course strongly dominated by property crimes. Apparently, in these European countries, rape is not clearly part of either the general crime pattern or the pattern of violent crimes in particular. Rather, as can also be seen in Figures 4, 5 and 6, the developments of the violent sex crime of rape lie in between the developments of non-sexual violent crimes (assault) and those of non-violent sexual crimes.

Figure 4

Cases of Rape, Non-Sexual Violent Crimes and Non-Violent Sex Crimes Known to the Police in Denmark, 1964-84*



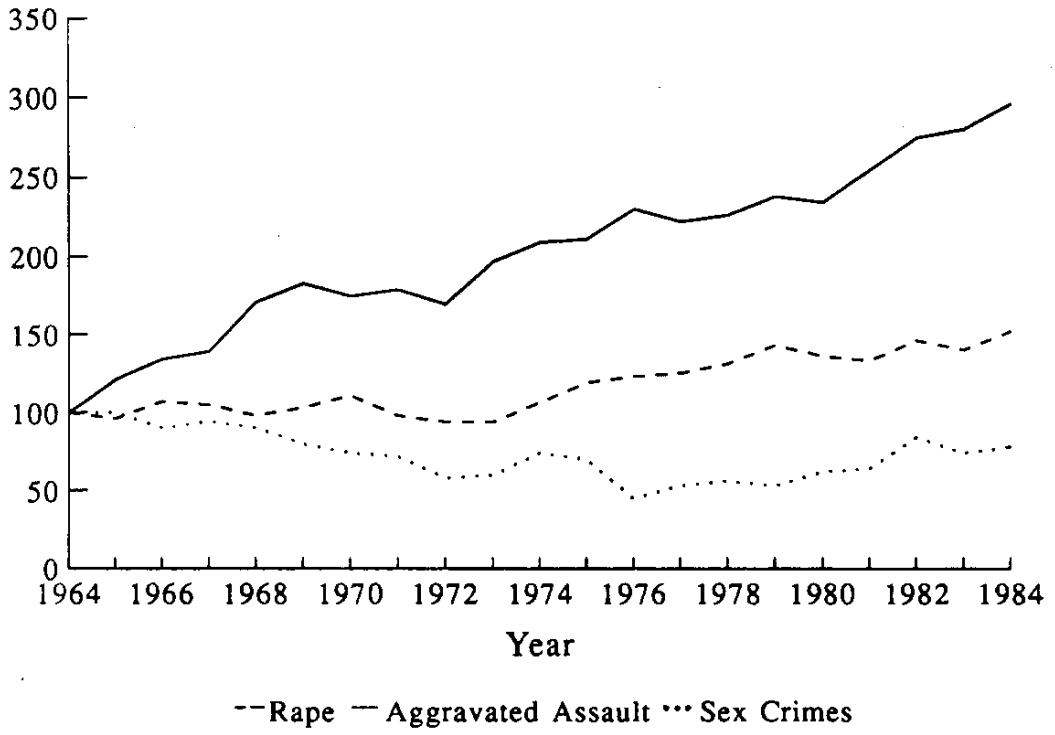
*Indexes of offences per 100,000 population. Index 100: Rape=5.5; aggravated assault=58.8; sex crimes=78.6.
Source: Criminal Justice Statistics for Denmark, various years.

In all three countries, non-violent sex crimes have decreased, although mainly during the first-half of the period. In Sweden a distinct decrease from 1964 to 1976 was followed by

an increase during the rest of the period. This development coincides with a period of liberalisation followed by a period in the opposite direction in which punishments of sexual offences were sharpened. This is but one among several facts which suggest that at least some of the developments of registered sex crimes in Sweden, as indeed in all three countries, reflect changes in the definition, reporting and registration of such crimes rather than actual numbers of crimes committed. This does not mean that the figures do not indicate anything at all about the actual number of crimes committed. As shown elsewhere, some of the decrease of sex crimes in Denmark appears to be real, most importantly serious sex offences against small children; the same appears to be true of West Germany (Kutchinsky 1985). For this and other reasons it is most unlikely that a real increase of important sex offences could hide behind the decrease of reported cases.

Figure 5

Cases of Rape, Non-Sexual Violent Crimes and Non-Violent Sex Crimes Known to the Police in Sweden, 1964-84*



*Indexes of offences per 100,000 population. Index 100: Rape=7.7; aggravated assault=126.4; sex crimes=42.8.
Source: Br Forskning (1985), and population statistics.

This is equally true about the rape figures. While the increases of reported cases of rape in Sweden and Denmark could result from increased reporting and registration tendencies rather than increases in actual offences, it can safely be concluded that considerable real

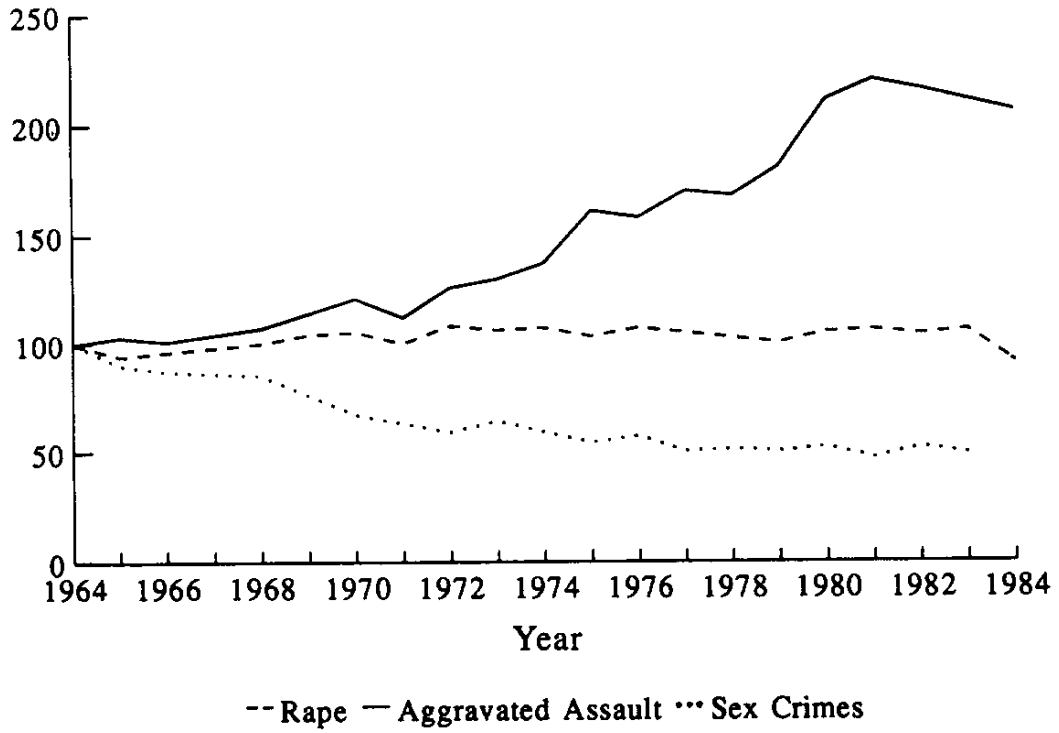
increases could not have been concealed by the moderate increases of reported rape in these two countries.

As far as West Germany is concerned, more detailed statistics, available since 1971, on rape and a related type of crime throw light on the remarkable stability of rape in that country. In 1971 the crime statistics in West Germany were reshaped following Criminal Law Reform. While this did not have serious consequences for rape as such, which both before and after the law reform was defined as sexual intercourse with a woman by force or threat, other forms of coercive (non-coital, but physical) sexual acts, including homosexual acts were singled out in the statistics. Figure 7 presents both the sexual coercion figures and the combined figures for rape and sexual coercion between 1971 to 1987.

Since sexual coercion has increased between 1972 and 1987 (as the only type of sex crime in West Germany to do so), the combined figures also indicate a certain increase during this period. In other words, the German 'rape' figures—computed in this way—behave more or less like the Danish and Swedish rape figures. That the increase is restricted to the type of crime which is likely to include a number of less severe offences supports the suggestion made above in regard to the Danish and Swedish figures, that the increase may be due, at least partially, to increased reporting or registration.

Figure 6

Cases of Rape, Aggravated Assault and Indecent Behaviour Known to the Police in the Federal Republic of Germany, 1964-84*



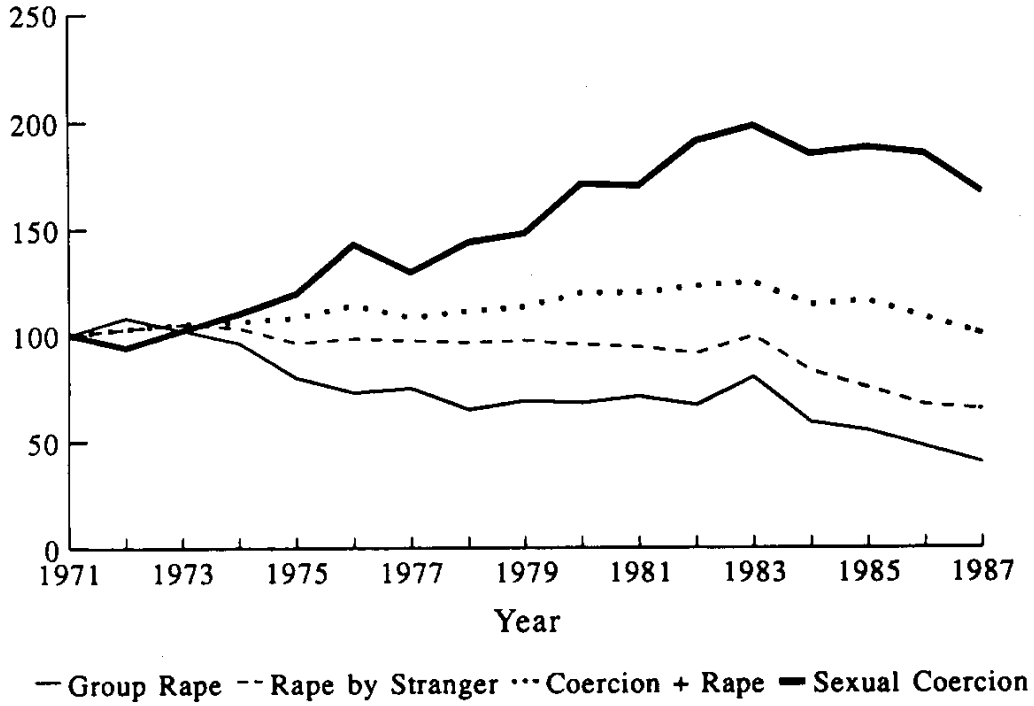
*Indexes of offences per 100,000 population. Index 100: Rape=10.6; aggravated assault=51.2; indecent behaviour=60.2.

Note: Aggravated assault=Gefährliche und schwere Körperverletzung (German Criminal Code, sections 223a, 224, 225, 227, 229). Indecent behaviour refers to the combined figures for Criminal Code sections 175, 176, 180, 180a, 181a, 183 and 183a or equivalent before 1974 (not available for 1984). Statistical breaks in 1971 and 1974.
Source: Polizeiliche Kriminalstatistik, various years.

Another innovation in the compilation of West German crime statistics further elucidates the issue of possible changes in reporting/registration frequencies. Since 1971, it has been possible to separate rape in the form of attacks by strangers and rape committed by groups (two or more persons raping the same victim). Figure 7 also presents the development between 1971 and 1987 of these two categories of rape. When comparing the developments of these two forms of rape to those of sexual coercion and sexual coercion and rape, it is worth noting that, although there are similar features in the four curves after 1978—especially the upward trend until 1983 and the downwards trend afterwards—there is a marked decreasing tendency in the two most serious types of rape. In fact, between 1971 and 1987 group rapes decreased 59 per cent from 577 to 239 cases while rape by strangers decreased 33 per cent from 2453 to 1655 cases (this decrease has continued through 1988 and 1989).

Figure 7

Cases of Sexual Coercion, Rape + Sexual Coercion, Rape by Strangers, and Rape by Groups Known to the Police in the Federal Republic of Germany, 1971-87*



*Indexes of offences per 100,000 population. Index 100: coercion=3.3 (2051 cases); rape+coercion=14.0 (8606 cases); rape by strangers=4.0 (2453 cases); group rapes=0.94 (577 cases).
Source: Polizeiliche Kriminalstatistik, various years.

Since rapes by strangers and group rapes are more likely to be reported to the police than rape in general and less serious forms of sexual coercion, there can be little doubt that the decreasing tendency of these types of crimes reflects a real decrease rather than a change in reporting and/or registration. That the most serious types of offences decreased while the least serious ones increased supports the notion that the latter reflects increased reporting/
registration.

At any rate it would seem fair to conclude that overall there could not have been any increase in the actual number of rapes committed in West Germany during the years when pornography was legalised and became widely available.

Conclusion

The aggregate data on rape and other violent or sexual offences from four countries where pornography, including aggressive varieties, has become widely and easily available during the period we have dealt with would seem to exclude, beyond any reasonable doubt, that this availability has had any detrimental effects in the form of increased sexual violence. The data from West Germany is striking since here, the only increase in sexual violence takes place in the form which includes the least serious forms of sexual coercion and where there may have been increases in reporting frequency. As far as the other forms of sexual violence are concerned, the remarkable fact is that they decreased—the more so, the more serious the offence.

This finding is not so strange. Most other research data we have about pornography and rape suggest that the link between them is more than weak. Our knowledge about the contents, the uses and the users of pornography suggests that pornography does not represent a blueprint for rape, but is essentially an aphrodisiac, that is, food for the sexual fantasy of persons—mostly males—who like to masturbate.

The policy implications of this conclusion are, of course open to debate. But as mentioned earlier, the mainstream attitude would seem to be a combination of two movements:

- to reduce the area of total prohibition and censorship to a minimum; and
- to implement a variety of restrictions, suitable to each form of pornography, in order to obtain maximum protection of children, and of adults who want no confrontation with the material.

References

Br Forskning 1985, and population statistics.

Denmark (various years), *Criminal Justice Statistics*.

Federal Republic of Germany (various years), *Polizeiliche Kriminalstatistik*.

Fisher, W.A. & Barak, A. 1991, 'Pornography, erotica, and behaviour: More questions than answers', *International Journal of Law and Psychiatry*, vol. 14, pp. 65-83.

Kutchinsky, B. (forthcoming), *Law, pornography, and crime: The Danish experience*, Yale University Press, New Haven.

Kutchinsky, B. 1991, 'Pornography and rape: Theory and practice? Evidence from crime data in four countries where pornography is easily available', *International Journal of Law and Psychiatry*, vol. 14, no. 1 & 2, pp. 47-64.

Kutchinsky, B. 1990, 'Legalised pornography in Denmark', in *Men Confronting Pornography*, ed. M.S. Kimmel, Crown Publishers, New York, pp. 233-45, 335-6.

Kutchinsky, B. 1985, 'Pornography and its effects in Denmark and the United States: A rejoinder and beyond', in *Comparative Social Research*, ed. R.F. Thomasson, JAI Press, Greenwich CT, vol. 8, pp. 301-30.

Kutchinsky, B. 1983, 'Obscenity and pornography: Behavioural aspects', in *Encyclopedia of Crime and Justice*, ed. S.H. Kadish, Free Press, New York, vol. 3, pp. 1077-86.

Penal Law Committee 1966, *Straffelovradets betaenkning of straf for pornografi* (Report of the Danish Penal Law Committee on the penalisation of pornography), Statens Trykningskontor, Copenhagen.

United Kingdom 1970, *Report of the Committee on Obscenity and Film Censorship*, Cmnd. 7772, Her Majesty's Stationery Office, London.

United States of America 1970, *Report of the United States Commission on Obscenity and Pornography*, Government Printing Office, Washington, D.C.

United States of America (various years), *Uniform Crime Reports.*

THE REFORM OF NEW ZEALAND'S CENSORSHIP LAWS: 'FEMINIST' ARGUMENTS AND THE FREEDOM OF EXPRESSION

William K Hastings
Senior Lecturer in Law
Victoria University of Wellington
and Member
Indecent Publications Tribunal
and Video Recordings Authority Examiner
New Zealand

IT IS NOT THE PURPOSE OF THIS PAPER TO ASSESS THE RELATIVE MERITS OR demerits of the various 'feminist' arguments. Instead, this paper will assess how these arguments can best be taken into account by censors applying statutory criteria which seem on face value not to espouse any particular ideology. My thesis will be that unless a legislature uses a 'shopping list' approach, it does not really matter what the criteria for classification, censoring or banning are. Words normally used in New Zealand to censor videos and printed material ('injury to the public good') and films ('likely to be injurious to the public good') are capable of supporting many different meanings. The meaning selected and applied to any given video, film or publication is based on a conscious policy decision, such as 'depictions of sexual violence intended for male sexual arousal are injurious because they encourage the victimisation, potential or actual, of a vulnerable segment of society'. If statutory criteria are to be given meaning from policy decisions, it is important that those policy decisions are based upon the best available evidence and argument. As important as, or more important than, the statutory criteria is how censorship decisions get made and the powers the censors are given by the legislature to reconcile competing interests. In New Zealand, how censorship legislation is drafted, and how the finished legislation is

implemented by censors, is controlled to some extent by the Bill of Rights Act 1990 which came into force on 25 September 1990.

The Statutory Criteria and Procedures used by the Chief Film Censor, the Video Recordings Authority and the Indecent Publications Tribunal

Both the Video Recordings Act 1987 and the Indecent Publications Act 1963 require censors to classify material according to its level of indecency. Indecency is defined in s. 2 of both Acts as 'describing, depicting, expressing, or otherwise dealing with matters of sex, horror, crime, cruelty or violence in a manner that is injurious to the public good'. Section 13(2) of the *Films Act 1983* requires the Film Censor to determine whether the exhibition of any film (not the film itself) 'is or is not likely to be injurious to the public good'. Each of the three bodies is given criteria which must be used to determine injury to the public good.

The Indecent Publications Act (which is rather unfortunately named because its title seems to presume that publications are indecent before the tribunal even sets eyes on them) requires a consideration of a publication's dominant effect, whether it has artistic or literary merit, the persons to whom it is to be distributed, its price, whether it is likely to corrupt a reader, and finally, whether it displays an honest purpose and honest thread of thought or whether its content is 'merely camouflage designed to render acceptable any indecent parts of the book or sound recording'.

The Video Recordings Act similarly requires an assessment of dominant effect, merit and likely viewers. It does not require an assessment of price, likelihood of corruption or honesty of purpose. Instead it substitutes three different factors: the manner in which the video depicts antisocial or offensive behaviour; the manner in which it depicts denigration by reference to colour, race, ethnic origins, sex, or religious beliefs; and the purpose to which the video will be put.

The Films Act echoes the dominant effect, artistic merit and denigration factors of the Video Recordings Act. It broadens the 'manner in which antisocial behaviour is depicted' criterion to include depictions of cruelty, violence, crime, horror, sex, indecent language and indecent behaviour, most of which are found in the definitions of 'indecent' in the other two Acts. The Films Act also has a basket clause of 'any other relevant circumstances relating to the proposed exhibition of the film, including the places and times at which or the occasions on which the film is intended or is likely to be exhibited'.

Some of these criteria are clear. Price, for example, is objectively ascertainable. Others are clear but require some subjective input. Dominant effect, for example, is ascertainable, but will differ from viewer to viewer. Indeed, the very act of viewing a film has a subjective element in it. Literary merit is perhaps also ascertainable, but is open to much more of a subjective interpretation.

Finally, the ultimate test—whether the manner in which something is depicted is injurious to the public good—is virtually incapable of being applied because it has no appliable meaning of its own. Can anyone say what this means? What is 'the public good'? When is it injured? We know it is something which the legislature has said is injured only by the manner in which sex, horror, crime, cruelty and violence are depicted, rather than by the depictions themselves of these things, but does this help in determining injury to the public good? If one segment of society is 'injured' by the way, sex, for example, is depicted, does this mean that the 'public good' has been injured, or do all segments of society have to be injured? And how is the public good injured by a two-dimensional depiction or written description of a rape for example? Is it via the fact that this manner of depiction is simply available, in which case it is unknown to the vast majority of people? Is it via the readers whose attitudes

towards women could be, or are, worsened, in which case, they might be injured but not others who do not read the depiction? Is it via the fact that someone might copy the described act, in which case the censor bans everything on the basis that someone, somewhere, could be 'triggered' by the manner in which something is depicted?

It is this criterion which is the most important one for all New Zealand censors, but it is also the criterion which is the least capable of being applied because it has no obvious or ascertainable meaning. To give effect to the statutes, the phrase must be given meaning through conscious policy decisions. It is, therefore, important to examine the procedure whereby these decisions are made.

The Department of Internal Affairs administers the Video Recordings Authority and the Film Censor, the Department of Justice administers the Indecent Publications Tribunal. Even though the decision-making thought patterns with respect to videos, films and magazines are very much the same exercise—applying legal criteria to visual depictions to reach a reasoned judgment—the procedures involved in censoring each medium are very different.

Only the Indecent Publications Tribunal, as its name implies, sits as a court or as a commission of inquiry would sit. All five members of the Tribunal, some of whom must be experts in literature, education and the law, read every publication submitted to the Tribunal. After public advertising, a hearing is then held in which written and oral submissions are received. The process is partly adversarial, in the sense that counsel often appear to present argument and to examine and cross-examine witnesses.

Some argue that this is the best way to test the probative value of any given piece of evidence. The process is also partly inquisitorial, in that members of the Tribunal often question the parties (which include anyone who can demonstrate an interest and who apply to be joined), counsel and witnesses, and can subpoena witnesses and evidence. Members of the public may attend hearings.

The members of the Tribunal then retire to consider the publications and the submissions on them, after which they must issue written reasons for each decision. The Film Censor and the Video Recordings Authority do not hold hearings, nor are they required to issue written reasons, although the Video Recordings Authority does keep written reasons for public perusal.

Of the two procedures, which is the best way to obtain the evidence upon which the policy decisions are based, upon which in turn the statutory criteria are based? There are points in favour of each. The 'Internal Affairs' approach (Film Censor and Video Recordings Authority) is possibly cheaper. Public hearings and counsel are expensive. Writing reasoned decisions is time consuming and expensive. The Internal Affairs approach is probably administratively more efficient. A video is taken from the locker and watched. A book is passed around, read, discussed, argued over by counsel and exposed for public comment. In addition, the Internal Affairs approach is free of the submissions of interested parties and counsel, and can thus decide on the basis of whatever evidence it chooses to examine. There is no danger of being 'led down garden paths' by counsel.

The 'Justice' approach has one great strength—it is an 'open shop'. Public accountability is the necessary consequence of public hearings and written, published reasons. Censorship is seen to be conducted in a public forum. The Justice approach also ensures that the evidence upon which censorship policy decision-making is based is openly tested in a manner used by courts for centuries. The best available evidence is therefore brought into the decision-making process. Finally, the Justice approach operates as a two-way education service, where the censors are kept aware of public attitudes and the public are kept aware of the reasons why their freedom of expression is affirmed or limited. The public also have a real opportunity to participate in the censorship process, thereby at least procedurally giving the 'public good' meaning.

While the Justice approach might seem preferable, this is not to say that censors using the Justice approach 'get it right all the time'. It is simply that there is a better chance that they will get it right more often. An example of how the Internal Affairs approach got it wrong, and how the Justice approach could have got it right but missed the chance is demonstrated by two cases concerning the 'feminist viewpoint'. Note that none of the statutory criteria explicitly mention anything which could be called a 'feminist viewpoint'. Denigration of a class of people by reference to their sex comes close, and it is this criterion which has caused censors difficulties in New Zealand.

Difficulties Censors have had with Feminist Argument[1]

Feminist argument in New Zealand has tended to be presented as a 'rights'-oriented argument. It is argued first of all that women have a right not to be exposed to sexually explicit material in places such as convenience stores, where images of female naked bodies are available to be purchased along with grocery items. The second argument is that women have a right not to be portrayed as available commodities. It is argued that this is degrading and humiliating. The third argument is that these portrayals harm them, and society, by the way they influence people to think about women. The application of these arguments to depictions of naked women lactating is of growing concern to pressure groups such as Women Against Pornography, who have recently made submissions on the subject to the Indecent Publications Tribunal. Some of these submissions are discussed below.

Depictions of pregnancy

The prevalence of depictions of naked pregnant and/or lactating women in sex magazines

This type of depiction occurs only rarely in publications intended for male heterosexual titillation. The relative scarcity of these depictions of course does not affect the question of their indecency, but it is useful to put them in context so that future policy-making is based on a firm empirical foundation.

There seem to be only two quantitative studies which have attempted to categorise the imagery in what could be called sex magazines (magazines intended to sexually arouse their readers). In Dietz and Evans (1982), the authors classified the covers of 1,760 heterosexual sex magazines from four retail shops in New York. They found images of pregnancy in only four magazines. This represented 0.2 per cent of the total. The authors concluded that 'the extremely low prevalence of imagery specifically limited to women fighting, leather garments, rubber garments, exaggerated shoes and boots, and pregnancy suggests that an extremely small audience depends on these specific images for sexual arousal'. The value of the study is limited for two reasons. Articles available in New York are not necessarily representative of what is available in New Zealand, and only the covers of each magazine were classified, rather than the whole magazine as is required by New Zealand law.

The second study was conducted for the 1986 US Attorney General's Commission on Pornography, but was not analysed and published until 1987 in Dietz & Sears (1987-88). This study suffers from exactly the same limitations as the 1982 study but, unlike that study, it attempts to assess the impact of various depictions on those who view them according to the degree to which the depictions are degrading or humiliating.

---

[1] The views presented in this paper should not be taken to represent the views of the Indecent Publications Tribunal or any member of the Tribunal. The Tribunal has not yet made a decision on some publications which contain some of the following depictions under the heading 'Difficulties Censors have had with Feminist Argument'.

The 1987 Dietz & Sears study shows an increase in the depictions of pregnant women on the covers of magazines, books and films. These images were found on the covers of 1.6 per cent of magazines, 0.1 per cent of books and 0.3 per cent of films, for a total of 1.2 per cent of all media surveyed. The authors attempted to categorise the images according to three views of 'degrading or humiliating imagery'.

The first—sexually traditional—view regards any depiction of 'a person as an object of purely sexual interest or (exposure) to public view portions of the body that are customarily concealed' as degrading or humiliating (Dietz & Sears 1987, p. 30). The authors say that 100 per cent of the material surveyed, on this view, would be degrading or humiliating.

The second—sexually moderate—view of degradation or humiliation 'accepts that depictions of the body and of sexual activity can occur without degradation or humiliation but finds degrading or humiliating all those sexual activities that are regarded as deviant or shameful according to traditional values' (ibid, pp. 30-1). The authors found that 52 per cent of the material surveyed—including depictions of pregnancy and 'engorged breasts with milk production'—would be degrading or humiliating on this view. Traditional values were defined to include those which 'regard sexual activity during the third trimester of pregnancy and the immediate postpartum period as taboo' (ibid, fn. 54, p. 31). Most New Zealanders would be somewhat more enlightened with respect to sexual activity during pregnancy.

The third—sexually liberal—view of degradation or humiliation 'would limit the use of these terms to depictions of activities that are considered shameful even by those who have by and large accepted the changes in social behavior that accompanied the sexual revolution of the 1960s (ibid, p. 32). Depictions of pregnant women were not included within the scope of degrading or humiliating depictions on this view. Thus, the sexually traditional and the sexually moderate would find depictions of pregnant women degrading or humiliating. The sexually liberal would not.

The arguments

Women Against Pornography (WAP) have this to say about one of the pregnancy magazines:

> *Pretty Pregnant*: the condition of pregnancy sexualised for men's pleasure. Pregnant women are presented as sexual objects and as sexual objects who enjoy pain and humiliation. One particularly woman-hating caption reads: 'This girl can't wait to deliver her nine-pound mistake before it splits her apart'. The woman is portrayed as a reluctant victim of pregnancy and as one experiencing violence. The same woman is shown as masochistic: 'My breasts have gotten so big and heavy, they hurt when I move and I have to wear a bra all the time to hold them up. They feel real sexy though'. Women's pain is clearly being sexualised here.
>
> Another caption targets all pregnant women for sexual assault: 'Everything about the pregnant woman is inviting and seductive. She exudes sexuality. Her body begs for sex'. The clear message is being given that pregnant women are necessarily sexual, that their bodies' condition makes them sexually available, regardless of their real needs and feelings.

Andrea Dworkin's *Pornography: Men Possessing Women* (1989) was used by WAP to support their argument. Dworkin discusses 'the pornography of pregnancy':

> In the male sexual system, the pregnant woman is a particular sex object: she shows her sexuality through her pregnancy. The display marks her as a whore. Her belly is her sex. Her belly is proof that she has been used. Her belly is his phallic triumph. One does not abort his victory. The right wing must have its

> proof, its triumph; she, a woman of sex, must be marked. The pregnant woman is the sexual obsession of the right-wing male sexual mentality: that obsession kept secret but acted on in public policy that forbids abortion. The pregnancy is punishment for her participation in sex. She will get sick, her body will go wrong in a thousand different ways, she will die. The sexual excitement is in her possible death—her body that tried to kill the sperm being killed by it. Even in pregnancy, the possibility of her death is the excitement of sex.

Three points are being made by WAP and Dworkin:

- the condition of pregnancy and possible consequential discomfort is 'sexualised' by these depictions;
- the condition of pregnancy is portrayed as the moral price to be paid for sexual activity; and
- the sexualisation and moralisation of pregnancy, created by the manner in which pregnancy is depicted in this magazine, lead to the sexualising of violence against, and the subordination of, women generally.

The factual basis upon which these arguments are made is objectively often true. Kitzinger (1983, p. 203) states:

> The pressure on the genital organs from about the fourth month is so great for some women that they say they feel 'randy', like Jane, who admits 'I can't wait for my husband to get home, poor man'! or Rosie, who says 'I couldn't get through the day without masturbating, I felt so sexy. I thought I must be very peculiar till I talked to my sister-in-law about it who'd had a baby last year and she said she felt just the same'.

These statements are not too dissimilar to some of the greater number of more positive, or at least neutral, statements in *Pretty Pregnant*, although the context is admittedly different: and it is the context, or manner of the depiction, to which WAP objects. Kitzinger (1983) continues:

> A woman who is feeling super-charged like this can be aghast to discover that her partner does not want to have intercourse or that he cannot get or maintain an erection. Many men are anxious that they can hurt the baby. This concern may have very good effects, because they become more thoughtful and considerate about lovemaking than before. But a man who is really frightened may refuse even to touch the woman. Some men have told me that they were terrified of breaking the bag of water. Others have believed that they could damage the baby. Others that if they let themselves go everything can get out of hand and labour may start forthwith. It is almost as if they feel that to keep themselves under restraint will help make the pregnancy go well; as if their self-control will somehow 'guard' the pregnancy. These beliefs are remarkably similar to those held in Third World societies, where taboos are enjoined on a father in order to ensure the well-being of a baby while it is still in the uterus.

This description of male response to pregnancy is the exact reverse of WAP's view. Far from being influenced to sexual violence, Kitzinger (1983) seems to argue that some men will be more considerate in their sexual relations with pregnant women, and that some men will not want to have sexual relations with pregnant women simply because of their pregnancy. The least that can be said is that the male sexual response to pregnancy is varied.

It could be argued that to suppress depictions of pregnant women simply because they are pregnant could actually promote the subordination of women. In *American Booksellers Association v. Hudnut* 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 US 1001 (1986), the Feminist Anti-Censorship Taskforce (FACT), among others, successfully challenged the well-known MacKinnon/Dworkin Ordinance relied on by WAP in their argument. It had been enacted by the city of Indianapolis. The FACT brief has been published in Hunter & Law, 'Brief amici curiae of Feminist Anti-Censorship Taskforce, et al., in *American Booksellers Association v. Hudnut*' (1987-88).

Subordination is the central concept of Women Against Pornography's definition of pornography. The FACT brief argued (1987-88, pp. 108-9):

> If a subjective interpretation of 'subordination' is contemplated, the ordinance vests in individual women a power to impose their views of politically or morally correct sexuality upon other women by calling for repression of images consistent with those views. The evaluative terms—subordination, degradation, abasement—are initially within the definitional control of the plaintiff, whose interpretation, if colorable, must be accepted by the court. An objective standard would require a court to determine whether plaintiff's reaction to the material comports with some generalised notion of which images do or do not degrade women. It would require the judiciary to impose its views of correct sexuality on a diverse community. The inevitable result would be to disapprove those images that are at least conventional and privilege those that are closest to majoritarian beliefs about proper sexuality.

FACT reached a conclusion as to the effect of pornography on men which differs from WAP's conclusion. When depictions which did not involve the use of physical force to coerce a woman to perform sexual acts were studied, FACT submitted that:

> no effect on aggression against women has been found; it is the violent, and not the sexual, content of the depiction that is said to produce the effects. Further, all of the aggression studies have used visual imagery [WAP based much of their submission on Pretty Pregnant on the captions beside the pictures]; none has studied the impact of only words. Finally, even as to violent 'aggressive pornography,' the results of the studies are not uniform. (ibid, p. 113).

There was no violent pictorial imagery in this magazine. The least that can be said by way of conclusion here is that there is no evidence of a negative psychological effect produced by depictions of naked pregnant women, without violence, on men, according to FACT.

FACT (1987-88) also argued that there were fundamental definitional problems with WAP's approach, which had the potential of undermining the very object they sought to achieve:

> The ordinance presumes women as a class (and only women) are subordinated by virtually any sexually explicit image. It presumes women as a class (and only women) are incapable of making a binding agreement to participate in the creation of sexually explicit material. And it presumes men as a class (and only men) are conditioned by sexually explicit depictions to commit acts of aggression and to believe misogynist myths.
>
> Such assumptions reinforce and perpetuate central sexist stereotypes; they weaken, rather than enhance, women's struggles to free themselves of archaic notions of gender roles. In treating women as a special class, it repeats the error of earlier protectionist legislation which gave women no significant benefits and denied their equality.

Finally, it is valid to argue that depictions of pregnant women designed for male sexual arousal could contribute to an atmosphere in which women are disadvantaged. Many other depictions could do this. But would banning all material which has this effect add to the deterrent value of laws which already punish the acts which WAP say are caused by 'pornography'? Again, the FACT brief (ibid, p. 134) stated:

> Individuals who commit acts of violence must be held legally and morally accountable. The law should not displace responsibility onto imagery. Amicus Women Against Pornography describe as victims of pornography married women coerced to perform sexual acts depicted in pornographic works, working women harassed on the job with pornographic images, and children who have pornography forced on them during acts of child abuse. Each of these examples describes victims of violence and coercion, not of images. The acts are wrong, whether or not the perpetrator refers to an image. The most wholesome sex education materials, if shown to a young child as an example of what people do with those they love, could be used in a viciously harmful way. The law should punish the abuser, not the image.

The Indecent Publications Tribunal has found depictions of sexual violence, depictions of the victimisation of vulnerable segments of society consisting of those who cannot or would not consent to the depicted sexual activity, and depictions which dehumanise women to a severe degree by placing undue and contrived emphasis on female genitalia to be injurious to the public good, and thus unconditionally indecent. Do depictions of pregnant women in sex magazines do these things? While the depictions are degrading or humiliating to many people, we must ask is this necessarily an indicator of injury to the public good on the basis of the statutory criteria and the Tribunal's policy as it has evolved in past decisions? It is always open however for people to argue and evidence to be adduced that depictions which have this effect could come within the meaning of 'injury to the public good'.

Depictions of awkwardly posed single naked women

Appeals from the 'Justice' approach used by the Indecent Publications Tribunal

The application of feminist arguments to depictions of single naked female models—sometimes bent over and photographed from behind, other times photographed lying down spreading their labia—was attempted by a minority of the Indecent Publications Tribunal in *Re 'Fiesta' and 'Knave'* (1986) 6 NZAR 213. The decision (representing the Justice approach) was appealed to the High Court where the minority decision was disapproved of by Jeffries J in *Comptroller of Customs v. Gordon & Gotch* (1987) 6 NZAR 469, [1987] 2 NZLR 80. Jeffries J's criticism was both substantive and procedural. Much of the substantive criticism was limited to the perceived illogicality of the question posed for the Court: 'whether the representational view of women *which* denigrates *all* women is indecent within s. 2 of the Act' (His Honour's emphasis). His Honour stated that:

> In my view to attempt to link pictorial or verbal representation of women to denigration of all women is to go too far .. . To avoid as far as possible misunderstanding I affirm that if a publication is of such a character it gravely concerns the Tribunal over classification then they must decide whether it is injurious to the public good of which women constitute approximately one half (1987, p. 94).

There are at least three possible interpretations of this statement. Does it mean that if a publication is injurious to only one sector of society, it does not injure the public good because it does not injure everyone? Or does this statement mean that one cannot link a denigrating representation of women in a publication to all women, but if one could prove such a link, the publication would still not be injurious because it does not injure the whole public? Or if one could prove such a link, that the publication would be injurious to the public good because it denigrates half of the public?

The opening sentence of the quotation probably qualifies the final sentence. His Honour emphasised that it was possible for the Tribunal to find that the manner in which some nude female models were depicted could warrant a finding that the depictions were 'injurious to the public good'. It was just that such a finding could not be based on 'representational grounds'. His Honour could not have meant that a depiction which did present an injurious view of a group of persons could never be injurious to the public good. Surely such a depiction could be injurious if it could be demonstrated that its effect was to injure the public good. For example, it may well be true that a publication which depicts women in a degrading manner does not per se degrade all women in society.

If it could be shown that that same publication has an injurious effect on society, whether it is because it could reinforce negative stereotypical attitudes towards women amongst its readers (potentially endangering women and negatively colouring male attitudes), or any other demonstrable reason which indicates a negative impact on society as a whole, then Jeffries J's comment would not prevent a finding of injury to the public good. Useful here are the examples of grounds upon which the freedom of expression may legitimately be limited in Canada under the Canadian Charter of Rights and Freedoms (very similar to the New Zealand Bill of Rights) which were set out in *R v. Butler* (1990) 50 CCC (3d) 97 (Manitoba Court of Queen's Bench). They were the protection of people from involuntary exposure to pornographic material, the protection of vulnerable segments of society, such as children, and the prevention of material which dehumanises or treats as unequal men or women, especially material which mixes sex with violence.

The thrust of Jeffries J's criticism was directed towards the absence of evidence or grounds for the minority's finding of injury to the public good; it was not directed towards the finding of injury to the public good itself which His Honour (1987, p. 94) stated to be a legitimate finding if it were supported.

Jeffries J did not preclude consideration of a 'feminist' viewpoint, or any other viewpoint for that matter, as long as certain *procedural and evidential* conditions were met. His Honour stated that it was 'right in jurisdiction for the Tribunal' to find that a magazine dealt in matters of sex in a manner injurious to the public good 'because of the manner in which the female nude form is depicted' (1987, p. 94). It was the basis of the minority decision, not the decision itself, which His Honour queried:

> . . . the feminist viewpoint had not been argued and apparently there had been no disclosure to the parties that it would be a controlling influence in their decision . . . By no stretch of the imagination could the feminist viewpoint be described as a fact, as that word is known in law. Also the feminist viewpoint is hardly in the category of facts for which official notice could be taken. Neither would the viewpoint come within the definitions of legislative or judgmental facts as previously mentioned in this judgment. There is no attempt to support the adoption of the feminist viewpoint by reference to any body of scientific or expert research. There is no citing of any authority for the propositions (1987, p. 95).

It could be argued that it is the duty of censors to take into account feminist viewpoints, along with other viewpoints, in light of the New Zealand Bill of Rights' requirement to justify in terms of 'a free and democratic society' any limitations created on the freedom of

expression. Regardless of the Bill of Rights argument, the *Gordon & Gotch* case represents a missed opportunity. The Justice approach, with its open hearings and receptiveness to evidence and argument, was very suited to overcoming Jeffries J's main objection to the minority's attempt at feminist argument. All that was needed to carry the day was evidence, tested at a hearing, upon which the minority could have based their decision.

Appeals from the 'Internal Affairs' approach used by the film censor

On the other hand, McGechan J in *Society for the Promotion of Community Standards v. Everard* (1987) 7 NZAR 33 viewed the film *Pretty As You Feel* and acted as a censor himself. Procedurally this was because the case came to him as an application for judicial review of the decision of the Chief Film Censor to classify the film R18. Nonetheless, it is possible to argue that the Society would have been much less likely to succeed if the film censor had had the advantages of the Justice approach. Because the Internal Affairs approach makes it very difficult to hear argument on the 'feminist' viewpoint, and impossible to test the evidence on which the argument is based, it is hard to see what else His Honour could have done. It was argued that the film 'denigrated' women as a class (this is one of the film censor's criteria). His Honour stated (1987, p. 63) that:

> There is no dispute—nor could there be—that at least in theory women are a class of the public and are capable of being denigrated as such. Traditional reference to women drivers might be an example . . . In the end, the view that the film denigrates women rather amounts to a general proposition that a film showing certain women undertaking exotic sexual practices blackens all women. I do not accept that proposition. If it is to be censorship policy, with the repercussions which could follow, parliamentary action is required.

Would His Honour have objected so much if 'censorship policy' (he too realises that the statutory criteria must be filled with meaning by policy decisions) had been based on evidence rather than 'general proposition'? Would he have objected so much, or at all, if the Film Censor had heard argument and evidence which proved that this film denigrated women? Yet it is the very nature of the Internal Affairs approach which makes this difficult, even impossible, to do. *Everard* then does not represent so much a missed opportunity, as an opportunity which was impossible for the censor to take because of the procedure under which he operated.

Conclusion

To get back to the purpose of this paper, which is to discuss law reform, it is probably by now obvious that the reform of censorship law should take account of not only classification criteria but the procedures used by censors to give meaning to, and to apply, those criteria. If censors are supposed to take into account the views of all segments of society and try to find some middle ground, then legislation must be drafted with the following principles in mind:

(a) The legislation should be administratively clean. The decision-making process should not be cluttered up with bureaucratic procedures and forms. A single independent tribunal to which any film, video or publication could be submitted by any person or government organisation would be administratively clean.

(b) The legislation should provide for a censorship procedure which allows maximum public opportunity to make submissions and arguments on any given film, video or publication.

(c) The legislation should provide for procedures which ensure that the best evidence is brought to light so that censorship decisions are based on well-informed policy. There is no better procedure to satisfy both (b) and (c) than an open public hearing.

(d) The legislation should give censors enough powers to enable them to reconcile as many opposing viewpoints as is desirable in a free and democratic society. Censors should not be hamstrung by a lack of power say, to order that a magazine be displayed in a place restricted to people over the age of 18 years, if that would be the best way to reconcile the right not to be exposed to sexually explicit magazines with the right to be able to read what adult people want.

(e) The legislation should make censors publicly accountable for their decisions. A requirement of written reasons for decisions goes some way to meeting this need. Open public hearings also go some way towards satisfying this need. And of course, the reverse is true: public hearings and written reasons go some way to keeping the public informed of current censorship policy and the evidence on which that policy is based.

Whatever the merits of 'feminist' arguments and counter-arguments, it is submitted that they must be taken into account by censors. Law reform must ensure that the procedures exist for a proper testing of these, and any other, arguments.

References

Dietz, P.E. & Evans, B. 1982, 'Pornographic imagery and prevalence of paraphilia', *American Journal of Psychiatry*, vol. 139, pp. 1493-5.

Dietz, P.E. & Sears, A.E. 1987-1988, 'Pornography and obscenity sold in 'adult bookstores—a survey of 5132 books, magazines and films in four American cities', *U Michigan Journal of Law Reform*, vol. 21, nos. 1 & 2, pp. 7-53.

Dworkin, A. 1989 (ed.), *Pornography: Men Possessing Women*, E.P. Dutton, New York.

Hunter, N.D. & Law, S.A. 1987-1988, 'Brief amici curiae of Feminist Anti-Censorship Taskforce, et al., in American Booksellers Association v. Hudnut', *U Michigan Journal Law Reform*, vol. 21, nos. 1 & 2, pp. 69-136.

Kitzinger, S. 1983 (ed.), *Woman's Experience of Sex*, Dorling Kindersley, London.

THE DESIRED OBJECT: PROSTITUTION IN CANADA, UNITED STATES AND AUSTRALIA

Suzanne E. Hatty
Senior Lecturer and
Coordinator Criminology
School of Social Science and Liberal Studies
Charles Sturt University
New South Wales

THE STATE REGULATION OF SEXUALITY CONTINUES TO GENERATE CONTRO-versy amongst feminist scholars and activists, criminologists and law-makers. Historically, the state has upheld traditional patriarchal institutions and supported male-biased rights concerning the deployment of sexuality and reproductive abilities. The state has actively sought to entrench women's position as home-maker and sexually-available partner, whilst at the same time contesting the right of women to practise prostitution.

In a gender-stratified society, in which sex, sexuality and the body are socially-constructed, prostitution raises important questions about the nature of desire, pleasure, harm and violence. As Lowman (1986, p. 193) notes:

> For contemporary feminists, the sexual commodification of women creates an uneasy tension between a desire to suppress the trade and a desire to free prostitutes from state interference. On the one hand, prostitution represents the pole of a system of sexual stratification and must be resisted as the quintessential form of men's exploitation of women (and children of both sexes). Prostitution is the raw end [sic] of patriarchy.

In this paper, the different ways in which prostitution by women is conceptualised by prostitute advocacy groups and academics in the United States and Australia will be examined. Current research on the experience of prostitution will be reviewed, with particular emphasis on information gathered during interviews with prostitute women in Canada. The law relating to prostitution and its effects in England, Australia and Canada will then be discussed. Finally the international themes evident in the research and experiential

data will be reiterated, and the implications of these themes for women's lives will be considered.

Competing Models of Prostitution

During the 1970s and 1980s, serious attempts have been made to transform the image of prostitutes as 'social misfits, sexual slaves, victims of pimps and drug addiction, and tools of organised crime' (Jenness 1990, p. 403). This attempt, undertaken largely by prostitute advocacy groups, has sought to supplant this image with another: prostitutes as legitimate waged labourers similar to other employees, except that the work is stigmatised and subject to police interference and harassment.

However, the struggle over the control of prostitution as a social problem has been intense. At present, there appear to be two dominant discourses about prostitution evident in the reform posture adopted by USA and Australian advocacy groups. First, there is the notion that prostitution is work. This is exemplified by the stance of COYOTE (Call Off Your Tired Old Ethics) in the USA, and the Scarlet Alliance in Australia. COYOTE functions on three premises: first, prostitution in general is a voluntarily-selected occupation; second, prostitution should be regarded as equivalent in social status to other service organisations; and, third, legal restrictions on the practice of prostitution constitute a violation of civil rights concerning the freedom to choose employment. As Jenness notes (1990, p. 417):

> By invoking and institutionalising a vocabulary of sex as work, prostitutes as sex workers, and prostitutes' civil rights as workers, COYOTE's claims sever the social problem of prostitution from its historical association with sin, criminality and illicit sex. The social problem of prostitution is firmly placed in the rhetoric of work and civil rights.

Whilst COYOTE acknowledges that violence and even death are risks associated with prostitution, these violations are seen as resulting from the illegal status of prostitution in some jurisdictions, as well as the stigma attached to the work itself. Violence and other hazards are viewed as occupational health and safety issues—just as asbestos might constitute a health threat for building workers (*see* Hunter 1990). This association of prostitution with other forms of work is made clear by Dolores French, the president of the Florida branch of COYOTE (cited in Jenness 1990, p. 405):

> A woman has the right to sell sexual services just as much as she has the right to sell her brains to a law firm where she works as a lawyer, or to sell her creative work to a museum when she works as an artist, or to sell her image to a photographer when she works as a model or to sell her body when she works as a ballerina. Since most people can have sex without going to jail, there is no reason except old fashioned prudery to make sex for money illegal.

This construction of prostitution as waged labour has been strongly challenged by other groups and individuals. The Council for Prostitution Alternatives in Portland, Oregon (n.d.), believes that prostitution is not a victimless crime, but an activity which disproportionately victimises women. The Council claims that prostitution is 'dehumanising, abusive and life threatening'. The Council asserts that prostitution is not freely chosen, and prostitutes 'should neither be treated as victims to be rescued, nor as criminals to be punished'. Consequently, legal responses, such as criminalisation or legalisation, fail to address the problem; further, 'unequal enforcement of the laws . . . reinforce the victimisation process by targeting prostitutes as 'the problem' while allowing the majority of participants (perpetrators) to

continue their exploitation'. Hence, the Council believes that prostitute women should be offered the opportunity to empower themselves through relinquishing prostitution and finding appropriate, alternative employment. The Council provides an extensive program based on a 'realist theory' of intervention involving major improvements in self-concept and personal autonomy. The program focuses on confronting the victimisation process which precedes and accompanies prostitution, and shifting the emphasis from powerlessness to self-responsibility and self-care (Davis, Hunter & Neland 1990).

