



HUMAN TRAFFICKING WORKING GROUP
Dr Andreas Schloenhardt (Coordinator)

The University of Queensland
TC Beirne School of Law

The University of British Columbia
Centre of International Relations

www.law.uq.edu.au/humantrafficking

UNREGULATED AND ILLEGAL SEX WORK IN WESTERN AUSTRALIA

Current as on: May 8, 2009

Table of Contents

1. Sole Operators .....2
2. Small Owner-operated Sexual Services Businesses .....3
3. Illegal Sexual Service Businesses (Illegal Brothels) .....3
4. Outcall Prostitution (Escort Prostitution) .....4
5. Street Prostitution .....4
6. Massage Parlours .....5
7. Adult Entertainment Including Exotic Dancing .....5

NOTE:

The newly-elected Government of Western Australian (Liberal-National Coalition) went to the 2008 state election with a promise to repeal the Prostitution Amendment Act 2008 (WA) which was prepared under the previous Labor Government. The Government is currently considering new legislation which, based on the very limited information currently available, would allow regulated prostitution in only a few, designated areas and which would remove the role of local government envisaged by the Prostitution Amendment Act 2008 (WA). Until alternative legislation is proposed, however, the Act stands capable of commencement.

Western Australia is set to move to a new system of prostitution regulation in mid-2009.<sup>1</sup> This document explores those aspects of the sex industry in Western Australia that are illegal or unregulated, and the effect that the new legislation will have on these areas.

## 1. Sole Operators

Western Australia's prostitution licensing system does not regulate or criminalise the work of individual sex workers. Specifically, sole operators are not required to hold licenses for the work they carry out. The services offered by individual sex workers are legal unless they violate the general provisions of the *Sexual Services Act 2000* (WA).<sup>2</sup>

In the absence of any regulatory or registration system, it is not possible to accurately estimate the number of sole operators offering sex work in Western Australia. But even if such a system existed, it would be unlikely to capture the majority of sex workers in that State. It has to be noted that many sex workers also have employment in other industries, and there is a large number of persons engaging in prostitution in an ad-hoc fashion. For example, reports about university students offering sexual services for payment are not uncommon.<sup>3</sup> Estimates made from the classifieds sections in newspapers are also largely inaccurate as it is not uncommon for sole operators to advertise under multiple names.

Under the new legislation, sole operators may work from their own home, or in rented premises shared by not more than one other sex worker,<sup>4</sup> without attracting the brothel licensing requirements. While an individual sex worker is required to solely own and carry on the relevant sexual services business,<sup>5</sup> sex workers may utilise the services of a bodyguard, receptionist or driver.

Sole operators may not remain unregulated and use licensed brothels to offer their services, as this would breach the requirement in s 4 *Sexual Services Act 2000* (WA) that the worker solely own and carry on the sexual services business, i.e. only he/she may provide the sexual services and he/she must have full control over his/her individual earnings from such involvement. Moreover, this would breach the requirement that a sexual services business not allow any person to act as a sex worker in the business unless that person has entered into a contract of service with the operator, and only provides sexual services for the brothel under the conditions of that contract.<sup>6</sup> To operate legally in such a case the sex worker would have to have an employment contract with the brothel, whilst keeping separate any proceeds or business expenditure incurred as a result of his/her sole operation.

Although the *Sexual Services Act 2000* (WA), does not regulate sole operators, all sex workers still need to meet certain general requirements relating to their work, otherwise they may face criminal penalties. For example, all sex workers must use a prophylactic during all intercourse or oral sex they provide.<sup>7</sup> Any advertising by a sole operator must also comply with the advertising requirements set out in s 10A *Sexual Services Act 2000* (WA). Requirements that

---

<sup>1</sup> Following the enactment of the *Prostitution Amendment Act 2008* (WA) which amends the *Prostitution Act 2000* (WA) and renames it the *Sexual Services Act 2000* (WA).

<sup>2</sup> Which will come into effect upon the proclamation of the *Prostitution Amendment Act 2008* (WA).

