



TEN YEARS OF PROSTITUTION REGULATION IN QUEENSLAND



The University of Queensland TC Beirne School of Law
Human Trafficking Working Group

HAPPY BIRTHDAY, BROTHELS! TEN YEARS OF PROSTITUTION REGULATION IN QUEENSLAND

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Note: The topic of prostitution is contentious and the subject of fierce and often polarised debate. In presenting this paper, we are mindful of the sensitive nature of some aspects of this topic. This paper is not designed to encourage or promote prostitution, nor is it meant to oppose or demonise it. We make no moral judgment on the sex industry and the people working within it. The paper also does not comment on the work of the Prostitution Licensing Authority and Queensland Police. The sole purpose of this paper is to assess the goals of the *Prostitution Act 1999* against the patterns of prostitution in Queensland ten years after its inception.

Abstract

The year 2009 marks the tenth anniversary of brothel licensing in Queensland. The legalisation of prostitution in Queensland is very restricted and limited only to the operation of legal brothels and to services offered by sole operators outside public spaces. Most aspects of Queensland's prostitution industry remain unregulated or illegal. This article reviews the patterns of contemporary prostitution in Queensland and explores the stated goals and the application of the *Prostitution Act 1999* (Qld) after ten years of operation.

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1. Introduction

The year 2009 marks the tenth anniversary of brothel licensing in Queensland. The legalisation of prostitution in Queensland is currently very restricted and limited only to the operation of legal brothels and to services offered by sole operators outside public spaces. Street-prostitution, escort agencies (outcall prostitution offered by brothels or other agencies), and the operation of unlicensed brothels, including the sharing of premises by more than one sex worker, are illegal.

Calls for reform and legalisation of prostitution in Queensland date back to the *Fitzgerald Inquiry* in 1987-89, which found police units dealing with prostitution enforcement were a significant source of corruption.¹ The *Prostitution Law Amendment Act 1992* (Qld)² provided a first framework for prostitution laws in this state, but it did not introduce a regulatory regime for prostitution.

Research conducted in the mid-1990s revealed that community support for a limited legal sex industry in Queensland was growing,³ and that Queensland was falling behind developments elsewhere in Australia, especially in New South Wales and Victoria, which had comprehensive prostitution licensing systems at that time.

On November 10, 1999 the Queensland Parliament passed legislation to allow the controlled operation of brothels.⁴ The *Prostitution Act 1999* (Qld) came into effect on July 1, 2000. Since its introduction, the Act has witnessed several amendments, including two significant reforms in 2001 and 2006.⁵ Most recently, on August 18, 2009, the Queensland Government introduced the *Prostitution and Other Acts Amendment Bill 2009* (Qld), which aims to regulate the way social escort services advertise. In an effort to combat the illegal sex industry, it also creates new offences for escort providers who carry on the business of providing illegal prostitution. Furthermore, the Bill seeks to 'enhance the safety of sole operators' by allowing them to employ a driver.⁶ The introduction of this Bill is a delayed response to a report by Queensland's Crime and Misconduct Commission (CMC) entitled *Regulating Outcall Prostitution*⁷ which was released in October 2006. The Bill implements 16 of the report's 23 recommendations.⁸ The Bill also appears to be a response to pressure placed on the government by Liberal-National Party (LNP) Opposition Member Steve Dickson⁹, referring to different treatment of offenders in the legal versus the illegal prostitution industries and also referring to earlier reports by The University of Queensland's Human Trafficking Working Group.¹⁰

¹ Queensland, Report of a Commission of Inquiry pursuant to Orders in Council, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (1989).

² No 65 of 1992.

³ Queensland, *Review of Prostitution Laws in Queensland, Discussion Paper* (1998) 67-69.

⁴ The history of and controversy surrounding the introduction of the Act is further explored in Deirdre Green, *Regulating the Sex Industry in Queensland: Process, Influence, and Impact*, (BA (Hons) Thesis, Griffith University, 2002).

⁵ *Prostitution Amendment Act 2001* (Qld), No 77 of 2001; *Prostitution Amendment Act 2006* (Qld), No 40 of 2006.

⁶ *Prostitution and Other Acts Amendment Bill 2009* (Qld), Explanatory Notes, 1-2.

⁷ Queensland, CMC, *Regulating Outcall Prostitution* (2006).

⁸ *Prostitution and Other Acts Amendment Bill 2009* (Qld), Explanatory Notes, 1-2.

⁹ Liberal National Party, 'Prostitution changes rushed into Parliament', (Press Release, 19 August 2009) <<http://www.lnp.org.au/lnp-media-releases/lnp-state-media-releases/prostitution-changes-rushed-into-parliament/316.html>> at 19 August 2009.