This second model of prostitution is consistent with the proposition, contained in academic discourse, that prostitution is a type of gender victimisation (Davis 1990) or a paradigmatic case of sexism (Davis & Hatty 1990). Also, it has features in common with the theoretical position of Carole Pateman (1988), who argues that prostitution should not be equated with work. Pateman maintains that prostitution is inherent in the 'sexual contract' that exists in patriarchal society. In this contract, men are defined as citizens with power and authority vested in their person. Moreover, men are guaranteed access to women's bodies under the law of male sex-right. In prostitution, men buy the sexual body of the woman, a far more significant purchase than that which occurs between employer and employee in capitalist society. However, as the self inheres within a consciousness about the body, men buy the person or the 'embodied self' of the woman when engaging a prostitute. Thus, prostitution cannot be reduced to the sale of 'sexual services'.

In this model, violence against prostitute women can be seen as the logical extension of the prostitute contract (the ownership, for a period of time, of the woman) and the expression of the patriarchal equivalence between male sexuality (desire) and violence (annihilation). Hence, Leder (1990, p. 155) is correct in assuming that women are defined as *other* to the essential (male) self, 'just as the body is *other*', and 'insofar as the body is seen as mindless and in need of control, so too its representatives. Subjugation becomes a necessity and a natural prerogative'.

The Experience of Prostitution

Research conducted on women who work as prostitutes indicates that poverty plays a major role in drawing women into prostitution (*see*, for example, Perkins & Bennett 1985; and Victoria, Inquiry into Prostitution 1985, with regard to Australia). The structural inequalities associated with a highly stratified labour market, in which women earn only a fraction of men's wages, render prostitution an attractive alternative to impoverishment. However, it is possible to argue that women who are disadvantaged through their membership of marginal groups are candidates for prostitution (Hatty, forthcoming).

Being poor, an immigrant or a rural dweller increases women's vulnerability to recruitment into prostitution. In some Asian and European countries, these forms of marginality are significant contributors to the maintenance of the prostitution 'trade'. Davis (1989) notes that in Taiwan a young girl can be bought or pawned as a prostitute, or even adopted into prostitution. In Yugoslavia, impoverished girls from rural areas are easily identified by professional procurers in urban areas. These procurers provide offers of 'employment' in the large cities (Davis 1989). Consequently, social dislocation and the removal of traditional constraints and ties may limit women's options for economic survival and increase the likelihood of induction into prostitution. This point has been made in a poignant comment offered by a representative of the Canadian group POWER (Prostitutes and Other Women for Equal Rights). This woman stated (cited in Lowman 1989a, p. A-203):

> The daughter of one of the working women I know came home from school one day and had heard about prostitutes at school. She asked her mother, 'What

> is a prostitute?' And her mother said, 'A hungry girl'. That's the best definition I can think of.

Interviews with women who work as prostitutes in Vancouver have confirmed the centrality of economic considerations to the decision to become a prostitute (Lowman 1984; 1989a). The interviews document the psychological cost of adopting the stigmatised role of prostitute. One woman said (cited in Lowman 1984, p. 245):

> There were times . . . I'd wake up, look at myself in the mirror first thing in the morning and go I'm a hooker—you're not worth anything.

Another woman commented (cited in Lowman 1984, p. 246):

> For years I had a very low self-esteem. Society's attitudes makes one feel different about themselves. The reinforcement that you're a whore, that you're nothing, that you're a low-life does have an impact on how you feel about yourself.

Other, negative experiences tend to occur disproportionately in the early lives of women who work as prostitutes. These experiences have been described as 'preconditioning' to prostitution (*see* Davis 1989), a kind of gender-work undertaken to intensify the effects of women's victim status in society (*see* Elias 1986). Within the sample of 600 female prostitutes working in Portland, Oregon, it was found that almost half the group reported being sexually assaulted by a male relative as a child, and over half of the group reported being physically assaulted by a family member (Davis, Hunter & Neland 1990). A survey of Vancouver prostitutes revealed that about 70 per cent were victims of sexual assault prior to leaving home, and over three-quarters of the women had experienced parental violence. The majority of the women interviewed had run away from home at least once, and almost a third had lived in group or foster homes. The average age of entry into prostitution was 16 years (Lowman 1989a).

Women working as prostitutes maintain that the activities undertaken in exchange for money are not experienced as 'sexual', that is, they do not provoke desire. Vancouver prostitutes report a preference for activities that are quick, easy and non-intimate. Lowman (1984) notes that prostitutes eschew any form of sexual intimacy with their 'tricks' (customers) and, hence, prefer 'blows' (oral sex) or 'lays' (sexual intercourse) because condoms provide a physical—and psychological—barrier between the woman and her client. One woman articulated this clearly when she said (cited in Lowman 1984, p. 214):

> This one guy came up to me, he wanted me to blow some coke with him but I don't do coke. He said, 'What would be your idea of a really good time? I want to satisfy you'. I thought, Oh no, one of these, like . . . I want to satisfy you too. Look honey, *I'm not here to be satisfied. You giving me the money is the satisfaction* (emphasis added).

Harassment, abuse and violence are integral to prostitution whether it is practised in the United States, Canada or Australia. Research with women who work as prostitutes in Portland, Oregon, found that 80 per cent of the women surveyed reported being sexually assaulted whilst working as a prostitute. These assaults included attacks with fists, bottles, guns, knives, being bound and gagged, tied with ropes or chains, being hung from ceiling beams or trees, and being photographed during the assault (Davis, Hunter & Neland 1990). Many prostitute women have also been killed over the last few years. The Green River murders—a series of killings of prostitute women which began in Seattle, Washington, and possibly extended to Portland, Oregon, and San Diego, California—remain unsolved.

Women working as prostitutes in Canada also report high levels of physical abuse. Violence at the hands of clients, police officers and pimps appears common. Speaking of her experience of eight years of prostitution, one Vancouver woman said (cited in Lowman 1984, p. 231):

> I have two scars on the back of my head. I have a broken nose in two places. I've had a broken jaw which has a pin in the back of it. I've had five or six broken ribs . . . My hands were scalded; they were put on a hot plate; I still have scars all over my hands. I've had a drill bit pushed into my fingers. I've had a gun pulled at my head; the trigger has been pulled and then the guy was laughing because he didn't have it loaded. I've had hoses pulled on me, fire hoses, high pressure hoses. I've had bottles thrown at me. I had a beer bottle break over my body. I've been set on fire. I've had gasoline put on me . . . I've been stabbed. I've been run over. I've been thrown from the third storey of a building. I have been robbed numerous times. I've been punched out numerous times . . . I'm talking hundreds. Hundreds and hundreds of bad dates (tricks/customers) in eight years.

Not surprisingly, this woman worked as a street prostitute, a type of prostitution that arguably increases the vulnerability of individual women to violence. (*See* Hatty (1989) for a discussion of the implications of the social organisation of prostitution for the occurrence of harm to women who work as prostitutes.)

Generally, the most serious risk posed by working on the streets is violence perpetrated by 'bad tricks'. Prostitute women are aware that they could be killed, severely beaten or raped during the course of their work. However, due to their marginal status and the consequent lack of legal protection, many women do not report such attacks to the police (Davis, Hunter & Neland 1990; Lowman 1984; 1989a). Prostitute advocacy groups are a main source of information and protection. The Alliance for the Safety of Prostitutes (now Prostitutes and Other Women for Equal Rights or POWER) began publishing its Bad Trick Sheets in Vancouver in 1982. These sheets provide information on the client and the offensive action and are intended to alert prostitute women to the danger associated with this individual. An analysis of the Bad Trick Sheets issued by POWER over a recent three-year period showed that the offending client was most likely to be a white male, and the most common form of violence was physical assault, followed by sexual assault. 'Bad tricks' were perceived to be young males in their twenties or thirties, and their victims were women of a similar age or female juveniles (Lowman 1989a).

The available evidence indicates that women do not exercise free choice in becoming a prostitute but are mindful of the restricted employment opportunities for women in society, especially women from disadvantaged backgrounds. In addition, the evidence indicates that prostitute women are subjected to frequent acts of verbal abuse and physical violence, including sexual assault, and are stigmatised as 'whores' or 'hookers'. They suffer the individual effects of various forms of abuse in their families of origin and the consequent loss of self-esteem and self-hood. Whilst financially compensated for the activities undertaken, prostitute women do not derive sexual pleasure from these activities. Also, they appear to tolerate their clients and harbour resentment of the objectification of all women inherent in prostitution. As one woman said (cited in Lowman 1984, p. 217):

> Men who go to prostitutes go to prostitutes (and I've been hooking for nineteen years) because its a power trip. They pay the money, they get to call the shots. They own you for that half-hour or that twenty minutes or that hour. They are buying you. They have no attachments, you're not a person, you're a thing to be used.

The Legal Regulation of Prostitution

The law relating to prostitution has been the subject of significant debate in many countries over the past fifteen years or so. To a large extent, the focus of this debate has been upon the control of street prostitution. Despite the claims that prostitution is associated with crime, illicit drugs, and HIV/AIDS, it is the visibility of street prostitution that has proved problematic for law-makers and the community. Resident campaigns have been mounted in many Australian jurisdictions, including New South Wales and Victoria, over the last decade, and have resulted in political pressure being exerted to vigilantly police street prostitution (*see* Hatty 1989; forthcoming). Similar experiences with street prostitution have been reported in England (Edwards 1984; 1987) and Canada (Lowman 1984; 1989a).

In England, female prostitutes have been exposed to higher levels of police intervention during the past ten years (Edwards 1987). In 1985, the Sexual Offences Act was introduced. The objective of the legislation was the control of street prostitution. In response to the legislation, women who work as prostitutes have found new means of contacting clients. Often this has meant that these women are vulnerable to exploitation, abuse and violence meted out by clients, pimps and the police.

In New South Wales, the introduction of the *Summary Offences Act 1988* relating to prostitution and public order offences was an explicit attempt to confine prostitute women within certain areas of Sydney and to reduce the public visibility of street prostitution. The legislation deems an act of prostitution which occurs 'within view from' a school, church, hospital, dwelling or public place an offence. The aim of the legislation, according to the former Attorney-General John Dowd, is to drive prostitutes 'out of the suburbs, out of the parks and public places' (cited in Hatty 1989, p. 240-1). This ideological statement, in which prostitutes are equated with outlaws and other deviants, is consistent with the approach adopted within the resident action campaigns of the 1980s. These campaigns sought to eradicate street prostitution from suburbia (for example, the campaign in Canterbury, Sydney) and the commercial and residential areas of the inner-city (for example, the campaign in Darlinghurst, Sydney). Concern was raised about declining property values, traffic congestion, discarded syringes and condoms and the propositioning of non-prostitute women by potential clients. This led to the increased criminalisation of women who work as street prostitutes in Sydney. The act of 'driving' prostitutes from established beats and necessitating the establishment of new locations for soliciting increased the risk of physical and sexual assault of street prostitutes. Women who work alone in new areas or who accept 'car jobs' to escape police detection are now more vulnerable to various types of crime.

In Canada, public anxiety over street prostitution has assumed a similar form to its Australian counterpart. Until the late 1970s, the Canadian courts determined that it was an offence under Criminal Code s. 195.1 to 'solicit any person in a public place for the purpose of prostitution'. The Hutt decision of 1978 defined soliciting as behaviour that was both 'pressing or persistent' in nature (Lowman 1989b). Hence, prostitutes had to engage in more than an offer of sexual services for payment in order to be arrested. In 1983, the Canadian Federal Government established the Special Committee on Pornography and Prostitution (the Fraser Committee) to review the current circumstances and recommend legislative changes. The Committee released its report in 1985. The Federal Government also set up the Committee on Sexual Offences Against Children and Youth (the Badgley Committee) in 1981 to investigate juvenile prostitution, among other matters, and suggest law reform in the area. The Committee released its report in 1984.

Lowman, Jackson, Palys & Gavigan (1986, p. XV) note that both reports instigated 'widespread support and trenchant criticism'. One criticism of the Fraser Committee report was that it attempted to locate prostitution within the private domain. The *Report of the*

Special Committee on Pornography and Prostitution (Canada 1985, p. 547) maintained:

> . . . If prostitution is a reality with which we have to deal in the foreseeable future, then it is preferable that it take place, as far as possible, in private, and without the opportunities for exploitation which have been traditionally associated with commercialised prostitution.

However, despite the recommendations of the Fraser Committee, the Federal Government merely revised the section of the Criminal Code dealing with street prostitution. In 1985, the Federal Government enacted legislation defining the offer to buy or sell sexual services in a public place as an offence (Bill C-49). The legislation states that it is an offence to 'in any manner communicate or attempt to communicate with any person for the purpose of engaging in prostitution or of obtaining the services of a prostitute'. This is often referred to as the 'communicating' law.

Whilst prostitution itself is not illegal in Canada (Lowman 1989b), there are a number of laws which prohibit activities associated with prostitution. One set of statutes prohibits the keeping of 'places' as prostitution houses (the 'bawdy house' laws). The definition of 'places' ranges from parking lots to circus tents (Lowman 1989b). A second and third set of statutes prohibit living off the earnings of prostitution and procuring prostitutes for others. A fourth statute, enacted in 1988, prohibits the purchase of, or offer to purchase, sexual services from an individual under eighteen years. This statute is interesting in light of the finding that many adult female prostitutes in Vancouver report being asked to procure female juveniles for clients or report being treated like children themselves. One woman commented (cited in Lowman 1984, p. 219):

> Yes, (I get) lots of requests for kids. Especially in the last four or five years. It's getting worse. They want younger and younger kids . . . In one case an eight-year-old . . . Another one wanted a six-year-old . . . Some of them will ask you to shave your pubic hairs because it reminds them of a little girl.

Another woman said (cited in Lowman 1984, p. 220):

> . . . They have asked me for really young girls. Really young. Lots of tricks [clients] ask me to call them daddy. Wear shorts and bobby socks and that's why I wear my bobby socks, ask me to call them daddy and all this.

An evaluation of Bill C-49 (the 'communicating' law) was undertaken recently in five major cities across Canada: Calgary, Halifax, Montreal, Toronto and Vancouver. The evaluation was intended to address the four major issues raised by Bill C-49. These have been described as follows:

> (a) Has there been a reduction in the number and visibility of street prostitutes and their customers?
>
> (b) What have been the law's other effects (for example, the displacement of street prostitution to off-street services, increase in danger encountered by prostitutes, deterioration of prostitute/ police relations)?
>
> (c) Have the police and courts found the law easier to apply than previous legislation?
>
> (d) Has the law been applied equally to male and female prostitutes, and to their customers? (Canada 1989, p. 8)

The results of the national evaluation of Bill C-49 found that the legislation did not appear to reduce the number and visibility of street prostitution in many cities, but led to the displacement of prostitution from one part of the city to another. Criminalising prostitution appeared to have little deterrent effect, particularly on structurally powerless groups such as native women. However, working conditions did deteriorate for many women after the introduction of Bill C-49. Clients were fewer in number in many cities, and prostitute women could not reject as many customers as they had previously. Vancouver and Calgary were cities in which violence against female prostitutes had escalated as a result of Bill C-49. Also, police impersonated customers in an attempt to identify prostitutes communicating with others for the purpose of commercial sex. Consequently, prostitutes were compelled to develop counter-strategies to identify police. These included asking the potential client to expose his genitals or touch the woman's breasts. Needless to say, these counter-strategies did not prevent police from engaging in these behaviours and then arresting the women.

The police departments in different cities adopted varying policies in implementing Bill C-49. Nevertheless, almost all the charges laid against prostitutes were effected by undercover police officers (decoy customers). This resulted in an imbalance in the arrest of prostitutes vis-a-vis their clients: in Vancouver, Calgary and Halifax, fewer than one quarter of the charges were laid against clients. Prostitute women were disproportionately criminalised.

Conviction rates on communication charges were high in all the cities studied. It is noteworthy that prostitutes received more severe sentences than their clients in every city. However, even when prior criminal record was held constant, prostitutes in Vancouver were still sentenced more harshly than their clients. Yet, Lowman (1989a, p. 209) argues:

> By all accounts tricks are more likely than prostitutes to be deterred by the threat of criminalisation; in a purely instrumental sense they might, in some ways, be more responsive to law enforcement efforts than prostitutes. Yet current proposals for a more punitive approach to street prostitution are generally aimed at repeat offenders, that is, prostitutes. There is a tendency to treat the prostitute as the primary problem (it is mainly her visibility that stimulates resident complaints to the police) and the 'criminal' deserving of the greater attention (police usually refer to the customer as a 'square john' or a 'citizen', not a 'criminal').

Those who advocate alternatives to the punitive approach to prostitution often refer to the legalisation or decriminalisation of prostitution. These options may be encompassed within the regulatory approach to prostitution in which prostitution is permitted within the limits of a licensing or zoning system (Hatty 1989). Such an approach applies in Victoria, Australia.

With the introduction of the *Prostitution Regulation Act 1986* (Vic.) in came a new ideology of prostitution. Under the *Planning (Brothels) Act 1984* (Vic.), brothels were licensed as commercial establishments. Prostitute women were encouraged to work in licensed brothels and relinquish street prostitution. Under the Prostitution Regulation Act, penalties were applied to soliciting, accosting or loitering in a public place for the purpose of prostitution. However, by all accounts, the working conditions of both brothel prostitutes and street prostitutes have declined significantly (*see* Hatty 1989). The licensing of brothels—and the discourse on free-market trade—have intensified the commodification of women's bodies. Rather than increasing women's autonomy within the prostitution industry, the prevailing legislation has underscored the prostitute's status as outlaw and 'a thing to be used'.

Conclusion

The select review of the international research outlined above indicates that there are several commonalities underlying the practice of prostitution in English-speaking countries. First, the structured inequality of women in the marketplace, and the inadequacy of welfare provision, creates an economic climate in which prostitution may be seen as a viable alternative to mainstream employment or, indeed, poverty. Women's vulnerability to recruitment into prostitution is thus structured into the economies of many modern western countries. Women who are displaced from rural to urban areas, or are without networks of social support, are particularly likely to be exploited by pimps or procurers. Women, especially young women, who have divorced themselves from their family of origin and may be living a precarious existence on the streets may have to resort to prostitution to survive. Also, women who have been victimised within their family of origin, or by others prior to adolescence, may be inducted into prostitution at a later date. From a psychological perspective, the lessons learned about the self, the body, and the power of others (particularly males) to deprive the individual of autonomy over her life are profound. This dissociation from the body and its pleasures, and to some extent its pain, is frequently reported by child sexual assault victims. It is not surprising, then, to find that adult female prostitutes refer to this severing of the body from the self. Clearly, however, this is not just the legacy of childhood abuse. It is also an enabling attitude, an adaptive device which allows prostitute women to engage in intimate activities without risking the disintegration of the self.

Yet ironically, the body/mind split is integral to contemporary patriarchal society. With its origins in Plato's emphasis on the purified soul and the Cartesian disavowal of the body in favour of the 'cogito', contemporary society valorises disembodied rationality. Female prostitution is the paradigmatic case of the body/mind split. Prostitution is premised on the established duality between body and mind: the prostitute becomes insensate matter to be purchased, matter devoid of cognitive influence or sensual desire. Hence, the individual histories of prostitute women and the construction of prostitution as an organised activity within society converge to create one reality.

The legal regulation of prostitution by the state tends to further embed prostitute women in cultures of abuse and violence. Even where law reform appears progressive, it often has the effect of marginalising the women who choose to work outside the systems of regulation. The international concern over street prostitution and the attendant anxieties over the visibility of prostitutes has generated a flurry of legal activity. The intention of this legal activity has been to 'drive' prostitute women out of public places and confine them in restricted public spaces or the private sector. However, the confining of women in the private domain has been associated, historically, with the oppression of women. Men have enjoyed rights over women's bodies in the private domain which have extended to physical and sexual abuse. Of course, violence against female partners continues to be a serious and widespread problem (Hatty 1987; 1989; Belknap forthcoming).

The attempt to relegate prostitution to the private domain, with its inevitable invisibility, is a predictable strategy. The state can thereby ensure the reproduction of patriarchal relations and particularly can render non-problematic men's recourse to prostitution, with its exploitation, violence and abuse. To fail to understand the imperatives dictating the state regulation of prostitution is to fail to understand that prostitution is about social and economic inequality. As John Lowman notes (1986, p. 211):

> If we are offended by prostitution itself or by the power relations embodied in it, the object of political and legal action should be the social and economic structures in which prostitution is situated, . . . (and) not its visibility.

References

Belknap, J. (forthcoming), 'Perceptions of Woman Battering: A Review of the Literature and an Empirical Test of Law Enforcement Officers', in *The Changing Roles of and Men and Women in the Criminal Justice System: Offenders, Victims and Professionals*, ed. I. Moyer, Waveland Press, Prospect Heights.

Canada. Department of Supply and Services 1985, *Report of the Special Committee on Pornography and Prostitution 1985*, Ottawa.

Canada. Department of Justice 1989, *Street Prostitution: Assessing the Impact of the Law, Synthesis Report 1989*, Ottawa.

Council for Prostitution Alternatives (n.d.), *Philosophy*, Portland, Oregon.

Davis, N.J. 1989, 'Cross-National Perspectives on Prostitution', paper presented at the American Society of Criminology Meetings, Reno, Nevada.

---------- 1990, 'Realist and Feminist Criminology: A Dialogue in Three Parts', paper presented to the Conference on Realist Criminology: Crime Control and Policing in the 1990s, Vancouver, Canada.

Davis, N.J. & Hatty, S.E. 1990, 'Prostitution and Violence: A Paradigmatic Case of Sexism', paper presented at the American Society of Criminology Meetings, Baltimore, Maryland.

Davis, N.J., Hunter, S.K. & Neland, V. 1990, 'Alternatives to Prostitution: Reflections on the Victimisation and De-Victimisation Process', paper presented at the Pacific Sociological Association Meetings, Spokane, Washington.

Edwards, S.S.M. 1987, 'Prostitutes: Victims of Law, Social Policy and Organised Crime', in *Gender, Crime and Justice*, eds P. Carlen & A. Worrall, Open University Press, Milton Keynes.

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

Elias, R. 1986, *The Politics of Victimisation*, Oxford, New York.

Hatty, S.E. 1987, 'Woman Battering as a Social Problem: The Denial of Injury', *Australian and New Zealand Journal of Sociology*, vol. 23, nos. 1 & 2, pp. 36-41.

---------- 1989, 'Policing and Male Violence in Australia', in *Policing and Male Violence: An International Perspective*, eds J. Hammer, J. Radford & E.A. Stanko, Routledge, London, pp. 700-89.

---------- 1989, 'Violence Against Prostitute Women: Social and Legal Dilemmas', *Australian Journal of Social Issues*, vol. 24, no. 4, pp. 235-48.

---------- (forthcoming), 'Prostitution in Australia', in *International Perspectives on Prostitution*, ed. N.J. Davis, Greenwood Press, Connecticut.

Hunter, A. 1990, 'Sex Workers and AIDS—An Introduction to the Issues', *National AIDS Bulletin*, vol. 4, no. 5, pp. 12-13.

Jenness, V. 1990, 'From Sex as Sin to Sex as Work: COYOTE and the Reorganisation of Prostitution as a Social Problem', *Social Problems*, vol. 37, no. 3, pp. 403-20.

Leder, D. 1990, *The Absent Body*, Chicago University of Chicago Press, Chicago.

Lowman, J. 1984, *Vancouver Field Study of Prostitution*, Working Papers on Pornography and Prostitution, No. 8, Department of Justice, Canada, Ottawa.

---------- 1986, 'You Can Do It, But Don't Do It Here: Some Comments on Proposals for the Reform of Canadian Prostitution Law', in *Regulating Sex*, eds J. Lowman, M.A. Jackson, T.S. Palys & S. Gavigan, School of Criminology, Simon Fraser University, Vancouver.

---------- 1989a, *Street Prostitution: Assessing the Impact of the Law*, Vancouver, Department of Justice, Ottawa, Canada.

---------- 1989b, 'Prostitution Law in Canada', *Comparative Law Review*, vol. 23, no. 3, pp. 13-48.

Lowman, J., Jackson, M.A., Palys, T.S. & Gavigan, S. 1986, Editor's Introduction, *Regulating Sex*, School of Criminology, Simon Fraser University, Vancouver.

Pateman, C. 1988, *The Sexual Contract*, Stanford University Press, Stanford, California.

Perkins, R. & Bennett, G. 1985, *Being a Prostitute*, George Allen and Unwin, Sydney.

Victoria. Inquiry into Prostitution 1985, *Inquiry into Prostitution: Final Report*, [the Neave Report], Government Printer, Melbourne.

SEX, LAW AND SOCIAL CONTROL: THE SEX INDUSTRY IN NEW ZEALAND TODAY

Jan Jordan
Lecturer
Institute of Criminology
Victoria University of Wellington
New Zealand

THE STRUCTURE OF THE SEX INDUSTRY IN NEW ZEALAND IS ESSENTIALLY similar to its structure in Australia. Most of those who earn their living from sex work are women; their clients overwhelmingly are men[1]. The New Zealand Prostitutes' Collective (NZPC) estimates that approximately 8,000 women are currently working as prostitutes in New Zealand, with that number likely to rise in the light of increasing unemployment and recent benefit cuts. The women make their services available in a wide range of contexts and can be found working on ships, on the streets, from massage parlours, through escort agencies, from hotel bars and clubs, and from their own homes. Some are barely teenagers while others are approaching pensioner status—the majority are probably aged between eighteen and thirty. They come from a variety of social backgrounds representing women who have grown up economically disadvantaged, as well as those from families of the wealthy and privileged. Some may have been raised in strict Catholic schools while others have had little or no religious upbringing.

Their personal lives reflect a wide range of disparate lifestyles—some fit sex work around other work, study or parenting commitments while others may work full-time in the industry and see themselves as 'career prostitutes'. The women vary in their attitudes to personal relationships while working—some maintain they are able to sustain involvement with male partners or husbands; some prefer lesbian partners; and others may opt for celibacy. Drugs or alcohol may be used by some to help cope with their clients' sexual demands, while others maintain it is too hard working while they are 'out of it' and prefer feeling in control of the situation.

[1] This paper, while acknowledging the existence of gay, transvestite and transsexual sex workers, is concerned primarily with sex work situations involving women interacting with male clients, since this is the most common arrangement and the one around which the author's research has been oriented.

Some stratification of the industry exists along class and ethnic lines—working-class and Maori women are more likely to be employed in situations characterised by lower pay and higher degrees of risk than are middle class and Pakeha women. For example, a Maori working-class woman may find it difficult to obtain employment in a massage parlour, especially if she has any tattoos on her face or body.

Recently the number of Asian women working in the country has increased, with growing numbers of Thai and Filipino women working in Auckland. Whereas there are comparatively few pimps in the New Zealand sex industry overall, these Asian women are considerably more vulnerable to exploitation by men because they often depend on male sponsors to bring them into the country and frequently have an insecure immigration status.

The aim in stressing these different factors is to emphasise the diversity of women who are involved in the sex industry. All too often we accept popular, stereotypical images of the prostitute. These images help those of us who do not work in the industry feel smug; firstly, in our ability to know 'one of them' at a glance and secondly, to feel reassured that clearly, we are not one of them. Yet it is increasingly difficult to sustain such a reassuring division.

Historically, one of the most effective tools of social control has been the principle of divide and rule. In the hands of patriarchy this principle has been evident in the division of women into two camps—madonnas and whores (Summers 1975). Men were thereby guaranteed access to both respectable women whom they could marry and trust to be fit and appropriate mothers for their children, as well as to wayward women with whom they could freely indulge in all the pleasures of the flesh. However, certain penalties are attached to being in the latter category and these dissuade many women from choosing whoredom. Hence, to be publicly identifiable as a prostitute became socially and legally dangerous. Such a tag could cost a woman not only her reputation, but could also be used to deprive her of her children and her freedom.

New Zealand's laws on prostitution essentially reflect the aims expressed in law codes since the days of St Augustine. Suppress prostitution, he said, and capricious lusts will overthrow society (Henriques 1963, p. 25). The madonna/whore dichotomy was seen as an effective way to curb men's adultery, the assumption being that men's sexual appetites were inherently more voracious than women's and thus required additional sources of satisfaction.

Laws on prostitution have not generally been oriented towards eradication but towards regulation. Men's interests were served too well by the existence of prostitution for them to wish to eliminate it completely. The existence of a pool of prostitutes was not only a source of sexual pleasure and a means of assisting in the patriarchal control of all women, but could also be a source of valuable revenue for the state. For example, during the days of the Roman Empire commercial sexual activity had been taxed by the emperor and the early Christian church was initially reluctant to lose the income from such activities. Increasingly, it was felt that for the state to accept revenue generated from prostitution effectively turned the state into a pimp and, therefore, implicitly condoned a trade about which there was growing ambivalence.

The current legal situation in New Zealand still reflects such ambivalence. To engage in the act of prostitution is not a criminal offence, but a range of offences exist which may be committed in association with acts of prostitution. The most common of these is soliciting, for which there is a maximum fine of NZ$200 (Summary Offences Act 1981, s. 26). Brothel-keeping is also illegal—whether by one woman on her own or more—as is living on the earnings and procuring (or pimping), all of which have maximum terms of imprisonment of five years (Crimes Act 1961, ss. 147-9). In practical terms, therefore, it is virtually impossible for a woman to work as a prostitute and stay within the law.

An additional piece of legislation was enacted in 1978 specifically to control the growth and operation of the massage parlour industry. Entitled the Massage Parlours Act 1978, it provides for the licensing and regulation of all parlours and parlour operators. Included in its

provisions are clauses prohibiting any woman who has had a conviction for drugs or prostitution in the previous ten years from being employed in a parlour, as well as any woman under the age of eighteen. The Act also requires each parlour to keep a register of who works there, listing each person's name, age and address.

There is considerable scope within the criminal law statutes for the regulation and control of prostitution. In practice, however, a high degree of selective law enforcement is evident. Soliciting offences constitute the largest category, but numerically even they are relatively few in number—125 reported offences for the year ended 31 December 1990 (New Zealand Police Department Statistics 1990). In total there were 140 brothel or prostitution-related offences reported last year, plus a further ten associated with breaches of the Massage Parlours Act. The number of convictions is low, but it is largely concentrated on sex workers who operate in publicly accessible settings while those working privately have comparatively little chance of detection (Robinson 1987, pp. 183-6). It is significant in this regard that massage parlours have been defined in law as public places, thereby assuring police access and control.

While the total number of offences recorded may not be very high, the impact of a conviction relating to prostitution activities can be substantial. It can clearly affect a woman's future work, travel prospects, her ability to raise mortgage or loan finance, acquire life insurance and so forth. For women working in massage parlours, a conviction for prostitution is sufficient to prohibit them from legally working in a parlour for the next ten years and greatly increases their vulnerability. Either they may continue working in parlours illegally, risking exploitation by bosses (and possibly clients) who are aware of their insecure status, or they go to work on the streets or through escort agencies, both of which can increase their vulnerability to physical attack or pressures to engage in unprotected sex.

Police enforcement of the prostitution laws in New Zealand has typically been highly selective and idiosyncratic. Major cities such as Auckland and Wellington have only two or three officers at a time charged directly with Vice Squad responsibilities. They may possess considerable discretion concerning where to focus their energy and how to enforce the law. Some, for example, may target escort agencies while others make it a priority to use undercover police to charge street-walkers. Officers have at times chosen to check up on the details which women have entered on massage parlour registers by visiting the listed home address and inquiring whether a particular person from a particular parlour lives there. Given the social stigma which still surrounds prostitution, and the fact that some women are not known as sex workers to those with whom they live, this type of police action would appear not only potentially hazardous but also a gross violation of civil liberties.

In Wellington, since the formation of the NZPC in 1987, members of the collective have been instrumental in helping to develop a good working relationship with the police. This has largely developed from a mutual acknowledgment that, as Catherine (an NZPC spokesperson) says: 'In order to keep AIDS out of the sex industry, it is necessary to bring the sex industry out of hiding'.

Unfortunately, however, relations with the police have become severely strained over recent months. Trusted officers have moved on to other positions and a new tone of harshness has characterised the enforcement of soliciting laws, evident in increased parlour raids and street busts.

These actions have had negative repercussions for the individuals arrested as well as rendering the Prostitutes' Collective promotion of safe sex counter-productive. Some parlour managers are now nervous about having the Collective's magazine—*Siren*—or safe sex posters on display, since this implies a knowledge that sexual acts occur on the premises. Furthermore, many workers are now understandably anxious about being found in possession of safe sex publications, lubricants or condoms, fearing that these may be used

as evidence against them in court. There is an urgent need in New Zealand for the police to expand their awareness of the health and safety implications of law enforcement policies.

Our laws on prostitution reflect the double standard of morality in society, which in the past has condemned women's behaviour, while condoning the same behaviour by men. Furthermore, the division of women into madonnas and whores disadvantages women, while it can be advantageous to men. The madonna/whore dichotomy has worked to men's advantage for centuries and it is unlikely this central support of the male power base would be dismantled easily.

In many ways, however, the madonna/whore division is a false dichotomy. It obscures the extent to which all women in our society end up making bargains around their sexuality with men (Jordan 1991). To be female in our society is to grow up with an awareness that men place a price-tag on women's sexuality. Even women who identify as lesbians may make similar arrangements with men, which while lacking in consistency and political correctness nevertheless become perfectly understandable given an analysis of where the power lies in our society. While men continue to occupy positions of authority, control access to jobs, flats and mortgages, and persist in defining a woman's value as residing in her sexuality, then it is inevitable that women will seek to use access to their sexuality as a means of advantaging themselves. It becomes an issue of survival.

Legal reform of the sex industry is necessary to remove some of the worst and most hypocritical abuses of power evident in the current situation. Ultimately, however, the success of such reforms will be limited, unless there is a fundamental shift in the power-base that lies at the very heart of our society. Maybe the strategy advocated by a lesbian feminist sex worker warrants consideration:

> If every woman charged every man, including her husband, for every [act of sexual intercourse], then the whole ownership of the world's resources would start shifting to female control (Jordan 1991, p. 238).

References

Henriques, F. 1963, *Prostitution and Society*, vol. II, *Prostitution in Europe and the New World*, MacGibbon & Kee, London.

Jordan, J. 1991, *Working Girls: Women in the New Zealand Sex Industry Talk to Jan Jordan*, Penguin Books, Auckland.

New Zealand Police 1991 (unpub.), Incident/Offences Statistics, 1990.

Robinson, J. 1987, 'The Oldest Profession', *Public and Private Worlds: Women in Contemporary New Zealand*, ed. S. Cox, Allen and Unwin/Port Nicholson Press, Wellington.

Summers, A. 1975, *Damned Whores and God's Police: The Colonisation of Women in Australia*, Penguin Books, Australia.

ECONOMICS, LEGISLATION AND PIRACY

John Lark
Managing Director
former Mature Media Group
Australian Capital Territory

Economics

THE EROTIC VIDEO MARKET IS CURRENTLY DEPRESSED ON A WORLDWIDE BASIS, except perhaps in Europe with the opening of the Eastern bloc countries. The reason for this depression is due to the proliferation of titles being produced mainly in the United States of America. Consequently there has been massive price cutting by suppliers and producers to move their titles into legitimate territories. To buy a title now, the rights will cost anything from $500 to $2,000 for a feature film, according usually to production costs and quality. Most low budget videos are shot in one or two days for the X-rated market and cost from $10,000 to $15,000 to make.

However, in the last two years a new market has emerged that is demanding a higher quality product. This is the cable television market. The cable—or Pay Television—market in the main, transmits only R-rated or soft erotica. Consequently, production houses are spending more on production quality so as to produce both soft and hard versions to cover both the X market and cable television. Cable television sales in the USA are worth from $15,000 to over $50,000 per title over a period of thirty-six months, depending on what channels agree to accept the title. We are currently selling our Australian titles to approximately eighteen cable television stations in the USA. As yet, European cable has not been sold but this is only a matter of time.

To compete with the better quality erotic video being screened on cable television, a company would need a minimum production budget of $50,000. However, this could return the company two to three times the investment when selling the video and cable television rights worldwide.

Video rights are sold by territories in the USA, Canada, South America, England, and so on. Seldom in this industry are world rights sold to one outlet. Europe is divided into countries, as is Asia, and films are edited to fit their local classification criteria. A master copy of the film is shipped to a particular territory for local duplication. Books are shipped, where possible, in their printed form to countries that will allow importation.

Because of the world recession and the limited access to cash funds, major companies worldwide trade within each other. That is to say they make available to other companies

their range of products in exchange for whatever the company has to offer. For example one video produced in Australia will be sold to an American company for USA rights in exchange for four or five of the American companies titles for Australian or New Zealand rights. This gives both companies additional titles to market within their own territories without cash changing hands. Bookkeeping of transactions is done by journal entry. We are currently negotiating to sell our films in Europe in exchange for printed books from Germany.

On the local front, the state revenue franchise fee of 40 per cent imposed in the Australian Capital Territory (ACT) has caused a number of X-rated video distributors to close. This has also enabled an illegal market to flourish outside of the ACT, due to illegal operators being able to advertise in national magazines. These illegal operators use an ACT Post Office box address from where all mail is redirected to their place of operation. It is estimated that the illegal operators interstate would be trading as much if not more than the licensed operators. Until cooperation is achieved between publishers of these national magazines, Australia Post authorities, revenue departments and local law enforcement agencies, this practice will continue.

Revenue is often lost because copyright is not paid. In Australia, people actually give tapes away free just to build up a mail-order list. We currently have a list of approximately 200,000 names built up over many years. The average purchase is two to three tapes per order and transactions are currently 1,000 to 1,500 per week with an average retail price of $15 to $20 per tape. This has a retail value of three to four million dollars per year.

Three years ago our average retail price was closer to $30 per tape and transactions were only 25 per cent less, from a list then only half the size. The reason for this is that the availability decreases demand and introduces competition (in whatever form) and reduces prices. The theory of mass production comes into operation as in the case of the general video sell through market. In most cases where legislation of erotica is introduced, local demand drops (for example, children's cartoons). The more restrictive the censorship, the higher the demand, and the higher the retail price.

One of the most valuable assets our company has is the mailing list, and from time to time this has been brokered to major institutions for the target marketing of their specific product with great success. Obviously, we are selective as to whom we broker our list. As of our last survey, our list comprised 60 per cent married couples, 10 per cent de facto couples and 30 per cent single persons. The average age is approximately thirty-five years and average income is approximately $25,000 to $30,000 per annum. It is estimated that about 7.5 per cent of our clientele may be homosexual.

The exact size of the hard-core erotic industry within Australia is hard to judge because of a lack of accurate information available to authorities from people trading both legally and illegally. Based on our assumptions, it is without doubt at a retail level of over $50 million per year—including both video and Category 2 books. Many millions of this total is paid in taxes of one form or another and, because of the many idiosyncrasies in our system, many millions are not.

Legislation

Legislation in Australia and worldwide in the forms of administration, penalties, policing and censorship vary dramatically from place to place. What is viewed as pornography in some eyes is not pornography in others. For example—*Playboy* in China is more extreme to the authorities than *Private* is in Amsterdam (*Private* Magazine—published in Sweden—is the largest-selling, hard-core, full-colour magazine in the world). Another example is New Zealand legislation which is completely the opposite to Australia concerning the publication of erotica. In New Zealand our Category 2 books are banned but X-rated videos are legal. Most states of Australia classify Category 2 books, but not X-rated videos.

The lack of uniformity in legislation in Australia makes administration and policing difficult, frustrating and expensive, and causes community standards to change. Consequently legislation needs to be constantly updated and streamlined. The best way to accomplish this is to confer with the industry itself. No one knows their business better than the people who work in it and own businesses. Twenty years ago full-frontal male genitalia had to be airbrushed out in any of the books that were published. In 1991, that same book could be sold beside *Woman's Weekly*. Our guidelines of censorship are set down by the Commonwealth Censorship Department and the guidelines for the X-category of censorship have been changed approximately five times since their introduction in February 1984. In Australia millions of X-rated videos have been distributed since the introduction of classification in 1984. Consequently, it would be physically impossible to stop the trading of these tapes if the X-rated materials were banned nationally. However, it is equally futile to introduce legislation that cannot be enforced by the law. People will always try means of testing legislation or at least applying their interpretation. As an example, X-rated videos cannot be sold on newsstand retail points in Italy. To avoid prosecution, retailers give the video away with a book purchase and apparently that is acceptable and legal.

The aspect of being able to sell by mail order from the ACT to a national market within the framework of legislation was most appealing and occurred to video producers in 1984 when all other states of Australia reversed their legislation. The industry worldwide is run mostly by legitimate business people and not, as widely published, by the mafia. The mafia are not interested in legal business with normal profit margins that pay taxes.

Sex is a way of life and modern society views it very differently from twenty years ago. The crusaders on both sides of the industry will always exist. Somewhere in the middle is the balance and this is where the legislators should aim. Our laws are more in line with the European system than that of the USA, and business counterparts in the USA only wish that they could operate under similar circumstances without legal harassment due to undefined laws in their territories.

It is interesting to note that with the repeal of X-rated laws in 1984, the X-rated sales were replaced by R-rated. People will always purchase the extreme in erotica or pornography as to what legislation will allow. Beside being properly licensed—as are most businesses that sell only to people over the age of eighteen—the industry should be used also to educate with the transmission of messages and information on AIDS, sexually transmitted diseases, and possibly even domestic violence and drug abuse. Millions of X-tapes are viewed every year and the life-span of a video is extensive. The total audience is looking for a message in one form or the other.

Prohibition only creates an illegal industry that in some cases can cause more problems to society, as was the case in the USA in the 1930s over the availability of alcohol.

One of the problems with our legislation is perhaps the ignorance of law or classification by many people. Most people still associate X-rating as violence when in fact the opposite is the case. The suggestion of a new category, 'Non Violent Erotica' (NVE) to replace 'X' was a good one as it aptly described the product. Restricted premises or discreet non public displays are commonsense aspects of merchandising and if all such areas were licensed they would be far easier to police if necessary.

Most legislation should be commonsense, no-one wants to see unsolicited hard-core erotic material on open sale. The explicit sex product is sought out and sold on request in Australia. In some countries in Europe the product is more freely available from a newsagent with discreet packaging. Some of our legislation in this country has been quite archaic (for example, the recently disbanded Queensland Censorship Board where a book was banned because its title had sexual connotations). It is interesting to note that Queensland has always had the largest pro-rata sales of mail-order video in this country. This may be because of the restrictive legislation in that state.

Piracy

One of the major problems in this industry, more so with videos than books, is piracy. The position taken by those operating outside of the legislation is that if the video or book is illegal then there is no copyright. Obviously printing a complete colour book is expensive and difficult to hide or store, whereas videos are easily copied. Duplicating plants are easily transportable and contact by mobile phone makes it difficult to find the duplicating location. A video pirate operating 100 machines can close down and reopen within 48 hours whether it be next door or 100 kilometres away. A plant this size could easily duplicate 1,000 tapes a day and operate out of the bedroom of a house in any area without causing too much disturbance. To date, no copyright case on X-rated has been won in this country. Most cases never get to court as the illegal trader moves on when he is exposed, and financially it costs more to pursue the case than what the matter is worth. Because of the sensitivity of X-rated material, most legal authorities avoid legislation regarding piracy.

In Germany measures are taken to control piracy and royalty is paid on screening of X-rated films in booths, adult shops or theatres. Funds are paid yearly from a fund administered by an industry body similar to APRA in the music industry in Australia. This body polices and administers the rights on all videos of all classifications. The body, GUFA, originated in Germany, and is now expanding into other European countries. To date, no such organisation exists in Australia. The Australian Film and Video Security Office is funded mainly by the major American studios and their charter does not cover the sex industry, as this industry is not officially recognised in the USA. In Europe proof of original and copyright ownership are supplied when films are registered for classification. This helps stop the release of non-copyright material in the marketplace and reduces the amount of copyright actions.

The majority of cable/satellite transmitters are very conscious of ownership. They usually have a very large investment in their business and obviously work well within legislation. However, a cable company in the USA recently had their satellite turned off as they were breaching the transmission regulations.

In 1991 in Australia, anyone can place an advertisement in a number of national magazines and advertise X-tapes. They then take a post office box in Canberra, redirect the mail, and supply the consumer, using a small bank of recorders in one room of a house. It would take months for anyone outside of the industry to know that this person existed.

Through our legal system, piracy abounds in the X-rated industry. A recent illegal operator in Australia took millions of dollars off-shore by transacting purchases on major credit cards in Vanuatu. We were able to persuade the publishers to withdraw the illegal advertising of our copyright product but not before two issues of the magazine were circulated and considerable expenses incurred on both sides. This scenario will occur again in this environment until X-rated or Category 2 advertising is restricted to X-rated or Category 2 publications.

Most X-rated videos distributed in Australia originate from the USA and consequently these are the most pirated. European films usually need translation so obviously the pirates do not bother with these, as translation is an expensive exercise. Until copyright on X-rated videos is legally recognised in all states of Australia, most producers are hesitant to carry out legal action.

The future of the sex publishing industry lies in electronics. This being so, how do you copyright a laser image? In the not too distant future you will be able to transmit a holograph of a live sex show from one side of the world to the other, as it is performed, by fibre optic or satellite. How, can and will law enforcement authorities police this?

X-rated compact disks are being pressed overseas but they have a limited market at present. However, because you cannot copy a CD, piracy does not exist in that format.

Almost all piracy of books ceased in 1984 when Category 2 books were allowed to be imported. It was far cheaper to import small quantities from the publisher than to reprint the books in Australia. Piracy will always abound where legislation is loose and much legal revenue will be lost.

International copyright laws are starting to be represented by most countries. However, law enforcement is usually another problem. In Australia's case, clear uniform legislation is the only answer. The financial penalties seem adequate, but are worthless if they are unenforceable.

Worldwide, this is a multi-billion dollar industry and, consequently, the problems cannot be ignored. Many of the problems are uniform, and only by the sharing of ideas and gaining from experience—both nationally and internationally—will we slowly start to resolve some of the dilemmas that currently exist.

TAXATION AND THE SEX INDUSTRY

Bernie Gallagher
Special Audit National Program Coordinator
Australian Taxation Office
Australian Capital Territory

THE PURPOSE OF THIS PAPER IS TO GIVE A BRIEF OVERVIEW OF THE INTERACTION of the Australian Taxation Office with taxpayers engaged in business in what is termed 'the sex industries'. At the outset, it is necessary to stress that the Australian Taxation Office (ATO) is not a law enforcement agency in the sense of detecting, investigating and prosecuting illegal activities associated with prostitution, pornography or, for that matter, any criminal business activity. Rather, the ATO is the government's prime revenue collection agency.

The ATO does not perform a function relevant to the detection and control of criminal activity except to the extent that it may from time to time act in concert with other agencies, such as the National Crime Authority, the Australian Federal Police or other law enforcement agencies. Where the ATO chooses to participate with other law enforcement agencies its participation is limited to a purely 'revenue collection' role.

In more recent times, the ATO has also assumed responsibility for some social objectives of government such as the Child Support Agency, the Higher Education Contribution Scheme and the National Training Guarantee.

Background

The ATO administers the various taxation Acts. To carry out this function it employs approximately 18,000 officers. Its main office is located in Canberra and in 1991 there were sixteen branch offices and several small regional offices in the states and territories. The ATO's primary objective is to ensure that the budgeted revenue is collected and that government policies are implemented.

Enforcement Program

The primary enforcement program of the ATO is one based upon promotion of voluntary compliance concepts through a balanced program, directed toward all taxpayer groups. This program is carried out by the Taxpayer Audit Group, whose role in essence is to detect and bring to account those who do not pay their correct amount of tax.

The Audit Group, which comprises roughly one-quarter of the total staff, is organised around distinct business groups or market segments. These groups are identified as the Complex Business and Primary Audit Groups, and the individual streams of work range from the very largest corporate structures through to partnerships, trusts, private companies and salary and wage earners.