<sup>3</sup> See, Jennifer Curtis, 'Students Sell Sex to Pay Bills: Guilds', *West Australian* (Perth), 14 Nov 2006, 9; John Simpson, 'High Price to Get an Education', *South-East Advertiser* (Brisbane), 19 Nov 2008, 5; 'No Rise in Sex Workers', *Nelson Mail* (Nelson), 12 Sep 2006, 2.

<sup>4</sup> See the discussion of small owner-operated businesses in Section 2 below.

<sup>5</sup> *Sexual Services Act 2000* (WA) s 4.

<sup>6</sup> *Sexual Services Act 2000* (WA) s 21P.

<sup>7</sup> *Sexual Services Act 2000* (WA) s 8.

sole operators must not solicit publicly for prostitution, including street prostitution, remain unchanged.<sup>8</sup>

Outcall prostitution is a popular form of prostitution among clients and independent sex workers<sup>9</sup> and can be legally provided by sole operators. However, a considerable proportion of outcall prostitution is facilitated by agencies, which employ multiple independent sex workers. This was previously an illegal form of prostitution as escort agencies were prohibited. Sex workers working for a licensed agency may now operate legally, but only if they do so under a contract of employment.

## 2. Small Owner-operated Sexual Services Businesses

Individual sex workers may work with one other sex worker yet avoid the regulatory framework established under the *Sexual Services Act 2000* (WA). A small owner-operated business is defined in s 4 of the Act as a sexual services business in which not more than two sex workers operate and where each of those workers has full control over his/her individual earnings from taking part in commercial sexual acts. This restriction eliminates any operation where there is a separation between management and the sex worker, as it prohibits any person from taking a 'cut' of the earnings of the sex worker.

This definition does appear to permit the two sex workers in such a business to share facilities, utilities, and potentially even bodyguards, drivers, receptionists et cetera. This may result in an operation with two sex workers and innumerable non-sex worker support staff never being classifiable as a 'brothel' that requires licensing. However, the financial difficulties of such a situation would render it a very unlikely occurrence.

As with individual sex workers, small owner-operated businesses avoid the brunt of the requirements in the *Sexual Services Act 2000* (WA). Such businesses are not required to have an appropriately certified operator or manager,<sup>10</sup> nor must they have contractual employment arrangements.<sup>11</sup> However, they are still required to satisfy local government planning requirements and are prohibited from sharing premises with any other sexual services business<sup>12</sup> — including individual sex workers.

While unlikely, this definition could potentially allow for the prosecution of the partners of sex workers operating in small owner-operated businesses. For example, if the proceeds of a commercial sex act are paid into a bank account jointly held by the sex worker and their partner, and those proceeds are subsequently dealt with by the partner of the sex worker, it may be argued that the sex worker is no longer in control of those proceeds. Hopefully this situation will be avoided by courts when interpreting the definition, as it would impact on the capacity of sex workers to form relationships, which is unlikely to have been the intention of the legislature.

## 3. Illegal Sexual Service Businesses (Illegal Brothels)

Other than individual sex workers and small owner-operated businesses, any other sexual service business that operates without a certified operator or manager (where applicable) is

---

<sup>8</sup> *Sexual Services Act 2000* (WA) s 6.

<sup>9</sup> While Western Australia has not completed a review of prostitution resulting in qualitative data, see Queensland, Crime and Misconduct Commission, *Regulating Outcall Prostitution: Should Legal Outcall Prostitution Services be Extended to Licensed Brothels and Independent Escort Agencies?* (2006) 16.

<sup>10</sup> *Sexual Services Act 2000* (WA) s 21O.

<sup>11</sup> *Sexual Services Act 2000* (WA) s 21P.

<sup>12</sup> *Sexual Services Act 2000* (WA) s 21R.

illegal and subject to various criminal offences set out in the *Sexual Services Act 2000 (WA)*. The definition of sexual services businesses are those that are in 'the business of providing, or arranging the provision of commercial sexual act[s]'.<sup>13</sup> This appears to encompass not only traditional illegal brothels, but also other businesses involved in the provision of commercial sexual services, such as massage parlours. Escort agencies also appear to be captured by this definition, given that there is no requirement that sexual services actually be provided, or be provided at specific premises.