In addition to these primary business streams the ATO maintains within the Audit Group a relatively small number of staff dedicated to the audit of persons deriving income from illegal business activity which may cross all principle streams. These officers form part of the Special Audit Program. They also undertake those audits where the taxpayer, because of his or her high profile, merits specialist attention sometimes in a secure environment.

In 1991, the group of 165 officers located in ten branch offices represented a salary cost of approximately $6 million. In 1989/90, their program generated additional tax and penalty of approximately $65.3 million.

Targets

For the greater part, cases processed by the Special Audit teams include persons engaged in 'organised' criminal activity which might include the operation of brothels, escort agencies or any other activities with criminal connotations. These activities generally require extension of inquiry to subsidiary or spin-off cases such as employee activities—prostitutes (female and male) and, in the case of the video industry, actors, actresses and stage crews.

The Income Tax Assessment Act 1936

The *Income Tax Assessment Act 1936* makes no distinction between income from legal or illegal activities. Regardless of moralities, ethics, social stigmas and so on, tax is payable on a taxpayer's taxable income. Providing an amount falls within the definition of assessable income, as defined in the Act, that income, less any allowable deductions, is subject to tax.

It follows that where a person is deriving assessable income from illegal activities, such as drug dealing or prostitution, the taxpayer is obliged in terms of the law to disclose that income in his or her taxation return.

Persons engaged in business enterprises, whether they be brothels, escort agencies, pornographic production and dissemination outlets or whatever, are for taxation purposes carrying on business in the same fashion as any other business and consequently subject to appropriate federal taxation statutes. Similarly, persons employed by such enterprises are drawing wages in the same way as any other employee and are subject to the same rules applying under the 'Pay As You Earn' (PAYE) system.

The Sex Industry

Like any other industry, the sex industry can be divided for tax purposes into two components—the 'tax compliant' part of the industry and the 'non-compliant' part of the industry.

Tax compliant

Within this segment there is a further breakdown of case types—those involved in activities which fall within the law and those which do not.

Legal

There are many examples of legitimate businesses within the sex industry which clearly comply with taxation laws, lodging taxation returns for income generated from their business.

In the ACT, for example, businesses involved in the production and dissemination of videos operate quite legitimately and derive profits from their business activity. Those businesses are also subject to state taxes and presumably comply with those state taxation laws as well. At the same time the businesses are registered as Group Employers for the purposes of the (PAYE) Tax Instalment Deduction system and remit tax deducted from employee's wage packets. The employees of these businesses, of course, are salary and wage earners, like the greater bulk of the population, and lodge returns at the end of the financial year.

In those states where prostitution has been legalised, many persons engaged in that industry voluntarily comply with the law by lodging returns of income derived as either an employer or employee of the business. Special PAYE arrangements are in fact in place to assist these taxpayers comply more easily with the tax law. In addition, proprietors of the various industries and their employees, like the general public, contribute further to the revenue through the Sales Tax legislation which impacts on the products they buy and/or sell.

Illegal business

While the greater majority of persons engaged in illegal activities tend not to disclose income derived from their activities in their returns, some do, and claim quite legitimate deductions for expenditure incurred against income derived from, say, brothel earnings.

Other taxpayers—and the numbers involved are unknown—mask the source of their income by declaring the income as commission income for whatever type of employment they choose to nominate, claiming equivalent expenditures for appropriately related costs.

In Perth, for example, where prostitution is not legal, but subject to what is understood to be a tight containment program, compliance with taxation laws is thought to be high. In a number of other states similar compliance has been achieved after the conduct of audits into the affairs of certain brothel owners.

Non-compliant

Again, there are two components within this class of taxpayer—legal and illegal business activity.

Legal

Persons engaged in legitimate business activities are dealt with by the 'normal' procedures and staff within the office. Depending on the type of business, its size and structure, the matter will be the subject of action by the respective Audit Group program.

Illegal business

This noncompliant business activity is the sector of the market dealt with by the Special Audit area in conjunction, as necessary, with other areas of the ATO.

However, it is necessary to stress that persons engaged in the pornographic, prostitution or whatever other sex-related industry draw no greater or lesser degree of attention than other illegal business activity not complying with the taxation laws.

Case Selection

The ATO case selection process involves the systematic analysis of groups of taxpayers in order to choose a stream which will:

- maximise the impact of voluntary compliance through a visible presence in the 'market' across all areas;
- within any area chosen for audit, focus audit attention on those taxpayers who are identified as having the greatest probability of having substantially understated their tax obligations; and
- systematically build ATO knowledge and understanding of the degree of compliance in the community and the main areas requiring audit attention.

An ad hoc approach to the selection of cases for audit attention, whilst perhaps picking up worthwhile cases does not provide assurance that attention is being directed to the important areas, nor that we are obtaining the most effective results for our input.

In the non-compliant illegal sector, possible case targets are therefore:

- illegal businesses;
- unregistered employees;
- nonlodging commission/contract workers;
- pimps; and
- prostitutes.

Brothels

As Special Audit targets, brothel owners and escort service promoters provide better revenue incentives and more reliable recovery prospects than industry employees. Income may be evidenced by the business records of the organisation, if kept; if not, by virtue of asset accretion or by other methods developed by astute Special Audit staff familiar with the trade.

Several accepted techniques for measuring brothel/escort agency takings have gained acceptance in recent years and involve the measurement of turnover by reference to the ratio of credit to cash sales and the split of escort agency 'take' against the escort 'take'. The aggregate of these percentage figures equals the agency's taxable turnover.

It must be remembered, of course, that the turnover figure is not the assessable income on which tax is levied. Substantial running costs can be incurred for genuine business expenditure such as rent, rates, advertising and so on.

The prostitutes also incur their own business-related expenses and, in the case of escort employees, communication costs related to the use of beepers, mobile phones and so on are part of their overheads.

National figures of the number of persons involved in the prostitution industry are not held in the ATO. However some state figures have been reported following limited projects in the respective states. For example, the population in Victoria has been identified as approximately fifty-five legal brothels using at least 3,000 to 5,000 prostitutes with 1,000

current at any given time. In Sydney, on the other hand 150 establishments were identified in the inner city and suburban areas. On the other side of the nation in Western Australia, nine brothels are known to operate in Perth, while three conduct business in Kalgoorlie. Some 500 employees ply their trade in these houses while another 150 operate under three escort agencies in Perth. Another fifty persons have been identified as independent operatives.

The size of brothels varies considerably, with some owners operating chain-like operations in one city, across a state and even across borders. Some criticism by employees of differing taxation treatment in different states has arisen where employees rotated through different houses of a particular employer. Other smaller establishments operate on a much smaller scale. Ten brothels, the subject of a recent ATO project in the Sydney area, resulted in additional revenue of $480,000.

The foregoing figures and others mentioned later in the paper have been collected during the course of state-based projects which do not necessarily reflect any true picture of the real industry size in the nation or even the state in question. Furthermore, figures of tax collected in one branch office or state need not necessarily be any benchmark for determining a national figure, given different population sizes, local client behaviour and differing service fees and costs.

Escort Agencies

Again, national average figures are not available for escort agency business. Nevertheless, monthly turnover of $100,000 is not unusual for enterprises employing say 100 girls in 'escort' arrangements where the 'escort' collects a commensurate share. In the bigger markets the dollar value is even higher.

In the escort industry the employer/employee relationship is not so easily established, and difficulties arise in detecting the relationship between work identities (assumed names) and the real identities of taxpayers engaged in the industry. These persons are nonetheless liable to taxation and the onus is firmly placed upon employers to verify claims for wages paid to employees.

Prostitutes

Experience to date indicates that while many prostitutes enjoy a lifestyle commensurate with the healthy profits generated by their endeavours, there are many more at subsistence level because they are supporting young families as sole parents or supporting a drug habit of their own or that of a partner. At the end of the day in these cases, there is often little left for the revenue to collect. This is also why the audit of prostitutes does not always have a high priority in terms of the total 'illegal' market.

However, as a result of audits of brothels or escort agencies, the natural spin-off is the list of persons identified in the wages sheets of the brothel owner. The identification of these persons and their tax return lodgment status is not usually a function of Special Audit. That process is normally undertaken by auditors involved in the Source Deduction Program officers who are drilled in the administration of the PAYE provisions.

Because of special circumstances peculiar to employment in brothels, arrangements have been made in a number of states to alter the rate of tax deductible from wages paid. For example, the employer (brothel owner) may make application under section 221D of the Income Tax Assessment Act to vary the rate of tax instalments to a flat rate (say 20 per cent) on all payments made to prostitutes in the business.

In recognition of known costs that go with the profession, the seasonal work in some areas, the otherwise unlikely lodgment of tax returns and other factors, an adjusted rate is quite feasible. This, of course, does not represent a final tax liability for the person.

As a further inducement to facilitate PAYE compliance and in recognition of taxpayer's concern for privacy, special care and arrangements are taken to ensure that true identities remain, where appropriate, unknown to employers, and others.

When prostitution was legalised in Victoria a number of employees expressed concern that compliance with the tax laws might lead to their spouse's discovery of previously unknown income. For all taxpayers, the individual affairs of each taxpayer is protected by strict secrecy provisions contained in the various statutes and severe sanctions apply to breaches of these provisions. In 1991 no evidence of breaches in this regard have come to notice.

Unregistered Employees

In the sex industry the greater number of unregistered employees would be located in brothels, whether legal or illegal. However, in those states where the industry is legalised, unregistered agencies employing illegal immigrants, for example, are believed to represent a sizeable audit target. These employees and the people who control them are the hidden side of the industry.

Nonlodging Commission/Contract Workers

Possibly the best example of this type of taxpayer is the escort agency operative. Essentially there is no employer/employee relationship and often the agency might have no knowledge of the real identity of the escort.

From an audit point of view, regardless of payment records of the agency, the task of matching 'street names' to real names is often impossible.

The ATO and Other Agencies

As mentioned at the outset, the ATO does from time to time act in task forces with other agencies where revenue is at risk. The assistance of the Australian Federal Police is also sought, where necessary, for information or intelligence gathering purposes. Formal liaison arrangements are in place with other enforcement agencies, such as the Director of Public Prosecutions, Customs, and the National Crime Authority.

The Future

The Special Audit Program as a formally-structured program is a relatively new initiative of the ATO directed toward those business activities which generate income from illegal or criminal business activities. Any activities generating income have always been liable to taxation and we are now starting to develop better strategies to ensure that the more organised, more profitable and less compliant segments of the market are addressed.

THE DEVELOPMENT OF THEORETICAL APPROACHES TO SEX WORK IN AUSTRALIAN SEX-WORKER RIGHTS GROUPS

Andrew Hunter
National Organiser
Scarlet Alliance
Victoria

SEX-WORKER GROUPS IN AUSTRALIA WERE LARGELY FORMED AROUND ACTION oriented tasks. Groups of people came together over particular campaigns or issues; law reform being the most notable. People in groups that are action-orientated often have a disdain for theory and see it as baggage that gets in the way of the real tasks. In many cases, groups establish themselves claiming not to have relied heavily on theory. Sex-worker groups in Australia have, however, made many theoretical statements on prostitution, and these have developed over the course of the sex-worker rights movement. This paper is an attempt to document that theoretical development.

This focus has been chosen for two reasons: firstly, for sex-worker groups in Australia, this paper will contribute to the ongoing discussion around various theoretical understandings of sex work; and secondly, because of the influence that different theoretical understandings of sex work can have on the development of public policy around the sex industry.

This paper is not going to be a history of sex-worker groups in Australia, although some of that information will be necessary as background to the main points raised. Largely, this paper will be a discussion of the direction that sex-worker groups have taken in the late 1980s and early 1990s. This will include a brief discussion of programs and action undertaken by these groups. However, this discussion will focus on these actions in relation to the development of a unique theoretical approach to sex work.

When speaking of an 'unique theoretical approach' it is not inferred that Australian sex-worker groups have come up with an entirely new theory. What is unique in Australia though, is the way Australian sex-worker groups have not become bogged down in dogma, but have looked to and adapted from sex-worker groups of all ideological persuasions from all over the world. This has included the merging of approaches that, in other countries,

could well be seen as mutually exclusive. Since the first sex-worker groups formed in Australia, there has been a search for theory; for a philosophy that would support the aims which the groups had set for themselves.

The Impact of Overseas Sex-Worker Groups on the Australian Sex Workers' Movement

The prostitutes' strike in France in 1975—as interpreted by the English Collective of Prostitutes (ECP)—became the first source of a theory that was seen as an acceptable explanation of prostitution. The ECP theory can be summarised by their slogan, 'for prostitutes, against prostitution'. They argued that prostitution existed because of the economic inequality of the sexes. If women had better economic circumstances, which was later narrowed into 'wages for housework', then there would be no need for women to engage in prostitution; and they further exhorted that no-one would. This won over many feminists and other allies who wanted to demonstrate exploitation to fit in with the largely Marxist-Feminist position that was dominant at the time.

This theory of prostitution, in retrospect, can be seen as the type of apologist position that many oppressed groups have taken in the first public airing of their cause. The gay movement started pre-Stonewall, in the same way, saying that it was not their fault they were different and that they just wanted to be accepted.

The shift from this position in the gay community—through the gay rights movement of the early 1970s to the assimilationist overtones of the 1980s—has parallels in the sex-worker rights movement. Similarly, parallels with the latest developments in gay political action and theory—such as those espoused by groups such as Queer Nation and OutRage—can also be seen in theory around sex work.

Most sex-worker groups in the USA and Canada in the 1980s developed along two tangents which are now converging. In Australia these two developments have occurred simultaneously, but in modified forms. First was the move towards consideration of prostitution as sex work. The notion that within 'prostitution' there were people doing a job—offering sex for a fee—was truly unique. No longer were there any apologist overtones. Stemming from this was the notion that some people actually chose prostitution as a job option: a statement which incidentally is still being howled down across the globe. Sex workers who say that they freely chose prostitution as a job option—and furthermore that they enjoy it, or do not hate and feel degraded by it—are told by many feminists and moralists from across the political spectrum, that:

- they do not enjoy prostitution; they are just saying they do to conceal the emotional damage that has occurred to them in prostitution; or,

- that they are only convinced that they like prostitution because it is in the interests of men for them to like it.

Such responses to prostitution actually show an anti-sex/sexual-difference position that has been taken by many 'progressive' groups towards sex work in particular and sex itself generally.

This leads the discussion into the second approach that developed in the USA and Canada in the late 1980s: seeing sex work as an expression of sexuality—an expression which in itself is good. This position further posits that sex work, like other expressions of sexuality that deviate from the norm, will be oppressed, and sex workers will be discriminated against. This oppression and discrimination includes laws criminalising sex

work, the extreme levels of violence directed at sex workers which are tolerated by society, and the stigmatisation of sex workers as unclean and 'unchaste' (Pheterson 1987, p. 215).

This position allowed sex-worker groups to look for allies amongst other groups of people who were stigmatised because of their sexuality and sexual expression. Sex-worker rights groups operating from this theoretical basis are often seen as part of a broad 'pro-sex' movement, which includes promotion of sexual minorities and action against censorship.

In the USA, both the 'work' grouping and the ECP affiliated groups took up this approach, often in response to attacks directed at sex workers from the emerging anti-porn movement. Thus a new separation between these two camps came into being: the pro-sex sex worker, and the pro-sex woman who was forced into prostitution by not being paid for housework, but 'isn't going to take any . . . now that she is a worker'.

There is a third camp in prostitutes groups in the USA called WHISPER (Women Hurt in Systems of Prostitution Engaged in Revolt). This group has no direct parallel in Australia, although views similar to theirs are sometimes aired by feminists in relation to sex work, both within sex-worker groups and outside of them. This group was firmly aligned with anti-porn feminists, and claimed that prostitution (they refused to refer to prostitution as sex work) was an institutionalised form of male violence directed against all women.

In response to other sex-worker groups in the USA, WHISPER often states that working in the sex industry is so damaging that sex workers who say they are not damaged are simply internalising that damage; or that they are brainwashed by the patriarchy into believing that sex work is good, because it suits men that way.

This approach, which sees women as victims of a violent male sexuality, actually suffers from a slippage of ideas around the issue of consent. Upholders of this position fail to differentiate sexual acts along lines of whether they are consensual or not, and sex work—in the nature of the contract between sex worker and client—is a consensual act. Anti-porn feminists try to move prostitution into the non-consensual category because they do not like the fact that people do consent to it. This is a case in point of the type of 'pornographic reductionism' that has become the trademark of this type of 'feminism'.

It is from this position that proposals such as arresting and charging the clients of sex workers, rather than removing laws against sex workers, emerge. However, the question is never asked what will happen to the sex worker who is then broke and is being harassed and arrested by the police.

Theoretical Development within Australian Sex-Worker Groups

Within Australia, sex-worker groups have gone through different stages of development. Influences and events are not arranged in chronological order in the following discussion as ordering the influence of ideas and events is not a particularly easy task.

Sex-worker groups in Australia have not taken on one theory outright and then rejected it in favour of a different theory. Instead, a combination of influences from sex-worker groups outside Australia, developments within sex-worker groups, the effects of changing political climates and, of course, the HIV epidemic have all had their impact on the approach to sex work that is being developed by Australian sex-worker groups.

The first prostitute groups in Australia, in the late 1970s and early 1980s, were formed around specific issues, the main issues being: stopping police harassment and corruption, and decriminalising prostitution. The greatest successes of the original Scarlet Alliance (South Australia) and the Prostitutes' Action Group (Victoria) were: getting law reform on the agenda; and bringing sex work and sex workers 'out from behind the red light'.

The desire for law reform and an end to illegality again formed the impetus for the reformation of sex-worker groups in the mid-1980s. The Australian Prostitutes Collective—which formed in Melbourne, Sydney and the Gold Coast—was originally

affiliated with the English Collective of Prostitutes (ECP) and accepted the explanation of prostitution as a reflection of economic circumstances. This was understandable, and possibly necessary at the time, as the aim of the newly formed groups was to act as support networks for sex workers and attract social welfare funding. This line was also easier for new spokeswomen to support in public as it narrowed down the issues that were open for discussion. It is also sometimes helpful to have an explanation that is full of holes as a starting point, in order to avoid the theory becoming dogma.

The ECP was also one of the few prostitutes groups known to anyone in Australia at the time. The sex-worker movement is still limited by the lack of credible home-grown published work upon which to base its approach to sex work and sex-workers' rights.

In encouraging people who had problems in the industry to come to the group, many of the positive aspects of sex work were not highlighted. One of the results of this 'economic approach' to prostitution, in the setting up of a group hoping to attract welfare funding, is the maintenance of a public perception that prostitution is a problem. Spokespersons from the groups were always saying what was wrong with sex work, and the organisation's time and resources went to dealing with problems related to prostitution. The negative emphasis continued when HIV/AIDS funding became available, and this emphasis has become entrenched in the service side of most sex-worker groups, persisting after ideology around sex work has moved on.

This negative approach fails to give recognition to what people in the industry actually like about working, both by emphasising that there is only one reason why people take up sex work (for money) and emphasising the 'bad' things about sex work. The other factor in the ideological shift away from 'problematisation' was an increase in the numbers of sex workers involved in groups. Most sex-worker groups had started as groupings of sex workers and their supporters.

The inclusion of a work approach to prostitution became obvious within the groups around 1987. With law reform in NSW and partial law reform in Victoria, it became increasingly evident that what sex workers wanted from their groups was to project an image that would itself promote the legitimacy of their position as sex workers, rather than simply explain away why they were working in the industry and thereby assume that they would all leave if they had any other possible way of earning a living. Initially, using the term 'sex worker' was seen as a way of avoiding the stigmatised and value laden term of 'prostitute'. Sex worker was a term which pulled no punches.

After the first round of law reform proposals in the mid-1980s, occupational health and safety issues became a central focus. Law reform, however, was still the basis of any real solution to all the issues in prostitution that are created by criminalisation. It became apparent that the type of law reform that most jurisdictions were likely to adopt could create new major problems with regard to working conditions and control of workplaces.

Thus, within most groups a stream of thought and action developed around industrial issues, but within the context of still providing services to, or advocacy for, those people who were having difficulty in sex work, or with other parts of their lives relating to sex work.

Cheryl Overs (1991), in her report for the Scarlet Alliance on issues for HIV positive sex workers, has differentiated between sex work and prostitution in the following way:

> Consciously commercial sex which takes place in a workplace, regardless of how informal, is more accurately described as sex work (as distinct from prostitution). Those transactions can be recognised as a series of interrelated workplaces which form the commercial sex industry and which can be targeted for promotion and/or enforcement of sound work practices.
>
> Prostitution outside the sex industry can be thought about in different ways. It is distinguished from other private sex acts by moral considerations about the

> impropriety of sex which is motivated by needs of the parties which fall outside of notions about love or even mutual respect and desire.

So whilst sex work was first used to remove moral connotations associated with the word 'prostitute', it was also an attempt to define the sex industry and its workers so as to form boundaries for programs of sex-worker groups. This demarcation within the category of prostitute was necessary, especially for the HIV programs which were developed for the sex industry.

AIDS brought a new focus of occupational health and safety issues into sex-worker groups. Funded programs for education focussed on the health of sex workers and the protection of sex workers from sexually transmitted diseases which they could be exposed to during the course of their work.

As sex-worker groups became more involved in HIV and industrial issues, the potential for AIDS to be used as a 'public health' reason to control the sex lives of sexual minorities became apparent. Current threats to the rights of prostitutes arise from AIDS related stigmatisation and associated ignorance and fear.

Ties with sex-worker groups working with AIDS in other countries, and with other AIDS groups here and abroad, have lead to a greater awareness of sexuality issues in Australian sex-worker groups. It has also opened our eyes to the way the right, notably in the USA and in Britain, has seized AIDS as a new reason for restricting the rights of people whose sexuality falls outside the accepted norm.

It is from this point that the current interest in 'new' sexual politics has emerged. Seeing sex workers as a sexual minority among other sexual minorities has the obvious potential for networking around common issues. The very idea of being a 'minority' (sexual or otherwise) also opens up many other political and ideological possibilities. Some of these are being incorporated into sex-worker groups and programs at present—the most notable being the concept of 'self-determination'. Applied to sex-worker groups, this is the recognition that the agenda for sex-worker groups should be determined by sex workers. This idea within HIV education is apparent in the concept of 'peer education'.

As an issue, HIV ties together many of the issues that sex-worker groups in the past have been working on. In Australia, the push to remove 'legislative impediments to HIV prevention' has resulted in law reform being placed back on the agenda in some states and territories. However, as well as the possibility of legislating to make HIV prevention easier, sex-worker groups are having to contend with a conservative push to legislate against people with HIV or groups perceived to be at risk. These conservative pressure groups are using 'the public health' as their new bandwagon. (This push comes largely from established conservative pressure groups in Australia, and is championed by people such as Dr Bruce Shepherd, President of the Australian Medical Association (AMA), among others.)

An understanding of sexuality issues—and the concept of sex workers as a sexual minority, amongst other sexual minorities—is a powerful base from which to work towards fending off these attacks. It also provides a base for proactive work to destigmatise sex work, as part of a broader movement aimed at destigmatising sex and sexuality.

From this theoretical position, government controls on sex work and sex workers are part of a broader issue of the state attempting to set moral limits by criminalising certain consensual sexual acts. Sex workers are discriminated against in a similar way to other people who do not fit into the narrow, accepted sex roles tolerated in our society.

Luckily, in Australia we have not had to contend with anti-porn, anti-sex feminists teaming up with such unlikely allies as the AMA and conservative Christians to limit the rights of sex workers. However, our strong links with groups and individuals in the USA and Canada have brought to our attention many of the issues that the debates around pornography have raised in those countries. A recognition of these issues, and our

involvement in HIV/AIDS, has seen the development of new and potentially powerful alliances.

In Australia, we have looked at sex work from many different standpoints while not being dogmatically tied down to any of them. The incorporation of inspiration from many theoretical approaches to sex work forms a good base for sex-worker groups to look at the varying issues around sex work in the 1990s.

In trying to summarise the theoretical base from which sex-worker groups are now operating, it should be noted that groups within Australia are independent, and different people have preferences for differing explanations of issues.

In Australia we have been exposed to many different theories about sex work. Groups have tended to take what is useful and discard that with which they disagree. Importantly, we have used our own local experience to try to mould together a theoretical approach that is relevant to the changes our groups are striving to achieve in the sex industry, in policy and the law, and in attitudes towards sex workers. This has been easy in Australia, as there has not been the group ownership of theories which has lead to conflict in the sex-worker movement in other countries.

The continuing development of the theory and social movement around HIV and sex/sexuality issues will hopefully prove to have a large impact upon the rights of sex workers and other sexual minorities. This—combined with a concerted push for the recognition of sex work as work and sex workers as workers—will hopefully lead to a strong and dynamic sex-worker movement that is able to deal consistently with the many issues currently confronting sex workers and the sex industry.

References

Overs, C. 1991, *National Consultation on the Issues and needs of HIV Positive Sex Workers*, Scarlet Alliance, October.

Pheterson, G. 1987, 'The Social Consequences of Unchastity', in *Sex-work, Writings by Women in the Sex Industry*, eds F. Delecoste & P. Alexander, Virago, London.

VICTORIAN SITUATION WITH LEGALISATION

Sheranne Dobinson
Safehouse Worker
Prostitutes' Collective of Victoria

THE PROSTITUTES' COLLECTIVE OF VICTORIA (PCV) HAS BEEN CONCERNED with industrial issues affecting sex workers, taxation and health issues in the sex industry. For law reformers it has been a matter of focusing on the consequences and effects of legalisation of brothels in Victoria. The PCV is concerned about how legalisation has affected the way workers are able to conduct their occupation, the choice of how they work and the disregard for civil, industrial and human rights that has arisen.

Law reform in Victoria was supposed to provide a legal and administrative framework to regulate the industry and decrease the powerlessness of males and females working in the sex industry. It has been of great interest to Prostitutes' Rights Organisations and sex workers that all those involved in prostitution law reform acknowledged that legislation in Victoria has failed to meet its stated objectives and should be viewed as a lesson in seriously defective policy making and how to avoid it. Hopefully this lesson has prevented similar mistakes being made in other states.

In Victoria, sex workers are left to deal with the problems legal reform has exacerbated and the new problems it has created. The legal codification of more stringent controls over adult sexual behaviour has largely gone unnoticed.

In preparation for this paper old submissions to the Neave Inquiry by the PCV, Australian Prostitutes' Collective and supporters of prostitutes rights were re-read. These submissions were written before the existing prostitution regulation in Victoria, with the amendments made in the Upper House. It was a chilling experience to realise that the outcomes Victoria is experiencing today were so aptly predicted.

This certainly raises the issue of the purpose of involving sex industry workers in the legislative process and then ignoring their input. Sex workers are best able to determine the way the industry is conducted—a right not denied to other occupations but, sadly, with a long history of denial in prostitution.

State and local government, the Australian Taxation Office, the police, the wider community and sex industry management all have a vested interest in prostitution. This is at the expense of the sex workers themselves, whose access to adequate occupational health and safety conditions, ability to pay tax correctly and control conditions in the workplace have been ignored. This results in a limited understanding of the sex industry, perceived and unsubstantiated threats to public morality and possible nuisance factors. However, it can be argued that public bars have a far greater capacity to create a public nuisance than a brothel

or one or two females working from home, yet these bars are not zoned in lightly industrial areas.

The *Prostitution Regulation Act 1986* (Vic.), of which about half was proclaimed, is basically the consolidation of already existing prostitution-related offences. The outcome is that prostitution is only legal in brothels with planning permits granted by local government. The creation of only one legal option for sex workers is doomed to fail. The shift in prostitution from a temporary job to a more permanent occupation was a result of 19th Century agitation, legal reform and police persecution. The situation in Victoria reflects the worse form of institutionalised prostitution, that is, there is no industrial, occupational health and safety protection or control in the workplace. It is imperative to understand what is going on in Victoria, in order to make informed decisions about what policies and practices to oppose and support and the consequences for sex workers.

The shift away from the legal brothels should not be seen in terms of just maximising workers' income: although the economic reality is that illegal sex work is more profitable for comparable hours (as workers keep all their earnings). Illegal sex work also allows choice of services provided, choice of clients and flexible working hours. It is the only option for sex workers wishing to direct the way they work. Despite the drawbacks of riskier circumstances and the possibility of criminal penalties, as one worker put it; 'I'll cop it sweet'. It is interesting that illegal workers—either in street work, escort work, working from home or in illegal massage parlours—are doing better financially, because the clients of sex workers also prefer a choice of what area of the industry they visit. The clients are also dissatisfied with the legal structure but, except for gutter crawling offences, the client is not penalised. However, while the introduction of laws penalising clients is not advocated, unfair application of the law needs to be highlighted.

Other sex workers—including male workers, transsexuals, workers on methadone programs, stereotypical drug users, non-competitive workers and old workers who cannot operate in the legal sector due to house rules—must also operate illegally. This is also true in country areas of Victoria, where no legal brothel has been granted a permit. Consequently, the women in these areas have no choice but to break the law.

The current move towards the illegal sector essentially means that more Victorian sex workers are working exactly the way they did pre-legalisation. It is ironic that the partial legalisation 'designed to protect' workers has facilitated its expedient growth, putting workers at risk of violence and HIV infection, with limited access to the PCV and peer support.

A comment on the power given to local government in regulating the sex industry will now be given as there appears to be a leaning towards this option in other states. The glaring inconsistency in Victoria is that councils are reluctant to give brothels permits based on morality rather than planning guidelines. It is not difficult to obtain a permit for a relaxation centre. Under the *Vagrancy Act 1966* they are deemed illegal brothels, as hand relief takes place. Usually females working in relaxation centres are unaware they are breaking the law.

It must be considered that local councils are more concerned with their own political agendas and are largely unaccountable in the policies and regulations they make. Camberwell Council wanted to enact local government laws to regulate the local brothel. These included the registration of all staff for a fee of $50, compulsory medical checks, the posting of a sign warning clients of the risk of disease and a million-dollar public liability insurance policy. Most of these proposed laws were inconsistent with government policies and the National HIV strategy. It was clearly apparent that the intent of this was to make the continuation of the brothel in this area impossible—a sentiment shared by all councils. Camberwell is so intent on this that the case will be heard in the Supreme Court later this year and, if successful, other councils will follow.

It is interesting to note that these acts were formulated with the stated rationale of protecting sex workers, yet the brothel in that area gained a permit without providing a workers' area (currently, the steps), or tea/coffee-making facilities. The kitchen sink where cups are washed out is the toilet wash basin shared by clients and workers. No other business would be granted a permit in such sub-standard conditions.

Workers in brothels are classified as employees and Workcare has publicly stated that as such they are entitled to workers' compensation. This is all well and good but how is it administered and how accessible is it to sex workers in reality? No brothel owner pays the Workcare levy of 2.7 per cent, nor are steps taken by Workcare to ensure sex workers have access to compensation.

The PCV has been involved in two Workcare advocacy cases. One worker, under pressure from management once her claim was lodged, was coerced into withdrawing it. The second was followed through. The worker submitted a claim for a back injury. When attending the Workcare doctor, he performed a rectum examination (that was not medically applicable) without her consent. At the hearing, no evidence was presented in relation to the worker, the decision to disallow the claim was based on the brothel management testimony and no action was taken against them for failure to pay the levy. The worker decided to appeal the decision and, on the recommendation of her lawyer, it would have been successful. However, an appeal by the brothel manager could not guarantee worker confidentially and no further action was taken. Subsequently, she was sacked from the brothel and black banned from other brothels and she moved interstate.

This is indicative of the double bind for sex workers. If women object to pornographic videos in the workplace they can do nothing about it. Yet in South Australia a female employee in the public service received huge amounts of money in compensation for mental trauma caused by a fluffy penis in the workplace. Women are not allowed to knit between bookings. Instead they have to socialise with clients unpaid. Fire stairs are blocked so the sex workers will not leave work and there are no meal breaks. Workers rooms (if they exist, or if workers are allowed to use them) are inadequately lit, ventilated and heated.

The PCV is banned from some brothels as management do not want sex workers to be made aware of industrial rights. The fines and bond system for breaches of 'house rules' still exists. Workers are asked to sign contracts waiving their civil rights to public liability claims or Workcare. Sexual harassment by owners and the practice 'of try before you're hired' is still practised in the industry. A menu of services provided is displayed so females are unable to refuse such services as allowing clients to perform oral sex on them (during which they cannot protect themselves against diseases such as hepatitis B, chlamydia and genital herpes). Sex workers are responsible for the cleaning of the brothel and receive no remuneration for this. The list is endless, yet at the end of the shift a worker may only take home $40. And brothel owners wonder why it is difficult to keep staff! Would you work in such a system?

At least we have the Brothel Health Regulations. These have been in force exactly twelve months. This legislative act was a Health Department initiative, as the Prostitution Regulation Act failed to address health issues in brothels. The Act highlights the inadequacies in the legislative process in regulating the sex industry. It is retrospective and possibly, at the time of drafting, areas of limitations of the Act could not be foreseen. To change the law requires an Act of Parliament. Recently the issue of management discouraging condom use (by threatening with the sack) in a sex act between a male client and a female sex worker arose. This cannot be addressed under the *Health Act 1959* as there are no provisions to penalise management. Consequently, management are effectively immune from prosecution. There was no thought in how the Health Act would be enforced, and this raises the complex question of administration after law reform.

The aim of the Act was to empower sex workers, enabling them to refuse clients and to work safely. It placed much of the onus on management to supply condoms, 'lube' and educative material free. However in reality, the onus rests on the sex worker or client to make an official complaint that the law has been breached and provide evidence. This is unlikely to happen.

Paying tax does not make sex workers equal in the community or give sex workers adequate access to public services, housing and bank loans—nor does it improve industrial conditions for sex workers. In Victoria the Australian Tax Office (ATO) has attempted to implement a PAYE system. Initial opposition by brothel management was that sex workers were subcontractors only renting the room. (This option, if it were a reality, would be ideal as a means for workers to control the way they operated.)

The implementation of the PAYE has been a nightmare for sex workers, however. Thousands and thousands of untaxed dollars have gone into management pockets. Tax file numbers are used for consecutive workers after the initial worker has left, no receipts or group certificates are given, and the ATO is unwilling to follow worker's complaints about breaches of the PAYE system. The workers do not lodge claims as they fear audits for back-taxes. Despite a commitment by the ATO not to audit workers, several females have been slandered by tax officers, and there is a very real fear of confidentiality being breached by either taxation officials or brothel management. Sadly, the initial law reformers are very quiet and the situation remains unaddressed.

In reality, dealing in situations with police, hospitals, banks and public officials is more difficult. In fact, several banks in Victoria have written to sex workers asking them to close their bank accounts as they prefer not to have dealings with the sex industry.

There does not seem to be much hope of readdressing the situation despite the community, PCV and police pressure. The government has refused to confront the structure they have created. The Victorian Attorney-General is guilty of dereliction of duty, making no comments or attempts to revive the Prostitution Management Committee–which was formulated after legalisation–to look at problems and issues as they arise. Sex workers are burdened with an excess of significant and unfair restrictions when already existing laws deal with the issues, such as areas of violence, public nuisance, exploitation and coercion. It must be accepted that the sex worker community does not need separate laws to enable them to have access to the same protection–industrial or otherwise–that the wider community receives.

THE PROCESS OF CHANGE IN QUEENSLAND: A WORKER'S PERSPECTIVE

Kris Anderson
President
Self-Health for Queensland Workers in the Sex Industry

THIS PAPER DOES NOT AIM TO PROVIDE AN ACADEMIC ANALYSIS OF CHANGE IN Queensland. Much of the material used for the paper, apart from historical references, has been gained from personal experience and from talking to other workers who were working in the sex industry at various times in Queensland. Thus the paper refers almost exclusively to female prostitution. There are two broad aims of the paper. The first is to discuss significant changes which have occurred in the industry in Queensland over the past century, and to examine how and why these changes occurred. The second aim is to explore the process of change for sex workers who have become involved in Self-Health for Queensland Workers in the Sex Industry (SQWISI) and to examine this very personal change.

The whole picture which emerges from this historical perspective is one in which the independence of the women in the sex industry is frowned upon and repressed. This repression is delivered either from bosses, the police, the law or from the health authorities. Repression has occurred at various times and in various ways in Queensland and has often been severe enough to create a backlash among workers who have begun to resist. This has happened recently in Queensland with the clampdown following the Fitzgerald Inquiry (Queensland 1989).

In Queensland, prostitution is regulated under the *Vagrants, Gaming and other Offences Act 1931* and the Criminal Code. Technically prostitution is not illegal–however, a number of associated activities are. As in other states the following are illegal:

- using premises for the purpose of prostitution;
- allowing premises to be used for the purpose of prostitution;
- living off the earnings of prostitution;
- keeping a premises for the purpose of prostitution; and

- keeping or managing a bawdy house.

Historical Overview

Early evidence suggests that, in the late 1800s, sex workers were prevalent and a number of brothels operated in the inner city in run-down tenements in lower Albert, Charlotte, Mary and Margaret Streets of Brisbane. By August 1880 police noticed prostitutes moving into suburban areas such as Boggo Road, Red Hill and Paddington.

In 1885 the newly formed Social Purity Society observed that there were 'fallen' women everywhere. In rural Queensland, a controlled number of Japanese prostitutes were imported to service the needs of 'coloured' male labourers in towns adjacent to sugar plantations or pearl luggers.

In 1897, more than 100 of these women were reported to be acting as prostitutes at Childers, Innisfail and Cairns. Within the next two years there were more than a dozen brothels operating in Mackay, Bundaberg and Thursday Island. Aboriginal women around this period were kidnapped from their families and dragged from campsite to campsite with itinerant travellers until they were so riddled with disease they were deserted; whilst other Aboriginal women were paid for their sexual favours with a few tobacco leaves (McIntosh 1984).

By the early 1900s, part of Brisbane's red light district had moved to South Brisbane. The presence of prostitution was seen as a necessary evil. It was not possible to uncover much information from the early 1900s to World War II. It is safe to assume, however, that prostitution did not cease to exist but rather it continued throughout the years of World War I, the 1920s and 1930s in a tolerated environment.

During the years of World War II, most of the sex workers were street workers. They would pick up the clients and take them to one of a few rooming houses where the client could pay for a room for them to use. It was also not uncommon for the workers to go to the American Canteen in Adelaide Street and pick up servicemen from there.

It was the practice of the Criminal Investigations Bureau to police the street workers, and it is believed that many were physically and verbally abused. It is reported that workers were frequently bashed in the cells. 'Once a copper, never a man' was a quote from one worker from the time. She and a girlfriend, who also worked on the streets, were tapped on the shoulder one day and taken away on the suspicion of having an infectious disease. They were detained in the 'Lock Hospital' for venereal disease patients behind Boggo Road Gaol. While detained they were given weekly health checks. During their incarceration they climbed a ten-foot galvanised iron wall and ran away. They were then apprehended and sent to Boggo Road Gaol for three months (although they only served a few weeks). Neither woman had any diseases.

The Act under which they were originally arrested was the *Suppression of Contagious Diseases Acts* of 1860 which required no trial, and indeed no proof of disease for a 'suspected prostitute' to be taken away. As with syphilis in the early part of the century, the issue of public health was again used as a means of controlling women who did not conform. It could be argued that women such as these street workers simply became too independent by hiring their own rooms and breaking out of their stereotype of the time.

From information gained about the late 1940s and early 1950s, it seems that there was a reversion to a more controlled and predictable type of prostitution, in much the same way as women, generally, were expected to abandon the work they had undertaken during the war and revert again to their roles of wife and mother. During the late 1940s and early 1950s, five brothels were operating in Brisbane. These were located at Knott, Claredon, Earnest and Albert Streets. Sex workers at this time frequented the streets and the Grand Hotel was reputed to be 'rotten with them'.

The brothels were referred to within the sex industry as 'houses'. There were usually two girls working in the daytime shift and several during the night shift. The workers did not live on the premises but were responsible for maintaining their own rooms and keeping the establishment clean. Some houses employed as many as eight workers at a time and would take 25 per cent of their earnings. Well-known and tolerated brothels in Bundaberg, Cairns and outside Innisfail would employ only one worker at a time and take 50 per cent of the worker's earnings. The worker would live on the premises and stay there for varying periods of time. A cleaner maintained these houses and the worker's meals were provided. They were only allowed to go into the town to do their personal shopping and usually they were in the company of the madam. If they went drinking late at night they were forbidden to mix with any of the menfolk. In most of these tolerated brothels workers were not allowed to have boyfriends. Boyfriends would have threatened accessibility by clients, and they would also perhaps have threatened the control which the police exercised at the time.

All the houses at this time were owned and operated by women and a man's presence was not tolerated, as he would be promptly charged with 'living off the earnings' by the police who constantly visited the houses. If the workers did not have a douche can visible in their room or could explain to the police a lawful means of employment, they would be charged under the Vagrancy, Gaming and Other Offences Act. Health checks were compulsory and were performed on a weekly basis. The women working in the Brisbane brothels were checked each Wednesday by a female doctor (the same doctor who checked the workers in the Lock Hospital). The doctor would monitor their attendance and contact the owner of the brothel if the workers were due for a health check. In the event of their contracting any diseases, they would be stood down until the doctor had given them a clearance to work.

There is currently little information from a worker's perspective on the early 1960s, although hotel work was still popular at this time. There were a couple of notable brothels such as '$2 May' from Paddington and 'Manhattan Walk' in South Brisbane. During the mid-1960s came the advent of the photographic studio. The first, most well-known was Cathy's Photographic Studio at New Farm. Another opened near the Police Station on Coronation Drive, but was closed down because it was too close to the Police Station. More of these studios opened and some were later converted into massage parlours as that concept became more popular. They were run by owner/ operators and some employed up to three girls.

During the mid-1960s many workers would travel to New Guinea and work for a few weeks. Another source of income that was tried by many workers was to take a caravan and a couple of workers to 'do the mines'. Workers would travel to the remote mining camps and sell sex to the isolated miners. Although this seems to be an innovative and independent exercise, it was usually organised with the permission of the local constabulary and the foreman at the mines. It was often undertaken in lean times and was organised by madams and pimps.

The early 1970s saw five small places operating as massage parlours: The Roof Garden in Edward Street, Brisbane City (owned by a male and operated by a woman); the Valley Therapeutic Clinic, Wickham Street, Fortitude Valley (owned and operated by a woman); Glencrag, Spring Hill, (owned and operated by a woman); The Vienna (owned by a male and operated by a woman); and the Elizabethan (owned and operated by two women). Some sex workers came from the southern states, worked for someone for a short time and then opened up for themselves. 'Home Massage' services—the equivalent of escort services today—were also available.

The police were rarely seen, but around this time they began to prosecute workers under the *Physiotherapy Act 1964* for advertising massage when they were not qualified under the Act. It was only a $40 to $60 fine and did not particularly worry anyone in the sex

industry. However, some of the workers looked up a thesaurus and started to advertise 'body rubs and rub-downs' instead.

In the early 1970s it was easier for a worker to set herself up in her own small business than it had ever been. It was not necessary to purchase or own suitable premises but rooms in a commercial area could be rented and this caused no nuisance value. All equipment required to open a massage parlour could be rented. It was also possible to advertise for clientele in the daily newspaper, albeit under the guise of massage.

Over this time period there had not been a lot of activity with police and parlours, as the police were used as agents but they were not allowed to remove their underwear. Therefore, if a client was clothed during the massage the workers simply did not offer any sexual services. One other way of prosecuting was if the worker made admissions of having broken the law. Very simply, if one made no such admissions or was not 'caught in the act' then it was extremely difficult for the police to convict a worker.

There was an explosion in the number of parlours at this time and some owners operated a large number of places. These operators came to an arrangement with the local Licensing Branch to 'cop pinches' or be charged by arrangement, at regular intervals. Obviously the heightened visibility arising from this increased number of parlours contributed to the need for the police to be seen to be policing prostitution.

Working conditions varied. The smaller operators usually split the earnings on a 50/50 basis. The cleaning and reception work was either shared or done by an ex-worker or someone who was unable to continue selling sex for either personal or health reasons. The parlours which belonged to a chain, however, charged the workers a set amount of money per client with a $30 base charge whether they earned any money or not. The independent operators started receiving a great deal of police harassment and were unable to keep their staff, with their clientele also being frightened off. They too, came to accept being prosecuted and convicted by arrangement.

By the mid-1970s, escort services were flourishing and being run by male operators in a large and competitive manner. Any parlours owned and controlled by male investors had a female to manage the day-to-day running of the parlour. These women also 'copped the pinches' for the owners. By the end of the 1970s in Brisbane, only five or six independent women operators were still in business. An interesting cycle also occurred during this period with the prosecution of the workers and operators in the small places owned and operated by sex workers and ex-sex workers.

Originally, when all the independent operators agreed for themselves and their staff to 'cop the pinches', they were proceeded against with a summons and received a fine in the mail, but the girls started 'shooting through' without paying their fines and also used false names. The police then started to lock the workers up overnight so they would appear in court the next morning. The workers then started to refuse to cop pinches, which resulted in the police raiding places, kicking in the doors and harassing both the workers and their clients. This resulted in the independent operators getting large, strong security gates fitted on the main doors in their premises. The police responded to this by lugging huge oxywelding gear up the stairs in order to break through the gates. Needless to say, by the time they actually gained admittance to the premises everyone was behaving in a lawful manner. In some cases a solicitor was actually paid to sit on the premises to ensure that the legal rights of the people involved were respected. Finally an agreement was reached between the independent operators and once more they were to be prosecuted by summons. The workers, however, were expected to carry proof of identification.

The cycle is a clear demonstration of the ability of the industry to 'roll with the punches' and to make adjustments according to police policy at the time. It also demonstrates that there is considerable power available to the workers even within the current system of laws

and that workers and owners will use this power when they are pushed to a point where they cannot work.

In the late 1970s, a private tug-of-war developed between the Licensing Branch and the Consorting Squad who decided to start going into parlours and blackmailing the workers for information. This caused a lot of confusion and the Licensing Branch instructed the workers in the industry not to cooperate or talk to the consorting branch. Things soon returned to 'normal' under the control of the Licensing Branch.

Around this time and in the early 1980s, a certain sergeant seemed to believe it was his job to close down parlours in Brisbane and the Gold Coast. He introduced the system of charging landlords. While this made life increasingly difficult, it was not successful. There were few landlords actually convicted and most referred the matter to their solicitors and again, due to the largely unenforceable laws, the solicitors were able to delay proceedings long enough for the matter to blow over and enable the parlour to continue operating.

The early 1980s were chaotic. In the late 1970s and early 1980s, a syndicate of male owners had been formed. This syndicate largely used women as receptionists and managers, and their control over the industry increased steadily. It has been revealed by the Fitzgerald Inquiry (Queensland 1989) that corruption existed on a significant scale and that police were being paid, not only to not prosecute syndicate parlours and workers but also to assist the syndicate to discourage competition. The whole industry was highly visible. However, unless one was already established in Brisbane or was linked to this syndicate of owners, the police harassment was so much that new places were unable to stay open. The police would arrange with Telecom to have phones disconnected, which made it impossible for an escort service to continue to operate.

In places such as the Gold Coast and larger country cities, it was still possible for independent sex workers to operate, although most of the houses operating at the Gold Coast were actually controlled by a few operators. Many private workers on the Gold Coast were able to keep working alone or with a friend without receiving too much attention from the police.

Police policy was not easily determined during the early 1980s. The Fitzgerald Inquiry revealed that while the police partied in some establishments, others received a lot of attention. The most common practice was to come around to places on a regular basis, sometimes twice a week and other times twice a day. A book was kept with all the workers names and periodically they were charged then returned to work approximately two hours later. 'Set ups' where police agents were also used occurred intermittently, despite the fact that everyone was well trained to 'cop their pinches'. Some owners did not even have to be on the premises or even in Queensland to be charged. As unsavoury as it may have seemed for the dozens of police who used many disguises and assumed personas to gain evidence, it was a thoroughly humiliating experience for a sex worker to provide sexual services and then be charged. Having the money taken back was a final insult.

By 1986, there were only three independent operators left in Brisbane and they had been operating before the syndicate monopoly was established. The majority of sex workers were employed mainly by this syndicate of male owners. As a result of the situation with the police, the independent workers 'copped more pinches' and good workers were actually advised by the police to go and work in one of the syndicate establishments where they would get less, if any convictions. The working conditions in these places were not as fair as the smaller owner/operator establishments. Robbery and violence were also used by the syndicate to control workers as was the practice of phoning through bogus bookings to other parlours so that they would be unable to take genuine clients. Condoms were not allowed to be used in establishments at this time and this did not change until the advent of AIDS. The role of the public health authorities at this time seems to have been minimal–except for the clinics and doctors which provided evidence of attendance for

sexually transmitted diseases (STDs) checks on a regular basis. Indeed, the industry was so controlled at this time that a worker was virtually unable to work unless they had a clearance certificate.

The workers received less than 50 per cent of the total monies earned. At first there was a 50/50 split. Then, if they were involved in escort work, they would have to pay a percentage toward the driver's fee and, after they had earned a certain amount, they would be required to pay a 'shift' levy.

Often workers were charged a bond when they first started working. This could be up to $200 which was rarely refunded. Workers would be fined for an array of things—for example being late or having days off without notification. Often when they left a particular establishment they were not paid for their credit card bookings which were normally paid to them on a weekly basis.

Shortly before the Fitzgerald Inquiry started, the Licensing Branch served section 8 notices on all of the parlours giving them seven days notice to close down. All the parlours except for three closed down in Brisbane. Initially, the parlours in large tourist towns (Cairns and the Gold Coast) fared a little better as it seemed the local police rarely showed any interest unless their nuisance value was disturbing the community. The large country towns, including Cairns and the Gold Coast, were then subject to large raids by the now infamous Licensing Branch. This resulted in very few massage parlours remaining open. Most of the workers went into escort work, some left the state, while a lot of the Brisbane based workers moved to the Gold Coast where they could operate freely from Tweed Heads. Advertising in the daily newspapers was stopped. It is interesting to note that one of the tabloids in Brisbane had a special rate for advertising parlours and escort services which was three times greater than any other advertisers were charged. There was also a required minimum $20 advertising fee.

During the Fitzgerald Inquiry, the industry continued to operate in a low-key, underground fashion. The media continued on their witch-hunt, searching out places to remind the police that the industry continued to exist. More and more workers started to work privately and discreetly. More people were charged under the criminal code and landlords were being threatened with prosecution. This was the beginning of one of the few serious attempts this century to enforce the laws relating to prostitution in Queensland. Tens of thousands of dollars were spent in attempting to secure convictions of owners and workers. Agents were used, with minimal success, surveillance and 'questioning' of clients leaving premises was undertaken. As with all such attempts its success has proven to be limited. The easiest convictions were workers rather than owners and several of these workers decided to contest the charges against them and won their cases. Again decisions had to be made as to who the police would target in this campaign. Workers working on their own, in flats or units were largely left alone, although they were technically breaking the law in relation to advertising and other peripheral offences. Private workers were contacted at this time and police were aware of their activities. This selective attention raises the thorny question of the point at which corruption occurs. It was in this climate that our organisation SQWISI commenced.

By the time the Fitzgerald Inquiry ended, the 'sisters were indeed doing it for themselves'. Most were discreetly working in small situations or by themselves. Most workers' reactions to the outcome of the Fitzgerald Inquiry were that they felt disappointed and 'ripped off'. Many workers who gave evidence at the Inquiry and who were promised police protection did not believe that they received this protection. There was also a strong sense that Mr Fitzgerald had turned the spotlight on prostitution and the exploitation in the industry at the time and had then backed off from the obvious conclusions and recommendations. As one worker put it at the time 'Fitzgerald opened up prostitution to the public gaze, stuffed it for the workers and then walked away'.

With the change in government in 1989, the Labor policy of removing victimless crimes from the statute books gave a sense of hope within the industry that prostitution would no longer be criminalised. This has again been put off, however, this time to the weighty and lengthy deliberations of the Criminal Justice Commission. Meanwhile the industry has been left in some sort of vacuum. Heightened police interest continued for a time after the Fitzgerald Inquiry until the final disbandment of the Licensing Branch. Conditions are now ripe in the industry for a re-establishment of syndicate type operations and corruption.

There are clear parallels between the 1990s and the early 1970s. From small establishments run by workers and ex-workers employing a few people, and many workers working privately, larger organisations are beginning to emerge. Many male bosses are now in business. The industry is becoming highly visible again. The media is still taking the ambiguous position of pushing for a change in the law while continuing on their witch-hunt and exposing establishments, no matter how discreetly they are operating, by publishing the names and addresses of sex workers, receptionists and operators when they are charged.

Overall, the picture is one of informal influences acting on the industry rather than consistent formal influences such as the law or changes to the law. The role of the law in changes relating to prostitution is almost irrelevant. The prostitution laws have remained virtually the same since the turn of the century and yet, as is clear from the preceding picture, the industry has changed enormously in this time.

The significant influences which have affected the practice of prostitution for a worker are: the visibility of the industry and the resultant police policy; the involvement of organised crime and its relationship with the police; the extent of repression and control of workers in the industry; AIDS and other STDs and the media. With official inquiries such as the Fitzgerald Inquiry and the Criminal Justice Commission, it is as yet difficult to determine the long-term results for workers. Certainly, short-term they have not been of assistance to workers.

Other informal influences which are probably most significant in the sex industry have been the unintended consequences of policing practices, extreme control and repression. Many of the workers currently working in Queensland have had two decades of experience of living with, fighting with, and learning about the law, the police, and organised crime. Some of the unintended consequences from this are the heightened consciousness of the women in the industry in terms of their potential; an increased knowledge of the law and their rights under the law; and a decreased likelihood of settling for half-hearted reform in the area of prostitution.

Self-Health for Queensland Workers in the Sex Industry

After two unsuccessful attempts to start a prostitute's rights organisation in the 1970s, SQWISI became possible through the involvement of a few sex workers and concerned citizens efforts. The catalysts for this were the AIDS epidemic and the attempted clampdown on the industry in 1988.

SQWISI began with a few sex workers and a couple of people from the Health Department. The original intention was to educate the workers in the industry about AIDS and other health problems. Almost immediately it was realised that criminalisation of workers in the sex industry continually surfaced as a major obstacle in educating the workers.

Our attitudes to common issues has evolved with contact with other sex-worker organisations and community based organisations. The following examples highlight this evolution:

- Initially a cottage industry concept was supported by SQWISI. However, we now realise that to partially legalise the sex industry only serves to create a two-tier industry as has been evident in other states.

- Registration (or some kind of licensing system) seemed an easy way of controlling our industry and we now feel registration is most unacceptable and damaging for personal anonymity. If clients of workers can enjoy anonymity then surely the worker is entitled to the same right.

- Compulsory testing is another common issue that was widely acceptable within the industry. After years of having to conform to a regulatory approach by brothel owners it seemed reasonable. The realisation has come, however, that it is quite valueless—as a sex worker is only as clean as her last client.

One of the dilemmas which SQWISI must face is that many of these attitudes are still held by many sex workers. Those 'enlightened' by their involvement with SQWISI are having to grapple with these issues on a day-to-day basis and often find it difficult to persuade a sex worker that registration is not desirable. Many sex workers simply see that a legal registration system is better than what they have now.

Involvement of sex workers in the running of SQWISI is, of course, essential and many problems occur in attempting to do this. Initially there was considerable fear of being identified with SQWISI and police attempted to deter workers from joining SQWISI. An assumption of unlawful behaviour was made by police when visiting various premises and finding a copy of the *Hooker's Herald* there. A number of meetings and representations have been made to the police who are now less suspicious of SQWISI's role and aims. Now, sex workers are more inclined to come forward and join but many are still apprehensive about supplying an address to be on a recorded file.

As many community organisations have found, time and motivation are a problem in getting workers involved. Whilst members are supportive of what is being done through SQWISI, the actual toil is left to a handful of volunteers and two full-time staff. A lack of success at encouraging workers to attend workshops at SQWISI premises has forced the staff at SQWISI to take the information to workers and input is often gathered in the same manner.

Our experience has also been that workers who wish to make the transition from full-time sex work into full time SQWISI employment have had great difficulties in coping with changes such as: living on a set wage; working set hours; working within a team; and divorcing personal and work relationships. Considerable learning has also resulted from this for those workers and others on the management committee of SQWISI. In spite of any of these difficulties, the overall conclusion is that having workers who have experience in the sex industry is invaluable as a SQWISI worker. Other skills such as office skills, training and education are teachable.

Personal changes which have occurred for workers involved in SQWISI, to a greater or lesser degree, include:

- becoming aware of legal rights and knowing that one does not have to accept continual convictions on the basis (and whims) of changing police policy;

- truly recognising and believing that sex workers have legal rights too;

- a building of trust in self-organisation. Key initiatives which have assisted with this have been services provided by SQWISI such as the 'Ugly Mugs' descriptions which help sex workers to identify potentially violent clients;

- the development of skills from being involved in running the organisation;
- learning about the political process—political lobbying and mechanisms for seeking support for SQWISI's position on a number of issues;
- media skills—which have often been learned at considerable personal cost to members;
- safe sex is now a non-negotiable issue for most workers whereas before, the client would attempt to bargain with the worker. The supply of condoms and lube has greatly facilitated this change and has reduced their reliance on owners who may or may not supply condoms; and
- sex workers now have a larger network of support.

The challenge for those sex workers in Queensland who now have a much broader perspective and understanding of many issues is to spread this perspective among fellow workers who have not had such involvement in the change process. Our exploration of this whole process of change in the beliefs of sex workers who have had considerable exposure to discussion and argument about issues raises serious questions about current research done, and research that will be done by the Criminal Justice Commission in the near future. Unless there is some process of education which accompanies the research, the workers will not be aware of the full implications of the answers that they give. For example, simply asking a worker about whether or not they would like to see legalisation, most workers would see this as an improvement on their current criminal status and would not be aware of the full implications of a 'legal' system such as in Victoria. SQWISI is attempting to provide this type of education through its most effective outreach tool—the *Hooker's Herald*.

Conclusion

As in the past, the industry is responding to influences such as demand, police policy and worker preference. At the moment just about anything is possible in prostitution in Queensland. It is likely, however, given the vacuum described earlier, that there will be an increase in organised control of the industry. Ultimately, this is not good from a sex worker's perspective as any increase in control diminishes an individual sex worker's independence. The Criminal Justice Commission needs to take account of this in their deliberations and any reforms which they introduce must be done as quickly as possible. Significant cooperation would be more likely to be forthcoming from sex industry workers if there was an amnesty from prosecution at this time of change.

References

McIntosh, M. 1984, in *So Much Hard Work—Women and Prostitution in Australian History*, ed. K. Daniels, Fontana-Collins, Sydney.

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

THE VICTORIAN BROTHEL OWNERS' PERSPECTIVE

Peter Richardson
President
Victorian Brothel Association

ALTHOUGH THE MEMBERS OF THE VICTORIAN BROTHEL OWNERS' ASSOCIA-tion are legal, this is not a position of comfort. Brothel owners were encouraged to believe legality would bring respectability, business certainty, prosperity and growth. We responded to the call and tried our best to bring our business into line, but those efforts have now proven unwarranted, as shall be demonstrated in this paper. The legal industry has become a scapegoat; we are subjected to the indignity of having the blame for all shortcomings heaped at our doorstep.

The *Planning (Brothels) Act 1984* that proclaimed correctly-zoned brothels legal was a fine Act in theory but was fatally flawed in its execution. Through its failure to have all the sections of the Act proclaimed, the Victorian Labor Government was unable to deliver a finished product. Brothel owners now have higher cost pressures and even more competition from a burgeoning illegal industry that has none of the restrictions which are imposed on legal businesses. The partly proclaimed Act has succeeded in disappointing everyone as it only covers 25 per cent of the sex industry in Melbourne. Local government councils resent the power of the Administrative Appeals Tribunal. Labor politicians resent Liberals for opposing parts of the Act.

The police are now presumed to have less reason to intrude upon brothel premises at will, resulting in a great reduction in manpower in the Vice Squad. Consequently, they do not have the resources to crack down on the unregistered places that still operate. The estimate of the total annual turnover of the entire sex industry in Victoria is $150-200 million minimum. We would suggest any industry with that sort of turnover in ordinary circumstances would definitely have some serious consideration from the government (for example, TABs, liquor outlets, and so on).

Delegations and deputations from Singapore, Queensland, Adelaide and New South Wales have inspected the Victorian model of the sex industry. They go away shaking their heads and turn their backs on the 'Victorian experience'. The delegations are being shown some of our worst examples. We ask that these delegations be introduced to the Victorian Brothel Association and taken on a tour of the range of standards that now exist.

Legal brothels have come under enormous financial pressure—all sixty-four of them—as of 29 April 1991. Taxation, health regulations, Workcare, payroll tax, insurance and a myriad of other charges have conspired to make legal brothels marginal economic units.

Legalisation introduced trading hour restrictions, room controls and a cap on the number of employees that could be on the premises at any one time. This has created a

situation where there are sixty-four permits, an estimated 6000 sex workers in Melbourne and only 2000 sex workers are required in legal brothels. The remaining 4000 sex workers are now seeking employment within the illegal sex industry where there are no health restrictions, age restrictions or working permit restrictions. Illegal brothels, massage parlours and hand relief joints have been allowed to trade with impunity. They have no advertising restrictions like the legal brothels and, consequently, can blatantly entice members of society into the industry. Times of recession are times when desperate measures are resorted to. Therefore, a well-worded advertisement in the daily newspaper attracts the unsuspecting 16 to 18-year-old worker to the sex industry. Carrying only a fraction of the overheads, opening on demand, asking their staff no questions about age, filling in no taxation forms—these low cost, cheaply set-up alternatives are a serious threat to legal brothels and are the reason why the law was introduced initially. It seems the law enforcement agencies have allowed them to flourish.

When various governments introduced socially revolutionary legislation in the past, the law enforcement agencies were moved to enforce compliance. TAB legislation saw most SP bookies forced out of business. Liquor licensing breaches are treated very seriously. But in the realm of the sex industry, enforcement is a joke. The Melbourne Vice Squad is rarely staffed by more than three or four officers. There are token visits, but all too often complaints about the 'illegal' traders end up in the 'too hard' basket. Police claim obtaining evidence is too difficult and time consuming—this could have been no more difficult than removing the above mentioned SP bookies with their 'v phones' and other anti-surveillance devices.

There appears to be no effective policing of the Act in Victoria, and there is little or no pressure on the police to change, other than that pressure which comes from legal owners. Periodic bursts of activity may frighten but they will never quell the enthusiasm of the under-capitalised entrepreneur who wants to get his own massage business up and running.

It is unfortunate that the Prostitutes' Collective of Victoria (PCV) has a woeful reputation with brothel owners. We feel that they could be a valuable force in educating the industry, but as yet we are not working closely together at all. There are still too many groups, such as the police, who by necessity dwell on the fringe of the industry and lack any real understanding of how a brothel operates. They are however, influential in shaping opinions. Preconceived notions are reinforced.

The legal brothels, via their association—Victorian Brothel Association (VBA)—should be consulted by all parties with an interest in law reform or changes to working conditions, so that more effective regulation can result. The Victorian Brothel Association would simply ensure inspection of as wide a range of premises as possible was undertaken, thus allowing any visitor the freedom to make up their own mind.

Advertising is the only method for launching a new business. While those operating legally in the sex industry are prevented from advertising for staff to work in a brothel and are restricted in the content or size of an advertisement, the illegal sex industry knows no such constraints. Legal sex industry advertisements are still not acceptable to the daily press which has no qualms in accepting quite explicit material for 0055 and phone-sex services. Advertising, if it is to be restricted, should be restricted to all practitioners including escort agencies, strip agencies and massage shopfronts.

There are some positives. We have an industry magazine called *The Shopper*. We have an Association, in spite of the law telling us we are not allowed to associate. Insurance premiums are coming down. The industry reputation for torching every brothel in sight has been proven to be a furphy, with only one claim made in six years. Corruption is not rampant. Police relations are improving and the Victorian Brothel Association has tackled the vexed question of taxation head on and achieved some accord with the Australian Taxation Office.

But problems do exist and we are not ignoring them. We would like to see a review of the present position before we go ahead and proclaim the balance of the Act or before we make any other changes. Not only will we then achieve commercial success but we will also be a significant contributor to important social change in the 20th century.

The Victorian Brothel Association does not want the rest of the Act proclaimed until it has been reassessed by a committee which has representatives from all aspects of the industry—both positive and negative. A simple example of how the industry could be controlled is by introducing a registration system which would work in this manner—as we have sixty-four permits, any person wishing to work in these legal places could do so without having to register. Any person wishing to work for themselves must register, thus stopping the mushroom effect we are seeing all around Victoria as we speak. This would also help the government departments relevant to our industry—such as the Health, Planning and Tax Departments—to monitor the industry more successfully.

The VBA believes that any business wishing to operate outside the proclaimed Act must register with a government body before they can advertise. In other words, before they can open for business. This simple procedure would not be a high cost to society, yet would encourage the control of the present large grey area by allowing a monitoring system to have full control of all prostitution in Victoria.

FROM THE INSIDE

Amanda Wade
Research Assistant
School of Sociology
University of New South Wales

MY CAPACITY AS FIELD WORKER FOR THE UNIVERSITY OF NEW SOUTH WALES' project on prostitution includes visiting many brothels and communicating with hundreds of sex workers. A composite view from the perspective of many sex workers in many different working situations will be presented, and it will begin with a discussion of the clients from the girls'[1] point of view. An attempt to distinguish between clients of the street, of the brothels, and of private sex workers will be made.

Sex Workers and Clients in New South Wales

There are three types of professional sex workers common to New South Wales. Firstly, there are the street workers who solicit business in public on certain Sydney streets. These are the smallest group, numbering no more than 10 per cent of all sex workers. Street clients as a group tend to be younger and often from working class backgrounds. But there are many exceptions to this, such as a girl who has a regular client of five years who is old and wealthy. Many street girls will also tell you of the numbers of clients who are young executives, media personalities and middle aged 'yuppies'.

The brothel workers are by far the largest group in New South Wales. They work in what are commonly known as 'parlours' across the state. The term 'parlour' is derived from the old concept of 'massage parlour'. A brothel is convenient for men who want sex without having to make a prior appointment—they can walk straight in off the street. Brothel clients come from all classes and are all ages, whereas street clients tend to be more spontaneous and will often stop when they see a girl on their way home or decide to visit a house after they have arrived home from work. Unlike most street clients who pull-up when any girl catches their eye, brothel clients tend to go to the same place, usually in their own neighbourhood, and see the same girls. They often prefer an environment that is familiar and feels secure, while many street clients are excited by the unknown and what they perceive as dangerous. Brothel clients prefer girls who threaten them the least and those who most resemble the 'girl next door'.

Private prostitution refers to the work of 'call girls' and 'escorts' whose clients are seen in the worker's home and apartment or on a date by appointment only. These girls represent

[1] The term 'girls' is a common usage among prostitutes and is not seen as demeaning.

about one-quarter of professional sex workers. Private clients are often looking for a mistress or the 'other woman'. They tend to scan advertisements seeking the most exciting woman with an exotic or mysterious persona. They are often older and middle class. The private client is usually not so concerned with having sex with a younger woman as fulfilling their fantasies of the 'other woman'. Often young clients visiting private workers seek out an older woman to satisfy their mother fixation or other fantasies.

Many girls find they form close and lasting friendships with other prostitutes. Sometimes these can be their first friendships with other women. On the street these friendships with other women are not so likely as girls do not have the opportunity to spend time together because they are always looking out for the next client. They also work in territories, which tends to keep them apart. The situation in a brothel is different due to the fact that girls are at work for eight to twelve-hour shifts, often with very little to do between clients. This can lead to boredom and to increased smoking or excessive alcohol and caffeine consumption. Most friendships form quickly and are based on shared work experiences rather than the girls' background. Although these friendships are strong at work, they usually do not extend beyond the workplace and are only ongoing while the two friends remain in the same brothel. In some brothels, friendships are discouraged or not allowed, as competition between girls is better for house profits. As in any working situation where staff need emotional and physical support from each other, it would be an advantage to management as well as to the workers if these friendships were encouraged.

Brothel Management

The role of the receptionist in the brothel is to manage the brothel for an absentee boss. Therefore, her first loyalty is usually to her employer, who, after all, has the ultimate power of dismissing her and the other staff. As a woman and an employee, she has more in common with the workers than the boss. She may develop close friendships with some of the workers but her duty to the boss is to enforce his or her rules, which places her in the unenviable position as the proverbial 'meat in the sandwich'.

Other duties of the receptionist include scrutinising visitors, making up the weekly roster and processing the clients. This can place her in an awkward position with the workers, such as when she has to turn away their friends at the door or give them unpopular roster times. The receptionist also has to decide whether a girl should refuse a client on the basis of obnoxious behaviour. Finally, due to the fact that the receptionist works in a brothel, clients assume that she is as available as the workers. She has to deal with this situation as pleasantly as possible without hurting their feelings or driving them away.

There are as many female as male brothel owners and managers. The position of the boss is omnipotent. There is no power greater than the boss and, with no union or arbitration commission, there can be very little staff solidarity. The authority of an irrational or prejudiced boss is likely to be unchallenged. The manager may impose whatever rules suit them and dismiss whomever they wish at a minute's notice. However, most bosses are reasonable people. In many cases where a girl has been working in one place for a long period of time, the boss will grant her privileges in recognition of her loyalty. There are also impossible tyrants among brothel management who can make working in their brothels unbearable. However, it is always easy for a worker to get another job quickly in this industry. The management is usually quite happy to have a high staff turnover, as this gives clients a greater choice and gives the brothel a greater profit. With omnipotence and no unionism, the brothel manager—like 19th century industrial capitalists—may treat the workers as dispensable items. One girl commented: 'The only thing I dislike at the moment is management. Everything else about my work I really enjoy'.

Occupational Hazards

Occasionally a girl may have problems with clients who become abusive or even violent. Most workers consider having sex with misogynous clients, drunks and aggressive men unpalatable. However, since these men form a large part of a prostitute's clientele it becomes a matter of economic necessity to endure them. In prosperous times prostitutes can be choosy, but during a recession they have to put up with the obnoxious and the repellent among men as well as the pleasant and respectful. Problems usually occur when the client is too drunk or nervous to perform sexually. A street worker can just walk away or, if she thinks the man may become violent, she can often call on a hired male 'sitter', whose job it is to deal with a nasty situation. Many street workers are street wise enough to deal with potentially explosive situations by quick thinking, a quick tongue and a witty repartee.

In a brothel most problems are not really serious. For instance, clients can be a nuisance by their petty complaints in the vain hope of getting a refund. Usually the receptionist deals with this quite capably. The main objective is to calm the man down and get him out of the door. Most girls are quite used to explaining why there are no refunds in brothels.

Private workers have to deal with some of these problems and, if they work alone, they are also more vulnerable to violence. Women who work alone choose to take this risk because they can make more money and are not controlled by management. But, there have been tragic occasions when all their skills have failed to calm a violent man and serious or fatal injury results.

Other problems with clients include a client becoming obsessed with a girl and wanting to spend all his time and money on her. This may sound good for business, but most girls have a full life outside the brothel and are not interested in having relationships with clients beyond work. In addition, some clients may try to force an unwanted sexual practice on a girl in the room. But most girls are expert at maintaining control over their clients during these occasions. Speaking about her sex work experiences, one girl said:

> You do have a degree of autonomy in prostitution. Within that whole realm of men selecting women with its notion of female passivity, there is a strong input of sexual control by the women.

Another girl agreed:

> In my personal experiences I found it was a total role reversal to the usual positions of power and dominance by men with women subservient to them.

In New South Wales the police rarely bother the girls because most are not contravening any laws. Occasionally though, police are obliged to visit brothels on departmental orders to count heads and check that minors are not on the premises. Invariably they will ask for names and addresses, though they know that often the girls give them false information. It is a game of power without substance. However, on certain residential streets of Sydney, street workers are constantly harassed by police for soliciting within view from a church, school, hospital or dwelling. In states where laws exist making prostitution activities illegal, the girls have a constant and antagonistic relationship with the police.

Common to all prostitutes is the stigma attached to their work. This effects some women much more than others and obviously those in love relationships or those closely attached to their families, where the other parties are unaware of their occupation, are under a greater strain of secrecy than those who are concerned only for their neighbours' opinions. The stigma of prostitution often leads to paranoia and low self-esteem among many women.

Only the emotionally strong are able to withstand community prejudices and misinformation about prostitution, and even among these only a handful of the most courageous with the least to lose will 'come out' politically and socially as whores.

One area of particular dislike for prostitutes is the demand by clients and bosses for workers' to dress in accordance with the popular images of high-class whores and cheap tarts. It not only elaborates mythology but is also expensive, impractical and uncomfortable for the workers. For instance, clients often have a sexual fetish for women's legs, so workers are pressured into wearing extraordinarily high-heeled shoes that are both dangerous and physically unhealthy. Of course, girls can choose not to wear this kind of clothing, but they would soon find a diminishing clientele and possibly without employment in brothels. There are some women who enjoy the charade of dressing-up as an opportunity to feel feminine and attractive. Others find it gives them an opportunity to change their identity and is a convenient way of separating the whore persona from the real person. These workers then feel that they are able to cope psychologically with the stigma attached to being a prostitute. However, a large number of prostitutes are resentful of having to cater to male sexism.

Other areas of discontent include working conditions, such as confined space, uncomfortable furniture, poor lighting and inadequate temperature control in rooms allocated to staff. Television sets dominate most common rooms and in some places these feature endless hard-core pornography for the benefit of clients.

Matters such as workers having to pay half the monies they receive from their clients to the management and a lack of concern for their welfare at work are issues which sex workers feel very strongly about. Likewise, having to pay a bond to some houses as assurance of their reliability is a major resentment amongst workers, particularly when few ever see their bond again. These, along with other matters, such as lack of holiday pay, sick leave, workers compensation and job security, are all issues for the union movement. Prostitution, in fact, is one of the last industries yet to receive the benefits of awards, wage adjustments and unionism. For example, one girl slipped and broke her arm at work—and she was not even partially compensated for six weeks loss of income following her fall. If the staff had been insured, as in most workplaces, such a situation would not have been allowed to happen. The following comment by one girl gives us an insight into the differences in working conditions:

> I left the East Sydney brothels to work in the parlours because winter was coming on and I didn't fancy standing in the open doorway in a short skirt. But I didn't like the parlour I went to work in because their rules and regulations were a bit heavy. It's not that I can't abide by rules and regulations, but when you consider that we girls were doing all the work and the owners were getting half our earnings, having to start at a particular time, finish at a particular time, can't do this, must do that, you must see everybody, and don't force them to use a French letter. That was the worst part. I ended up getting gonorrhoea twice because of the doctor visiting the parlour being so slack. I never had a disease in all those years in the East Sydney brothels. I had seven weeks off before I started back working in a brothel in Palmer Street. But it was closed down by the City Council a few weeks later. Next I went into a brothel in Bourke Street and was there only two months when it was closed down as well. So the only alternative for me was the streets.

Advantages of Sex Work

The main advantage of prostitution is the high financial rewards. However, in the present depressed economic climate, like many other businesses, earnings are considerably lower than they were just a few years ago, with every girl complaining that their business has

dropped by between 25 per cent and 50 per cent. Many people believe that prostitutes make thousands of dollars a week, but this has not been true for quite a few years; and even then 'one had to literally work their butts off' to make such an income. At that time there were a lot of men seeking prostitution as a sexual outlet. In 1991 though, most girls are lucky to make much above the average national wage. Nevertheless, this comment by a worker in a Sydney North Shore parlour probably expresses the sentiments of a lot of girls:

> Doing prostitution feels like the amount of money you're paid gives me a sense that my labour is valued, from a purely monetary sense. Other work I've done felt to me to be particularly under-valued, most especially in nursing.

Another advantage for most prostitutes is the freedom and flexibility of their work. For instance, a single mother working a day shift can deposit her child at a local creche at 10 a.m. and pick the child up at 6 p.m. This can mean the difference between poverty and a comfortable lifestyle. For women without family commitments, the job flexibility and the financial rewards provide them with a more luxurious lifestyle. For this private worker, prostitution gave her a jet-set living:

> I greatly enjoy my freedom. If I want to go somewhere for a month I can just go, when I like and for as long as I like. It has allowed me to travel and I have travelled a lot due to prostitution. When I travel to Europe I can go to work in an apartment with two girls. If I work there for a week I can travel freely anywhere afterwards. That's what I like about prostitution.

An additional advantage often expressed by girls is the self-confidence they develop through prostitution. This next girl's comment sums it up nicely:

> When I started working I was quite frightened of men. Whenever I found myself alone in a room with a strange man I'd get scared. Now I'm no longer frightened of men and I'm learning a lot about them. I mean they are no longer as mysterious or revolting as I imagined them to be. When they come into the parlour they tell us these terrible secrets about themselves and you get to know them intimately very quickly. My work has given me confidence to communicate with men and has taken away my fear of them. It's also given me confidence physically and I'm no longer self-conscious about my body. It doesn't worry me that I'm not perfect and I really do think that I'm attractive to some men but not to others, whereas before I used to have this very bad physical self-image.

Conclusion

Prostitution is like any other business, it has its good points and its bad. The nature of these issues are different from other work but every type of work is unique. The disadvantages include situations the girls dislike and hazards such as violence and arrests. It is surprising to note that most girls do not list sexually transmitted diseases and AIDS amongst their dislikes and hazards of the profession. This is not to imply that they are not concerned for these, because the scrupulous use of condoms and medical checks strongly suggest otherwise. The research at the University of New South Wales indicates that most girls do not get diseases, and the diseases they do get seem to occur more often in their private lives than in their working lives.

The advantages of sex work are not publicised to the same extent as the disadvantages. There is a good side to prostitution, otherwise there would not be as many girls involved in

sex work, regardless of the financial rewards. Two quotes from girls in the business indicate this. The first girl works in a Kings Cross parlour:

> It was the best thing I have ever done, because it has developed a strong character in me. Before prostitution I was just another clinging, obsessive female. Now, I am my own person—independent.

This next comment is from a girl who is a street worker:

> What I like about what I do now is I can start work when I want to and finish when I want to. I am virtually an independent person. Overall, prostitution offers me much more money than I could get anywhere else, and the hours are more flexible than in any other kind of job.

This paper will conclude with some recommendations. The first recommendation is that the legislators in all state governments decriminalise prostitution, totally. Prostitutes are ordinary women doing sex work as a matter of survival. They are not sick or disease-ridden, nor are they criminals. They do no harm to society or to the community, so why should they be punished for doing what everyone else does privately, with the only difference being that they get paid for their efforts?

The second recommendation is to the police departments. Prior to 1991 in New South Wales, prostitutes have endured many problems with police. Police should respect prostitutes as citizens, with citizens' rights like anyone else. For instance, in Sydney, even though working in a brothel is no longer a criminal offence, some police still swagger into the place unannounced, without warrants, and demand the names and addresses of all the workers. They certainly would not dream of behaving like this with any other law-abiding citizens. So, as prostitutes are law-abiding citizens, they should be treated as such, and the police in all states—even where prostitution activities are criminal offences—should treat the women with the respect they deserve.

Finally, the last recommendation is for social workers and health workers who are in constant contact with prostitutes. In this age of HIV/AIDS, many more health workers are eager to communicate with prostitutes, ostensibly to assist them in the fight against the dreaded disease. This noble gesture, however, is sometimes tainted by the attitudes of health and social workers who have no previous experience with prostitutes. Some of these health and social workers need to improve their attitudes if they are to gain the confidence of the sex workers.

Do not patronise and treat prostitutes as though they were dummies or lepers. Most prostitutes are responsible, practical professionals who have been taking care of themselves for years. They can probably teach most health workers something and the communication between prostitutes and the health and social workers should be a mutual learning experience between two equals. Stop believing the newspapers, act on your instincts in dealing with other women, and think of sex workers as women and not whores. Most important of all, change the attitude inside your head before speaking to a prostitute.

SEXUAL HEALTH AND SAFETY AMONGST A GROUP OF PROSTITUTES: AT WORK AND IN THEIR PRIVATE LIVES

Roberta Perkins
Senior Research Assistant
School of Sociology
University of New South Wales

THIS PAPER DRAWS ON THE RESEARCH FINDINGS OF A STUDY COMPLETED BY the School of Sociology at the University of New South Wales. The study, funded by the Commonwealth AIDS Research Grants Committee, investigated AIDS prevention practices of female prostitutes in both their working lives and their private lives.

The survey gathered data on the degree of protection from infection, taken by prostitutes at work and in the private lives of 280 sex workers in New South Wales and the Australian Capital Territory in 1990-91. It is estimated this number of sex workers is approximately 18 per cent of a weekly population figure of 1,505 prostitute women within the geographical area. Given that the numbers of prostitutes moving in and out of the sex industry over a six-month period (the time span of the survey) are minimal, one can assume that the sample is a reasonable representation of women in the sex industry.

The data from this sample was compared with two other samples: 128 Sydney prostitutes in a study the author conducted in 1985-86 (Perkins 1991); and 436 non-prostitute women in a national survey conducted by the magazine *Cleo* in March and April 1991. With the comparative data emerging from cross tabulating corresponding variables for each sample, we were able to surmise:

- changes in sexual practices by prostitutes across a time span of five years; and
- the differences in these practices between prostitutes and other women in the matter of sexual health protection.

Prostitutes Sexual Practices at Work

The sample of 280 sex workers in the 1990-91 study indicated that they averaged forty clients in a 'good' week and thirteen in a 'bad' week. This is an extraordinary fluctuation of over 66 per cent. 'Good' weeks and 'bad' weeks were interpreted according to individual assessments of client turnover. Two-thirds of the sample claimed to have a 'good' week every fortnight, while a fifth said it was less frequent. The overall average number of clients for 'good' and 'bad' weeks was twenty-five.

In the 1985-86 study, the 128 women said their average number was thirty clients per week. This study was completed in the wake of media horror stories on prostitutes and AIDS which, according to many of the women, decreased business by as much as 50 per cent. The decline in business since then has not been due to AIDS per se so much as a combination of the present economic recession and the prostitutes mandatory use of condoms regardless of age or regularity of clients. These results suggest a decline in client turnover, leading to a general reduction in the risk of infection determined by quantitative sexual activity among prostitutes today, compared with five years ago.

The services most frequently offered by the 1990-91 sample of prostitutes are fellatio followed by coitus (88 per cent), hand relief (37 per cent), coitus only (36 per cent), massage including hand relief (34 per cent) and fellatio only (33 per cent). Those services usually rejected include anal sex (86 per cent), urinating on the prostitute (83 per cent), anally stimulating the client (63 per cent), bondage and discipline (54 per cent) and urinating on the client (46 per cent).

These activities did not vary much from the types of services offered and rejected by the 1985-86 sample of sex workers. Whilst it may appear that these prostitutes are avoiding high-risk sexual activities associated with the exchange of body fluids such as urine, sperm and blood, many associate anal intercourse with homosexuality and AIDS, and it appears anal sex, bondage and 'water sports' had been low priorities among most sex workers long before the advent of AIDS. Presently, only bondage mistresses will perform blood-letting services and 'water sports' and only with maximum protection.

This information seems to indicate not so much avoidance of presumed high-risk practices as a rejection of sexual activities thought to be too 'kinky', disgusting or violent. It is a moral judgment rather than a health judgment. Coital intercourse and fellatio have not diminished because of AIDS, and neither would have anal sex had it been acceptable among prostitutes before the 1980s.

Condoms were used by 98 per cent of the 1990-91 sample in sexual contacts with their clients. The survey found 95 per cent of prostitutes used them on every occasion regardless of the type of sexual activity or the familiarity of the clients. This is a considerable increase on the 1985-86 samples where only 70 per cent of the prostitutes surveyed used condoms on every occasion. Undoubtedly the advent of AIDS and the impact of the 1985 media horror stories of sex workers was a major factor in the increased use of condoms. Throughout 1986 the work of the Australian Prostitutes Collective, the 'grim reaper' advertisements and a mandatory condom policy in most brothels were initiatives which resulted in a universal use of condoms in prostitution.

The few women who did not use condoms on every occasion were asked their reasons for unprotected sexual activity. Four of these women thought that unprotected sex was 'not that risky', three claimed they 'gave in to pressure from clients', two women said 'condoms were physically uncomfortable', one answered that she 'could make more money without a condom', and another failed to disclose her actual reason for not using condoms.

The women who claimed unprotected sex is not very risky unfortunately reflect an ignorance of the potency of Sexually Transmitted Diseases (STDs) and Human

Immunodeficiency Virus (HIV). The other prostitutes were motivated by greater pressures than self-preservation and were possibly ignorant of the facts of infection.

Apart from this small group, it is apparent that almost all prostitutes are acutely aware of the problems associated with unprotected sex and, as such, they are attempting to do something about it. This evidence suggests that the continued media and health authorities' focus on prostitution as a potential danger to the community is unrealistic and based on myths rather than facts.

Prostitutes' Private Sex Lives in 1990-91

Sexual activity

Over 5 per cent of the prostitutes surveyed said their private sexual activity was exclusively lesbian and 14 per cent claimed to have no private sex life. Therefore, nearly a fifth were practising either low-risk sex or avoided risk entirely. Interestingly, prostitutes engaged in less social sex in each type of activity compared with non-prostitutes, with 95 per cent of the non-prostitutes enjoying coitus compared with 76 per cent of the prostitutes, 89 per cent of non-prostitutes enjoying fellatio compared with 56 per cent of prostitutes, 87 per cent of non-prostitutes enjoying cunnilingus compared with 76 per cent of prostitutes, 50 per cent of non-prostitutes enjoying mutual masturbation compared with 49 per cent of prostitutes, 51 per cent of non-prostitutes enjoying auto-masturbation compared with 40 per cent of prostitutes, and 17 per cent of non-prostitutes enjoying anal sex compared with 13 per cent of prostitutes. However, only 7 per cent of the non-prostitutes enjoyed sadomasochism compared with 9 per cent of the prostitutes, and only 3 per cent of the non-prostitutes were exclusively lesbians.

It appears non-prostitutes also enjoy social sex per se more often, with 23 per cent having sex at least once a day compared with 21 per cent of prostitutes, 36 per cent of non-prostitutes participating in sexual activities every two or three days compared with the 29 per cent of prostitutes, and 16 per cent having sex every four or five days compared with 7 per cent of prostitutes. The ratios are equal, at approximately 14 per cent, for sex once a week, while only 10 per cent of the non-prostitutes have sex less often, compared with 19 per cent of the prostitutes.

The popular image of prostitutes as over-sexed or nymphomaniacs does not stand up against this evidence. In fact, these research findings seem to suggest that prostitutes have ordinary libidos, but with sex associated with mundane work practices, sex in private has less appeal to them as pleasure than to non-prostitutes.

Safe sex practices

While these figures may suggest that the prostitutes were less at risk in their private sex lives than the non-prostitutes by the sheer logistics of sexual activities, this depends more upon the frequency of safe sex practices and the number of sex partners to each woman. In fact, the survey found that 65 per cent of the non-prostitutes used condoms at some time compared with only 43 per cent of the prostitutes in their private sex lives. The survey also found that 66 per cent of these prostitutes used condoms in every sexual encounter compared with only 23 per cent of the non-prostitutes, while 19 per cent of the prostitutes almost always used condoms compared with 15 per cent of the non-prostitutes.

As the frequency of use decreased, the number of condom-using non-prostitutes increased. Thus, 28 per cent of non-prostitutes used condoms 'only sometimes' compared with 10 per cent of the condom-using prostitutes, and 34 per cent of them did so only rarely compared with 2 per cent of the prostitutes. These findings seem to suggest that the

prostitutes who practised safe sex in their private lives treated most of their sex partners like clients by insisting they wear a condom, whilst the non-prostitutes who practised safe sex used condoms only with certain men.

Exactly who do the condom using women in both groups practise safe sex with? Of the condom-using prostitutes, 8 per cent practised safe sex with their conjugal husbands compared with 12 per cent of the non-prostitutes, 12 per cent of prostitutes had safe sex with their de facto husbands compared with 10 per cent of the non-prostitutes, and 27 per cent of prostitutes used condoms with regular lovers compared with 46 per cent of non-prostitutes. With casual lovers and 'one-night stands' 46 per cent of the condom-using prostitutes practised safe sex compared with 29 per cent of the non-prostitutes, while 35 per cent of the prostitutes said they used condoms on everyone in their private lives compared with only 13 per cent of the condom using non-prostitutes.

We found that approximately one-quarter of the married prostitutes were using condoms with their husbands, 28 per cent of the prostitutes in de facto relationships were using them with their lovers, and 55.6 per cent of the single, divorced, separated and multiple-partnered married prostitutes were using them in their casual sexual encounters or with non-regular sex partners. Overall, it appears that prostitutes are more likely to use condoms in their private lives than the non-prostitutes.

The prostitutes and non-prostitutes who 'only sometimes', 'rarely' or 'never' used condoms in social sex were asked their reasons for this. Over one-half of the non-using non-prostitutes and 29 per cent of the non-using prostitutes thought their monogamous relationships ample reason for not using condoms. Nearly 19 per cent of the prostitutes and 14 per cent of the non-prostitutes considered sex more enjoyable without a condom. Approximately 11 per cent of both groups said that the spontaneity of their sex left no room for condoms, while 17 per cent of the non-prostitutes and only 1 per cent of the prostitutes regarded sex less complicated without them.

Of the non-using prostitutes 16 per cent claimed that condoms reminded them too much of work. It is likely these particular women used condoms as a symbolic demarcation between the men in their lives, and that condoms serve to distinguish between their clients, who had to wear condoms because they were dangerous and undesirable, and the men they loved, who were both trustworthy and desirable. The difficulty with this notion is the extent of male infidelity existing in what the women regard as monogamous relationships. It would appear that the spread of HIV in sexual transmission among prostitutes is more likely to occur through their monogamous relationships than through their work.

Sources of Infection of Sexually Transmitted Diseases (STDs)

The suggestion that the spread of STDs occurs more likely in their private lives is partially supported by the statistical evidence on the sources of infection. Let us examine the kinds of STDs the prostitutes contracted by comparing the 1990-91 sample with the 1985-86 sample. Only 16 per cent of the more recent sample had gonorrhoea compared with 31 per cent of the earlier sample, 13 per cent compared with 22 per cent contracted trichomoniasis, 8 per cent of the recent sample compared with 21 per cent of the 1985-86 sample contracted non-specific urethritis, 9 per cent of the 1990-91 sample compared with 15 per cent of the 1985-86 sample were infected with pelvic inflammatory disease. Only 20 per cent compared with 35 per cent caught pubic lice, 16 per cent of the 1990-91 sample compared with 18 per cent of the 1985-86 sample had genital warts, and 8 per cent compared with 15 per cent contracted hepatitis B.

It appears only with chlamydia (20 per cent compared with 13 per cent) and herpes (13 per cent compared with 10 per cent) were the recent sample more often infected than the earlier sample. Only 2 per cent in both samples were infected with syphilis, and over

60 per cent in each group caught thrush, which, like hepatitis B, may not have been transmitted sexually. No-one in either sample had been infected with HIV. Although the time span for each sample was not matched for frequency of recurring diseases, the indications are that the earlier group had more recurring diseases more often. The suggestion from these figures is that prostitutes today are less likely to be infected with STDs than they were five years ago, which corresponds with the findings on the increasing use of condoms over the intervening period.

With regards to infection in private sex life only 40 per cent of the 1990-91 sample of prostitutes were infected by their clients, compared with 52 per cent who were infected by men in their private lives. By comparing the figures of 98 per cent of prostitutes using condoms at work compared with 43 per cent in private life, this reveals the women as more vulnerable to infection outside of work.

Examining the figures for private sex suggests that 19 per cent of the women were infected by their conjugal or de facto husbands and regular lovers, or over 35 per cent of infections in private life were transmitted by men the women trusted. Since one-third of the sample were in conjugal or de facto marriages, the 7 per cent of infections which occurred in these contexts bear a grim witness to the extent of infidelity in the women's monogamous relationships.

Other statistics of interest are those relating to the frequency of medical screenings undertaken by the prostitutes. Approximately 24 per cent of the 1990-91 sample had a medical check-up once a week, compared with 51 per cent of the 1985-86 sample, 45 per cent did so every two or three weeks compared with 23 per cent, 18 per cent did so once a month compared with 9 per cent, and 15 per cent of the 1990-91 did so less frequently compared with 12 per cent of the 1985-86 sample. Obviously, as condoms have increased in use, the frequency of screenings has declined as mandatory.

The 1990-91 sample indicated their frequency of screenings for HIV antibodies with over 15 per cent having said 'they had a test within a week of responding to our survey', 29 per cent said 'less than a month', 34 per cent 'less than three months', 10 per cent 'less than six months' and 8 per cent 'less frequently'. Only 2 per cent of prostitutes had never had a test.

Half of the sample visited a private practitioner for their medical check-ups and tests in the previous six months, 32 per cent went to Kirketon Road Clinic in Kings Cross, 11 per cent visited the Nightingale Clinic at Sydney Hospital, 14 per cent visited Parramatta, Liverpool and Prince of Wales Hospitals, and 10 per cent visited the John James Memorial Hospital in Canberra, the Royal Newcastle and Port Kembla District Hospitals. Some of the women sampled had visited more than one venue.

Drug-Using Behaviour

Only 16 per cent of the 1990-91 sample never use drugs regularly. Nearly 69 per cent of prostitutes consumed tobacco, 47 per cent consumed alcohol, 39 per cent cannabis, 15 per cent amphetamines by oral admission, 10 per cent cocaine by nasal or oral admission, 10 per cent ecstasy, and 9 per cent heroin by intravenous admission regularly at present or in the past. Almost 6 per cent of the sample used intravenous drugs at least once a day, 4 per cent did so at least once a week, and 7 per cent did so only on certain occasions. Eight of the women had shared a needle/syringe within three months of responding to our survey, seven had shared a needle/syringe up to a year ago, ten had shared up to four years ago, and fifteen had shared a needle/syringe more than four years ago.

A small proportion of the women continued the risky practice of exchanging blood in intravenous drug practices. It is difficult to ascertain whether this group of women constitute

a greater risk to their clients than the larger number of women engaging in unsafe sexual practices in their private lives, as it is dependent on a number of unclear factors.

AIDS Awareness

The data suggests that prostitutes have increased protected sexual practices in their working lives over the past five years due to an awareness of AIDS. However, the question arises as to just how realistic this awareness is, given the general ignorance of the community on the subject. Approximately one-half of the sample said they washed after each client to prevent HIV infection, 10 per cent of prostitutes said that they douched and 31 per cent avoided kissing strangers for the same reason. Over 85 per cent used condoms during intercourse to prevent HIV, 76 per cent used them in oral sex, and 76 per cent used them on every occasion. These, of course, only applied to those women who practised these sexual activities.

Comparing these figures with the data on the services offered by prostitutes indicates that almost all the women offering coitus and fellatio as a single service agreed to condoms for coitus but did so less often for fellatio. The survey also found that only 3 per cent of the women avoided ejaculatory sex and 5 per cent avoided sex altogether as a measure of preventing HIV infection. Almost one-third of the sample said that 'avoiding sharing needles/syringes with strangers was sufficient', while 29 per cent correctly assessed that sharing needles/syringes should be avoided with everyone.

Conclusion

The study outlined in this paper indicates that prostitutes have increased their diligence on safe sexual practices over the past five years and are contracting less STDs less often as a result. Sex work, therefore, is a largely safe occupation and its perception in the media as a hot-bed of disease is undeserved. Prostitutes are more vulnerable to infection in their private sex lives and, in the case of a few, in sharing needles/syringes.

However, it appears that, compared with non-prostitute women, there is less risk. As with most women in monogamous relationships where a great deal of trust is placed on the woman's sex partner, prostitutes are at their most vulnerable. The ratio of STD infections arising from relations with husbands, de factos and regular lovers supports this contention.

This paper will conclude by making three recommendations. The first recommendation is for decriminalisation of the prostitution laws. Women made criminals by legislation dealing with sex work are in a legally vulnerable position when communicating with health workers, whose state government employers are arresting and gaoling these same women. Instead of cooperation in combating the spread of HIV and STDs the health authorities are more likely to be greeted with suspicion and resentment.

The second recommendation is for a more rational response to HIV-infected prostitutes by the health authorities. As we have seen in recent cases of antibody positive prostitutes in New South Wales and Victoria, the authorities are too quick to assume that these women are providing unsafe sex to their customers. Instead they must recognise the clinical evidence of a low incidence of HIV among sex workers and surveys which stress prostitutes persistence with safe sex practices.