The repeal of the prostitution offences contained within ss 190, 191 *Criminal Code (WA)*, along with the removal of any references to prostitution within the new *Sexual Services Act 2000 (WA)*, means that technically, offences relating to prostitution no longer exist in this state. Despite this absence in name, the replacement of these offences with equivalents dealing with commercial sexual acts means that the offences remain in practice. It therefore remains an offence to provide commercial sexual acts in an illegal brothel (i.e. with a person taking a 'cut' of the income of more than one sex worker). It is also important to note that, without the presence of an aggravating factor such as a child client or a failure to use a prophylactic, neither sex workers nor clients are held liable for the provision of commercial sexual acts in this context; instead, the operator or manager of the sexual services business is prosecuted for breach of the licensing requirements.

#### **4. Outcall Prostitution (Escort Prostitution)**

Outcall prostitution is a form of prostitution that takes place at a location agreed upon by the sex worker and the client. This is normally arranged on the internet (often involving personals websites or chat-rooms), or by telephone, after the client calls a number listed in the personals section of a newspaper.

Outcall prostitution, commonly referred to as escort services, is legal in Western Australia if provided by a licensed sexual service business, sole operator or small owner-operated business. Indeed, the Prostitution Law Reform Working Group considered that its proposals would cover the provision of sexual services through escort agencies.<sup>14</sup> While sole operators are able to legally provide this service, it is not stated whether the involvement of another individual to assist a sole operator in the provision of those services – for example, by taking phone calls, making bookings at hotels, or acting as a driver or bodyguard – would render the act illegal. As discussed above, the better interpretation is that such assistance would be permitted.

#### **5. Street Prostitution**

Street prostitution is the most visible, and perhaps most unpopular form of sex work. Street prostitution occurs when a sex worker loiters in a public area in order to approach, or be approached by, clients for the purpose of prostitution. The actual sex act is usually performed in the vehicle of the client, but it may also be performed in a public place or in premises that are shared by street prostitutes for this purpose.

In Western Australia, seeking a sex worker in public is an offence.<sup>15</sup> Solicitation, where the person sought as a prostitute is a child, is subject to a higher penalty.<sup>16</sup> Similarly, under s 6 *Sexual Services Act 2000 (WA)*, it is an offence for a sex worker to publicly seek a client, either

---

<sup>13</sup> *Sexual Services Act 2000 (WA)* s 4.

<sup>14</sup> Prostitution Law Reform Working Group, *Prostitution Law Reform for Western Australia: Report of the Prostitution Law Reform Working Group* (2007) 5.

<sup>15</sup> *Sexual Services Act 2000 (WA)* s 5.

<sup>16</sup> *Sexual Services Act 2000 (WA)* s 5(5).

directly or through another person, subject to one year imprisonment (although this penalty increases by two years where the prospective client is a child).

Unlike some other jurisdictions, there are no exempted areas in which street prostitution is legal or otherwise tolerated.<sup>17</sup> Regardless of this prohibition, certain parts of south Perth and areas in other urban centres in Western Australia, such as Kalgoorlie, are known to be used for street prostitution.

## **6. Massage Parlours**

Traditionally, in order to avoid police attention, illegal brothels would advertise their services as 'massage'. These massage parlours were common in Australia during the 1980s.

Massage parlours that provide services which fall within the definition of commercial sexual acts under s 4 *Sexual Services Act 2000* (WA) will be illegal if offered by any person other than a sole operator, small owner-operated business or certified sexual services business. The operator and manager of such a business will bear the brunt of any prosecution.

## **7. Adult Entertainment including Exotic Dancing**

Western Australia has no specific legislation in place regarding the provision of adult entertainment. For this reason, unless an act of entertainment was able to be characterised as a commercial sexual act as defined in s 4, it would not fall foul of the *Sexual Services Act 2000* (WA). Provisions such as the offence of public indecency remain in the *Criminal Code*.<sup>18</sup>

An electronic copy of this document is available at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking)  
© 2009, A Schloenhardt, The University of Queensland, Brisbane, Australia

---

<sup>17</sup> Cameron Stewart, 'Not in my Front Yard' *The Weekend Australian* (Sydney), 8 Oct 2002, 23.  
<sup>18</sup> *Criminal Code* (WA) s 203.