The last recommendation is for a greater focus on men's responsibility in the fight against HIV and STDs. In the cases of the antibody positive prostitutes, the women in question were made fully culpable for the supposed spread of HIV/AIDS while authorities completely overlooked their customers' roles in these affairs. The reality is that if every client carried a condom when they visited prostitutes then the question of transmission would not

arise. There is a general expectation that prostitutes should provide the prophylaxis, and there seems little concern by health authorities that many sex workers have daily battles with their clients over the wearing of condoms.

Not only in prostitution but in most social sexual situations, men continue to resist condoms more often than women. It is time the health authorities began devising ways of convincing men to stop taking the side of the virus in the fight, instead of singling out the odd prostitute for an object lesson when she is very likely pulling more than her weight for the side of humanity.

References

'Tell us What You Think . . . Sexual Habits', *Cleo*, March & April, 1991.

Perkins, R. 1991, *Working Girls*, Australian Studies in Law, Crime & Justice Series, Australian Institute of Criminology, Canberra.

Perkins, R., Lovejoy, F. & Marina 1990, "'Protecting the Community'—Prostitutes and Public Health Legislation in the Age of AIDS", *Criminology Australia*, vol. 2, no. 2, Australian Institute of Criminology, Canberra.

TO WORK OR NOT TO WORK?

Cheryl Overs
Consultant
Scarlet Alliance
Victoria

BY LAST YEAR IT HAD BECOME APPARENT TO THE SCARLET ALLIANCE THAT there was a need for reasoned discussion concerning the fate of people with HIV/AIDS who work in the sex industry. A six-month consultation was initiated which was to result in a document which discusses as many of the issues as is possible. The document is intended to stimulate further discussion and the subsequent development of effective policy.

The consultation consisted mainly of a series of interviews with sex workers, clients, sex business operators and people who provide services to sex workers, and those responsible for formulating relevant policy. This paper is a summary of some of the major themes of that report.

Media coverage of people living with HIV and AIDS who work in the sex industry, both in Australia and other developed countries has rated with the worst, most ill-informed and hysterical reporting of the pandemic. When the discussion is about sex workers with HIV/AIDS many commentators dismiss the idea that people need not fear any person with HIV if they take responsibility for their own health by not participating in activities which might lead to the blood, semen or vaginal fluids of another person entering their blood stream.

The concepts contained in the National HIV/AIDS Strategy concerning each person's responsibility to practise safe sex and injecting practices to protect themselves from HIV are rightly based on the inescapable fact that exclusion of people with HIV from daily life is unnecessary, unjust and unachievable when the mechanisms for preventing transmission are known and available. How do these concepts apply in relation to male, female and transsexual sex workers?

Firstly, we need to address the question, should people with HIV work in the commercial sex industry? If the answer to that question is 'no, they should not work in the sex industry', how should they be identified and excluded from the various legal and illegal sections of the sex industry which exist throughout Australia?

If the answer is 'yes', how is that justifiable against the weight of public opinion on the subject? If the answer is 'only if they work safely', a few questions arise—what is safe sex? How do we know whether safe sex is being practised or not? And where safe sex is not practised, what mechanisms might be used then to exclude a person with HIV from the sex industry?

At the core of the issue of whether people with HIV should work in the sex industry is the question of whether people with HIV should be sexually active at all.

There were two categories of people interviewed in the course of the consultation with the view that people should stop all sexual activity after a positive HIV diagnosis. These were:

- those who do not understand how HIV is transmitted or believe that the real facts about transmission are not known; and

- those who know the facts about transmission but contend that safe sex is not safe enough because it is not 100 per cent safe. On this analysis, anything other than zero risk is unacceptable.

If we regard zero risk as the only acceptable level of risk, life itself is an unacceptable risk. For any discussion of risk to be meaningful it is essential to identify a risk threshold for determining what is acceptable and unacceptable risk and subsequently abandoning, or requiring to be abandoned, an activity as 'too risky'. Acceptable risk is risk that is below a cut-off threshold. To speed on a wet road is above that point; to drive carefully is not. It is still worth driving despite the risk of an accident. In our language and culture the word 'safe' means 'where the risk is low enough to be acceptable'.

So what is safe sex? The chances of transmission of HIV from an infected female to an uninfected male as the result of a condom breaking during vaginal intercourse are minuscule; one in thousands or hundreds of thousands depending on the cofactors which make transmission more or less likely. Oral sex with condoms also presents risks which on any sensible analysis fall well within the category of acceptable risk. Where an HIV-positive person is the active person in anal sex the combined chances of condom breakage and the virus entering the blood stream are clearly higher. Has this act crossed the line into the 'too risky'? Views on this vary. Most male sex workers said they would not provide insertive anal sex as a service if they were HIV-positive, and many said that they regarded passive anal sex as too risky for an HIV-positive sex worker.

The Commonwealth Department of Health, Australian Federation of AIDS Organisation (AFAO) and the Scarlet Alliance all support the idea that barrier precautions do have the capacity to render sex safe. This means that it is reasonable for people with HIV to continue to be sexually active.

Beyond that, the remaining questions are for the individual. It may be that a person is only content to live with the risk level of oral sex or frottage, while others accept the risk of protected anal sex. Subjective decisions about safe sex can be acted on by both HIV-negative and HIV-positive people. Those who regard the risk of a car accident during dry weather with careful, sober driving as too great are clearly free to abstain from driving despite the fact that others believe the risk to be low enough to continue driving. The same applies to sexual acts. It is important that accurate information upon which individuals can base those decisions to be freely available.

Most female sex workers and a large number of male sex workers state that they would not want to continue to work in the sex industry if they tested positive for HIV. Those who would continue to work say they would do so safely. In reality then, the main business of public policy in this area is to support those decisions and to assist in providing the resources which make these options possible and also remove the barriers which prevent people from discontinuing sex work. There is a tendency for this reality to become lost in discussions about the more ethically problematic issues of dealing with difficult cases, particularly in the wake of sensational media coverage of individuals.

If safe sex in its various forms is effective in preventing transmission of HIV at an acceptable rate, is there a difference between the commercial and non-commercial setting? Unfortunately, the media coverage offers unqualified support for making sure that sex workers are prevented from working if they are HIV-positive. However, no arguments

which are soundly based on knowledge of transmission and the epidemiology of HIV are offered in support of this position.

Some of the people the author interviewed saw it as a matter of consumer rights that a customer is entitled to an HIV-negative sex worker for his money. Others said it was not an acceptable risk, in the same way that a person who is epileptic is not suited to being a train driver for example. Interestingly, only two of the thirteen clients of female legal brothels the author interviewed said that they had an expectation that the sex worker they were visiting was necessarily HIV-negative. For them, safe sex removed the need to be concerned about the HIV status of the sex worker. None of these clients had been tested for HIV.

Sex worker advocates and AIDS organisations take the view that there is mutuality in obligations between sexual partners which are not nullified where one partner pays. On this analysis it is both unfair and dangerous to assume that the paying partner is HIV-negative and that the other is to be tested and to proceed only if the test result is negative.

It is folly here to speak of people informing the prospective partner of their HIV status. Apart from the fact that the commercial sexual transaction clearly does not involve the kind of trust required to rely on such a statement, the window period must be considered, and most participants do not know their HIV status anyway.

Another argument for differentiating here between sex workers and other people living with HIV is the idea that sex workers have greater numbers of partners and the risk of safe sex accidents and subsequent transmission is therefore increased proportionately.

The fact that sex workers have more partners is by no means certain. Some non-sex workers certainly have penetrative sex with more partners than some sex workers. For many men and women, sex work is not a regular or even a frequent occupation.

Additionally, there is both documented evidence (Richters & Donovan 1988, pp. 1487-8) and a sustained and pervasive idea in the sex industry that safe sex accidents occur less frequently in commercial sexual transactions than in other settings. There is no reason to believe that sex workers who are HIV-positive will be any less skilled in safe practices. One view is that people with HIV and sex workers are usually safe sex experts and those who are both are even more likely to be extremely good at making sure sex is both pleasurable or profitable and safe.

One reason why there are so few condom breakages and other safe sex accidents in the sex industry may be that sex workers become more adept at using condoms and other forms of safe sex practice. The fact that mutual desire and passion is not present in the commercial transaction may also be an important factor in conjunction with the basic idea that professional conduct applies. Safe practice is built into the structure of many sex workplaces (such as the receptionist informing the client that condom use is required and provision of condoms).

But the most frequently used argument is that sex workers simply cannot be trusted to practise safe sex, especially where they are drug dependent and can command extra money for providing unsafe services. Sex workers consistently say that this is extremely rare. Sexually transmitted disease (STD) rates amongst sex workers, where they are recorded, certainly support that claim.

The role of drug dependency in the spread of HIV is complex and it was noted that several sex workers interviewed objected strongly to the criminal laws which force drug users into circumstances where they are most vulnerable. On the whole, drug services were regarded as punitive and inappropriate. Additionally, it is not productive to aim to reduce the supply of unsafe sex in a market where the suppliers have so little power or control. It is essential that, difficult as it may be, the demand for unsafe sex is reduced. Supply related initiatives are destined to be of limited efficacy where the demand remains the same.

The mood changing substance which has an effect on safe practices in the sex industry is probably the alcohol consumed by clients rather than the drugs consumed by sex workers.

Yet, for all the research papers the author has read about HIV and drug use, an article about the effect of alcohol on client's willingness to use condoms when they visit a sex worker has never been seen.

Another persistent theme of those who advocate the identification and removal of all sex workers who have HIV infection from the sex industry is the idea that sex workers are inherently irresponsible. There is a lack of evidence brought forward in support of some of the public's perceptions about the nature of prostitutes, as it is so widely accepted by some that sex workers hold the value of human life in the same contempt that they are presumed to hold conventional morality. The shameful history of coercive public health measures aimed at controlling infectious diseases show that this assumption has been made and acted upon in relation to all kinds of unpopular minorities.

It is the experience of all but the most biased service providers who work with sex workers that this is not the case. A counsellor commented in the interview that in her experience with female sex workers they are equally or more accepting of the social value that women must look after the health and welfare of men.

In this context, uneven allocation of responsibility for safe sex can take on absurd proportions. One woman who was interviewed expressed outrage that, as a female sex worker who was homeless, drug dependent, HIV-positive and offering safe sex to a well-off businessman, she is expected by society to save him from his own refusal to take responsibility for his health. If she acquiesces to his demand it is she who is condemned. It is interesting to note that this worker added that she had never acquiesced to his requests for unsafe sex because of the likelihood of him infecting other women if he contracted the virus, and the fact that she did not want to add guilt to her existing burdens.

If these arguments against exclusion of all HIV-positive people from the sex industry are rejected, regardless of what services they offer, it is necessary to look at mechanisms which might be used in practice to protect clients and sex workers alike.

Fortunately in Australia, it is not necessary to devote much attention to the kinds of extreme measures which apply in some other jurisdictions, such as tattooing, automatic quarantining and forced, so called, retraining, or electronic tagging. However, attitudes which support these kinds of actions certainly exist in Australia. Police and sex business operators are in many cases keen to participate in identifying and excluding HIV-positive sex workers. The reasons given have little or nothing to do with limiting the transmission of HIV. Rather, brothel operators see it as a good business move and police see it as an opportunity to further control the sex industry.

The most likely approach adopted by these agents in Australia would be to somehow extend the existing mechanism which aims to keep people with HIV and STDs out of the sex industry. This is an ad-hoc system which applies to large numbers of sex workers. Employers collect from sex workers documents which are supplied by doctors. These certificates are intended to identify those sex workers who have HIV or STDs. The certificates sometimes state that the person has attended for tests and sometimes state test results. Although it is not the intention of doctors in most cases to provide a clearance, the certificates are certainly interpreted that way. Sex business operators expect doctors to refuse to supply certificates to sex workers who test positive for HIV or have an STD and many doctors do refuse to issue the certificate if pathogens are detected.

The system has the advantage of attracting some sex workers who might not otherwise access HIV and STD information to services which may be able to provide it. But it has several disadvantages. In the rare event of a sex worker with HIV wishing to continue to work in the sex industry she could go to a doctor who does not include HIV in the testing regime, work in a section of the industry where certificates are not required, or simply borrow a fellow worker's certificate. There is clear potential for the documents to be interpreted by clients as an assurance that the person is HIV-negative and that may in turn

act as a disincentive to carry through safe sex practices ('you're a clean girl who goes to the doctor aren't you, you haven't got AIDS?').

The system does not apply to most male sex workers, many escort workers and street walkers. Most of the workplaces where certificates are collected regularly are those which do not employ transsexuals, injecting drug users and others who are at increased risk.

An idea which is sometimes mooted is that all sex workers should be compulsorily tested and those who test positive for HIV be prevented from working in the sex industry. This idea has a number of problems. It presumes that there is a rational basis for this policy, but there is no epidemiological basis for this argument. Secondly, it presumes that there is a single, legal sex industry and that those who are excluded from it are not able to simply work outside of it.

Of all the jurisdictions in the world in which there is legal sex work and compulsory testing, those sex workers who are most at risk are clustered in illegal sex industries in which the conditions are the least conducive to safe sex practices (Overs 1988).

If it is accepted, as has been argued, that it is unrealistic as well as unwarranted to exclude all people with HIV/AIDS from the sex industry, it is possible to allocate resources and to focus policy on ensuring that transmission of HIV in commercial sex industries is minimised. This has to be achieved primarily through education of clients.

Hard Cases

Where sex workers who are HIV-positive have sex without protection and in ways which put others at involuntary risk, they may be subject to legal procedures which apply to all people with HIV/AIDS. In such cases, where the client has paid extra to take the risk and to put the sex worker at risk, the failure of the presumed victim to take responsibility for his health and the health of others is most clearly and irrefutably expressed. Not only has he consented to risk, he has paid extra to be exposed to that risk!

Certainly once the focus is changed from all sex workers to those who have put others at risk, some of the ethical and practical issues discussed previously in relation to excluding all people with HIV are removed.

A new question which arises then is, is it necessary to treat a sex worker who knows their status and puts others at risk any differently to others who do the same thing in a setting which is not commercial? Most people interviewed thought not, because they thought that knowingly putting others at risk was unacceptable in all settings.

Currently in Australia there are a range of laws which might be used where a person who knows they are HIV-positive behaves in a way which places others at risk. Some are found in old health legislation which is difficult to apply to regulating the spread of a contagion with the characteristics of HIV. Others are modern provisions which place emphasis on education and personal responsibility for protecting oneself by safe practices regardless of the status of the person with whom potentially risky contact is being made.

In those states where there is modern legal provision for the detention of people with HIV/AIDS who knowingly put others at risk, the intention has been to integrate those principles with the commonsense notion that we cannot, as a society, allow anyone with a probably fatal contagion to behave in a way which is likely to lead to others becoming infected. This is despite the fact that transmission can only occur where the HIV-negative person consents to the circumstances which may lead to him becoming HIV-positive.

A process to deal with all HIV-positive people who behave in ways which might lead to others being infected has been developed and is in place in at least three states. A broad description of the process is that it is a staged, case management process which aims to redress the situation before the final step of incarceration is invoked. The case management

is done by a small committee with relevant expertise and which includes an advocate from the person's peer group.

This approach consists of:

- identifying clearly that the alleged behaviour has taken place and is likely to continue;
- identifying the reasons or cause of the behaviour and putting into place strategies which might lead to the person behaving safely;
- issuing formal instructions to the person that they are not to engage in practices which put others at risk;
- if the behaviour persists, restriction of movement and/or activities, and if that fails, detention or isolation.

Amongst most people interviewed in this project there was widespread consensus that the guiding principles and basic approach of the process is sound. A number of concerns exist regarding the way in which the process will apply in practice. In some cases problems such as a lack of certainty that the guidelines will be used at all (there is no legal obligation on states to do so) and the lack of an appeal mechanism exist. There is a fear among sex workers' organisations that it will be applied unfairly to sex workers for political reasons. A fear which has been borne out in the recent past.

In Australia we are fortunate that resource intensive, individual case management is possible because small numbers of people will be involved in this process. It is this ability to case manage which sets Australia apart from many other developed countries, and certainly from developing countries, in our ability to respond appropriately to those few people with HIV who participate in high-risk activities.

No matter how well-intentioned and well thought out these procedures are, the fact is that they cannot operate in an atmosphere of fear, ignorance and hysteria. This was the case recently in Victoria where police charged a woman with recklessly endangering life, in the absence of any claim or admission that she had provided sexual services in which there was a risk of HIV transmission. The police claimed this was a commonsense approach taken in the absence of any applicable health department policy. The police statements were blatantly incorrect. Police had been involved in drafting the procedures which they later claimed did not exist.

It is probably not possible to change the widespread belief amongst police that all people with HIV should be removed from the sex industry. But it is essential to change their belief that they, together with the criminal justice system within which they operate, are the appropriate mechanisms for achieving that goal.

It is unacceptable and counter-productive for appropriate case management to be sidestepped by police who have neither the brief nor the knowledge and skills to make and implement public health policy.

Alternatives to Sex Work

Finally, to the question of what kinds of support and incentives can be provided for those HIV-positive sex workers who wish to leave the sex industry or are compelled to, because they have been found, hopefully by an informed and just process, to be unable or unwilling to work safely.

One strategy which is often mooted for ensuring that sex workers with HIV do not work is to provide them with income alternatives, prioritised access to support services such as counselling, housing and drug substitution and income replacement. Retraining for other occupations is a popular thought, but not one which a single HIV-positive sex worker in the consultation was prepared to take seriously in the current economic climate and in view of their perceptions of life expectancies for people living with HIV/AIDS.

A fundamental problem exists in relation to prioritising resources to all HIV-positive sex workers. It is unfair and discriminatory to allocate resources which other people living with HIV/AIDS or indeed other sex workers might have greater claim on, in an experimental attempt to alleviate some imagined, possible risk to people who wish to flaunt the AIDS prevention messages to which they have been exposed. It is impossible to imagine an effective strategy for removing sex workers who have put no-one at risk and see no reason why he or she should stop working in the sex industry. High priority services in this context are almost sure to degenerate into the state bribing selected people not to work in the sex industry. Sex workers in that situation can rely on the assistance of the 'gutter press' to sensationalise any angle of the story they wish to supply in the course of gaining more and more benefits. Who would not? Avoiding this scenario has become a feature of the life of health ministers and their damage control officers throughout Australia!

Unless it is against a background of clear directives—with sanctions applying if there are breaches—resource intensive case management can be justified only to the extent that it is actually effective in preventing the subjects from working. In Western Australia there was an outcry at the idea that a small amount of funds had been used in the case management of HIV-positive sex workers and an even greater outcry when it was suggested that one or some of the recipients had worked again. Again, many of the problems do not apply if prioritised access to services occurs only within the framework of the intensive and directive case management which applies to all people with HIV who KNOWINGLY put others at risk.

There is a wide variety of ways in which counselling and other support services might interact to bring about better circumstances for sex workers who are HIV-positive and who cannot maintain safe behaviours. It is only in the concentrated and coordinated context of this kind of case management that it would be possible to ensure that the changing needs of individuals who are being managed are met effectively.

To summarise the answer to the question 'should people with HIV work in the sex industry?', the answer is yes. There is no reason why any person with HIV should not have safe sexual activity. Those who do not have safe sex should be dealt with through the legal procedures which are currently being put in place throughout Australia for all people who knowingly or recklessly expose others to infection. Perhaps the greatest threat to the maintenance of a sex industry in which safe practices are universal is the possibility of the introduction of misguided law and policy.

It is neither necessary nor possible to identify and stop HIV-positive people selling sexual services. Attempts to do so are likely not only to fail in their objective of reducing HIV transmission, but may impact negatively on well-planned management of individuals at particular risk and on client willingness to be responsible for his, and his family's, health.

Intelligent, effective management in the face of ignorance and hysteria is at the core of the challenge presented by the HIV/AIDS pandemic in developed countries. Of all countries, Australia should be able to deal with the issues of seropositive sex workers in a more reasoned and effective manner than that invoked by the ill-informed media portrayal of sex workers as AIDS vampires striking out at silly, but basically innocent clients. Australia has a low incidence of HIV; well-developed health and welfare infrastructure; liberalised (if not ideal) laws governing the sex industry in some states and a network of the most well-developed sex-worker organisations which exist anywhere. These are the tools with which the challenge can be met.

References

Overs, C. 1988, 'Changing Legal and Administrative Responses to Sex Work', Paper presented at Sex Industry and AIDS Debate Conference, Prostitutes Collective of Victoria, Melbourne.

Richters, J. & Donovan, B. 1988, 'Low Condom Breakage Rate in Commercial Sex', *The Lancet*, vol. 2, 24-31 December, pp. 1487-8.

LEGAL REGULATION OF PROSTITUTION: WHAT OR WHO IS BEING CONTROLLED?

Dr Linda Hancock
Faculty of Social Sciences
Deakin University
Victoria

MUCH OF THE LAW ON PROSTITUTION IS DERIVED THROUGH INDIRECT attempts to regulate or control prostitution through either invoking old laws or through gaps in laws. In New South Wales, the invocation of the *Disorderly Houses Act 1942* to prosecute illegal brothels illustrates the use of outdated laws and reflects the frustration of law enforcers rather than the application of laws which reflect the changes in community attitudes to prostitution in the 1980s and 1990s. State inconsistencies and gaps in prostitution-related legislation expose the fact that the same behaviour might be permissible in one state but proscribed in another.

Against the backdrop of the legacy of English laws on prostitution, this paper looks at how prostitution laws in Australia presently stand and considers patterns of law enforcement and non-enforcement. It then focuses on who or what is being controlled by prostitution legislation and law enforcement and concludes with an appraisal of the present situation in Victoria.

The Legacy of English Laws

The history of legal regulation of prostitution in the United Kingdom and Australia is one of state intervention; which in Australia, dates from attempts to curb prostitution under public nuisance provisions in the early colonies of the 1850s and efforts to introduce the English Contagious Diseases Acts into some Australian states in the 1870s and 1880s.

From about 1910, all Australian states introduced criminal laws on prostitution, whereby the act of prostitution itself is not an offence, but certain prostitution-related activities are. These laws were based on English laws on soliciting, prohibiting under-aged persons on premises used for prostitution, brothel keeping and leasing accommodation to prostitutes.

The legacy of English law bequeathed four notable aspects to Australian laws on prostitution. First was the emphasis on control of prostitution under the guise of public

nuisance controls or the prevention of annoyance. Under the Town Police Clauses Act 1847, it was an 'offence for a prostitute to solicit or importune in a public place for the purpose of prostitution'; and after the Street Offences Act 1959, it was assumed that the presence of prostitution in public places 'was likely to cause annoyance even though no particular person was annoyed' (Great Britain 1984, paragraphs 5 & 6).

Secondly, the pejorative term 'common prostitute'—which applies only to women—first appeared in the English Vagrancy Act 1822 and was legislated into Australian laws on prostitution. The implication being that police could side-step certain formalities in the arrest of common prostitutes.

Thirdly, the Contagious Diseases Acts 1864, 1866 and 1869 entrenched the view that women working as prostitutes—not their clients—were the purveyors of contagious diseases. These Acts bestowed coercive powers on state agents to control women suspected of having venereal disease. The 1864 and 1866 Acts were designed to prevent the spread of contagious diseases to Naval and Military stations and gave Justices of the Peace, inspectors, magistrates and medical practitioners power to apprehend and forcibly detain women suspected of carrying venereal disease upon threat of imprisonment (Moscucci 1990, p. 123).

Fourthly, the systematic application of the law and law enforcement has been to penalise prostitute women and not their clients. It was only in 1985 with the Sexual Offences Act, that English law made it an offence for a man to solicit a woman from or near a motor vehicle, but it excluded male pedestrians seeking prostitutes. Even then, a different level of proof applies to clients. 'Persistence or causing fear' is required to prove charges against male clients for soliciting but is not required to convict a woman of loitering for the purpose of prostitution (Sexual Offences Act 1985 (Eng.), Section 21(1)).

Australian laws, however, have permitted the prosecution of clients as well as prostitutes, but the focus of law enforcement has been overwhelmingly against prostitutes.

Australian Laws on Prostitution

For seventy years, it was vagrancy laws, contagious diseases legislation and criminal laws that regulated prostitution in Australia. More recently, in the 1980s, other legal regulation has been added; in the form of planning law (including town planning permits for brothels, licensing for brothel operators and licensing of individual sex workers); health regulations, particularly regarding AIDS and sexually transmitted diseases (STDs); and prostitution related provisions in force under liquor, health and local government legislation.

As the law stands in 1991, New South Wales and Victoria are the two states to have attempted to reform laws regulating prostitution. Western Australia and Queensland are both reviewing their laws and the Northern Territory has a new Act before Parliament. However, at present, Queensland, Western Australia, South Australia and Tasmania penalise most aspects of prostitution. (Although in practice, the Western Australian police policy of 'toleration and containment' maintains a police-controlled de facto licensing of sex industry workers and 'approved' brothels.) Notably, it is not an offence for workers to work from their own premises in Queensland, Western Australia and Tasmania and no states have legislation prohibiting the operation of escort agencies.

Irrespective of reform efforts, different Australian states are consistent in their efforts to control more visible forms of prostitution and, in particular, street prostitution. New South Wales is the only state to attempt some form of decriminalisation here with the *Prostitution Act 1979* (Section 5) which repealed laws relating to soliciting and loitering for the purposes of prostitution, unless behaviour caused serious alarm or affront. Showing the power of the resident lobby, these reforms were overshadowed by the re-introduction of criminal penalties for street prostitution, and further restrictions on street prostitution in amendments

in 1983, 1988 and 1989; in the attempt to confine prostitutes to brothels or escort agencies and keep them off the streets. Further complaints by inner city residents have resulted in increased arrests, higher mandatory penalties and use of the Bail Act to stop women convicted of prostitution from working in the same area (Hatty 1989).

Brothels have been outlawed but police-controlled in Western Australia (quasi-legally under the police policy of 'toleration and control') and Queensland (illegally under police protection as established by the Fitzgerald Inquiry). In New South Wales, the declaration of premises as a 'disorderly house' permits prosecution of owners and occupiers for using the premises for prostitution, whereas in Victoria, brothels with a valid town planning permit may operate without penalty. However, illegal brothels—which are on the increase—come under different legislation which requires a different and according to police, a more difficult burden of proof.

At the most discreet end of the industry, escorts are not illegal and no state has laws which penalise escort agencies—although managers or drivers taking a cut of takings can be prosecuted under 'living on earnings'.

In terms of law enforcement, three main conclusions may be drawn. Laws are enforced overwhelmingly against prostitutes rather than clients; against street prostitutes rather than those who profit from prostitution or those who work in licensed brothels or escort agencies; and against females working as prostitutes rather than males. For example, in Victoria, prosecutions for keeping a brothel constituted 3 per cent in 1983 and 1 per cent in 1984 of persons proceeded against for prostitution related offences and from 1980 to 1984 only three people were prosecuted for procuring (Victoria 1985, p. 132).

It is also important to look at non-enforcement of laws against rape and violence and the reported lack of police response when a criminal offence has been committed against a sex industry worker. Criminalising certain forms of prostitution work has the direct consequence of lack of protection for sex industry workers from violence, robbery and intimidation for those working illegally. Studies such as Hatty's (1989) suggest that violence against sex industry workers is both frequent and on the increase.

The English writer, Susan Edwards (1987, p. 56), observed that prostitutes in England are 'controlled, exploited, intimidated and assaulted beyond the reach of the law'. The negative stereotype of women working as prostitutes compounds their difficulty in establishing their right to fair treatment under the law. Invoking the shadow of the 19th Century Contagious Diseases Acts, there have been moves to invoke the criminal law to forcibly detain sex industry workers who are HIV-positive and still working.

Who or What is Being Controlled by Prostitution Legislation and its Enforcement?

Is it public nuisance? Is it to control the spread of AIDS and STDs? Is it to prevent police corruption and organised crime? Are there other symbolic implications?

To address these questions, it is necessary to analyse the broader issue of interests and values embedded in prostitution legislation and law enforcement.

A public nuisance?

Law enforcement patterns illustrate the considerable discretionary power vested in police and the selective application of the criminal law; against women rather than men, against those working as prostitutes rather than clients, and against particular prostitution workers.

The focus on particular women and on the most visible or autonomous forms of prostitution should alert us to the fact that policing of prostitution means more than the control of 'public nuisance'. The nuisance is shifted around rather than eradicated. If public nuisance was the main issue, then policing would not be selective but would be unilateral. If

public nuisance was the issue, there would be little opposition to the notion of one or two women working discretely from their own premises—as was the case with the rejection of the Neave Inquiry recommendation in Victoria and with recent moves by a Perth council to request registration of owner-occupier businesses in its area with a view to placing restrictions on some uses (namely prostitution).

Prevention of AIDS and sexually transmitted diseases?

This has become a major focus of attention in recent times with some states proposing compulsory health checks for sex industry workers. The need for an education program on safe sex for sex industry workers in the late 1980s led to government funding of the Prostitute's Collective. Because sex work is their livelihood and because they realise the threat of AIDS, sex workers show an exemplary record in terms of AIDS prevention in current Health Department statistics. In view of the difficulty of reaching clients through an educational program—since clients are anonymous and come from every stratum of society—sex workers play a major role in educating clients about safe sex. Given these factors, it would be hard to justify further regulation of workers under the pretext of AIDS prevention.

Prevention of public nuisance and prevention of AIDS and STDs represent major formal justifications for the focus of state policy, resources and control of the industry and an unwarranted focus on prostitute workers rather than clients or those who serve to gain from prostitution. In comparison, other areas show a lack of state resources, a lack of monitoring and a lack of investigation by law enforcement bodies.

Prevention of police corruption and organised crime?

There is a frequent saying in the industry: 'You cannot have sex and money without violence and corruption'. This was born out by the Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, chaired by Mr Tony Fitzgerald (Queensland 1989), which confirmed the involvement of drug distributors in Brisbane's parlours; links between parlour operators and officers of the Queensland Police Department Licensing Branch which were common knowledge to senior police; payments in money, sexual favours and goods by parlour and escort agency operators to police; and unequal enforcement of the law against industry operators who were out of favour (1989).

Does the absence of such inquiries in other states imply that Queensland is the exception? These are areas where there is minimal public investigation, minimal use of criminal sanctions and inadequate monitoring.

Why then the preoccupation with regulating and controlling sex industry workers? Women workers, in particular, and gay men become an easily identifiable target for law enforcement. The symbolic value of such control is that laws on prostitution become a means of controlling women's sexuality and women's autonomous work, whilst at the same time, the industry is shaped by the prevailing conceptions of men's sexual needs and the continuing control of the industry by men. Even in Western Australia (where it is claimed that the industry is all-female with police insistence that brothel managers and workers are women) under the policy of 'toleration and control', the Vice Squad—who register all workers and impose conditions of operation on brothel managers—are predominantly men and the owners or company directors of some brothel premises are men. Furthermore, the state's stance on the inevitability of prostitution has implications for consolidating dual standards of morality for men and women, the objectification of women and reinforcing a masculine ideology of women's sexuality. Drawing on Mackinnon, the state institutionalises male power through the law: she says the state 'treats women the way men see and treat women' (Mackinnon 1983, p. 644).

The Victorian Situation

The Neave Inquiry (Victoria 1985) recommendations entailed a package of trade-offs; decriminalisation of criminal law with the recommendation that one or two workers be permitted to work from their own premises; the use of planning law to regulate the location of premises; a Licensing Board to regulate the industry and vet brothel owners for criminal convictions; and health regulations to control AIDS and STDs.

As a consequence of radical amendments made to the Bill in the Upper House, much of the *Prostitution Regulation Act 1986* was not proclaimed. The basic outcomes in May 1991 are that the government would not accept the proposal that one or two workers be permitted to work from their own premises. Thus, street work is still criminalised and bears the brunt of discretionary law enforcement. Amongst the sixty or so licensed brothels, we have seen the growth of large brothels—some owners with multiple shares, inadequate attention to issues of ownership and control of brothels, and neglect of worker safety and employment conditions. The Licensing Board was not set-up, reputedly because if this section of the Act was proclaimed then independent workers would be compelled to register. The devolution of planning-related issues to local government has not worked, and councils' repeated refusals of planning permit applications has resulted in the Administrative Appeals Tribunal state planning mechanism for brothel applications becoming a defacto. Given the reputed difficulties of proving the offence of illegally running a brothel, illegal brothels have increased, with police estimates at around 150 to 200 illegal brothels in the Melbourne metropolitan area.

On health issues, action has been slow to say the least. The Act was proclaimed in 1987, the Health Regulations came out in May 1990 and to May 1991, guidelines for interpreting these regulations were still being developed. There also appears to be an extreme lack of coordination between the authorities charged with enforcing health regulations—the local government environmental health officers and health department officials. Within the Health Department, officers with the task of enforcing the regulations are under-resourced and reticent to enforce regulations. (Health standards on condom use, clean towels, shower and toilet facilities and so on are the obvious casualties here).

For sex industry workers, the new legislation and continued focus of law enforcement on street workers has forced them into more hidden and dangerous sectors of the industry. Inaction on the Neave Inquiry recommendation for a special police unit to deal with workers' complaints of violence has left sex industry workers vulnerable to sexual exploitation and violence. Worker representatives claim that work conditions in some brothels exploit workers (such as expecting unpaid socialising with clients) and contravene workers' civil liberties. The Government's Interdepartmental Monitoring Committee on Prostitution has not met for twelve months. Enforcement of prostitution-related laws and regulations in Victoria show a dismal lack of coordination and a breakdown of any inspectorial system; and local government resistance to brothels has rendered the Australian Administrative Tribunal a defacto state-wide planning board.

The Future

The area of prostitution law reform is epitomised by ignorance, fear and lack of communication. Prostitution is a difficult area to regulate, since it spans a multitude of state bureaucracies and because prostitution has such symbolic significance.

In Victoria, there will be regulation of prostitution, but the mechanisms and the implications are less clear. Given local governments' antipathy to allowing prostitution under planning guidelines, and because prostitution activities are often concentrated in some local government areas rather than others, it appears that a model of decriminalisation with a

state-wide Licensing Board would be more appropriate than devolving planning issues to local government. Such a Board could combine representation from planning, health, sex industry worker, employment and training, police and brothel-owner sections of the industry, and could combine tasks of investigation, education, monitoring worker health and safety and other work conditions, enforcement of health regulations and could become a mechanism for dealing with complaints.

Additionally this Board could adopt principles of minimising the spread of AIDS and STDs, of ensuring workers are accorded dignity, rights and protection in their work, and ensuring the minimisation of corruption and exploitation.

In the long term, however, we need to look more closely at gender, power and sexuality within western industrialised society. Two issues in particular need to be addressed: men's demand for prostitution and the inherent vulnerability of women when their power rests on their attractiveness or appeal to men.

References

Edwards, S. 1987, 'Prostitutes: Victim of Law, Social Policy and Organised Crime', in *Gender, Crime and Justice*, eds P. Carlen & A. Worrall, Milton Keynes, Open University Press.

Great Britain. Criminal Law Revision Committee 1984, *Prostitution in the Street*, 16th Report, Cmnd. 9329, HMSO, London.

Hatty, S. 1989, 'Violence Against Prostitute Women: Social and Legal Dilemmas', *Australian Journal of Social Issues*, vol. 24, no. 4, November.

Mackinnon, K. 1983, 'Feminism, Marxism, Method and the State: towards a Feminist Jurisprudence', *Signs*, vol. 8, no. 3.

Moscucci, O. 1990, *The Science of Woman: Gynaecology and Gender in England, 1800-1929*, Cambridge University Press, Cambridge.

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

Victoria. Inquiry into Prostitution 1985, *Inquiry into Prostitution: Final Report*, [the Neave Report], Government Printer, Melbourne.

Postscript

In August 1992, the Victorian Police Minister, Mr Mal Sandon, set up a working party to consider whether further sections of the *Prostitution Regulation Act 1986* should be proclaimed in order to better control the legal and illegal prostitution industry.

SEX WORK AND REGULATION: HOLDING ON TO AN IMAGE—A SOCIOLOGICAL REFLECTION

Grazyna Zajdow
School of Social Inquiry
Deakin University, Rusden Campus
Victoria

THIS PAPER DOES NOT ATTEMPT TO INDICATE PREFERRED OR MORALLY CORRECT forms of regulation. As a sociologist, it is hard to be prescriptive. What is intended by this paper is to define the meaning and outcome of social control policies and the assumptions behind them. The constant emphasis on sex work as problematic, and existing apart from the society which defines it as such, serves to hide the meaning which sex work has always had for this society. Moral judgments are implicit in all discussions of prostitution which do not exist for other forms of work (even other forms of deviant work). There are very few conferences based around 'theft and social policy' or 'the production of toxic chemicals and social policy'. Sex work—and specifically female prostitution—holds us in thrall as do few other things. It is constructed as a problem, and new examples of old problems are demanding our attention again.

This problem can be defined as follows. With the coming of AIDS, the identification of 'high-risk' groups and strategies for the prevention of the spread of the infection has again spotlighted those involved in the sex industry. Specifically, prostitutes (who are overwhelmingly female) are being targeted because of their sexual activities. The three groups being stigmatised currently are homosexuals, injecting drug-users and prostitutes. The popular imagination assumes them to be interrelated and equally to 'blame' for the spread of the disease. This vision is important to understand if we are to legislate practically, rather than fearfully.

In view of the fact that historically, prostitutes have been seen as the spreaders of sexually transmitted diseases (STDs), those in power have rarely analysed the veracity of these claims or their justice. Calls for regulation on the grounds of public health are being heard, and assumptions about the nature and meaning of prostitution are being made. The legal structure is predominantly male in membership and outlook which is reflected in the laws on prostitution.

> Laws which determine the circumstances in which prostitutes (mainly women) provide sexual services to clients (mainly men) reflect the overwhelming

> dominance of a masculine ideology of women's sexuality, in which the exciting but wicked stereotype of the whore is counterposed to that of the wife and mother (Neave 1988, p. 203).

Prostitutes are expected to be female and the laws are so framed. This is also reflected in the study of sex work which has concentrated on female workers. There is much to be done to understand the nature of male sex work.

Marcia Neave (1988) states that, rather than affecting the extent or even existence of prostitution, the law shapes the form in which it is pursued. However, in an increasingly bureaucratic society, the state may use means other than the legal system to control and regulate the activities of individuals and groups. It is not unreasonable to assume that the medical system is implicated in this control. The call for compulsory testing of deviant groups for HIV status against evidence of its impracticality and even uselessness is an example of the health and legal systems being intertwined parts of the social control apparatus. Sociologists such as Max Weber clearly saw the expansion of rationalist bureaucracies as part of the state's arsenal of control, and Foucault (1981) cogently analysed the prevailing debate around the control of sexuality in the 19th century, which included the newly emerging medical and welfare professionals. For a clearer understanding of the debate, some historical analysis seems to be in order.

To paraphrase Simone De Beauvoir (1972), prostitution has followed humanity from antiquity to the present day: so have many other phenomena which have not created such emotional and even vitriolic responses. To understand why this is so, it is worthwhile studying the 'image' of the prostitute in our society so that we can go some way to explaining the paradox, which is evidently her lot in this life, and the inappropriate legal responses to the issue which are based on inaccurate imagery.

Feminist (and even many non-feminist) writers about prostitution have linked prostitution to the situation of women in a given society—specifically to marriage and 'woman's place'. De Beauvoir (1972) suggests that, while the situation between the wife and the prostitute is comparable, the difference is profound. The difference lies in the fact that although both barter sexual favours for their existence, the wife is respected as a human being despite being oppressed, while the prostitute sums up all the forms of female slavery without the ability to 'check the opposition'.

> The prostitute is a scapegoat; man vents his turpitude upon her and he rejects her. Whether she is put legally under police supervision or works illegally in secret, she is in any case treated as a pariah (De Beauvoir 1972, p. 569).

While there is no evidence that prostitution has existed in every historical period across all cultures, the history of western culture gives prostitution a long lineage. However, even in western cultures, the meaning of prostitution has changed over time.

In ancient Greece, prostitution took many forms. There existed *dicteriads* who were similar to prostitutes as we know them; *auletrids* who were dancers and flute players; and the *hetairae*, the most literate and cultured women of ancient Greece who were free to dispose of their own wealth and were the lovers of influential men. Considering that 'respectable' wives were in virtual bondage to their husbands, prostitution in its various forms was not necessarily the worst of all possible fates (De Beauvoir 1972). Some writers on the history of prostitution have found it almost impossible to separate the commercial proposition (which is prostitution) from non-monogamous sex practised by women. Western society has had a tradition of sex for money stretching from ancient times to the present day. However, some societies, such as native American societies, had various traditions which were interpreted as prostitution by European writers only because the 'loose' woman and

the prostitute were one and the same thing in their world views (cf. Henriques 1963). The view of European men towards Koori women was very similar.

Foucault (1981) disputes the accepted notion that Victorian society repressed sexuality by dismissing its existence. Rather, the control over sexuality took the form of a 'discourse', or language of naming the evil. For him, power lies in the ability to control the 'discourse' and therefore the language. Each intimate aspect of sexuality was dissected and discussed by the new power brokers in bourgeois society. These new power brokers were the rising medical specialists who defined 'normal' sexual behaviour in the language of science. Psychiatry, sexology and criminal justice were the sites of power, and political power lay in the ability of the middle-classes to align themselves with these new sites. The trick in delineating sexuality was to define its 'normal' and 'abnormal' limits to the utmost. Everyone was to know these limits. Victorian society was not a silent society; like the medieval confessors, it wanted to know the intimate detail of all its citizens.

The 19th century Victorian prostitute became the centre of one of these new sites of power. She became synonymous with filth and degradation at a time when the cities appeared to be deluged with the results of the industrial revolution. She became the symbol of both class and gender politics. The unwashed poor were flocking to cities that were falling apart with disease, while the middle-class was desperately trying to lock its women into the home to keep them safe with the children.

> The prostitute was defined primarily in terms of her difference from the feminine ideal, and, as a system, prostitution was seen as a negation of the respectable system of marriage and procreation (Nead 1988, p. 99).

The image of the 'fallen woman' was necessary at this time, according to Nead, to assist in establishing the moral authority of the newly emerging medical profession which began to dominate the debate. She (the prostitute) then became a fallen woman–pathetic and out of control.

The prevailing view of the world was of the need for strong control to stop it falling into social chaos. This chaos was the result of industrialisation and rapid urbanisation which brought with it disease. The language of the rising health professions took over as the new morality; filth and infection were the new evils to be combated. Public health debates were concerned with the fear of miasma—a silent and festering emanation which crossed all boundaries of class and could infect even respectable society. The prostitute may have spread venereal disease through contagion but her moral evil lay in the way she threatened respectability with 'miasma'. She then needed to be contained and regulated.

Images of prostitution were everywhere in Victorian England. The linking of prostitution with decay and disease was part of a very public debate.

> Public health became an issue chained to political upheaval. Disease and political sedition were not regarded as discrete problems; both were seen as the inevitable outcome of dirty and unhygienic living and working conditions (Nead 1988, p. 118).

The prostitute was prominent in this philosophy. Graphic images of fallen and destitute women were part of the popular literature and the new professionals wrote many scholarly articles on the topic. Nead writes of the linking of prostitution, sewerage and garbage in the popular imagination.

> The language of the 1859 publications on prostitution was vivid and obsessive and the same images of disease were invoked again and again (Nead 1988, p. 121).

The current obsession with sex workers and their involvement with the transmission of the HIV virus is relevant in this context. Again, disease is the excuse for a moral war against workers in the sex industry and, again, it is a disease which has no immediate cure and can be blamed on marginal groups. Only this time the imagery takes a multimedia form.

In the USA where the Social Hygiene Association was much more powerful with its eugenic policies in a multi-racial state, the suppression of prostitution took on a different form. The Social Hygiene Association worked with the US military to promote celibacy outside of marriage and so tried to rid military bases of prostitution, rather than institutionalise military prostitution, which was the method preferred by the European and British authorities. The US military was given the ability to arrest, detain and incarcerate women suspected of prostitution around training camps. By 1919, 30,000 women had been incarcerated in thirty states (Daly 1988, p. 196). However, the spread of STDs was not contained by this action.

In Australian history the occupation of prostitute was one of the very few means of economic support for women from the beginnings of white settlement. Not even marriage was seen as a viable option for many women because of the itinerant nature of the male population (Allen 1984). Notwithstanding the obviously practical nature of prostitution for women at the time, the prevailing view of the prostitute was the classic Victorian image: she was the fallen woman and a danger to others. State control did not come into the picture until the middle of the 19th century when a growing middle-class demanded the cleaning up of areas which prostitutes traversed. Police became actively involved in restricting the trade to certain areas of a city. As in the UK and the USA, state intervention was used to control all women and the growing urban working class. Fear of infection, both in a public health and moral sense, fuelled the intervention. This fear exists to the present day. Marcia Neave comments that there was a number of submissions to the Inquiry into Prostitution in Victoria in which it was claimed that without legal sanction, respectable women would be drawn into prostitution (Neave 1988). As in the 19th century, this moral fear cannot be easily separated from the fear of disease which sex workers are supposed to spread.

The term 'prostitute' is an historical construction which works to define and categorise a particular group of women in terms of sex and class:

> The prostitute was understood in terms of respectable femininity: if the feminine ideal stood for normal, acceptable sexuality, then the prostitute represented deviant, dangerous and illicit sex (Nead 1988, pp. 94-5).

No discussion which has prostitution as its central theme can avoid this definition of female sexuality by male demands. As Neave (1988) notes, the person who accepts the inevitability of prostitution assumes an immutable male sexuality and female subordination to it. The current discourse of HIV infection and the promiscuous prostitute who helps spread it is no different. There is little recourse to known facts in the debate, but rather assumptions about the links between prostitution and disease. These are historically embedded in our consciousness and can claim direct descent from the initial Contagious Diseases Acts of the mid-19th century, through the World War I venereal disease epidemics, and the explosion of penicillin-resistant strains of gonorrhoea after the Vietnam War. (Filipino women are currently the scapegoats for the source of penicillin-resistant strains of gonorrhoea when the original and continuing source is US servicemen [Tan et al. 1989]).

The fear of the explosion of the AIDS crisis into the western heterosexual population centres again on the promiscuous, deviant woman. The principle carriers (male) define the problem as needing a solution among prostitutes (female) rather than their clients (male). Women, once again, must be regulated, albeit by health rather than criminal legislation, to save the population.

Epidemics of particularly dreaded illnesses always provoke an outcry against leniency or tolerance—now identified as laxity, weakness, disorder, corruption and unhealthiness. Demands are made to subject people to 'tests', to isolate the ill and those suspected of being ill or of transmitting illness, and to erect barriers against the real or imaginary contamination of foreigners (Sontag 1989, p. 80).

In Australia there has been no serious attempt—outside of the groups directly involved with prostitution—to alter the way society deals with the problems associated with sex work. There has still been no serious effort by Australian authorities to use the Swedish model, which relies on giving women in the sex industry real, practical options for other types of employment. The fear of infection in a physical and moral sense still pervades this society. There has been a shift, however, from the criminal justice system to that of health and welfare. The debate is seen as more benign by some authorities, but as the situation in Victoria has demonstrated, town planning controls can be just as negative in stigmatising sex workers as the police ever were. In suggesting any form of mandatory testing for HIV status of sex workers, the health authorities can also be substituted for the police as well. Gagnon puts this well when he writes:

> Immediately after the onset of the epidemic (in the USA) there was a hue and cry about the dangers of transmission of HIV from women who gave sex for pay, and in a number of jurisdictions there were implementations of the police power to test for HIV seropositivity or to otherwise constrain sex for pay, constraints imposed entirely on women. The initiatives were taken without any evidence at all to support them and in some cases the AIDS epidemic appeared to be used as an opportunity to impose moral values under the guise of disease control (Gagnon 1989, p. 61).

Without understanding prostitution in a social context and giving it a sociological definition, the moral and practical elements will never be adequately separated.

The sociological study of sex work has traditionally been locked into that section of the discipline called 'deviance' which deals with outsider groups and their place in society. A certain logic tells us that this is a legitimate place for the sex worker because she is a 'deviant'—a member of a group spurned by mainstream society and made to feel dirty and immoral. On the other hand, the study of deviance in the sociological literature has succeeded in cordoning off the prostitute; making the prostitute an exotic and 'different' type of woman who can be identified easily and quarantined. As the case of the resistance to the Contagious Diseases Acts proved, there is no way of distinguishing the professional from the amateur, the prostitute from the non-prostitute. Herein lies the difficulty, too, with the intention of enforcing compulsory health checks on female sex workers—how does a society tell a working woman from others without locking her up or indelibly painting the colour red on her face?

It is by the process of 'stigmatisation' or the naming and identifying of 'outsider' groups that society tries to separate and distinguish them from the 'normals'. Social control and the maintenance of social order are inherent in any discussion of changes to the structure of sex work.

> Social control includes all social measures which involve the management, containment, punishment, repression, direction or redirection of individuals and groups who are perceived to constitute a threat or problem for society (Edwards 1988, p. 65).

Social control here means not just the traditional law enforcement agencies but also the medical, health and public welfare agencies. All these structures have the ability to enforce negative labels and stigmatise individuals and groups according to some predetermined

moral position. Deviance is not an inherent or intrinsic property of a person, but it is the way in which an act is viewed by particular groups in society who have the power to make their moral world view predominate.

> . . . deviance is created by society. I do not mean this in the way that is ordinarily understood, in which the causes of deviance are located in the situation of the deviant or in 'social factors' which prompt his action. I mean, rather, that groups create deviance by making the rules whose infraction constitutes deviance and by applying those rules to particular persons and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom the label has successfully been applied; deviant behaviour is behaviour so labelled (Becker 1963, p. 9).

As Carol Smart (1976) has remarked, prostitution has traditionally been viewed as a female vocation and the laws surrounding it have reflected this. In the USA, the group which has traditionally been arrested on solicitation grounds is women, but when this was seen as discriminatory in terms of constitutional rights, male rates for solicitation rose dramatically (Symanski 1981). However, this is only a hiccup in the apparatus.

The current attack on sex workers and their relationship to HIV infection is gender-biased. There is a problem with definition because it is assumed that prostitutes are female. This means that society generally takes little note of male prostitutes, and their relationship to the spread of HIV is not well understood. The figures on seropositivity among sex workers bear this out. They refer to women, rather than men. The labelling and stigmatising of sex workers is structured on sexist lines, and power relations between women and the legal and medical systems control the stigmatisation process. Below are some examples of studies in the area of sex work and how they manage 'spoilt identities'. ('Spoilt identities' are the identities which deviants take on after they have been so labelled. cf. Goffman 1963).

A study of massage parlours in a west-coast city in the USA describes the process of stigma and how it effectively locks women into prostitution. Velarde (1975) charted the voyage of some women from masseuse to hand-whores to prostitutes. In this particular city, as in many others, massage parlours became big business in the 1970s. Many young women accepted employment through advertisements which did not suggest any sexual services but rather training in the massage trade with large financial rewards. Once they were accepted into the job, it was made clear that part of the service offered was masturbation, by the woman, of the client. This was known as a 'hand job'. While this was distasteful to many, the financial rewards were good at a time of high unemployment.

The early applicants for jobs felt their job was as a 'physical therapist' rather than sex worker, but this rapidly changed when the newspapers caught on to the business and a series of articles appeared headlining the supposed activities in the parlours. Because of this attention, the local council passed ordinances demanding licensing of the workers. The labelling process became a permanent feature.

> The licensing process included: police 'mug shots', fingerprints, an interview with the vice squad chief, a medical examination limited in scope to detection of venereal disease (blood test and smear). This licensing was put into effect for all masseuses. When a masseuse applies for licensing, she is generally treated by those officials as a prostitute (Velarde 1975, p. 257).

The effect of this process was to stigmatise the masseuses while at the same time alerting many new customers to the parlours. These men expected much more than the 'hand jobs' and many of the original women felt they had no more to lose by providing greater

services. Prostitutes from other areas were drawn to the city because of the publicity and the interaction between the two groups heightened the feeling of stigma. At the same time ' . . . (t)he earning capacity of masseuses increased while their public image decreased' (Velarde 1975, p. 258). The process had a snowballing effect.

> To summarise, the re-labelling from physical therapist to prostitute was facilitated by two events: newspaper publicity and licensing laws. The media influenced the general public into believing that masseuses were prostitutes. The city council reacted to mounting pressure by establishing licensing procedures which appeared to have implications of prostitution: police fingerprinting, 'mug shots', VD check-ups, and a lecture from the vice squad chief (Velarde 1975, p. 259).

And so it goes . . . This is a scenario which was enacted in many parts of the USA at the time (Symanski 1981). If, as has been suggested, the licensing of sex workers is self-defeating on purely health grounds—because there are always many more unlicensed than licensed workers—the strategy is a waste of time.

Groups of individuals use this shared stigma to support each other in subcultures. Writers in the field of prostitution often note the way that sex workers give each other support and information as well as being a friendship and peer group. This may be very positive for the workers themselves but at the same time may also lock them into the subculture, especially if there is a great distance between the prostitutes and mainstream society. An example of positive support is the way that the Prostitutes Collective of Victoria gives information and support to its members. The most effective work is with those workers who identify as sex workers and who have occupational health and safety issues which they attend to.

There are many workers in the community who do not identify as sex workers and, therefore, disregard the information available to them. An analogy can be made here between these sex workers and bisexual men who do not identify with gay culture and consequently are less likely to accept the 'safe sex' message. A study of the interaction in a public toilet used as a meeting and recreational place by homosexual men found that many men who frequented this place on the way home to their wives denied their homosexual identity and therefore placed themselves outside the culture (Humphreys 1973). It becomes a fine line to draw when identification with the sex worker role could be healthy in terms of protection against disease, but unhealthy in terms of that same identity and the stigma associated with it.

Conclusion

When prostitution is illegal, the dominant social control agency is the legal system. Even when prostitution is legalised in the way that it is in West Germany or Nevada, the police exert great control over it. However, legalisation also brings in health controls so that the medical system is then implicated. Medicine is not value neutral and its practitioners have their own ethical and moral positions to protect. Without feeling totally secure about the information, many sex workers will not succumb to compulsory testing.

The process of lining up to have a weekly check can be degrading and ultimately stigmatising, as happened with the masseuses in Velarde's study. Also, without a proven benefit to the worker, the feeling that she is being used as a scapegoat is not unreasonable. In a world increasingly interested in documenting people's lives for databases, it is debatable whether there are any benefits accruing from an admission of being a sex worker. Even in a

country which has a guarantee of individual rights, such as the USA, the civil rights of sex workers are systematically and continually abrogated (Symanski 1981).

Attempts to change public policy in relation to sex work will inevitably fail if no regard is taken of the meaning that this particular activity has for the society as a whole. The image of the prostitute has been constant over the last 200 years even with changes in legislation. As the Victorian situation has shown—with the striking out of parts of the initial legislation which were central to effective change, and no attempt to alter the image of the workers—almost nothing has altered.

References

Allen, J. 1984, 'The making of a prostitute proletariat in early twentieth-century New South Wales' in *So Much Hard Work: Women and Prostitution in Australian History*, ed. K. Daniels, Fontana/Collins, Sydney.

Becker, H. 1963, *Outsiders: Studies in the Sociology of Deviance*, Free Press, New York.

Daly, K. 1988, 'The social control of sexuality: a case study of the criminalisation of prostitution in the progressive era', *Research in Law, Deviance and Social Control*, vol. 9, pp. 171-206.

De Beauvoir, S. 1972, *The Second Sex*, Penguin, Middlesex.

Edwards, A. 1988, *Regulation and Repression: The Study of Social Control*, Allen and Unwin, Sydney.

Foucault, M. 1981, *The History of Sexuality: An Introduction*, Penguin, Middlesex.

Gagnon, J.H. 1989, 'Disease and desire', *Daedalus*, vol. 118, no. 3, pp. 47-77.

Goffman, E. 1963, *Stigma: Notes on the Management of Spoilt Identity*, Prentice-Hall, New Jersey.

Henriques, H. 1963, *The Immoral Tradition*, Panther, London.

Humphreys, L. 1973, 'A Typology of Tearoom Participants' in *Deviance: The Interactionist Perspective*, 2nd edn, eds E. Rubington & M. Weinberg, MacMillan, New York.

Nead, L. 1988, *Myths of Sexuality: Representations of Women in Victorian Britain*, Basil Blackwell, Oxford.

Neave, M. 1988, 'The failure of prostitution law reform', *Australian and New Zealand Journal of Criminology*, vol. 21, no. 4, pp. 202-13.

Smart, C. 1976, *Women, Crime and Criminology: A Feminist Critique*, Routledge & Kegan Paul, London.

Sontag, S. 1989, *AIDS as a Metaphor*, Allen Lane, New York.

Symanski, R. 1981, *The Immoral Landscape; Female Prostitution in Western Society*, Butterworths, Toronto.

Tan, M., De Leon, A., Stoltzfus, B. & O'Donnell, C. 1989, 'AIDS as a political issue: working with the sexually prostituted in the Philippines', *Community Development Journal*, vol. 24, no. 3, pp. 186-93.

Velarde, A.J. 1975, 'Becoming prostituted: the decline of the massage parlour profession and the masseuse', *British Journal of Criminology*, vol. 15, no. 3, pp. 251-63.

INDUSTRIAL ASPECTS OF THE SEX INDUSTRY

Victor Gleeson
Department of Law
University of Canberra
Australian Capital Territory

THE AUSTRALIAN SENATE, IN 1991, CONDUCTED AN EXHIBITION AND A SERIES of lectures to commemorate the centenary of the National Australasian Convention of 1891. At this Convention the first draft of the Australian Constitution was prepared. This Convention was at a time of industrial strikes in the shearing and maritime industries that concluded in defeat of the unions involved. These affairs stimulated H.B. Higgins to successfully move, albeit by the narrowest of margins, for the adoption of labour power in the 1898 sittings of the Constitutional Convention.

How things change! In April 1991, there were media statements that scientists had discovered a hormone treatment for sheep that allowed the fleece to be removed in one piece with a few gentle tugs. So the stimulus for Australia's unique industrial system, the shearers, may soon be by-passed by technological change. And with social change who might be entering the industrial arena? Workers in the sex industry. This could well be beyond the imagination of the founders of our Constitution!

This paper will look at some of the industrial aspects of people working in the sex industry with attention being focussed on those who provide personal services. Past debate that has brought about a liberalising of laws connected with brothels, soliciting and related matters has given some attention to conditions experienced by workers in the industry, but seldom presented specific suggestions on how conditions may be stabilised and possibly improved. It is from the perspective of a labour lawyer that the general framework shall be described.

Occupational Health and Safety (OHS) is a major concern for persons working in the sex industry. It is also of concern to consumers and the community at large. It is this concern that has led to laws being modified and prompted conferences such as this. We need to ask what approaches to OHS issues should be adopted?

There are no impediments arising from Australia's Federal system to state and territory legislatures enacting provisions that are directed to the control of communicable diseases. Physical injuries to workers in the industry may also be covered by state legislation, and compensation claims can be covered in this way also.

The communicable diseases issue is one that this paper shall not be pursuing in depth. There are provisions already in place of a general community nature and the provisions

directed specifically to the sex industry will probably become standard. Such provisions can be characterised as being directed against workers in the sex industry and this probably aptly describes what motivated legislators. However, provisions of this type can be beneficial to the targets if handled appropriately.

Injuries to the workers themselves, however incurred, might be handled by what might be classified as legislation of a 'shops and factories' type, that is, the traditional style of legislation that is directed mainly to guarding employees against equipment that cuts, crushes and burns. Such legislation generally covers other matters relating to OHS such as ventilation and safe methods of exit that can have relevance to the industry.

Related to the shops and factories style of legislation are regulations controlled by fire bodies as well as general building control and planning bodies. In unsatisfactory working environments, such controlling mechanisms—together with their multiplicity of agencies—all have some potential impact. However, they all have a common factor. They depend very much on the vigilance of inspectorate services. Short of a calamity, however, vigilance will generally be lacking given the underfunding of most inspectorate services.

The 'new style' OHS legislative packages that are now in place in all Australian jurisdictions are designed to compliment (and to an extent displace) the traditional shops and factories style of legislation. Every jurisdiction has its own variation on 'Robens-type' legislation which was recommended by a United Kingdom Inquiry into Occupational Health and Safety chaired by Lord Robens in 1972. There is a common element in such legislation. A general duty of care is placed on employers to maintain a safe working environment. Some element of participation of employees on matters of OHS is also to be found in all packages. Where the size of the workplace is sufficient, safety committees may be (or must be) formed (depending on jurisdiction). Safety representatives may also be required, depending on the jurisdiction.

This brief indication of the nature of 'new style' OHS legislation indicates what approach might be adopted in the sex industry. Under the current industry structure, the number of people in one workplace would be insufficient to place an obligation on employers to set up a safety committee (twenty is normally required). In any event, to make this style of legislation work against a reluctant employer, employees need to be fairly strong in purpose and demonstrate a good deal of unity. Accordingly, an arena where some coercion is required will now be discussed.

Workers can further their cause by grouping as an association, collective or union. It is through the grouping that negotiation strength can be gained because of the express or implied group modification of usual working procedures unless concessions are gained. The Australian Federal industrial system was designed to lessen the disruption brought about by strikes and lockouts (Higgins 1968). It is following registration of employee (and employer) bodies that awards can be gained that have the force of law.

This may seem far too formal an exercise for this stage of development of the industry. Until a few years ago it is quite likely that Federal registration of workers in the sex industry would not have been accepted. This is because, prior to the *Social Welfare Union* case ((1983) 153 CLR 297; (1983) 47ALR 225), the High Court of Australia used to take a narrow Constitutional view as to who could engage in an 'industrial dispute'. Following that case there is no impediment to registration.

There is a recently released report from the Commonwealth Department of Industrial Relations that suggests a framework for understanding workplace industrial relations (Commonwealth Department of Industrial Relations 1991). The comment is made that industrial relations often varied considerably between workplaces within the same industry. No doubt this applies to the sex industry, with industrial relations varying from proprietor to proprietor and there being distinctions between workers in brothels and those working for escort agencies. If one looks at other characteristics outlined in this report, the likelihood of

a union being formed and it being active industrially does not seem all that great. That is, it falls within the 'recreation, personal and other services' classification, and the unstructured characteristics of the job—together with the independent attitudes of many of the workers—would seem to put this low on the scale.

Alternatively, one does not know what impact decriminalisation will bring. There could be an increase in the number of available workers, especially in the current economic environment. This can weaken attempts to unionise. On the other hand, falls in incomes that might occur can strengthen resolve. Possibly, if most employers adopt a benign stance and keep conditions good as supposedly occurs with some employers in the computer industry, then this will lessen demand for union activity. It seems, however, that benign employers are not universal in the industry. In the recently released *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991) there are two brief statements on working conditions and potential unions:

> 11.32 Currently workers are not entitled to paid holiday leave, are not entitled to sick leave provisions, there is limited access to workers compensation, there are no set hours of work, no established rates of pay or remuneration, no established working conditions and no access to industrial representation; and
>
> 12.24 It is also the opinion of the committee that the interests of workers can be protected through membership of an appropriate union, and the involvement of a union will add significantly to the monitoring of the operations of brothels and escort agencies.

The Australian Capital Territory *Interim Report* has recommendations that will tend to strengthen any moves to unionism. The introduction of a 'Prostitution Regulation Act' is recommended with such an act having a multiplicity of provisions directed to licensing of brothels and escort agents and keeping them on 'the straight and narrow'. This tends to follow the Victorian lead and similar approaches in other jurisdictions seem imminent. Thus a more regulated industry is to be expected.

As much of the regulation is directed at curtailing activities, union activity to improve the lot of workers is likely. This is compounded by a further recommendation of the *Interim Report* which is to make it an offence for a person to engage in commercial sexual activity other than in accordance with a licence to own and operate a brothel or an escort agency. Thus, workers in the industry will be compelled to adopt an employee status which is a clear encouragement to union activity.

This speculation aside, there is a most important aspect of Federal industrial regulation that needs to be considered. The system abhors a vacuum. It is open to any registered union to seek coverage of workers that it claims to be equipped to cover. Thus when new technology leads to a new class of worker there are often contests between unions as to who should have coverage. Here we have an analogous situation with societal change.

Should one of the established workers collectives or alliances manage to rally the requisite minimum membership and seek Federal registration it is quite likely that opposition will come from one or two registered unions who will claim competency to cover. If there is no initiative from the industry itself then a colonising exercise from an established union is likely in any event. This leads to the suggestion that early activity may be sound policy in order to get some say in choice of union and some say in the nature of the relationship. This is desirable at the preliminary stage of coverage and essential at the next stage at the establishment of an award.

There is no novelty in this 'race to the Commission' scenario that has just been suggested. Following the Social Welfare Union case (supra), various groups of workers gained eligibility for Federal industrial coverage for the first time. Teachers in tertiary

institutions were amongst them. Discussion amongst such people on the desirability—even respectability(!)—of academics seeking Federal coverage ended quickly when a small conservative teaching union made preliminary moves to cover everyone. Similar things can happen in the sex industry, with the possibility of union coverage being gained by a group that is not to the liking of those in the industry. It is true that opposition to coverage by an unwanted body can be expressed to the Industrial Registrar but, in contests of this type, a fair degree of organisation and industrial capability needs to be demonstrated.

Supposing nothing is done with respect to industrial registration by currently established collectives or alliances within the industry and an established union makes an unwelcome takeover. Suppose also that this is followed by the establishment of an award that is regarded as less than satisfactory by the workers in the industry. What could be done? A campaign within the union to change office bearers might have some appeal. Democratic control is an essential characteristic of unions registered under the *Australian Industrial Relations Act 1988*. But what percentage of our hypothetical union membership might be made up by sex workers and how many issues other than the Sex Workers Award may be in the minds of voters? Let us assume, however, that reorientation of our hypothetical union can be achieved and application is made for an award with provisions superior to the established award. Such an application is sure to be resisted by employers who will be able to argue that the new claim is outside national guidelines. A bad start in such matters is hard to rectify!

The people who take on the drafting of the first award application will have an interesting time. Awards differ in their level of specificity, but even the most specifically worded award relies on the customs of the industry. As we are concerned here with what is said to be the oldest profession there should be no lack of custom. There are sure to be arguments on classifications of workers and on characterising activities. And what relevance should be attached to the experience of the worker? It is a common pattern for awards to set down different pay rates according to whether a person is a junior, apprentice, journey-man, leading hand and so on. It is doubted whether this form of classification will find favour with any employees in the industry. Maybe the only distinction that could be adopted would be between an 'escort worker' and an 'in-house worker'. But even with a line being drawn this way, the hourly rate due to the 'escort worker' might need to be adjusted downwards if wining and dining should take up a fair amount of time on duty. This prematurely touches on questions of work value, established rates impact of market forces, and so on, but it is bound up on determining how classifications might be made in any award.

If attempts to classify workers are unsuccessful then one could fall back to just one rate. This would be consistent with most Federal awards where the specified rate establishes only the minimum. Above award payments are then open to negotiation on an industry or enterprise basis. Enterprise bargaining could become widespread given its current political popularity and its ready applicability to an industry of this type.

But when 'rate' is referred to, what is to be covered? An hourly rate or a rate related to output? Or perhaps both, as in industries where the overall rate has a piece rate and hourly rate running together. This is where experts in the industry will have to advise because it seems that this industry contrasts with the manufacturing industry where the very fastest worker may be the most prized. With regards to rates, if the time factor is not the only consideration then some averaging exercise with the time and performance payments will be needed. Without calculations along these lines there can be no way of determining the appropriate rates for other elements that should become part of an award. These are elements such as recreational leave, sick leave and public holidays (or payment in lieu). There are also potential issues such as shift work and penalty rates.

At first glance these might seem non-issues if only casuals are employed. But this approach will not help in calculating the appropriate rate for a casual which under most

awards is 20 per cent greater than ordinary workers. This still leaves the problem of what an ordinary worker is to be paid.

There appears to be nothing to prevent an entire working group being paid on 'casual' type conditions although it is probably inappropriate to label in this way when there are no 'ordinary' or standard workers. If this approach was to be taken, however, one should really follow traditions established elsewhere and top-up any notional 'ordinary' rate by 20 per cent to make up for lack of paid time off.

The problem does not stop here, however. Long service leave entitlements are bestowed on employees by legislation in all states and territories. Such entitlements tend to be supplemented by award provisions. In the ordinary course, casuals are excluded from such entitlements. What happens when everyone is supposedly a casual is a moot point.

This suggests that if problems in determining pay rates and consequent problems in determining other benefits leads to workers being handled universally as 'casuals' it should be casual in a very limited way. That is workers would be 'ordinary' with no holidays and such like, but there would be built in monetary compensation for this.

Universal casualisation is unlikely to be a feature of any Federal award. This is further confirmed when one considers the new parcels of provisions that have begun to appear in awards since 1984. When the High Court of Australia decided the Social Welfare Union case (supra) it permitted a reconsideration of what could properly be regarded as an 'industrial matter'. This, in turn, allowed Federal awards to cover matters previously outside their Constitutional scope. Amongst these matters are superannuation and disputes relating to unfair dismissal. Provisions in awards covering these sorts of matters give employees a degree of permanency not previously enjoyed. Any proposed award for workers in the sex industry would seek provisions along these lines, thus striking at the notion of all work being on a casual basis.

Provisions to be found in these new parcels are of great significance themselves. Superannuation was once confined to government employees and the professional and administrative personnel in non-government employment. It is now universal. People in the building industry—where jobs are traditionally short-term—have award provisions that commit employers to making superannuation contributions. The Industrial Relations Commission now has superannuation as part of national wage cases. Clearly it is due to the sex industry also.

Unfair dismissal provisions in awards do more than affect the occasional dismissed employee. Once 'unfair' becomes the subject of debate all manner of things relating to the employment relationship attract scrutiny. This can have an impact on the general conditions of employment and the way employers relate to employees.

Thus, we come back to a consideration of OHS matters. Previously, the 'new style' of OHS legislation that is directed to developing safe working practices through interaction between employers and employees was mentioned. Legislation of this type includes criminal sanctions against controllers of employment places who fail to maintain an appropriate level of care. The way in which such provisions are enforced is subject to much debate. It is clear that prosecutions are rarely commenced unless there is a 'body on the floor'. This is through a combination of factors. Agencies charged with inspectorate functions generally view advising and scolding more effective in maintaining standards than prosecuting. When scolding is ineffective, prosecutions are expensive exercises with complicated evidentiary issues that seldom result in penalties of any magnitude.

This is not a result that pleases unions. Until recent times, however, few unions have taken a high profile on OHS matters. 'Danger money' for sundry hazardous activities was the typical approach rather than seeking an outlawing of them. In part this was because union involvement in such matters was seen as invading 'managerial prerogatives'. In part it was the result of the way in which 'Shops and Factories' style legislation had very specific targets. In

any event, until recent times unions tended to give lip-service to prevention of occupational injuries and diseases and focus principally on seeking compensation for members suffering from work-based inflictions. Bit by bit a different approach is becoming apparent. Whether it be through legislation or through peak union campaigns it matters little because of the interaction between them.

On current understanding of matters, the alliances and the collectives in the sex industry have been active on OHS issues. State and territory legislatures are in the throes of introducing provisions that impact on OHS and, in due course, they may have an impact. But a multiplicity of provisions will do little good for anyone unless there are effective measures for enforcement. In the absence of clearly discernible hazards—such as machines with exposed blades—inspectorates can do little until there is the equivalent of the 'body on the floor' situation found elsewhere. The answer, to the extent that there can be an answer, is in keeping lines open to the 'whistleblower'—the person working in the industry who is unhappy about the way things are being done.

The 'whistleblower' has been about for some time. Whether a person gains this categorisation (or the less favourable one of 'dobber') depends on how one feels about the activity being reported. However described, the releaser of information unfavourable to the employer is likely to have a career set-back if the employer discovers the source of the adverse publicity. This means that Control Boards (however described) are likely to have limited impact due to problems in gaining information, let alone hard subject-to-cross-examination evidence on what is going on in the areas that are purportedly under their control.

Here is where a well-functioning union is likely to be more effective. Assume the worker has coverage by a registered union. Activity as a union member cannot be grounds for discriminatory practices. There may be practical problems in enforcing this unless there is some solidarity from the union. A provision in the award against 'unfair dismissal' places all sorts of pressures on the employer to justify dismissal. It is unlikely that objection to matters linked to OHS will be seen as grounds for dismissal. With the burden placed on an employer to justify dismissal, it may be possible for a concerned worker to avoid the distressing 'whistleblowing' stage because, in effect, the whistle will only be blown if the employer actuates it.

Whether it be through their potential as protected de facto whistleblowers or through their insistence on compliance with other award provisions, it is likely that some employers will be resistant to employing union members. What impact might a Federal award have in this regard? There are two key matters to be considered.

First, any union that gains award coverage is sure to ensure that the award covers workers that do not hold union membership. Such coverage tends to distress people who are paying union subscriptions, but it is a generally adopted device to avoid undercutting by non-union members. A worker who is not a member of the union has no enforceable right to award rates (save in the territories). The potential sting for the employer is that any short-fall in award rates must be made up if the Arbitration Inspectorate uncovers the underpayment. (There may be a prosecution as well). More likely than a discovery by an overworked, underfunded Arbitration Inspectorate is that the worker takes out union membership. Any short-fall on union rates over a period as long as six years can then be claimed. In times past, claims of this sort tended to be actuated by dismissal or would lead to dismissal. Should there be award provisions against unfair dismissal there may be less disinclination for workers to seek the award conditions.

The second consideration relating to union membership is that there may well be a provision in the award declaring preference for unionists. Under a Federal award, a 'closed shop' is not permissible, but the permissible alternative of 'preference for unionists' can lead to virtually the same thing if the stock of potential workers exceeds employment placement.

The current adverse employment situation combined with actual and potential legitimisation of the industry could bring about this oversupply.

My focus on the industrial aspects of the sex industry has been principally on the prospect of Federal registration and possible elements of a Federal award. Many of the things I have referred to could be covered by state awards. Assuming, however, that a Federal route is taken, there is one last comment that needs to be noted with respect to the characteristic of a Federal award: Section 109 of the Constitution, aided by Section 152 of the *Industrial Relations Act 1988* (Cwth) gives priority to provisions of a Federal award over any state laws inconsistent with them.

There have been a multitude of cases before the High Court on what is involved in 'inconsistency' in this area. It is doubted that a law of a state that prohibits specific activities will be invalidated by a Federal award provision that regulates such activities. If one has the situation, however, that an activity is permitted in a state and the industrial aspects of it are laid down in a way inconsistent with the Federal award, then the Federal award will prevail. This is favourable to those supporting the award provisions. Where matters need close attention by those negotiating for a Federal award are those circumstances where favourable state provisions may be inadvertently eclipsed by provisions of the Federal award. This possibility needs to be closely monitored in circumstances such as these where values are changing rapidly.

References

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT*: *Interim Report*, Canberra.

Commonwealth Department of Industrial Relations 1991, 'The Australian Workplace Industrial Relations Survey', Chapter 7, in *Industrial Relations at Work*, eds R. Callus, A. Morehead, M. Culley & J. Buchanan, Australian Government Publishing Service, Canberra.

Higgins, H.B. 1968, *A Province for Law and Order*, Dawsons, London.

PROSTITUTION IN VICTORIA: THE ROLE OF LOCAL GOVERNMENT—AN INNER CITY PERSPECTIVE

George Bennett
President
Local Government Planners' Association
Victoria

PROSTITUTION HAS EXISTED IN MELBOURNE SINCE THE EARLIEST DAYS OF settlement. The correspondence from the officially appointed Aboriginal Protectors to the colonial governors in Sydney contain details of their struggle against the forced used of Aboriginal women as prostitutes (*The Age*, 15 April 1991).

The gold rushes saw the incidence of prostitution increase not only in Melbourne, but also on the goldfields. At Ballarat the only known strike by prostitutes occurred when the local workers withdrew their services in protest at the influx of foreign women into the trade. The wealth created by the gold saw luxurious brothels such as that of Melbourne Mab—or Madame Belgie as she preferred to be called—established in Lonsdale Street, near Spring Street, where it flourished for over forty years. It was to these premises that the ceremonial mace of the speaker of the Lower House of the Victorian Parliament once mysteriously found its way.

From this time, the area bounded by Lonsdale, Russell, Victoria and Spring Streets contained dozens of brothels, opium dens and notorious pubs. Petty theft and violent crime were common and street prostitutes worked on 'Little Lon'. Even as late as the mid-1950s, 'respectable' women would not go to the area, though by that time little remained of its colourful past except its reputation.

War and economic depression also played a role in the distribution and incidence of prostitution in Melbourne. World War I and World War II saw prostitution increase significantly despite the legislation of the early 20th century aimed at suppressing it. The establishment of Albert Park Barracks as a recruitment and induction centre at the outbreak of World War I saw prostitution move away from the docks and the inner city to establish itself in the then genteel seaside suburb of St Kilda. The economic depressions of 1890 and 1930 saw prostitution spread to the inner working class suburbs of Fitzroy, Collingwood and Richmond.

During the Vietnam War, Melbourne become a centre for leave for United States servicemen, and the more tolerant attitude towards sex in the late 1960s and 1970s resulted in a big increase in street prostitution and the introduction of massage parlours and escort agencies. Though reports that massage parlours and escort agencies had by 1985 come to be established throughout the metropolitan area (Victoria 1985, vol. 1), there is ample inferential material to suggest that these were concentrated in Melbourne and the adjoining municipalities stretching from Footscray in the west, through Essendon, Brunswick, Fitzroy, Collingwood and Richmond to Port Melbourne, South Melbourne, St Kilda and Caulfield in the south and east. Street prostitution was concentrated in St Kilda, but from time to time—mainly in response to client demand or police pressure—it spread to other inner municipalities.

Semi-Legal Massage Parlours

The incidence of prostitution had become so great and the problems associated with client behaviour in relation to street prostitution and massage parlours so prevalent by the mid-1970s that the inner municipalities most affected began individually and collectively to agitate for the government to act to control all forms of prostitution.

They were rewarded for their pains by an amendment to the then metropolitan planning scheme (Melbourne Metropolitan Planning Scheme, Amendment 61, 3/9/75). This Amendment meant massage parlours could be granted town planning permits to operate in commercial and industrial zones, but were prohibited in most residential zones—except in those which just happened to coincide with some of the most densely populated parts of the inner metropolitan area where many people lived in small terrace houses and flats. Because it made no reference to sexual activity or prostitution, and because other legislation to which it was related (such as the *Crimes Act 1958* (Vic), The *Vagrancy Act 1966* (Vic) and the *Summary Offences Act 1967* (Vic)) remained unchanged at its introduction, this amazing Amendment meant that any sexual activity associated with prostitution which occurred in the massage parlours it legalised was illegal. Any such sexual activity was a breach of any town planning permit that might be granted. This meant that owners, managers and sex workers in legal parlours could be prosecuted for breaches of the *Town and Country Planning Act 1961* for which there were a variety of penalties, including fines and ultimately the loss of a town planning permit.

Those massage parlours which existed prior to the Amendment coming into effect—whether or not they existed in a zone where they were prohibited under the Amendment—were legal and subject to the same penalties as those which subsequently were granted permits. Those which were set up in areas where parlours were prohibited or in zones where they were permitted without first obtaining a town planning permit were illegal and were also subject to fines and closure under the Town and Country Planning Act. In practice, fines were occasionally obtained in the Magistrates Courts but closures rarely, if ever, occurred. They resorted to the Supreme Court for an order to close a premises but few, if any, such orders were ever obtained as such action had to be taken under a multiplicity of legislation.

Escort agencies remained unregulated and partially legal since most claimed their function was to provide an escort. Any transaction to provide sex for gain or reward was a matter solely between the client and the escort. This fiction has been successfully maintained until recently and has generally allowed immunity from prosecution under any existing legislation. In early 1991, the police have launched several successful prosecutions against the owners and administrative staff of escort agencies for living off the earnings of prostitution.

Street prostitution remained illegal and, following agitation by municipal councils in 1979, the penalties for soliciting and other prostitution related offences were increased and provisions were introduced which made it an offence for the client to solicit a prostitute. Despite continued protests at deficiencies in the Amendment—which most municipalities found had given them increased responsibility without any effective means of control—the politicians of the day gave the impression of extraordinary naivety. Requests for changes to the definition of massage parlours which would remove any ambiguity were met with comments to the effect that it would be wrong to impose a stringent definition which could adversely effect many genuine health and recreational establishments.

If the politicians believed that most massage parlours or health spas as they were sometimes called were not in fact brothels, the general public was not so easily hoodwinked. Urged on by a mixture of genuine grievance and moral zeal among their constituents, those inner-metropolitan municipalities most directly involved with the situation vigorously pursued both legal and illegal massage parlours for breaches of the Melbourne Metropolitan Planning Scheme (MMPS). The exercise proved both costly and ineffective.

The main problems of the municipalities could be summarised as follows:

- because of the density of residential, commercial and industrial uses in inner suburban areas and the relatively small size of the areas zoned for those uses, it was impossible to effectively reduce the impact on amenity caused by parlours;

- when a breach of the MMPS was admitted (and it was surprising how often it was), it was virtually impossible to prove that the premises were being used as brothels. Consequently, despite admissions, there were few convictions;

- the terms brothel and prostitution were absent from the Planning Scheme;

- the difficulties of the local authorities under the Planning Scheme were compounded by the Town and Country Planning Act, which required two days notice for an inspection of any premises where it was believed a breach of the Act or the Planning Scheme was occurring;

- there were difficulties for police in arranging visits to premises suspected of being a brothel and sometimes in follow-up;

- street prostitution, though confined to a few places, remained totally outside the control of the local authorities.

Changing Attitudes

Though flawed and therefore unworkable, Amendment 61 of the MMPS 1975 in introducing massage parlours as a legal use was a tentative step in the right direction. Three years later, in a reversal of this direction, the policy of the Victorian government became one of suppression of all forms of prostitution by the introduction of harsher penalties for offences related to prostitution and more stringent policing. The ambiguity of Amendment 61, however, meant that this was virtually impossible in a major sector of the industry. The genie was out of the bottle and probably could not be put back.

By 1980 a significant change of attitude had begun to occur in both state and local governments. Position papers began to circulate which called for legal brothels in non-residential zones, decriminalisation of prostitution in legal brothels and escort agencies, and town planning permits for brothels which complied with the MMPS. Street prostitution was

considered possible in some specified areas. Over the next two years, however, nothing happened.

In the meantime, local councils in those areas most affected began to lobby for change. What inner city councils argued was that the existing legislation largely confined prostitution to their areas. What they wanted was:

- removal of the term 'massage parlour' and all its ambiguity from the MMPS;
- designation of brothels as a legal land use in industrial and commercial zones, subject to planning controls;
- decriminalisation of prostitution in legal brothels;
- the removal of the two-day notice provision for inspections where a breach of the Planning Scheme was suspected;
- some better form of regulation of street prostitution.

What they came correctly to perceive was that if the ambiguities were removed and brothels were recognised as a legal land use they would then respond to market forces and come to be distributed throughout the metropolitan area like any other form of land use for which there is more or less universal demand.

The *Planning (Brothels) Act 1984* and Guidelines for the Location of Brothels

The findings of the Working Party on Prostitution of 1983 led to the *Planning (Brothels) Act 1984*. This Act:

- decriminalised prostitution in brothels which held or came to hold valid town planning permits;
- increased penalties for illegal brothels;
- gave council officers and police immediate right of entry into premises reasonably suspected of being a brothel;
- gave power to the Supreme Court to proscribe a brothel.

Guidelines were introduced which set out clearly where brothels could be legally located. These addressed many of the problems of inner municipalities with high population densities and a mosaic of small sized residential, commercial and industrial zones. The MMPS was amended to permit brothels in certain commercial, and industrial zones in accordance with the Guidelines (Victoria 1985, vol 2, p. 23).

These actions, as much as anything else which followed, caused tremendous changes in the distribution and number of brothels in the metropolitan area. At the beginning of 1984 there were 150 brothels in metropolitan Melbourne, mostly in the inner municipalities. Of these, fifteen held valid town planning permits. Following a twelve-month moratorium, during which the existing brothels were given the opportunity to obtain planning permits, the numbers declined to around 120. It is not widely realised that, when the moratorium ended and prior to the Prostitution Regulation Bill being enacted, police appear to have been given the power to close illegal brothels immediately. At the instigation of some inner metropolitan

councils, many were closed in this way—particularly after the Inquiry Into Prostitution (Victoria 1985) delivered its report in October, 1985.

The Inquiry Into Prostitution

The Inquiry was set up in September 1984. Its task was 'to inquire into a report upon the social, economic, legal and health aspects of prostitution in all its forms . . . ' (Victoria 1985, vol. 2, p. 5). The main recommendations of the Inquiry as far as local government was concerned were:

- street prostitution should not be a criminal offence in certain designated areas;
- prostitution in brothels with a town planning permit should not be a criminal offence;
- planning authorities should have the right of immediate entry into premises reasonably suspected of being brothels;
- planning authorities should have the right to request the police to visit premises reasonably suspected of being a brothel;
- the powers of the police to enter premises reasonably suspected of being a brothel at any time should be removed;
- a brothels licensing board should be established to control licensed brothel operators (Victoria 1985, Summary, pp. 11-19).

The Inquiry made no recommendations regarding escort agencies. This was not of great concern to local government as agencies per se were not seen as a form of prostitution which created amenity problems.

The inner metropolitan councils generally welcomed the recommendations of the Inquiry as these were in line with the submissions which they had made. They had reservations, however, about the recommendation that single person brothels be allowed without licensing or a planning permit. The reason for this was the belief that this could lead to situations where one person could set up a number of brothels in an area under this guise.

The *Brothels Regulation Act 1986*

The *Brothels Regulation Act 1986* adopted many of the recommendations of the Inquiry but significantly, it did not legalise street prostitution in any form. Like the Inquiry, it had nothing to say on escort agencies which, until recently, remained unregulated.

Generally, councils treat escort agencies as offices when town planning permits were issued. One interesting legal opinion is that this is correct but that, reading down the definitions of 'brothel' and 'prostitution', it is possible to conclude that if the client and the escort transact sex for payment then the premises on which this occurs is an illegal brothel and that an offence has occurred. This could include hotels, motels and possibly private dwellings. This opinion has been followed up in one or two instances where the accommodation in a hotel or motel was perceived to be used principally for escorts and their clients who were staying only long enough to complete their transaction. The possibility of prosecution has in these instances been used as a lever to get owners and managers to stop these activities.

Brothels remain a matter for planning control and local councils can enter premises without notice for the purposes of inspection. Police can be requested to enter premises reasonably suspected of being a brothel at the request of a municipal council.

Though police have lost the right of immediate entry into a premises reasonably suspected of being a brothel, if an offence under the Act is suspected, a warrant to enter may be obtained in the usual way. The section granting them immediate entry, though reinstated by the opposition, was not proclaimed.

Because of changes which the government found unacceptable, the section relating to the establishment of a brothels licensing board was never proclaimed.

The Results of the *Prostitution Regulation Act 1986*

The *Prostitution Regulation Act 1986* as proclaimed has served local government in the inner metropolitan area very well. In 1984 there were 150 massage parlours which were in effect brothels operating in Melbourne, mostly in the inner municipalities. Today there are approximately sixty legal brothels operating throughout the metropolitan area. In terms of time and resources previously diverted to enforcing the MMPS provisions, this represents an enormous saving.

Most town planning permits for brothels have been granted only after appeal either by the applicant against the decision of the local council to refuse a permit, or by the residents against the decision of the council to approve an application for a permit. In inner and outer metropolitan municipalities the councils appear more ready to approve brothel applications. It is only in the middle class, middle ring, eastern suburbs that there is strong opposition by both the residents and councils to applications for brothels.

Criticism of the Prostitution Regulation Act 1986

From time to time criticism of the Act appears in Melbourne's main newspapers. This criticism may be stated briefly as follows:

- organised crime controls most of Melbourne's legal brothels;
- the limited number of brothels means limited employment opportunities which in turn allows for exploitation of employees;
- the lack of police powers to enter a brothel without notice means that non-related criminal activities and breaches of the current prostitution laws go undetected;
- the legislation is failing because illegal brothels still exist and may be increasing in number;
- the sex workers in legal brothels do not get a sufficient percentage of the client's fee and find this, together with the need to pay tax on income earned, a disincentive to work in them;
- working conditions, facilities and services for staff in legal brothels are inadequate.

All of these criticisms may be valid up to a point but, without proper investigation, the extent of their validity remains unknown. Following the proclamation of the Act, a Monitoring Committee was set up to monitor the impact and effectiveness of the legislative changes and to recommend amendments to the government from time to time. Unfortunately, the Committee has not met for some time and no amendments have been made as a result of any earlier recommendations. Generally, however, the Act has been successful, the notable exception being in regard to street prostitution which continues to be unsatisfactory for the sex workers, residents, police and councils. The re-convening of the Committee with some specific terms of reference is probably now overdue.

Building and Health Regulations

Once a valid town planning permit has been issued for a brothel, if major works or extensions are planned, most councils require a building permit to be applied for, as is usual for any other business premises. Building permits are not usually used to delay the establishment of a brothel once a town planning permit has been issued.

The uniform building regulations introduced throughout Australia on 8 April 1991 do not mention brothels, probably because they are illegal in most states. In Victoria most councils will continue to deal with building permits for brothels as they currently do under that section relating to business premises.

The Health Brothels Regulations 1990 set the health standards for brothels in Victoria. They are the responsibility of the state Health Department, not the environmental health officers employed by municipal councils.

The Involvement of Local Government in Other States and Territories

New South Wales

Some involvement in the issue of town planning permits for massage parlours. Some parlours hold town planning permits though the use of the *Disorderly Houses Act 1943* to prosecute owners means the legal status of parlours is uncertain.

Queensland

No involvement as brothels and massage parlours are illegal. The Criminal Justice Commission in the *Review of Prostitution Related Laws in Queensland* (Queensland 1991) canvasses the idea of planning controls and the current inquiry is also examining this idea.

Northern Territory

Brothels are illegal. All control rests with the police.

Western Australia

Control currently rests with the police, but the report of the Community Panel on Prostitution (Western Australia 1990) recommends involvement for local government through the introduction of planning controls.

South Australia

Brothels are illegal and a private members bill recommends a licensing board which would approve a licensed operator of a brothel who would then be permitted, without reference to local government, to establish a brothel in certain zones. This however is not clearly stated in the current second reading draft. There is also an inquiry into prostitution being conducted by the South Australian Attorney-General's Department.

Tasmania

Brothels are illegal if owned, operated or managed by men but not by women. Planning permits are therefore possible for brothels run by women. No applications however have been made for such permits.

Australian Capital Territory

An inquiry is being undertaken into prostitution. Brothels are currently illegal and therefore there is no local government involvement. The first draft report recommends legal brothels for which a planning permit has been obtained, in light industrial zones.

Conclusion

In Victoria the first experiment with legal brothels and partially decriminalised prostitution has taken place. The legislation has generally worked and has served local government in inner metropolitan areas well. They no longer have to carry a disproportionate responsibility for what is a demand in the entire metropolitan area. The area where the current legislation is most deficient is in relation to street prostitution which only affects one or two municipalities. The safety of sex workers, residents' right to amenity, and the responsibilities of the councils and the police remain to be addressed. The Act may be deficient but it represents a major advance in dealing with prostitution in Australia. It is now five years old and it is probably time for the Monitoring Committee to be reconvened to review the legislation.

References

Pinto, S., Scandia, A. & Wilson, P. 1990, *Prostitution Laws in Australia*, Trends and Issues No. 22, Australian Institute of Criminology, Canberra.

Queensland. Criminal Justice Commission 1991, *Review of Prostitution-Related Laws in Queensland*, Information and Issues Paper.

The Age, 15 April 1991, Melbourne.

Victoria. Inquiry into Prostitution 1985, *Inquiry into Prostitution, Final Report*, [the Neave Report], Government Printer, Melbourne.

Western Australia. Community Panel on Prostitution 1990, *Final Report of the Community Panel on Prostitution*, Perth.

THE POLITICS OF VICE: REGULATION AND POLICY MAKING IN THE AUSTRALIAN CAPITAL TERRITORY

Michael Moore
Chair of the Select Committee on HIV, Illegal Drugs and Prostitution
Legislative Assembly
Australian Capital Territory

IN HIS ESSAY 'ON LIBERTY', JOHN STUART MILL (1975, P. 15) STATED:

> The only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

The debate on controlled prostitution has been simplified into a basic policy choice of prohibition versus regulation. Those who would advocate a more tolerant attitude to prostitution are faced with the constant barrage of over-simplified arguments of those who favour suppression. By reducing the debate to black and white, the issues reach such an over-simplification as to become meaningless.

Vice can probably best be defined as the things that people like doing that do not harm others but offend their sensibilities. It is those sensibilities that eventually decide how people will vote and, therefore, in dealing with policy and vice, politicians have to take into consideration the sensibilities of their electorate and whether or not the person or the party will be re-elected and will be able to carry out the reforms for which, supposedly, they have entered politics. The *Shorter Oxford English Dictionary* defines 'vice' as:

> Depravity or corruption of morals; evil, immoral, or wicked habits or conducts; indulgence in degrading pleasures or practices. 2. A habit or practice of an immoral, degrading or wicked nature.

Such definitions are invariably laden with value judgments. Morality, depravity and corruption are about such judgments, and the values of one group or one person's moral attitudes, which they are attempting to inflict on others. There is a point at which the society

has a right to inflict their moral view, and that is most clearly expressed in the above quote of John Stuart Mill.

The politics of vice is about the suppression of people doing things that they like doing which do not harm others. The only reason that can be seen for people wishing to inflict their moral judgments on others is the desire to exercise the power of their group over other people. This power encourages a lack of tolerance and a lack of understanding; it fosters bigotry and the marginalisation of groups.

Where there is no risk in harming others, whether to legislate in terms of morals becomes a question about sensibilities. With reference to prostitution, however, we have clear evidence that there can be a major risk to harming more than sensibilities. That evidence can be identified through a study of prostitution in Thailand, Myanmar and other places in South-East Asia where the spread of the AIDS virus is rapidly reaching epidemic proportions through a lack of legislation and policing. The matter of public health is, potentially, the harm associated with prostitution—harm to members of our community through the spread of HIV and other sexually transmitted diseases (STDs). In resolving such problems the community must weigh up public health against moral sensibilities.

The Politics of Vice

In originally proposing the Select Committee on HIV, Illegal Drugs and Prostitution to the Australian Capital Territory (ACT) Assembly, the author was approached by members of all political persuasions and asked what was the point of raising such an unpalatable political issue as prostitution and illegal drugs—and that it was political hari kari. At the introduction of this motion to establish the Committee it was commented: 'We have a responsibility to do what we can to avoid this epidemic'.

The introduction of the Committee to the Assembly was an uncustomary step in a number of ways. Firstly, a Social Policy Committee already existed which was a Standing Committee that could have taken this responsibility. Secondly, the Committee took on a role to raise the issues and the level of public debate about prostitution, illegal drugs and the AIDS virus.

It is a normal approach for a Parliamentary Committee to contain the content of reports to the end. This Committee was able to say, prior to bringing down its report, there will be no surprises as far as the report goes because the committee had made its direction and intention very public.

The role of the Committee in fostering public debate was a most critical function in the light of public perceptions. The Canberra community, the Canberra media, and, in particular, the journalists who reported on these issues deserve congratulations. *The Canberra Times* (3 February 1991, editorial) stated:

> It is perhaps a measure of the maturity of the Canberra community that public debate surrounding this inquiry has been conducted in such sensible and low key language.

When dealing with politicians and public policy, a question still remains: What is it that motivates politicians? At the most cynical level it could be said being re-elected, power and self-interest motivates politicians—and there is some truth in that. The majority of politicians, however, fit into the range of personalities that could be found in any community organisation. There are those who are interested in the power and are primarily self-interested—and perhaps we have a greater proportion of those in politics—but there are many who are working hard for what they believe to be in the best interests of the community.

For instance, in Queensland at the moment, the Labor Government is moving slowly towards law reform in the area of prostitution. One cannot help but recognise that that Government is not prepared to reform laws which the community is not yet ready for. And that is appropriate. The issues need to be debated at length, the community needs to be involved, and the debate needs to be carried on in a moderate way so that there are no surprises for the community. Over-reaction to the shock that suddenly people are going to find themselves or their children or their streets exposed to prostitution is usually a result of misunderstanding of the issues. If moral sensibilities are not going to be offended, the methodology has to be measured, public, and open. No doubt there are innumerable ways of achieving such an open debate, but the role of the Committee in the ACT could well establish a model for politicians dealing with issues that are sensitive and difficult.

Community Values

Throughout history some groups have attempted to force their own moral values and moral standards on other members of the community, particularly with reference to sexual conduct. Sexuality ought to be subjected to the same morality as other human endeavours and human conduct. There should be no such thing as a special sexual morality: sexual morals are about sensibilities rather than about ethics.

For example, one of the most formidable applications of enforcement of human sexual morality on a western community was the pre-Vatican II Catholic Church's attitude towards masturbation. This attitude did not even deal with a sexual act between consenting adults, but rather an individual's sexual act in their own privacy. The Catholic Church of the time used its ultimate penalty on the 'sin' of masturbation. It was considered a mortal sin and as such the penalties were greater than capital punishment. In fact, the penalty was eternal damnation—burning in hell for all eternity. At that stage, one sector of society attempted to influence others over actions that were carried out in private by an individual. The Church attempted to enforce, as part of its influence and power, a special sexual morality. Of course, the power of the Catholic Church was extended by encouraging children from an early age to confess their sins to the priest. The system was not so much about morality as about surrendering personal power to the priest and, through him, the Church hierarchy.

In the *Inquiry into Prostitution, Summary of Final Report*, Marcia Neave (Victoria 1985, p. 9) states:

> Prostitution is now the only sexual activity between consenting adults which is punished by the criminal law.

The criminal law, with regards to prostitution, has no role to play from a morality perspective. In the *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991), criminal sanctions for street prostitution were advocated. It could well be argued that such sanctions illustrate an inconsistency. However, no inconsistency exists in the report because the Committee perceived that street prostitution provided the greatest potential for the spread of HIV in the community. As such, the question revolved around public health, not around morality. The Committee accepted that what consenting adults do in private when there is no risk of harm to others is not the forum for legislation. The matter of public health adds another dimension which will be discussed later.

One of the ironies of the politics of vice is that the vast majority of criticisms about a tolerant attitude to prostitution has come from the fundamentalists. The mainstream churches in the ACT presented quite a tolerant view to the Committee. Bishop George of the Anglican Church presented the following view:

> As a necessary evil it should be accepted and controlled. That control should be by way of decriminalisation not legislation. The Church would, I do not think ever, come out in favour of the legalisation of prostitution, but I think we could cope with decriminalisation. (Australian Capital Territory 1991, pp. 46-7).

And Bishop Power of the Catholic Church (Australian Capital Territory 1991, pp. 46-7) expressed the following point of view:

> The distinction . . . between decriminalisation and legislation is a good one for the reasons stated earlier, the path of decriminalisation appears to be the better course to follow, otherwise the way is open for prostitution becoming legal, respectable and more widespread.

Submissions received from fundamentalists and discussions with them presented a far less tolerant attitude than those expressed by the Bishops. It is ironic when reading the New Testament, Christ's relationship with the prostitute Mary Magdalen was indeed one of tolerance and understanding. It is difficult to understand why Christians who purport to follow the teachings of the Bible do not attempt to model their own behaviour on that of Christ. If that were the case they would befriend sex workers, attempt to understand them, while perhaps attempting to influence their ideas. Tolerance in our society is a far more important moral issue than sexuality.

Civil liberties

Whilst any group can be marginalised in the way that the gay community, intravenous drug users and prostitutes have been marginalised, there is a grave risk to civil liberties. That risk was aptly described to the Committee in the way that the Australian Federal Police (AFP) dealt with prostitution. On the whole, our Committee congratulated the AFP for the way in which they had handled prostitution in the ACT within the confines of being committed to anti-brothel legislation, while at the same time being told by the Director of Public Prosecutions that no prosecution would take place unless aggravating circumstances were involved. Aggravating circumstances included the presence of drugs, minors or aliens, being in a residential area or being associated with organised crime.

One method the police used to assist in the control of brothels was to record the names and details of workers and to retain this information at headquarters in a filing system. The AFP claimed that there was limited access to this filing system, and it was not on computer. However, the Committee was informed that the information had been made available on a number of occasions. In addition, police working from those files, indicated there were some 400 prostitutes working in the ACT. Other information obtained by the Committee indicated that at any given time there were only 150 prostitutes working in the ACT. The discrepancy in those figures indicates that when a person stopped working as a prostitute, unless they put a request to the police to remove their name, their card remained on file. This discrepancy includes 250 people. The recording of such information is a clear infringement of civil liberties.

The Committee recommended, under Recommendations 28 and 29, that:

- the records kept by the AFP identified in paragraph 233 of the *Interim Report* be destroyed; and

- the Assistant Commissioner of Police (ACT Region) notify the Assembly through the Minister when the records have been destroyed.

This issue illustrates that, once one section of the community has been marginalised, it is far easier and far more acceptable for the community as a whole to deprive them of their civil liberties without any real justification.

Women as objects

The Committee found a dichotomy in its basic position. On the one hand the Committee could not support the continuance of a practice which made women the objects of sexual pleasure for men. Such a practice was recognised as a fact in our society and not one capable of prohibition. Accordingly, the position that this idea must be regulated in some manner was adopted. Prostitution was seen as a social problem, endemic to the fundamentally sexist nature of our society. To resolve this idea of women as sexual objects, society needs to attack the fundamental position of sexism.

So often the advocates of suppression are also the advocates of sexism, which is in itself another form of oppression. To advocate the suppression of prostitution does nothing to resolve the basic sexist nature of our society. Grappling with the sexist nature of our society must be the first step in finding a resolution to the problems associated when men see women purely as objects of sexual pleasure or for sexual gratification. It is for economic reasons why some women choose to take advantage of that situation.

Public health and morality

The spread of infectious disease has long been associated with prostitution. The advent of HIV has followed a long line of other sexually transmitted diseases—for example, chlamydia, herpes, gonorrhoea, syphilis and hepatitis B. In discussing law reform options such as decriminalisation or legalisation of prostitution, it is critical that any harm associated with prostitution be considered. The ethics of the issue are no longer about the conduct of two consenting adults which may offend others' moral sensibilities. The issue is that these activities may become the vehicle for the spread of disease and the vehicle for the decline in the public health.

The simple solution under these circumstances seems to be to put the onus for public health on the worker. Rarely in the laws regulating prostitution has there been any attempt to control the conduct of the client. Many would argue that clients are from a dominant power group (men), while the workers are from a marginalised group, devoid of power (women sex workers).

In looking at the plight of young people, it is important to assess whether they are forced into prostitution. The Assistant Director of the Open Family Foundation told our Committee that young people engage in 'street prostitution':

> It may not be commercial in the sense that dollars and cents pass, but quite often they will give sex for a roof over their head, for a feed, and that must be made very clear because that is prostitution (Australian Capital Territory 1991, p. 20).

This view was reiterated by the Working Party on Alcohol and Other Drug Issues of the ACT Women's Health Network who provided evidence:

> More likely it is for a bed, it is for a roof over your head, it is for a few drinks. I often find it pitiful how cheap sex actually comes in that environment (Australian Capital Territory 1991, p. 20).

The Committee chose to define prostitution as commercial sexual activity and distinguished commercial sexual activity from sexual exploitation of disaffected young

people, both by their peers and by rapacious adults. Whilst it is important for the community to deal with the issue of the exploitation of young people in this way, the debate on prostitution regulation and legalisation can only become clouded by attempting to include the exploitation of young people with the debate on the decriminalisation or legalisation and regulation of prostitution.

Decriminalisation and Legalisation

The over-simplification of the debate has also touched on the notion that there is a choice between decriminalisation and legalisation. Such a choice does not really exist and it would be far better if people spoke in terms of law reform rather than those two possibilities.

> By using the term, reform, we acknowledge that legislative change is only one aspect of change. Social reform, attitudinal change and change in enforcement policy are equally important.
>
> On one end of the scale . . . decriminalisation involves the repeal of all legislation specific to prostitution. The industry would then be subject to controls that apply to any other businesses such as planning, health and nuisance laws.
>
> At the other end of the scale is legalisation where a special set of laws are established to regulate the sex industry. This means the government formally recognises sanctions and monitors the industry. The monitoring could be done in a number of ways, such as by registering workers or brothels, restricting ownership, management or location, or making health checks compulsory (Australian Capital Territory 1991, p. 127).

In looking at law reform, one of the interesting pieces of legislation that applied in the ACT was the *Police Offences Act 1930*. Under Section 34 of the Act:

> Every person who has or keeps any house, shop, room or place of public resort wherein provisions, liquor, or refreshments of any kind are sold or consumed (whether they are kept or retained therein or procured elsewhere), who—
>
> (c) knowingly permits or suffers prostitutes or persons of a notoriously bad character to meet, to gather and remain therein shall be guilty of an offence.
>
> Penalty $10.

No-one has ever been convicted under this section of the Act. However, it does illustrate quite clearly that law reform is required, and that decriminalisation or the removal of laws has a most important role within the sex industry. Here, the civil liberties of a person go well beyond what would be considered acceptable to any thinking member of a free society. There is a range of other laws that fit into this category and, therefore, there is clear justification for decriminalising the laws. In fact, the Committee has recommended the repeal of all laws in the ACT that refer to prostitution and, at the same time, it has recommended the establishment of a Prostitution Regulation Act in order to regulate prostitution.

In a press conference following the tabling of the Committee's *Interim Report*, a *Canberra Times* reporter challenged the Chairman of the Committee to say that this, in fact, is a report that legalises prostitution, rather than decriminalises it. What we must attempt to convey to the community is that there is no choice between legalisation and decriminalisation. The two sit on a continuum. A far better term to apply is that of 'law

reform' because the term law reform clearly sets out that changes to legal and administrative responses to prostitution are necessary.

Law Reform

In order to establish law reform in the ACT, the Committee recommended the decriminalisation and regulation of prostitution. It also made some recommendations with reference to public health, sexually transmitted disease, and on broader social issues.

Decriminalisation

In seeking to decriminalise the activity of prostitution the Committee made a series of recommendations. Firstly, that control of prostitution in the ACT be exercised through one enactment only, the Prostitution Regulation Act. The *Interim Report* applied the following definitions to the Prostitution Regulation Act:

> brothel—premises used for the purpose of commercial sexual activity;
>
> commercial sexual activity—providing sexual services for monetary or material reward based on a normal commercial transaction;
>
> escort service—the provision of commercial sexual services, other than on the premises of a licensed brothel;
>
> prostitute—a person providing commercial sexual services for monetary or material reward; and
>
> prostitution—engaging in commercial sexual activity (Australian Capital Territory 1991, pp. 103-4)

The Committee then went on to recommend that a series of quite specific sections of Acts be repealed. They apply to the Police Offences Act, as well as common law. Further, the Committee recommended:

> That the Australian Federal Police have no special and/or specific powers in respect of brothels or escort agencies for which the Licensing Board has issued a licence to own and operate (Australian Capital Territory 1991, p. 104).

Regulation

Having applied a decriminalisation process within its concept of law reform, the Committee then went on to establish a series of regulations. These regulations were based around the establishment of a Licensing Board which would be able to grant, reissue, transfer and monitor licences to own and operate a brothel and/or an escort agency. That licensing board should consist of three part-time members appointed by the Minister for terms of two years, although members be eligible for re-appointment for one further term, and at least one member of the Board be a woman.

Considering that the prostitution industry in the ACT is primarily formed of women, it is preferred that the whole licensing board be entirely women. The Minister, of course, does have the power to ensure that at least a majority of that committee be made up of women.

The functions of the licensing board under the Committee's recommendations to regulate prostitution would be to:

- hear and determine applications for the grant of a licence to own and operate a brothel and/or an escort agency;
- hear and determine applications for the reissue for transfer of licences to own and operate a brothel and/or an escort agency;
- cancel licences to own and operate a brothel and/or an escort agency;
- hear and determine complaints, other than criminal proceedings, against licence holders;
- monitor the adherence to licence provisions; and
- maintain a register of licences granted, reissued or transferred.

The licensing board also would have power to issue and collect fines imposed for breaches of licence conditions—although decisions of the licensing board should be appealable to the Administrative Appeals Tribunal.

The Committee was aware of some of the difficulties in the attempts to regulate prostitution in Victoria and debated at length as to how to avoid these problems. The Victorian experience is one of the reasons the recommendation that there be two classes of licence to own and operate a brothel and/or an escort agency was made. The first class of licence to allow for employment of up to ten people, and the second class to allow for the employment of eleven and up to forty people. Under the recommendations of the Committee, no brothel or escort agency in the ACT should employ more than forty workers at any given time.

Members debated the possibility of restricting the number of brothels or the size of brothels according to the numbers of beds. It was finally decided that the best compromise in attempting to avoid the problems experienced in Victoria was to restrict the number of workers in any given brothel or escort agency. There is, however, no restriction under our recommendations, for a licensee to operate two or three brothels if they consider that appropriate.

Other regulating mechanisms adopted by the Committee include taking into account any indictable offence under the law of the ACT or any other state or territory punishable by imprisonment for three years or more; or a previously held licence to own and operate a brothel and/or an escort agency which had been cancelled within the preceding three years. Any person in such circumstances ought not be granted a licence. Similarly, a licensee should be a resident of the ACT—although in additional comments from one member of the Committee, it was made clear that that member did not support the residency recommendation, because of the belief that it is against the principles of free trade.

Other regulatory recommendations which risk the loss of licence under the recommendations include employing minors; foreign persons who do not have a current work permit issued by the Commonwealth Department of Immigration, Local Government and Ethnic Affairs; or failure to comply with conditions set out under the regulations of the Act. Recommendations were also made with reference to publishing advertisements in either print or electronic media, and in respect of the criminal law.

The criminal law

Under the criminal law, the Committee recommended the continued ban on street prostitution in the ACT with penalties to be imposed equally upon the prostitute and the client. The criminal law also applies in cases of threats or inducements, or threaten to assault in order to intimidate any person to take part in any acts of prostitution, and to the employment of young people in prostitution.

Health and safety issues

The prime justification for law reform in prostitution has been health issues. The Committee has made a series of recommendations with reference to sexually transmitted diseases, with the responsibility being placed primarily on the shoulders of the licensee. However, the Committee has recommended that there be no health cards introduced for prostitutes, or that no legal provision mandatorily require prostitutes to undergo regular medical examination. The responsibility for medical examinations is to be the responsibility primarily of the licensee.

The main argument against compulsory health checks and medical examinations is that such a health check, or such a certificate, is really only as good as the next customer. It is far more important that brothels, escort agencies and all prostitutes employ universal preventive methods—primarily safe sex practices. With that in mind, the Committee recommended that it would be an offence under the Prostitution Regulation Act for a person who holds a current licence to own and operate a brothel or an escort agency issued by the licensing board to—expressly or implied—discourage the use of condoms in a brothel or escort agency. And, similarly, that it be an offence for anyone working in a brothel or escort agency in any encounter with a client involving vaginal or anal penetration by any means without using a condom. The penalty for offences against the provision dealing with the use of condoms be no greater than $5,000.

The difficulty with this recommendation is that it deals with a consenting act between two adults in private. The Committee felt it critical to emphasise the importance of the use of condoms, and believed that it would be possible for evidence to be taken from either a worker or a client to indicate that there was a repeated abuse of that regulation. It seems that of all ninety recommendations of the Committee, this recommendation is the one most open to question and debate. The Committee, as an oversight, failed to suggest the penalties apply equally to worker and client.

The Committee also recommended that regulations be made under the Prostitution Regulation Act with respect to:

- the cleanliness of brothels;
- the provision, use and laundering of towels and other items of linen;
- hygiene standards for swimming pools, spa baths and sexual aids;
- provision of, and hygiene standards for, showers, washing and toilet facilities;
- the disposal of used condoms;
- the inspection of premises;
- the provision of information relating to sexually transmitted diseases to prostitutes employed by the brothel or escort agency and to clients; and

- safeguarding the health of clients, and people employed by, the brothel or escort agency.

The funding of the licensing board was perceived by the Committee to be budget neutral in that the charge for the licences would cover the obligations of the Committee.

Matters of occupational health and safety, superannuation, workers' compensation and the like would also now become a matter for all licensees to comply under normal business regulations. The Committee envisages problems with these in the transition period, and made recommendations on educating managers and workers about their rights and responsibilities.

Finally, the Committee also recommended the prostitutes collective in the ACT—Workers In Sex Employment (WISE)—receive appropriate funding and guarantees of funding be provided for the workers in that respect.

Conclusions

If we follow the path of law reform, what are we hoping to achieve? The answer falls primarily into three categories: improve the rights and working conditions of the workers; we, as a community, arm ourselves for the fight against the spread of infectious diseases, particularly HIV; and we become a more tolerant and understanding society.

The rights and conditions of workers

In dealing with improving rights and conditions of sex workers, one must first of all ensure that the activity in which they are participating is not a criminal activity—that is the role of the process of decriminalisation. It is then important to follow the path of regulation in order to protect those workers.

One of the recommendations of the Committee—although there was a dissenting comment from one member—was that sex workers would gain some benefits of being a member of an appropriate union. It was also considered by the Committee that involvement of a union would add significantly to the monitoring of the operations of brothels and escort agencies. Unionism in Australia has been the mainstay of workers rights. There is no reason why that should not continue in the situation with sex workers.

It is interesting to note the reaction of various organisations to that recommendation. The Miscellaneous Workers Union hardly embraced the suggestion with enthusiasm, and Fiona Patten of WISE in the ACT suggested that the most appropriate union would be the Social Workers Union.

Occupational health and safety issues are the subject of new legislation in the ACT. Under the recommendations provided by the Committee, the brothels currently operating in the ACT who have more than twenty workers would be required to establish designated work groups. Those work groups would be responsible for the occupational health and safety of the workers. Clearly, there are some major disadvantages under the recommendations of the Committee to the licensees of brothels: health regulations, safety regulations, workers' compensation, paid holiday leave, sick leave provisions, workers' compensation, set hours of work, established rates of pay or remuneration, established working conditions and industrial representation are just a few of the extra issues the owners and workers will need to learn about.

The spread of sexually transmitted diseases

That the community will be armed for the fight against the spread of infectious diseases is also an important factor. Although it is quite clear that the educative process in brothels has

been highly successful, and that the use of safe sex practices seems to be widespread by decriminalising and regulating the industry, the community can be more certain that safe sex practices are part and parcel of working conditions in brothels. Clients can understand that they also have a responsibility to ensure they are using safe sex practices.

A more tolerant and understanding society

The final category advantage that has been mentioned is the establishment of a more tolerant and understanding society. Sexism, bigotry and violence are often established due to a lack of tolerance of the views and rights of others, and prejudice is fed by intolerance. When a group is marginalised they can easily become victims of this type of attitude. In speaking of censorship, the National Committee on Violence suggested a number of strategies for dealing with sexism in our society. Those same strategies apply to dealing with bigotry and prejudice:

> The Committee deplores sexism and the denigration of women. It feels, however, that values such as these, no less than other anti-social thoughts, are best combated not by censorship but by criticism, censure, and stigmatisation in the market place of ideas (National Committee on Violence 1990, p. 211).

Throughout the report of the Committee and throughout this paper prostitution has been neither condoned nor condemned. Before we look at criticism, censure and stigmatisation, we need first to be able to deal with those ideas in a logical and rational way. Once we have achieved that part of the debate, it will be time to look at the role of women in prostitution, sexism in our society, and how best to deal with these issues by a helping approach rather than an intolerant condemnation of prostitution.

References

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Legislative Assembly for the Australian Capital Territory, Canberra.

Mill, J.S. 1975, 'On Liberty' in *John Stuart Mill—Three Essays*, Oxford University Press, London.

National Committee on Violence 1990, *Violence: Directions for Australia*, Australian Institute of Criminology, Canberra.

The Canberra Times, 3 February 1991, editorial.

Victoria. Inquiry into Prostitution 1985, *Inquiry into Prostitution, Summary of Final Report*, [the Neave Report], Government Printer, Victoria.

CENSORSHIP AND PUBLIC OPINION

Robert Swan
Lobbyist
Swan Media
Australian Capital Territory

I agree with censorship. After all, I made a fortune out of it—Mae West.

IN THE AWARD-WINNING MOTION PICTURE, *DANCES WITH WOLVES*, THERE IS A very sensitive scene which shows a middle-aged Indian couple, wake-up and quietly make love beside a much younger and wide-awake squaw. As the camera pans back, we see that this scene is being enacted amongst fifteen or twenty other sleeping members of the tribe including grandparents and children. This scene says something about our roots!

We have a long history of making love in the company of others. Three and a half million years ago on the plains of what is now Ethiopia, our hominid ancestors were bending over each other from behind and grunting and groaning in full view of the campfire and the tribe. Viewed objectively, the modern practise of a single couple retiring by themselves to an empty and often darkened bedroom to engage in meaningful interface could be seen as a new development. With this in mind, the idea of sharing the living room with actors and actresses in an X-rated movie may involve some ancient behaviour patterns.

Indeed the history of sexual depiction is a long and celebrated one. Sexually explicit drawings and the world's first dildo, dating back to the Ice Age, have been found in Europe (Gordon 1980, p. 304). Detailed clay drawings of sexual intercourse were found during the excavation of the ancient Babylonian city of Ur (Gebhard 1970, p. 109) and the ancient Vedic civilisation of India gave us the *Kama Sutra*.

One of China's oldest manuscripts, *The Golden Lotus*, contains many explicit sexual passages. The ancient Greeks and Romans were famous for their ceramic works which depicted explicit sex acts including homosexuality and group sex (Brendle 1970, p. 109).

In 1832 Louis Daguerre invented the photographic process and immediately the erotic French Postcard evolved. As the motion picture industry developed in the early 1900s, sexually-explicit films incorporating state of the art graphics and equipment were some of the first. Between 1915 and 1920, two sexually-explicit films—*A Free Ride* and *The Casting Couch*—were made.

Of the world's six or seven main religions, the two largest—Christianity and Islam—take the greatest exception and apply the most severe censorship to depictions of non-violent adult sexuality. Punishments for dissemination range from eternal damnation in the afterlife, through to being stoned to death in this life. Both religions take sex very seriously and have

devoted many pages of their own religious texts to outlining what they see as proper sexual conduct. Christians have built two anti-sex pillars into the fabric of their religion—the celibate priesthood and the Virgin Mary.

In comparison with other world religions such as Buddhism and Hinduism, Christianity and Islam appear negatively preoccupied with sex. Buddhism and Hinduism, on the other hand, actually embrace sexuality as one path to liberation and a useful tool for changing consciousness. These religions also involve female deities or spirits in their godhead, whereas Christianity is still agonising over whether to admit female clergy into its mortal ranks—some thousands of years after its inception. Islam appears so chauvinistic in its approach that, in most countries, its clergy are not even allowed to touch or look at women. The patriarchal nature of these two strongly anti-sex religions is mirrored by their strong militant nature. The Christians and Moslems have been waging 'holy wars' and crusades for centuries.

As the major religion of the Western world, Christianity is philosophically locked into a negative view of non-violent adult sexual depictions. This is wonderfully summed up by St Paul's famous admonition 'To be carnally-minded is death' (Romans). This hysterical reaction to sexuality is a direct result of the Church's longstanding equation of sex with guilt. This has translated into censorship for a long time. For example, not long after Michaelangelo completed his statue of David, the church put the obligatory fig leaf in place where it stayed until the 20th century.

Because the act of sexual union, at its best, involves depictions of true equality, these are seen as weakening to the patriarchal and militant approach. Indeed, the power of orgasm is seen by some theologians as an alternative to the power of God and therefore to be avoided as much as possible. Without this push from the Christian church, the western world would have very little censorship on sexually-explicit material and a whole lot more on violence.

Where sexual and moral matters are concerned, politicians are extremely susceptible to the power of the church—even when there is a complete and demonstrable lack of public support for increased censorship. This was graphically illustrated in 1984 when the Reverend Fred Nile and the British morals campaigner, Mary Whitehouse, took in a lightning tour to all state Premiers. Within a very short space of time, they managed to persuade each Premier to ban the sale of non-violent, adult, sexually-explicit films and videos.

Public opinion, however, did not support these bans. From December 1984, a series of national polls conducted by the Adult Video Industry Association showed that the Premiers had acted without mandate. When asked the question 'Do you think that sales of non-violent, sexually-explicit films and videos should be banned'?, a Morgan poll in 1984 showed 66 per cent said 'no'. In 1985 a McNair Poll showed 63 per cent said 'no'. In 1986 another Morgan Poll showed 72 per cent said 'no'. In 1987 yet another Morgan Poll showed 77 per cent said 'no'. In 1988 a Saulwick poll showed 97 per cent said 'no'. State polling on the same issue in 1987 by the Morgan organisation showed an average 73 per cent support for depictions of non-violent explicit erotica (AVIA Survey Results April 1989). In April 1991, a Morgan poll in Queensland found 80 per cent of the people were against bans on non-violent erotic books and magazines.

Across the Pacific, national public opinion polls in the United States of America between 1965 and 1987 show an intense minority of 4 to 7 per cent of the population believe explicit sexual imagery is a threat to society. When rated on a harm scale, this minority consistently saw it as more threatening than economic and environmental problems and even more serious than nuclear war. When asked what they saw as a suitable punishment for selling sexually-explicit material, a majority of these people recommended

castration, beheading, standard death penalty and even dismemberment (McConahay 1988)!

That this small and fanatical minority continue to wield such disproportionate power in the political arena is an indication of the immature grasp on moral and sexual issues that many western politicians have—possibly this is an admission by some of their own sexual guilt and confusion. The censorship of explicit sexual imagery will be difficult and problematic for politicians as long as adults continue to make love to each other. One simply cannot ban depictions of such a universal activity. It is like trying to ban depictions of breathing or eating!

In Australia we already have approximately four million non-violent erotic (X-rated) videos in circulation. Any future bans on the sale of this product from the ACT will simply force the product underground and into the hands of blackmarket operators who may also be dealing in drugs, stolen property and other contraband. Trying to ban material in such obvious demand makes criminals out of ordinary citizens and robs the rest of society through misplaced law enforcement.

When we look at the classification system that is used for film and video in Australia we find some strange and distressing features. At the top of the list is the only totally non-violent category of films—the classification, non-violent erotic X—though G-rated cartoons are allowed a modicum of violence. The next classification is extreme and relished depictions of violence or R-rated.

Who sets this agenda for classification? One must ask, is consenting, non-violent adult explicit sexual depictions more or less offensive than violent scenes of someone having their head blown off with a shotgun? Essentially, what all state and Federal Attorneys-General are saying to their constituents is that 'I think sex is worse than violence'.

But on the issue of censorship, the state Attorneys-General have a lot to answer for. From the many discussions that have been held with their offices after they had collectively decided to pressure the Federal Attorney-General to ban X-rated videos in 1988, it was obvious that most of the Attorneys-General and their advisers were confused as to what was X-rated and what was R-rated. For example, Peter Dowding, Premier of Western Australia in 1989, convened a special Cabinet luncheon to view X-rated videos. He told the *West Australian* newspaper that 'the violence in the videos turned me off my lunch' (*West Australian*, 22 March 1989). Clearly, he made his decision to ban X-rated, non-violent erotic videos, after being shown an R-rated 'slaughter' video.

Politicians are notoriously fickle under pressure from moral groups. In August 1989, whilst in Opposition in Queensland, the Labor Justice spokesman, Dean Wells, accused the Queensland State Library of censorship for shredding copies of erotic photographer, Robert Maplethorpe's book. He told reporters: 'The destruction of books was supposed to have gone out with the Dark Ages' (*The Canberra Times*, 12 August 1989). In April 1991, the Attorney-General of Queensland, Dean Wells, voted along with all his other Cabinet members to ban the sale of all Category 1 and 2 non-violent erotic books. This ban included one-third of the Queensland Family Planning Association's booklist.

In early March 1989, John Howard, the then Leader of the Opposition, told the House of Representatives during a debate on Salmon Rushdie's book 'It means that we do not start banning books even though they may be offensive to segments of our community'. However, Liberal Senator Shirley Walters was at that same time preparing a Private Members Bill to ban non-violent erotic videos because they were offensive to some members of the community.

If we go to those who act on the censorship boards and ask them what they consider to be more offensive—explicit sex or violence—it can be anticipated that they will say 'violence' every time. This is not to say that we should have an open slather approach to sexually explicit films.

Not long ago, those in the X-rated industry made overtures to the Chief Censor's office to take defecation films off the X-rated list and into the banned category. Those explicit films which, whilst not showing any violence, do depict an incredibly sexist and yobbo approach to lovemaking should be taken out of the system. However, to be consistent, the sexist and yobbo depictions of mindless violence in M- and R-rated films should be taken out as well. But that would involve an act of censorship so great that we would lose nearly 25 per cent of our current video list. We must find other ways of educating X-rated film producers and buyers to avoid the sexist and the trashy end of the market.

Censorship is a process which erodes the fabric of democracies. Apart from the censorship of certain acts of violence such as child pornography, heavy sadomasochism and possibly bestiality, non-violent acts, art, philosophies or lifestyles should not be censored.

Without censorship on alcohol, Al Capone would never have become the crime boss he was. Without censorship on heroin, AIDS possibly would not have infected as many people as it has. Without censorship of the media, Hitler and Stalin could never have manipulated nations the way they did. Without the censorship of information, the victims of Chernobyl may have been able to escape a disaster.

References

Adult Video Industry Association 1989, Survey Results April, AVIA.

Brendle, A. 1970, 'The Scope and Temperament of Erotic Art in the Greco-Roman world', *Studies in Erotic Art*, eds T. Bowie and C.V. Christenson, Basic Books, New York.

Gebhard, P.H. 1970, 'Sexual Motifs in Prehistoric Peruvian Ceramics' in, *Studies in Erotic Art*, eds. T. Bowie and C.V. Christenson, Basic Books, New York.

Gordon, G. 1980, *Erotic Communications: Studies in Sex, Sin and Censorship*, Hastings House, New York.

McConahay, J. 1988, *Pornography and Public Opinion: How Many and Who would Ban What?*, Working Paper, Duke University, Institute of Policy Science and Public Affairs.

PORNOGRAPHY AND REGULATION

Shirley Walters
Senator for Tasmania
Australian Parliament

THIS PAPER WILL EXAMINE THE NEED FOR THE REGULATION OF PORNOGRAPHY. If we examine the Trends and Issues Paper No. 23 entitled *A Comparison of Crime in Australia and other Countries* (Walker, Wilson, Chappell & Weatherburn 1990), we will understand the reason for the need to regulate pornography and why the belief that pornography should be regulated has been reinforced.

Walker et al. (1990) points out how difficult a comparison of crime in Australia and other countries has been in the past, due to the variety and complexity of the criminal justice systems in various countries, resulting from the differences in the way they record and define their activities. However, Walker et al. also point out that 'with the advent of crime surveys, utilising standard sampling techniques and questions to obtain information about victimisation experiences, many of these dilemmas have been overcome'. Walker et al. used victim surveys for their data and have commented: 'Though "victim surveys", as they are called, are far from foolproof, they at least allow researchers to estimate the risk of crime in particular countries'.

Walker et al. (1990) summarise the findings of the 1989 International Crime Survey. They show estimates of the percentage of the sampled population aged 16 years or over in each country who have been victimised at least once during 1988. Walker et al. say:

> The Survey findings reveal that Australia has crime rates which are much more comparable to those of North America than Europe. In a number of cases these rates are the highest recorded among the 14 jurisdictions included in the survey.
>
> In assaults involving force, in the less serious types of sexual incidents, in burglary and in motor vehicle thefts, Australia ranked highest of all countries surveyed (Walker et al. 1990).

Walker et al. (1990) suggest:

> There is evidence that some aspects of the Australian lifestyle may actually be responsible for our high crime rates. For example, we may make ourselves easy targets for burglars with our detached houses, living in big, impersonal cities. Both these features are found to be associated with high burglary rates. Likewise, it can be thought that we make life easy for car thieves by driving to work—leaving the car parked all day unattended.

Having been locked out of a car on various occasions, the author can certainly testify to the ease of breaking into a car, so long as a wire coat hanger is at hand.

With regard to assaults and sexual incidents, suggestions are made that city dwellers are over 50 per cent more likely to be victimised than those who live in towns of under 10,000 people. As Australia is among the most highly urbanised nations—ranking fifth of the fourteen nations—and has high labour participation rates—especially for women—our lifestyle means we could be more susceptible to victimisation. Again, the 1989 International Crime Survey shows that:

> . . . the risk of all major categories of crime clearly decreases the further a country is from the equator—possibly because a colder climate imposes an informal curfew on both offenders and potential victims alike . . . (Walker et al. 1990).

All this, it is claimed, makes Australia a high risk country. However, Walker et al. (1990) point out that 'in-depth analysis of the data needed to confirm these suspicions has not been completed'.

What all this indicates is that our lifestyle in Australia *may* contribute to the fact that Australia is ranked third in the fourteen countries surveyed—behind USA and Canada—in terms of overall victimisation. Australia ranks highest in sexual incidents (asked only of women) and third in sexual assault, yet national characteristics are ignored. Why? We do know that other societies have different mores, for example, in Western Sumatra where women have always been respected and influential members of the community, anthropologists say rape is low or nonexistent. The survey points out that some European countries such as Switzerland and England also rank very low in sexual assault rates—Switzerland having no incidents in 1988 and England 0.1 per cent, compared to Australia at 1.6 per cent.

It is possible that the Australian characteristic of the macho chauvinist male has taught our men that being male gives them a right to dominate women. With masculinity being seen as aggressive—both sexually and otherwise—and with the need for mate approval, perhaps it is the reason Australia ranks so high among those countries surveyed for sexual abuse. A survey that reinforces this view, undertaken by the Office of the Status of Women, points out that 22 per cent of men—an amazing one in five of our male population—believe it is acceptable for a man to use physical force against his wife. Surprisingly, 17 per cent of women agree (Public Policy Research Centre 1988).

As has already been indicated, Australia tops the survey in sexual incidents against women and does so by quite a large margin. In Australia there were 7.3 per cent of the sample victimised in sexual incidents in 1988. The next worse country was USA with 4.5 per cent and Canada with 4 per cent. The lowest being the United Kingdom and France with 1.2 per cent. With regards to sexual assault including rape, Australia came third but by a much smaller margin.

These surveys indicate there is a grave problem in Australia. The Australian Institute of Criminology acknowledges this and says in the paper by Walker et al. (1990) that the statistics give 'a result which must surely give cause for concern to all Australians and reinforce the need for the establishment of a National Crime Prevention Strategy'.

There are no suggestions in this paper as to what should constitute a National Crime Prevention Strategy, and that may have been relegated to the 'too hard basket'. Yet the situation is so important, legislators would be irresponsible if they do not take action that has a reasonable expectation of at least alleviating the problem.

In 1985 the Australian Parliament set up a Joint Select Committee on Video Material. This Committee took evidence for over three years. The *Report of the Joint Select Committee on Video Material* (Australia 1988) was unusual in that it was the Report of

the Committee Members, while the minority Report was the Chairperson's Report. The major recommendations brought down by the Committee regarding pornography were:

- to refuse classification of X-rated material; and
- that the current guidelines for violence in R-rated videos be tightened.

The first recommendation is self explanatory. It is recommended that X-rated videos be disallowed, that is, videos containing explicit depiction of sexual acts involving adults, but not including any depictions suggesting coercion or non-consent of any kind. (This wording was later altered by the Film Censorship Board).

The R-Violence guidelines would read 'explicit depictions of violence, but not detailed, relished or gratuitous depiction of acts of considerable violence or cruelty'. The guidelines for R-rated videos at that time stated that explicit depictions of violence would be allowed, but not detailed or gratuitous depictions of acts of considerable violence or cruelty. The inclusion of the word 'relished' may seem minor, but it was of great importance, for if the Film Censorship Board abided by this, it would stop the showing of all acts of violence where the perpetrators were seen to be enjoying committing the violence, such as depictions of many of the rape scenes, torture and other sadistic acts.

Although the *Report of the Joint Select Committee on Video Material* (Australia 1988) was tabled in the Senate in April 1988, the Government did not respond until December 1990. As a consequence of the delay, a Private Member's Bill was presented to the Senate in November 1988. The Bill was subsequently amended by the Democrats in June 1989, and their amendment effectively cancelled the intention of the Bill. It remained on the Notice Paper until the dissolution of Parliament for the 1990 election. On 1 May 1989—during debate on the Bill in the Senate—the Film Censorship Board accepted the second recommendation and it is now included in the guidelines, but it is not believed they abide by it.

Evidence given to the Joint Select Committee which supported the need for one or both of these recommendations was considerable. Indeed, the Australian Institute of Criminology presented a submission that carefully pointed out that, as regards violent video material, there was no evidence to establish a definite causative link between exposure to violent material and violent criminal offences. However, Dr Paul Wilson, of the Queensland University of Technology (formerly of the Australian Institute of Criminology), gave evidence at a later time to our Committee saying:

> . . . while I find no evidence that sadistic sexual pornography causes serial killing, lust killing or child killing, depending on the terms that one uses, in my own mind, and reluctantly, I have found evidence that in the killer's background there is, first of all, a preoccupation with this material, secondly, a feeling that their sexual and sadistic fantasies are fuelled by this material and, thirdly, a feeling in some cases that the material is not strong enough and that their fantasies are not satisfactorily fulfilled. Those are the only three statements at this stage that I am prepared to make. I am not drawing a cause and effect relationship, but I am fairly deeply concerned (Australia 1988, pp. 193-4).

Dr Wilson told the Committee that it was his view that, with particular personalities, material of a sadistic, sexual kind which intertwines sex and violence reinforces existing predisposition towards the sadistic acts that are carried out. He added:

> I use the word 'reinforce' rather than 'cause' deliberately . . . Again I say 'reluctantly' because my basic philosophical position has always been one of allowing adults to read what they want in private, or, more relevantly, to view

> what they want; I believe there is a strong case for censoring material which combines sex and sadism even though I am at the same time concerned about what effect that censoring will have on opening up a black market (Australia 1988).

His evidence appeared contrary to an extent, to the Australian Institute of Criminology's submission. His concerns were supported by Dr William Belson's (a prominent researcher on video violence) evidence. Dr Belson's study 'Television Violence and the Adolescent Boy' formed the basis of his evidence. He stated:

> . . . long term exposure to television violence increases boys' participation in violent behaviour, increases their preoccupation with violent acts shown on television, makes them more callous in their reactions to the spectacle of violence in the world around them, produces sleep disturbances, reduces respect for authority, makes them feel more willing to use violence to solve their problem (Australia 1988, p. 191).

Dr Patricia Edgar, Director of the Australian Children's Television Foundation, agrees that video violence can have a disinhibiting effect on certain personality types. If a viewer inclined to aggression has an inhibiting factor working against this predisposition, the video breaks it down by making violence appear more normal and thus more acceptable. Dr Edgar sees it as 'feasible' that some individuals may select materials that exaggerate their aggressive tendency and hence allow the committal of a violent crime—a crime that otherwise may not have occurred (Australia 1988, p. 196). Many other eminent academics and researchers gave similar evidence on violence.

Evidence given in support of regulation of X-rated videos was again considerable, but perhaps more controversial. Dr Paul Wilson told the Committee that he was 'not convinced' that this material had any harmful effects. By 'harm' he meant 'criminal activity'. He went on to say:

> The issue of whether it causes harm in other ways is an issue that I am not really particularly concerned about at this stage' (Australia 1988, p. 207).

Dr Wilson referred to Professor E. Donnerstein's claims that non-violent pornography had no anti-social effects.

Professor James Check, who undertook research for the Fraser Committee on Pornography and Prostitution in Canada, disagreed. He found that the anti-social effects of any pornography were the most pronounced in individuals who already possessed a certain 'sexual aggressivity'. Moreover, the data revealed that it was the frequent users of pornography who had the most striking inclinations to sexually aggressive behaviour (Australia 1988, p. 205). Again, many eminent academics and researchers supported this view: Dr J.H. Court, of the Spectrum Psychological and Counselling Centre, Kent Town, South Australia; Mr F.M. Horwill, of the Australian Psychological Society of Victoria; Dr James Weaver, of Kentucky, USA; Zillman & Bryant, to name but a few. Others included Scotland Yard and many Australian police forces.

The evidence that made most sense was given by Professor Sheehan, from the University of Queensland. Like Dr Wilson's evidence on violence, Professor Sheehan argued that the personality of the viewers was of prime importance:

> . . . the critical thing in whether or not there will be these so-called effects of sexually explicit material is how aggressive the person is in the first place . . . There is no question that a lot of people are stimulated mildly or strongly by seeing sexually explicit material. When one is aroused one tends to behave as a consequence of that arousal and I think if the person is aggressive, aggression

> will out . . . In and of itself, I do not think that sexually explicit material divorced from aggression leads to strong negative effects. Once you combine sexually explicit material with aggression you have a different kettle of fish .. . The critical thing is how much someone is aroused and how aggressive he is in the first place (Australia 1988, pp. 207-8).

If this evidence is considered in conjunction with the survey on domestic violence—where nearly one-quarter of Australian men consider it acceptable to use physical force against their wives—then Australia has a real problem.

The three main concerns of witnesses who opposed any censorship of either X-rated videos or violence in R-rated are as follows:

- 'Adults should be able to view what they like and that censorship is a violation of civil rights'.

  It is illogical that those who gave this type of evidence did not object to censorship of child pornography, that is the depiction of sexual acts involving children or adult actors depicted as children. Again there is no proven evidence of a causative link between the viewing of child pornography and criminal child sexual abuse. Yet those who gave the Committee this evidence were all in favour of banning child pornography. It was not that they really objected to censorship, it is just where they wanted the line drawn.

- 'if banned, it would open up a black market'.

  Similarly, those who made this claim did not seem to think that, just because there was a black market in child pornography, that type of censorship should be lifted. They agreed that, yes, a minority would continue to use the black market but you would not be able to walk down to the supermarket and get 'the stuff'. Use would certainly be greatly limited.

- 'that there is no proven evidence of a causative link between the viewing of violent or non-violent pornography and violent criminal behaviour and so there is no justification for its ban'.

  There is evidence that convicted paedophiles have libraries of videos showing child pornography and there is evidence that many convicted murderers and rapists have libraries of X-rated and sexually violent R-rated videos. As Dr Wilson said:

  > I have found evidence that in the killer's background there is, first of all, a preoccupation with this material (Australia 1988, pp. 193-4).

  However, he disagrees when it comes to non-violent pornography. Dr Wilson is quoted, when speaking at the Victorian Criminal Justice Symposium, as rejecting the view that sexually explicit material, without violence, caused sex crime. He said studies failed to present clear evidence of a causal link between pornographic exposure and aggression. He rejected the view that sexually explicit material, without violence, caused sex crime (*The Age* 18 March 1991).

There are no studies that give clear, proven evidence that viewing child pornography, violent pornography or non-violent pornography causes criminal behaviour. But there is a reasonable expectation that frequent viewing of any of these types of videos by people with

aggressive characteristics can, as Professor Sheehan says, stimulate them mildly or strongly and, when one is aroused, one tends to behave as a consequence of that arousal, and so on.

As has been suggested, Professor Sheehan is not alone in this belief. Substantial evidence was presented to us which claimed viewing of such material desensitises the viewers—a claim all could identify with. How often have we become desensitised to the use of unacceptable language or to the viewing of violence either in the news or in films. We all know that when we hear certain expletives in conversations that were previously considered unacceptable, we no longer turn a hair. This is fact, and yet there seems to be a lack of acceptance of this. Many people do not believe that regular viewing of pornography, and indeed sexual violence so readily found in all these videos, leads to the desensitisation of the viewer, even though so many experts have brought this evidence to the Joint Senate Committee. Considering the doubt, this is not acceptable. We must not allow, or even run the risk of allowing, these videos to desensitise our population. The cost is too great.

Following research undertaken by Sommers and Check in the United States of America, a report was published. The research involved forty-four women who suffered severe battering by their male partners. These women were compared with a control group of women who had not had any battering and no domestic violence. It was found that the partners of the battered women were high consumers of pornography—in the form of both videos and magazines—while the partners of the control group were not (Sommers & Check 1987).

Following the tabling of the *Report of the Joint Select Committee on Video Material* (Australia 1988), the Attorneys-General from all the states met in Darwin on 30 June 1988. All states expressed opposition to the introduction of a new 'Non-Violent Erotica' category. They also stated that the present X-classification would not be introduced to the states. The Federal Attorney-General indicated that he would take the matter back to the Government for consideration. The future of X-rated material in the Australian Capital Territory would depend upon what the Federal Government decides.

Unfortunately, the Federal Attorney-General was unable to convince the Government to agree with the states' wishes as regards X-classification, so Australia is left with the situation where it is illegal to sell or hire X-rated material in the various states but, because of our Constitution rightly allowing free trade between the states, there is a thriving mail-order business conducted from Canberra.

It is ironical that X-rated videos are considered by the Government to be too degrading to women to be shown in cinemas. They ban them but believe it is quite suitable for home entertainment, where our young people can gain access to them. Would anyone be happy for their children to view X-rated videos as an introduction to their sex education? Does anyone believe this would contribute to a happy, healthy relationship in their children's future life?

This paper has shown that Australia rates highest among fourteen countries surveyed in the number of sexual incidents that take place and third in the more serious offence of sexual assault including rape. There is considerable concern in the community regarding the increase in the figures of sexual abuse—the latest figures on rape alone show an increase of 159 per cent in ten years (National Committee on Violence 1989).

Headlines such as: 'War Declared on Sex Crime'; 'Men on the March against Rape'; 'The Mind of the Rapist'; 'Rape Law Reforms Timid and Inadequate, Say Critics'; 'Rape: A New Victim Every Hour'; ' How Much More Proof do We Need to Ban Porn?', 'Rapes up by 23 per cent, Say Police', 'Longer Jail Terms Urged for Rapists', 'Cher-like Photos Spark Aggression: Kirner' mirror this concern. While these could be called emotive headlines, they do reflect the community's grave concern. Women are taking self-defence courses and talk about one-sex car-parking lots. They no longer can go for walks in their neighbourhoods after dark. When politicians are door-knocking during election times, women will no longer

open their doors—even in the middle of the day—but wait until they can establish who is knocking.

Every women's organisation except one—The Women in Science Inquiry Network—supported the Bill. From the most conservative to the most radical, all pleaded with the Government to support the legislation, but they were ignored.

The Office of the Status of Women has put out a Position Paper to provide the basis for the work of the National Committee on Violence Against Women. In it, examples of some of the more common types of sexual violence are given—including 'forcing her to view pornographic material'. They say sexual violence is not only an attack on the woman's physical body it is also a violation experienced at emotional and intellectual levels (National Committee on Violence Against Women 1991). Dr Wilson is quoted in the *Daily Telegraph* (1 August 1990) as saying 'I think there is a view that pervades Australian culture that sex is readily available and if you cannot get it you should take it'.

Walker et al. (1990)—quoted at the beginning of this paper—said the 1989 International Crime Survey's results 'must surely give cause for concern to all Australians and reinforce the need for the establishment of a National Crime Prevention Strategy'. As legislators, we are required and it is our obligation to do everything in our power to make Australia a safer place for our women, our men and their families. The Government has been given evidence that the banning of both violent and non-violent pornography may well help to alleviate that violence. Why are we not prepared to take that action?

Bibliography

Australia 1988, *Report of the Joint Select Committee on Video Material*, vol. 1, April, Parliament of the Commonwealth of Australia, Australian Government Publishing Service, Canberra.

Jennings, B. 1984, 'Effects of Massive Exposure to Pornography', in *Pornography and Sexual Aggression*, eds N.M. Malamuth & E. Donnerstein, Academic Press, London.

National Committee on Violence 1989, Monograph No. 1, *Violence in Australia*, Australian Institute of Criminology, Canberra.

National Committee on Violence Against Women 1991, *Position Paper*, April, Office of the Status of Women, Department of Prime Minister and Cabinet, Australian Government Publishing Service, Canberra.

Public Policy Research Centre 1988, *Community Attitudes Towards Domestic Violence in Australia: Social Survey Report*, Public Policy Research Centre, Sydney, p. 34.

Sommers, E.K. & Check, J.V.P. 1987, 'An Empirical Investigation of the Role of Pornography in the Verbal and Physical Abuse of Women', *Violence and Victims*, vol. 2, no. 3, pp. 189-209.

Walker, J., Wilson, P.R., Chappell, D. & Weatherburn, D. 1990, *A Comparison of Crime in Australia and other Countries*, Trends and Issues No. 23, Australian Institute of Criminology, Canberra.

LAW ENFORCEMENT, PROSTITUTION AND PORNOGRAPHY

Bernard Collaery
Attorney-General
Legislative Assembly
Australian Capital Territory

AS THE AUSTRALIAN CAPITAL TERRITORY'S ATTORNEY-GENERAL, ONE OF THE most controversial issues in my portfolio has been pornography. Correspondence is received from all over Australia urging that the sale of X-rated videos in the ACT be banned. With the release of the *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991), prostitution may well join pornography as an issue which provokes much heated debate in the community.

Law enforcement in the areas of prostitution and pornography is particularly difficult because it involves balancing two competing concerns, first the right of adults to enjoy, in private, X-rated books, videos and magazines, and to conduct their sex lives as they wish. Against this must be balanced the right of the public not to be exposed to material or behaviour which they consider offensive, and the need to protect children from these areas. Other considerations influencing law enforcement are the possible involvement of organised crime in these areas and, for prostitution, the fact that it is currently illegal in the ACT.

In the area of pornography, the access of minors to X-rated material has been of great concern to the community. Despite the safeguards which have been introduced, test cases have proved how difficult it is to restrict this access, particularly where such material can be ordered by telephone. Although businesses appear to be concerned to stay within the law, there seems to be only so much they can do if minors are determined to gain access to this material.

Another problem in this area is the diversity of views within the community. Pornography seems to evoke strong reactions from most people: there is a vocal section of the community who are vehemently opposed to pornography, on religious or moral grounds. On the other hand there is a large and profitable market for X-rated products, both inside and outside the ACT, indicating that many people enjoy this material. It is interesting to note that Queensland, which has strict laws controlling censorship, also boasts the highest mail-order sales of X-rated videos of any state.

The legislative scheme surrounding censorship in the ACT makes any changes to existing laws difficult: it is controlled partly by the ACT government and partly by the Commonwealth government. The ACT cannot make any laws relating to classification of

materials for censorship purposes—this function has been retained by the Commonwealth. The ACT can, however, legislate on the distribution of films and publications. The Act which allowed the sale and distribution of X-rated material was a Commonwealth Act made only days before self-government of the ACT was introduced in May 1989.

The issue of pornography has implications for more than just our jurisdiction. Because of the booming interstate trade in mail-order X-rated videos, law enforcement measures in the ACT and the Northern Territory (which are the only legal sources of these videos) impact on their distribution Australia-wide. The mail order business embraces both illegal and legal operators. Australia Post—for a flat fee of $30 per month—provides a redirection service for businesses. It is believed that the X-rated mail-order industry includes operators who are actually operating in other capital cities but using the re-direction service through mail boxes in Canberra. Perhaps it is time the Commonwealth had a look at this matter, if only to lessen the burden on taxpayers for double-handling of mail.

Just as the pornography issue has its own set of problems in law enforcement, prostitution also presents problems for the legislator and the law enforcer. It has been suggested that there are links into organised crime with prostitution. The Select Committee on HIV, Prostitution, and Illegal Drugs reported that they could find no evidence of organised crime involvement in prostitution in the ACT.

Another concern with regard to prostitution is the health risk to the community, especially with respect to AIDS. There was considerable concern in New South Wales when Charlene, an HIV-positive prostitute, admitted to continuing to work as a prostitute. More recently, however, the risk to the community has been seen as not so great. The Committee has found no significant link between preventing HIV infection of the community and prostitution.

The visibility of prostitution is also an issue of concern to the community. Street prostitution is generally uncommon in Canberra, brothels being the most common form of employment for sex workers. There have been strenuous objections to brothels which were sited in residential areas or in neighbourhood shopping centres. While the public in Canberra do not seem to object to prostitution in general, they would prefer that it took place in industrial rather than residential areas. There are signs, however, that prostitution has moved into the suburbs and a suspicion that more 'mobile' services are available, though not from the street.

The law enforcement responses in 1991 differ widely between prostitution and pornography, mainly because of the differences in the legislative schemes surrounding them. Prostitution is currently illegal, and law enforcement measures have been concerned with reconciling the laws, which are outdated, and current community standards. Pornography is legal in the ACT, so legislative measures are mainly aimed at refining the legislative scheme to best meet the needs of the public.

In 1991 in the ACT, prostitution is dealt with by the *Police Offences Act 1930*. This Act makes it a criminal offence to keep a brothel, to persistently solicit in a public place, or to live on the earnings of prostitution. It is also illegal to allow a public resort to be used as a meeting place for prostitutes. Although the legislation displays a clear intent to prevent prostitution and prostitution-related activities, the law is not enforced like this. The Director of Public Prosecutions (DPP) must give consent before prosecution can be initiated under the Act. The DPP does not consent to prosecution unless there are 'aggravating circumstances', for example, if members of the public have complained about a particular premises, if they are located in a residential area, or if illegal drugs are involved. The Australian Federal Police (AFP) have adopted a policy of 'containment and control' based on this policy of the DPP.

Prostitution law has not been amended in the ACT for a long time, so its enforcement has changed to deal with changes in community attitudes, including an increased tolerance of

prostitution. The recently released *Prostitution in the ACT: Interim Report* (Australian Capital Territory 1991) recommends the removal of criminal penalties for prostitution and the regulation of prostitution-related activities. The Report recommends that a Licensing Board be set up to regulate the location, management and running of brothels. While the current Alliance Government has not yet responded to the Report, this seems a sensible option for the ACT.

In the area of pornography, the ACT inherited a system of local controls over X-rated videos at the time of self-government in May 1989. In fact those controls were made by the Commonwealth Government two days before self-government. The ACT itself introduced legislation in July 1990 to restrict the sale and distribution of X-rated material to the light industrial areas (away from schools and residential areas), made it more difficult for minors to obtain such material by introducing proof-of-age requirements for all new orders, introduced a new offence of assisting a minor to obtain an X-rated video (for orders where there is some doubt as to age), and required that adult material be mailed 'envelope within an envelope'.

Despite much of the adverse publicity directed at the ACT about X-rated videos, there are steps that other jurisdictions could take to control their distribution which they have chosen not to take. The Commonwealth, for example, controls the importing of these videos: it could tighten its Customs controls to prevent unclassified material being imported into Australia. It could also enforce its laws which control the postal services and prevent the transmission of these videos by mail. The states could consider banning the possession of X-rated videos, thus curtailing the mail-order business. So far, none of these other jurisdictions have chosen to make these moves: they are quite content to let the ACT remain the 'scapegoat'. Although there is a Private Member's Bill before the Assembly at present, there is no indication that it will be more successful than it was twelve months ago in banning X-rated videos.

We must also keep pace with new developments in technology. It was announced recently in *The Canberra Times* that a new service will be available for home computer users providing information on brothels and escort agencies and making available pornographic books and magazines by computer. While this service will be based in Canberra, regulating it will be a Commonwealth responsibility, as the Commonwealth has control of telecommunications.

In reforming and enforcing laws in the areas of prostitution and pornography, the real problem lies in determining how far to intrude into the lives of individuals. The task of the law is to regulate people's public lives: that is, their dealings with each other in the public sphere. In dealing with people's sexual lives, the law is going beyond its usual function. To do so wisely is difficult.

Reference

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Canberra.

COMMUNITY POLICING AND THE POLICING FACTOR OF ON-STREET PROSTITUTION IN THE KINGS CROSS POLICE PATROL

Superintendent James McCloskey
Patrol Commander
Kings Cross Police Station

Sergeant Mike Lazarus
Beat Coordinator
Kings Cross Police Station
New South Wales

SINCE JULY 1987 THE NEW SOUTH WALES POLICE SERVICE HAS BEEN extensively involved in the process of research involving the Police Service and the delivery of services to the community of New South Wales. From the Kings Cross Police Community Survey, a number of extremely relevant policing factors were identified. One of these factors is the topic of on-street prostitution.

The purpose of this paper is to analyse on-street prostitution, examine social options (including legislation) and factors pertaining to on-street prostitution, the present legal situation and common policing strategies and finally propose an alternative strategy.

Demographic Analysis of the Kings Cross Police Patrol

The Kings Cross Police Patrol caters for a broad cross-section of business, residential, industrial and recreational activities and development in a region of Sydney with probably the highest population density in Australia. The population during evening hours increases substantially—especially in the Central Business District—due to the large number of licensed

premises, some of which conduct adult shows and sell restricted adult items and material. There are also a number of brothels and street-working prostitutes in this area. The availability of illegal drugs is an additional factor in attracting members of the public to the area. There are also very clearly defined links between prostitution and drug distribution in the area.

Characteristics of the Kings Cross Police Patrol

The Kings Cross suburb and surrounding areas have a worldwide reputation as the vice market of Sydney and perhaps Australia. This reputation provides a substantial and lucrative market for those involved in all forms of prostitution in Kings Cross and surrounding areas.

This paper is based upon the presumption that, despite the variations in policies adopted, it is an unreasonable assumption that on-street prostitution can be eradicated or permanently moved from the confines of the Patrol, given the existing socio-environmental conditions.

Profile of Persons Involved in On-Street Prostitution in the Kings Cross Police Patrol

Adult females

The vast majority of adult females prostituting themselves in the Kings Cross Police Patrol area are aged between 18 and 30 years of age. Over 95 per cent are heroin addicts and the majority live in the inner city or eastern suburbs, with 20 per cent residing within the Patrol boundaries (Travis 1986, p. 24).

On-street adult female prostitution occurs twenty-four hours a day, but the number of prostitutes and the usage of areas fluctuates according to whether it is night or day. During the hours of daylight, adult female prostitutes use the Central Business District and to a lesser extent the Darlinghurst area. The Central Business District is utilised by a majority of non-drug users during daylight hours. They provide their service from footpaths and a few utilise parks and recreational reserves. Less than fifty prostitutes work on-street during daylight hours at any one time.

During the hours of darkness, on-street female prostitution increases in the Central Business District. However, it is the Darlinghurst/East Sydney area that is far more heavily utilised by female prostitutes during the hours of darkness. During these hours the number of prostitutes on William Street, East Sydney, is greater than the total in the Central Business District area. The area bounded by Bourke, William, Victoria and Burton Streets is also heavily utilised—especially by adult female prostitutes who provide their services from motor vehicles or in other public places. On-street adult female prostitutes can total between fifty to one-hundred at any one time on an average Friday or Saturday evening in the Kings Cross Police Patrol area.

Transsexuals

The transsexuals prostituting themselves on-street in the Kings Cross Police Patrol area are usually aged around thirty—considerably older than their female counterparts. The majority live in the area (Travis 1986, p. 66) and, although many are drug users, far fewer are heroin addicts compared with their female counterparts.

Very few transsexuals prostitute on-street during daylight hours. The majority prostitute themselves during the hours of darkness from the footpath on the southern side of William Street, between Bourke Street and Darlinghurst Road, with some utilising streets south of

William Street. The number of transsexuals soliciting on-street during the hours of darkness on a Friday or Saturday evening would number between twenty and forty.

Adult males

The majority of adult male street prostitutes are younger than their female counterparts and their age range is between 18 and 26. The vast majority live in the area and are drug users. However, fewer adult male prostitutes are heroin users compared with their female counterparts (Travis 1986, pp. 83-96).

Male prostitution is mainly confined to the hours of darkness. The areas utilised are distinct and separate from their female and transsexual counterparts. The two areas where most male prostitution occurs are the Fitzroy Gardens, Kings Cross area, and the Green Park, Darlinghurst and surrounding areas (commonly known as 'The Wall'). There are far more adult male prostitutes offering their services from park seats and from within the confines of the reserves than female or transsexual prostitutes.

With the entrenchment of Oxford Street as the gay entertainment area of Sydney, activity has shifted from the Central Business District area to 'The Wall' area of Darlinghurst with its close proximity to the gay sub-culture in Oxford Street increasing the market for the males' services.

Juvenile prostitutes

There are approximately fifty young streetpersons under the age of sixteen years who inhabit the area on a permanent basis. There are at least another fifty who reside in the area on a semi-permanent though regular basis, such as on weekends. The majority of these juveniles prostitute themselves, many doing so in public places.

There are also a significant number of juveniles aged between sixteen and eighteen years who prostitute themselves on-street in the same locations as the adult prostitutes. Because of their mode of dress and their physical maturity, it is extremely difficult to differentiate between juvenile and adult prostitutes. The vast majority of these juvenile prostitutes are drug users and, once permanently residing in the area, very few do not use intravenous drugs such as heroin.

The majority of on-street juvenile prostitution occurs during the hours of darkness and the locations utilised most frequently are Fitzroy Gardens and 'The Wall', Darlinghurst. Local demographic knowledge and available statistical analysis substantiate the fact that over 50 per cent of adult street prostitutes initially enter the profession as juveniles (Travis 1986, pp. 27, 85-6).

Factors Pertaining to On-Street Prostitution in Relation to the Prostitute and the Community

Reasons for Persons Soliciting in Public Streets and Places

The main reasons that persons solicit in public streets and places can be summarised as follows:

- usually economic—there are minimal overhead costs, unlike escort or brothel work;
- offers the prostitute a last resort for those who are too old, underage or drug addicted;

- offers the prostitute 'more freedom'. They are also their 'own boss';
- some consider it less competitive than brothel work.

However, increased monetary gain compared to other forms of prostitution is the main reason for the continuation and proliferation of street prostitution. The fact that over 95 per cent are drug addicted causes them to ignore the dangers such as sexual assault, assaults and/or robberies, kidnapping, and sometimes murder.

Health factors

Despite varying opinions regarding the percentage of sexually transmitted diseases that can be attributed to the activities of prostitutes, there can be little argument that prostitutes themselves must be considered in the high-risk category of potential victims due to the frequency of, and varying types of, sexual activity performed with different partners. Because of the nature of their work and their working conditions, a good deal of general ill-health also occurs in what is by and large a very youthful population. Poor eating habits, lack of sleep, emotional and physical stress, inadequate housing and drug abuse are conditions commonly affecting those involved in the profession. Also, many have had a traumatic childhood or adolescence which compounds their health problems (New South Wales 1986, p. 155).

Drug factors

It has been estimated that as many as 80 per cent of street prostitutes in Sydney are heavily heroin dependant (New South Wales 1986, p. 187). Therefore, there is a very strong link between heroin usage and street-prostitution. The majority of street prostitutes claim that they earn up to $500 per shift soliciting, and some earn more. However, there appears little doubt that the length of the shift depends on how long it takes to earn enough money to pay for sufficient heroin to satisfy their addiction. For these prostitutes, their profession is an economic necessity—a necessity which leads to a swift deterioration in health and, for many, a premature death from drug overdose.

In addition to heroin, other illegal hard drugs are commonly used by prostitutes, such as 'black market' methadone, cocaine, LSD, speed and virtually every other illegal drug currently available. Many of the street prostitutes supplement their income through acting as drug suppliers. As their bodies deteriorate with drug use and their clientele decreases, many are forced to replace prostitution with drug supply as their main, and sometimes only, source of income.

Drugs replace monetary payment for services rendered by the prostitute and there is increasing evidence that the practice of supplying drugs to street prostitutes on commencement of shifts by managers or owners of casual accommodation is becoming more common. This practice means that the prostitute is continuously working to repay monies owing for drugs supplied by these premises and is very securely 'locked into' the profession.

Therefore, the street prostitutes provide a very lucrative marketplace for the illegal drug trade. Not only are they purchasing the illegal drugs, but they are also being used as on-street outlets for the supplier's products, thus decreasing the prospect of their detection by members of the Police Service. If a heroin-addicted street prostitute earns over $2,000 net per week from prostitution, then it is conceivable that, over twelve months, at least $100,000 will be spent on purchasing heroin. If the monetary amount of heroin supplied to heroin-addicted prostitutes is totalled, then it is obvious that many millions of dollars are harvested by the supplier from this one market.

Community Factors Pertaining to On-Street Prostitution

The prostitutes who solicit in public places in the Central Business District and other commercial areas such as William Street are very seldom, if ever, the cause for community complaint. However, a number solicit in the Forbes Street area of Darlinghurst. Their positioning creates noise pollution from increased motor vehicular traffic consisting of potential customers, sightseers and other persons harassing the prostitutes both verbally and physically. The prostitutes themselves cause noise pollution through territorial disputes and verbal altercations with passing vehicular and pedestrian traffic. In addition to the noise factor, the discarding of condoms and other debris, often on private property, is of major community concern. The increased pedestrian traffic causes problems such as persons urinating and vomiting, and increased drug activity in these areas results in an increase in discarded syringes and associated debris.

Contrary to a commonly held belief, very few male persons act as 'pimps' for a number of prostitutes. Virtually all male persons observed in the vicinity of the female prostitutes are boyfriends who, like the prostitute, is heroin dependant. The boyfriends remain in the vicinity to ensure the safety of their girlfriend. The prostitutes who provide their services from motor vehicles face added safety risks, and the boyfriends of these females are utilised to record registration numbers of customers vehicles. It is not unknown for these persons to report the fact to police that their girlfriend's return is overdue.

Common Community Policy Options in Relation to On-Street Prostitution

Suppression—legal suppression

It has been commonly accepted that suppression is not a practical option. Suppression would undoubtedly only move on-street prostitution to other areas and create an environment where crime and corruption would flourish. Also, driving the activity underground creates associated difficulties for support agencies such as health and drug rehabilitation services.

Legislation—legal recognition with full government control

This policy has strong support from members of the community who recognise the inevitability of prostitution. Most advocates argue that advantages could include a licensing system to enable regular health checks, and others have advocated the creation of 'red-light' areas. Opponents state that to legally recognise on-street prostitution is to encourage its growth. However, the logistics of such a proposal are enormous and in practical terms it is not possible given the resources available. Secondly, and most importantly given the current environmental conditions, this policy would create 'underground' areas of prostitution where crime and corruption would flourish and the access of support agencies would be hindered.

This policy ignores the fact that virtually all on-street prostitutes are drug addicts and that direct efforts at control will either relocate their activities or create a socially less desirable result, such as forcing the person from prostitution to more serious criminal activity. Prostitutes resent control, especially street prostitutes and legislation would deny them any choice of working conditions and severely restrict their economic and personal rights.

Decriminalisation without controls—removal of all specific laws relating to street prostitution and no government regulation of the trade

Decriminalisation is a policy which has been attempted in New South Wales previously with the *Prostitution Act 1979*. With the decriminalisation of street prostitution in 1979, there

was a corresponding increase in the number of street prostitutes visibly soliciting in residential areas, especially Darlinghurst. Although this policy offers advantages to prostitutes and releases a burden from law enforcement and judicial services regarding resource allocation, historically the facts verify that it is unrealistic to formulate prostitution policies without considering the needs of all members of the community.

Decriminalisation with controls—legal recognition with government regulation of some aspects of street prostitution

Decriminalisation with controls involves legal recognition with full government control. 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 of the Exploitation of the Prostitution of Others 1949*—represents a reasonable working compromise between prostitutes, clients and the community. The Fitzgerald Report also endorsed a policy of decriminalisation with controls (Queensland 1989, p. 188).

In the state of New South Wales, this policy has been adopted since 1983, with Section 8A of the Prostitution (Amendment) Act prohibiting soliciting in or near a dwelling, school, church or hospital. In 1988, with the repeal of this Act, the offence for street prostitution was broadened under Section 19 of the *Summary Offences Act 1988*, with the inclusion of the factor of visibility by adding the words 'within view from' these locations.

Two new offences were also created under Section 19(3) and Section 20. An increase in penalty above that provided for soliciting applies where such soliciting 'harasses or distresses the other person'. Section 20 specified an offence of public acts of prostitution in or within view from a school, church, hospital or public place, or within view from a dwelling house. Further to this, it is also an offence to take part in acts of prostitution in vehicles similarly located.

Acts of prostitution include sexual intercourse as defined by Section 61A of the *Crimes Act 1900*, and masturbation by one person on another for payment. All persons involved in such public acts are liable to prosecution.

Significant changes have also been made to the penalties for prostitution. Section 19, Summary Offences Act 1988, carries a maximum penalty of $600 or three-months imprisonment ($800 or three-months if the soliciting harasses or distresses), while Section 20 carries a maximum penalty of $1,000 or six-months imprisonment. Section 8A of the *Prostitution Act 1979* carried a penalty of $500 only.

An Analysis of Common Policing Strategies Relating to On-Street Prostitution

The most common policing strategy—adopted by the New South Wales Police Service for decades—has been to allocate responsibility for the policing of street prostitutes who contravene the current legislation to members of the Vice Unit. This Unit has a resource allocation of approximately twenty personnel who are expected to service vice-related activities statewide. To expect a unit with such a limited resource allocation to adequately service an industry which is a twenty-four hour, statewide industry employing—directly or indirectly—thousands of individuals, is both unreasonable and illogical.

After a very short duration, the street prostitutes know the identity of members of the Vice Unit and their usual periods of surveillance. When the Vice Unit is in the area, the prostitutes' communication 'grapevine' enables them to keep an accurate knowledge of the Vice Unit's location at any given time. These facts drastically diminish the chance of detection and arrest of contraveners of the legislation, as 'knowing' and 'proving' offences are committed are two vastly different matters.

Since May 1990, the resources allocated to the Kings Cross Police Patrol have been increased by the allocation of approximately thirty Beat Police. Because of the increased concern of residents in the Darlinghurst area in relation to the activities of street prostitutes—especially during Friday and Saturday evenings—Beat Police have been performing their duty in plain clothes in the Darlinghurst/East Sydney residential areas. This has resulted in some success in alleviating perceived community problems during these hours. However, similar problems to that being experienced by the Vice Unit have arisen, such as familiarity with the identity of the police and the time duty is performed. This results in the times and places of soliciting constantly changing in the East Sydney/Darlinghurst residential areas. Therefore, the problem is not alleviated in the long-term, it is only constantly shifted throughout the area.

The final, commonly-adopted policing strategy is the implementation of a police operation involving an unusually high number of police personnel saturating the perceived problem areas for a defined period of time. This strategy results in either a shifting of street prostitution from one residential area to another, a time-shift, or a temporary decrease of street prostitution in the Kings Cross Police Patrol area but a corresponding increase in street prostitution in other areas such as Canterbury Road, Sydney. Once the operation ceases, it only takes a short period of time for the prostitutes to return to the residential areas. The effectiveness of this strategy is, therefore, only short-term.

Utilising Community Policing in an Endeavour to Address the Policing Factor of Street Prostitution

Community-based policing is primarily concerned with the prevention of crime and social disorder through the cooperative efforts of police and the community. Its fundamental theme is to deliver an improved service by establishing an effective communication network between the Police Service and the community, and the creation of an awareness within the community that it has an important role to play in the maintenance of law and order. It is essential that the Police Service function as one united body with strong links at every level with the community.

Through research, the Kings Cross Police Patrol has ascertained that on-street prostitution is a significant policing factor. However, it appears logical that the formulation of a viable long-term strategy is dependant upon further research to ascertain the wants and needs of all the major community factors pertaining to street prostitution.

The following persons or representatives of organisations were conferred with at length in relation to on-street prostitution in the Kings Cross Police Patrol:

- the four Neighbourhood Watch groups operating within the Kings Cross Police Patrol;
- a number of street prostitutes;
- Doctor Ingrid Van Beek, Director of the Kirketon Road Centre, Darlinghurst;
- Tom Wilson, Coordinator of the Kings Cross Adolescent Unit (FACS);
- representatives from the South Sydney Council;
- representatives from the Kings Cross Chamber of Commerce;
- representatives from local organisations and welfare agencies;

- the Commander of the New South Wales Police Service Vice Unit, Chief Inspector T. Dennis.

This research has proved invaluable in broadening knowledge on the subject and, combined with local demographic knowledge, has provided the basis for much of the information which appears throughout this paper. It also provided the information needed for the development of the framework for an alternative viable long-term strategy which considers the factor of on-street prostitution in terms of the whole community within the Kings Cross Police Patrol.

The Proposed Alternative Strategy Relating to On-Street Prostitution in the Kings Cross Police Patrol Designated Areas

The strategy proposes the designation of a number of areas within the Patrol where on-street prostitution is permitted, by virtue of the consent of all the community and its relevant sections and organisations as previously listed. Ideally, these areas would be considered legal and concur with the provisions of the current legislation.

One may ask why this is necessary given the current legislation and environmental conditions. There is understandable confusion amongst the prostitutes themselves as to the exact interpretation of the legislation. Indeed, opinions have varied amongst members of the Police Service who are entrusted with enforcing such legislation. The confusion is based upon the 'within view from' wording of Section 19. The interpretation by different members of the judicial system in different geographical areas has added to the confusion. There is no doubt that representatives of the judiciary will have to be consulted prior to the designation of any particular areas to ensure their acceptability under the current legislation.

There are a number of very important community advantages in actually designating areas for the purpose of street-prostitution. Firstly, the prostitutes themselves will be educated as to the location at these areas. They will know that firstly, members of their own occupation will have played an important role in determining their location and; secondly, they will know that the areas have been designated after consultation with all relevant community organisations, resulting in decreased likelihood of harassment from residents. If they remain in the designated areas and abide by Section 20 regarding 'Acts of Prostitution' and any other Act or regulation of this state—just as any other member of the community is required to do—then they have no fear of arrest, attempts to control or harassment by any member of the New South Wales Police Service.

The community within the Kings Cross Police Patrol area, in the main, accept the logic that on-street prostitution is a fact of life. Their main concerns relate to the actual soliciting of prostitutes in residential areas and the committing of acts of prostitution from within vehicles and in public places within residential areas. By designating areas for the soliciting of prostitutes with community consent, it will decrease the friction between members of the community and the prostitutes themselves. The members of the community will be under no misapprehension as to the areas where street prostitution is permitted.

These designated areas will also have the very important role of placing these prostitutes, virtually all of whom are drug addicts, into areas which are easily accessible to support agencies such as Family and Community Services (FACS) and health services.

In the *Report of the Select Committee of the Legislative Assembly upon Prostitution* (New South Wales 1986), it is stated that overseas experience suggests that the centralisation of prostitution creates intolerable problems for residents in or near 'red-light' zones. The Report stated that 'red-light' areas degenerate into contact zones considered unsafe for residents, clients and prostitutes (New South Wales 1986, p. xxix).

In the Kings Cross Police Patrol area, the Central Business District and surrounding areas have been unofficially and universally recognised as a 'red-light' area for decades. The proposed strategy of designating areas will in fact attempt to reduce the 'red-light' area to boundaries which gain and are given community acceptance. The most obvious areas to examine are the main commercial thoroughfares such as William Street and the northern end of Darlinghurst Road. These areas are wide, well-lit streets with heavy pedestrian and vehicular traffic. Notably they are also the location for the majority of street prostitution at the present time. Local intelligence reveals that these areas are no less safe than other streets in the Patrol for residents, clients and prostitutes. Also the Police Service can more frequently and efficiently allocate resources to service these defined areas than if on-street prostitution is commonly pursued over a wider area.

Re-Assessment of Health Services

As a result of the *Report of the Select Committee of the Legislative Assembly upon Prostitution* (New South Wales 1986), a recommendation was made to introduce measures to reduce the incidence of sexually transmitted diseases and drug abuse. The recommendation led to the creation of the Kirketon Road Centre, Kings Cross, which is a community-based primary health care facility at Sydney Hospital. Services are provided free and include nursing, medical and counselling services, a social welfare service, needle/syringe exchange and mobile outreach program.

The Kirketon Road Centre is ideally situated in the central Kings Cross area to service the needs of the persons involved in prostitution and any related drug addiction. However, in 1991, there are a number of extremely significant problems which need to be urgently addressed.

Due to insufficient resources, the Centre is unable to provide a twenty-four hour service (open from 9 a.m. to 8 p.m.), which appears illogical when one considers on-street prostitution is a twenty-four hour occupation in the area. The period between 8 p.m. and 9 a.m. is by far the time-span of greatest on-street prostitution activity.

In the *Report of the Select Committee of the Legislative Assembly upon Prostitution* (New South Wales 1986), the recommendations were made for the New South Wales Government to continue to monitor the size of the heroin addiction problem in New South Wales and, if necessary, to continue its expansion of a range of methadone treatment programs to ensure the availability of treatment for all those diagnosed as suitable for methadone. The recommendation was also made so that the assessment of heroin addicts could be streamlined and expedited to undercut the heroin market and absorb addicts into suitable treatment programs. Unfortunately, it appears that these recommendations have not been implemented efficiently and effectively considering the gravity of the situation.

Available intelligence reveals that drug addicts committed over 80 per cent of reported crime in 1989 consisting of 240,000 crimes in New South Wales. Information gained from Patrol intelligence sources reveal that this percentage is higher in the Kings Cross Police Patrol area. The main on-street drug distribution network is centred on utilising prostitutes as the well-known on-street drug distribution outlet. Therefore, the rehabilitation of these persons is, and should be, one of the major priorities of the community and its elected representatives.

In 1991, there are 1,100 places on the methadone program allocated to the Eastern Suburbs area. Because of staffing difficulties in the three public methadone distribution centres in the area—Rankin Court, Langton Clinic and Kirketon Road Centre—the number of potential places on the program is not being filled. It is apparent that a significant percentage of places are filled by persons who do not reside in the area.

The delay from first inquiry by the patient to actual admission to the program is usually three months. In 1991, methadone treatment is delayed through an antiquated system of processing applications within the health service. Detective Sergeant Brian Collis from the Kings Cross Police Patrol has made a detailed analysis of the system. He has deduced that a single computer linkage from the initial inquiry point to other health service departments would enable treatment to begin in twenty-four hours. Ideally, there should be no barriers (including urine testing) to any person undertaking the methadone program within twenty-four hours of application, if not immediately.

The advantages are logical and irrefutable. Once a prostitute is undergoing methadone treatment there is some chance of rehabilitation. To refuse treatment is to offer virtually no hope of rehabilitation, and to delay treatment is to dramatically decrease any hope of rehabilitation. Once the patient enters the program, he or she has access to counselling and other rehabilitation services. The Kirketon Road Centre has the facilities to offer assistance on housing, education and employment matters to encourage and enable prostitutes to support themselves without relying on prostitution.

Medical research supports the theory that both methadone and heroin in their pure form and in correct dosages cause little deterioration in the human body. However, the fact is that heroin is always mixed with various other substances, many of which cause rapid deterioration in the health of the addict. Methadone is not diluted with harmful substances and, therefore, has distinct health advantages over heroin usage. Heroin usage is usually by intravenous injection with a hypodermic syringe. This method of usage increases the chance of contracting infectious diseases, especially AIDS, as a result of syringe sharing. It also leads to a rapid deterioration of the user's body (ulcers, collapsed veins and so on) through incompetent injection techniques and the quantity of daily injections in the one area. In contrast, methadone is taken orally in liquid form and one dose affects the user for twenty-four hours.

One of the most important functions of the New South Wales Police Service is to prevent crime. If the present methadone treatment programs are refined and improved, more readily available methadone will undoubtedly lead to a lower usage of drugs such as heroin and a proportionate decrease in the need for the addict to either prostitute themselves or be involved in more serious criminal activity to support their drug addiction. Also the effect of making methadone more readily available will virtually eradicate the present black market in the drug. If the on-street prostitution heroin market is depleted or seriously diminished, the heroin suppliers to the market may be forced to become more visible and these persons will be easier to identify, arrest and prosecute. In fact, a Drug Unit has been created recently in the Kings Cross Police Patrol area to service the specific policing factor of drug supply, especially at Stage 2 level and above (street level distribution is Stage 1). Therefore, these individuals who are participating in this most vile of trades will find their market and their profits diminishing.

It is essential that the Kings Cross Police Service support the Kirketon Road Centre's urgent representations to the Minister for Police and the Minister for the Health Service to ensure that the supply of methadone is more accessible to heroin addicts. There is no doubt that there are drug-addicted prostitutes desperate to undergo methadone treatment who are attempting to rehabilitate themselves. Some doubt their sincerity and argue that the methadone is used to supplement their heroin addiction.

Re-Assessment of the Youth and Community Services Resources in the Kings Cross Police Patrol

The need to address the problem of on-street juvenile prostitution is a very important integral factor in any viable long-term strategy dealing with on-street prostitution. Statistical

information reveals that a very significant proportion of adult prostitutes begin their careers as juveniles. Many forget that these young persons are the human beings who will be corrupted and recruited by unscrupulous individuals to be 'educated' in drug use and prostitution—usually in that order. These young persons continue the chain, creating the next generation of drug-addicted prostitutes and drug distributors who participate in these and other associated criminal activities. The need to detect these young persons and rapidly remove them from the street environment of the Kings Cross Police Patrol area, assisting them in rehabilitation, accommodation and other welfare services is a major determining factor in the success of this alternative strategy.

In 1990-91, the Kings Cross Police Patrol has reorganised resources both internally and externally within the Police Service and adopted new strategies in order to more successfully service this policing factor. A system of recording all juvenile detentions and other intelligence has been devised and coordinated. A Youth Team has been created that coordinates the Patrol's juvenile strategies. The team members closely liaise with the Kings Cross Adolescent Unit (FACS) and exchange intelligence. This coordination of services is beginning to show positive results with a decrease in permanent juvenile street inhabitation of the Patrol. More recently internal reorganisation has been initiated with this Youth Team beginning to coordinate resources with the Police Missing Persons Unit and the Police Child Mistreatment Unit.

The Kings Cross Adolescent Unit provides an excellent service but is lacking in adequate funding and resources. Members of the Youth Team and the Patrol have, at times, been unable to receive adequate coverage from FACS personnel during the periods from 2 a.m. to 9 a.m. Thursday, Friday and Saturday, and 9 p.m. to 9 a.m. Sunday to Wednesday. It is during the hours of darkness—especially in the early hours of the morning—that young persons are soliciting most frequently in public streets and reserves throughout the Kings Cross Police Patrol area. This occurs, not only because during these times the quantity of customers is greatest, but also because these juvenile prostitutes know that FACS personnel are not present in sufficient numbers to warrant detection. It is believed that an urgent increase in resource allocation to the Kings Cross Adolescent Unit is required to ensure an adequate twenty-four hour service is provided, and that the Kings Cross Police Service should support any such representations to the Family and Community Services (FACS) Minister.

Judicial Factors

In 1991, there appears to be some inconsistency in the interpretation and penalties imposed by members of the judiciary in New South Wales regarding Section 19 and 20 of the *Summary Offences Act 1988*. More severe penalties imposed by members of the judicial system in the Canterbury area have resulted in an influx of street prostitutes from that area to Darlinghurst/East Sydney where charged prostitutes have received less severe penalties.

It would be of great benefit to all concerned if members of the judiciary or a representative could be invited to attend a meeting of all interested community parties in order to gain first-hand knowledge of the community perception of street prostitutes in the King Cross Patrol and the problems associated with this trade. It is essential that the judiciary support the concept of designated areas and the logic behind this strategy, as there is no doubt that past history in the Canterbury area has illustrated the positive deterrence that a community oriented magistrate can have on the on-street prostitution trade.

The Formation of a Community Working Committee

The final and possibly most important fact of the proposed alternative strategy is the formulation of a permanent committee which meets on a bimonthly basis to discuss, not only street-prostitution, but all facets of prostitution in order to analyse alternative strategies in relation to any community problems associated with this trade. Although the aforementioned proposed alternative strategy has been agreed upon in principle by the various relevant community parties, there is no doubt that there is much discussion to be undertaken before such a strategy can be documented and then implemented.

The proposed bimonthly committee meeting would consist of: the four Neighbourhood Watch area coordinators; representatives from the prostitutes; Doctor Ingrid Van Beek, Director of the Kirketon Road Centre, Darlinghurst; Tom Wilson, Coordinator of the Kings Cross Adolescent Unit (FACS); representatives of the South Sydney Council; Kings Cross Chamber of Commerce representatives; Chief Inspector T. Dennis from the Police Service Vice Unit; Superintendent J.H. McCloskey Patrol Commander Kings Cross Police Patrol and other Patrol relevant representatives; a member of the New South Wales Judiciary; and representatives from various welfare agencies.

Conclusion

The policing of on-street prostitution in the Kings Cross Police Patrol has been a factor of considerable concern to the Police Service for decades. The strategies previously attempted have failed. Since the Vietnam War, as a result of which there was a huge increase in vice activity in the Kings Cross Police Patrol area, prostitution—and especially on-street prostitution—has become a very significant market for the supply and distribution of illegal drugs. Also during this period, there is no doubt that juvenile on-street prostitution has increased as has the usage of illegal drugs by these persons.

Valuable resources are being utilised in the policing of on-street prostitution in this Patrol throughout residential areas. The arrest and charging of a prostitute can consume four hours of a two-person police team's shift. Therefore, if the concept of designated areas can be adopted, then these police resources may be able to redirect their services towards the drug supply and distribution networks both on-street and from within premises which prey on the addiction of these prostitutes.

It must be recognised that the free and efficient supply of methadone to the on-street drug-addicted prostitutes is essential if these people have any chance of rehabilitation. In addition, increased funding and resource allocation to agencies such as the Kirketon Road Centre and the Kings Cross Adolescent Unit is essential so that they may become efficient twenty-four hour services. These agencies are possibly the sole chance for rehabilitation and even survival for many of these street prostitutes.

With the creation of a drug unit at the Kings Cross Police Patrol, and teams of personnel specifically examining the major policing factors including drugs, juveniles and prostitution, combined with genuine attempts at internal service organisation of resources relating to these factors the machinery has been created and put into motion to impact upon these factors which are of major community concern. However, the next important step is to coordinate external resources. By liaising with these resources and the community at large, viable long-term strategies that will impact upon these factors may be formulated and implemented. Perhaps this paper may be the catalyst that will bring this vision into reality.

References

New South Wales. Select Committee of the Legislative Assembly upon Prostitution 1986, *Report of the Select Committee of the Legislative Assembly upon Prostitution*, Sydney.

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

Travis, G. 1986, *Soliciting in Darlinghurst*, New South Wales Bureau of Crime Statistics and Research, Department of the Attorney-General, Sydney.

POLICING OF THE SEX INDUSTRY IN THE AUSTRALIAN CAPITAL TERRITORY

Detective Superintendent Brian Brinkler
Officer in Charge, City District Crime Branch
Australian Federal Police
Australian Capital Territory

IT SHOULD BE NOTED THAT POLICE DO NOT MAKE LAWS RELATING TO THE SEX industry or any other areas of community behaviour but are required to enforce those laws which are currently in place and which, in theory, represent the views and attitudes of the majority of the community. Obviously, in some cases the applicable laws were drafted many years ago and may no longer represent current community standards and expectations. Police do have discretion when considering what laws to enforce. However, use of that discretionary power must be finely balanced to avoid any inference or suggestion that one section or group is being shown favourable treatment at the expense of others or the community as a whole.

Members of the Australian Capital Territory (ACT) Region of the Australian Federal Police have the responsibility for policing of ACT and Commonwealth laws which govern the behaviour of those involved in the sex industry and those who use the facilities provided by that industry.

The following activities constitute the sex industry in the ACT:

- prostitution in massage parlours/brothels, through escort services and through soliciting in public places;
- management and conduct of brothels and the letting or sub-letting of premises knowing they are to be used as a brothel;
- procurement of persons to work as prostitutes;
- the production, duplication and distribution of X-rated videos, unclassified videos and videos which have been refused classification, and the distribution of advertising material relating to these types of videos;
- the production, sale, distribution or display of printed forms of pornography;

- the procurement of persons to model for printed pornography or to fill roles in the production of X-rated videos; and

- the employment of strip-tease acts and topless or nude waiters or waitresses.

Prostitution

There is no current law within the ACT prohibiting the act of prostitution itself. There are prohibitions contained in the *Police Offences Act 1930* (ACT) against the use of premises as a brothel and being knowingly concerned in such use. It is also prohibited for persons to knowingly lease or sub-let premises for use as a brothel. These offences are directed at owners and/or managers of brothels, although technically they could be used against prostitutes who work in brothels on the basis that they are knowingly concerned in the owner's use of the premises as a brothel. Similarly, clients of the prostitutes could also technically be considered to be knowingly concerned with the conduct of the brothel. Other prohibitions within the Police Offences Act relate to knowingly living in part or in full off the earnings of prostitution, and permitting prostitutes to meet with other prostitutes in certain types of premises. Under the provisions of the *Crimes Act 1900* in its application to the ACT, it is an offence to employ or permit to be employed for the purposes of prostitution, any person who is under the age of 16 years.

There is no legislative discrimination between sexes and there is no legislative prohibition against prostitution or brothels which are exclusively used by persons of the same sex. Similarly, there is no specific prohibition against prostitutes visiting clients in motel rooms or their own homes. However, once again, technically it could be construed that the motel room, private home or other premises were being used was a brothel at that time.

It is no secret that a number of brothels currently operate in the ACT under the euphemism of massage parlours. The open existence and operation of these businesses is viewed by members of the general community in a number of ways. Apparently, a large proportion of the community either do not know they exist or do not care whether they do. Some sections of the community who are aware of their existence mistakenly believe they operate lawfully, while others see their existence and open operation as evidence of police collusion and corruption.

The true situation is as follows. Until recently, no prosecution for offences relating to the management or conduct of a brothel could be launched without the prior consent of the Commonwealth Attorney-General or his nominated delegate. On a number of occasions, police collected evidence in relation to alleged offences of this type, which was of a level believed to be sufficient to warrant the commencement of a prosecution, only to have the application declined by the Director of Public Prosecutions who was the Attorney-General's delegate.

When requested by police for the reasons behind these decisions, the Director of Public Prosecutions outlined certain conditions which he referred to as aggravating circumstances. These, he stated, would be considered when deciding whether to commence such a prosecution, notwithstanding the sufficiency of the evidence available to establish prima facie that the offence had been committed. As a result of this, police adopted the policy of monitoring the existence of brothels within the ACT with the view that applications for consent to prosecute would only be made when there was sufficient evidence and one or more of those aggravating circumstances was found.

When the section of the Police Offences Act relating to the Attorney-General's consent to prosecute was repealed, empowering police to launch prosecutions of their own accord, it was decided to continue with the policy of monitoring the situation and commencing

prosecutions only where there was believed to be sufficient evidence accompanied by one or more of the 'aggravating circumstances'. The 'aggravating circumstances' are:

- brothels should not operate within residential areas;
- there should be no possession, use or sale of any narcotic or other illicit drugs on or about the premises;
- there should be no minors on the premises, whether employed as prostitutes or otherwise;
- there should be no person involved in the management of a brothel who has a known criminal record of a serious nature;
- funding of the enterprise should not come from known criminals or organised crime sources;
- there should be no unruly or anti-social behaviour associated with, or caused by, the operation of the brothel, by clients, staff or other persons (breach of the peace);
- circumstances which would indicate an increased or significant risk to the public health through the operation of the brothel or the employment of particular individuals;
- any complaints received from members of the public concerning the existence and operation of a particular brothel.

The ACT Legislative Assembly's Select Committee on HIV, Illegal Drugs and Prostitution (Australian Capital Territory 1991) recently tabled a report on the findings of its investigations concerning prostitution and brothels in the ACT and its recommendations regarding the future of these enterprises. This report recommends radical changes and the elimination of police involvement in the control of the majority of areas of prostitution. Until the recommendations of the Select Committee are considered by the ACT Government, it is anticipated that police will continue with their current policies and practices in this area.

It should be pointed out that any decriminalisation of the prostitution industry in the ACT must acknowledge the potential for infiltration by undesirable and criminal elements. The potential for long-term community problems will continue to exist should any changes not involve police representation in the proposed licensing and monitoring process. The police do and will accept change but not at the expense of the ACT community, should a lack of effective control become a reality.

X-Rated Videos

The ACT's position regarding X-rated videos and their sale and distribution has led to the ACT often being referred to as the 'Porn Capital' of Australia. The possession and viewing of X-rated videos is generally legal throughout Australia, however the sale and distribution of these videos is illegal in all other jurisdictions except the Northern Territory and ACT. Probably because of its central position when compared with the Northern Territory, the ACT appears to have a higher concentration of sale and distribution companies. Ironically,

while the ACT has the reputation as being the 'Porn Capital' of Australia, the proportion of ACT customers compared to those from interstate is believed to be relatively low.

Policing of the X-rated video industry in the ACT revolves around alleged offences committed against the *Publications Control Act 1989* (ACT), the *Business Franchise ('X' Videos) Act 1990* (ACT), the *Film Classification Act 1971* (ACT) and the *Customs Act 1901* (Cwth).

The policy of the Australian Federal Police regarding X-rated videos and other forms of pornography is reactive rather than proactive. Whilst any complaints received are fully investigated and alleged offenders prosecuted where sufficient evidence is available, because of resource limitations and higher priority operational commitments, police do not go out actively looking for breaches of the relevant statutes.

The retailing or wholesaling of X-rated videos from the ACT is limited to those persons or businesses which have been issued a licence by the ACT Government and who operate in accordance with those licences including the payment of the ACT Tax, the operation from premises within the zoned areas and compliance with other requirements of the licence and relevant legislation.

Very few complaints are received from members of the general public. The majority of those complaints relate to the receipt through the mail of unsolicited advertising material for X-rated videos. The principals of the firms concerned deny they are in the practice of forwarding unsolicited advertising material, stating that commercially it is a waste of money. Being aware that their industry is continually under the scrutiny of those opposed to it, such practices would provide their opponents with further ammunition to use against them.

Investigations of these complaints have revealed that the companies concerned have received written requests for their material, usually in the form of a completed coupon obtained from advertisements the firm has placed with various national magazine publications. Upon receipt of these written requests, it is virtually impossible for the company to determine whether it is a genuine application or one completed by someone else—either maliciously or as a practical joke. Other investigations have revealed that the complainant has been a long-standing customer of the firm and has lodged a complaint only after a parent or spouse has discovered X-rated material in their possession.

Complaints are regularly received from persons within the industry alleging offences against the various pieces of legislation by opposing firms. These complaints generally relate to firms advertising for sale and selling videos which have either not been classified or have been refused classification by the Office of Film and Literature Classification, or advertising and selling videos over which the complainant claims to have copyright. Whilst these complaints—often anonymous—are generally couched in terms of moral indignation, a more cynical view may be that they are based on commercial grounds. Regardless of the complainant's motives, these allegations are investigated by police and, where sufficient evidence is found, a prosecution is lodged.

One area which causes police, the legitimate operators and others concern is the practice of interstate X-rated video distributors who are operating outside the laws of their own state using ACT post office box addresses to give their operations an air of legitimacy. It appears that various national publications are willing to accept advertising from these firms as the provision of an 'ACT address' absolves them from responsibility of advertising an illegal operation. These firms hire an ACT-based post office box, then arrange for mail to be redirected from this box to interstate locations. Often what follows is a chain of similar redirects through suburban post office boxes in Sydney or Melbourne to make tracing of actual premises and identities more difficult. These firms are not the holders of ACT licences and are operating outside the laws of their own state. It has been suggested that such firms—because of their displayed preparedness to breach laws relating to the sale of X-rated videos—would be predisposed to the sale of unclassified videos, videos which have been

refused classification, or worse—videos which are legally regarded as objectionable publications such as child pornography, promotion of violence and bestiality.

The vast majority of X-rated videos are made and produced in either the USA or Europe, with local firms obtaining master copies under licence (sometimes this is not the case) and duplicating the films or cassettes here in Australia.

The only direct legislative prohibition in the ACT against employing persons to perform sexual acts for the purpose of producing pornography is contained in the Crimes Act relating to employing or permitting the employment of persons under the age of 18 years for this purpose.

Complaints relating to printed pornography are very rare. When received, they are investigated in a similar fashion to complaints relating to videos and, once again, policing of this area is reactive rather than proactive.

There is no specific legislation relating to strip-tease performances, or topless or nude waitresses or waiters. However, where such activities are performed or carried out in public places or in view of public places, those involved may find themselves liable to prosecution for offences of indecent exposure, or offensive or indecent behaviour. The main area of contention revolves around what is offensive or indecent and quite obviously what one person or group finds offensive or indecent may be quite acceptable to others. In such cases, police would be reluctant to intervene or commence any prosecution unless either direct complaints were received from members of the public or the behaviour was particularly outrageous.

If a strip-tease performer was to carry out sexual acts on stage with a person of the opposite sex and money was being paid to the performer for the act, then this could be regarded as prostitution and the premises where the performance was taking place could be considered to be a brothel.

The areas of behaviour covered by the sex industry are emotive ones and, while it is felt that a large proportion of the community is ambivalent about them, those with concerns either for or against various aspects of the industry are often very dedicated and vociferous in their beliefs. It is important that police ensure that their own personal beliefs and feelings do not affect the performance of their duties and the implementation of government and departmental policies.

Reference

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Canberra.