¹⁰ Andreas Schloenhardt & Lachlan Cameron, 'Happy Birthday Brothels! Ten Years of Prostitution Regulation in Queensland' (2009) 29 *Queensland Lawyer* 194-220.

The purpose of this study is to review the patterns of contemporary prostitution in Queensland and the application of the *Prostitution Act 1999* (Qld) after ten years of operation. Despite general support for a licensed sex industry, concerns remain about the efficiency of the current licensing system, unregulated and illegal forms of prostitution in Queensland, the trafficking in persons for sexual exploitation into legal and illegal brothels, and the possibility of regulating escort services (so-called 'outcall prostitution'). This study explores these concerns in the context of the stated goals and practical operation of prostitution regulation in Queensland.

2. Prostitution in Queensland: An overview

Prostitution itself is not illegal in Queensland.¹¹ Prostitution is defined in s 229E(1) *Criminal Code* (Qld)¹² (which also applies to the *Prostitution Act 1999* (Qld) by virtue of schedule 4) as:

(1) engaging, or offers to engage, in the provision to another person, under an arrangement of a commercial character, of any of the following activities--

(a) sexual intercourse;

(b) masturbation;

(c) oral sex;

(d) any activity, other than sexual intercourse, masturbation or oral sex, that involves the use of 1 person by another for his or her sexual satisfaction involving physical contact.

(2) However, a person does not engage in prostitution if--

(a) the activity is an activity mentioned in subsection (1)(d); and

(b) the person is providing adult entertainment under an adult entertainment permit and is an adult and is not an intellectually impaired person; and

(c) the activity is authorised under the permit.

(3) Subsection (1) applies equally to males and females.

(4) It does not matter, in relation to an arrangement for the provision of an activity mentioned in subsection (1)(a), (b), (c) or (d), whether--

(a) the arrangement is initiated with the person engaging in the provision of the activity or a third person; or

(b) the pecuniary or other reward under the arrangement is to be received by the person engaging in the provision of the activity or a third person.

(5) In this section--

oral sex means the bringing into contact of any part of the genitalia or anus of a person with any part of the mouth of another person.

The *Criminal Code* (Qld) creates a number of offences relating to prostitution that may apply to persons involved in offering prostitution, organising and managing prostitution (and prostitutes), or otherwise facilitating prostitution.¹³ The scope of these offences leave presently only two forms of prostitution legal in Queensland: prostitution offered by sole-operators (which remains largely unregulated),¹⁴ and prostitution offered in licensed brothels (which is regulated in the *Prostitution Act 1999* (Qld)).¹⁵

¹¹ See also *Kelsey v Hill* [1995] 1 Qd R 182.

¹² Introduced by *Prostitution Act 1999* (Qld), No 73 of 1999.

¹³ See Section 6 below.

¹⁴ See Section 5.1 below.

¹⁵ See Section 4 below.

The first seven licensed brothels opened in Queensland between July 1, 2001 and June 30, 2002. The number rose to 24 licensed brothels on June 30, 2007.¹⁶ As of September 21, 2009, there are 25 licensed brothels in Queensland.¹⁷

The greatest concentration of brothels, 12, is in the greater Brisbane area. Five licensed brothels are located on the Gold Coast, two on the Sunshine Coast, and two in Cairns and Townsville. Mackay and Mount Isa have one licensed brothel each. The most recent openings have been the brothels “Temple of Pleasures” in Rocklea on May 15, 2009, and “Asian Star on Meadow” in Coopers Plains on June 12, 2009.¹⁸ Development approval for Toowoomba’s first legal brothel was granted on April 20, 2009 and this facility opened in mid-September 2009.¹⁹

Several characteristics of prostitution in Queensland need to be stated from the outset. First, the licensed brothel industry only makes up a very small part of the sex industry in Queensland. The Queensland Crime and Misconduct Commission (CMC, formerly the Crime and Justice Commission) estimates that 75% of the prostitution market involves outcall services.²⁰ Second, sex workers offering prostitution are for the most part women, especially in the licensed brothel industry. Male prostitution in Queensland appears to be only a small segment of the market. Some brothels advertise the availability of male sex workers (using slogans such as “ladies welcome”), but this is a marginal part of brothel operations that is offered on an ad-hoc basis only.

Further, it is important to highlight that there is a noticeable absence of scholarly analysis of prostitution in Queensland and of the prostitution laws in this state. All major inquiries and examinations thus far were carried out or commissioned by State Government agencies.

3. Purpose of Prostitution Regulation

The stated purposes of prostitution control and regulation in Queensland are to

- 1) Ensure quality of life for local communities;
- 2) Safeguard against corruption and organised crime;
- 3) Address social factors which contribute to involvement in the sex industry
- 4) Ensure a healthy society; and
- 5) Promote safety.²¹

3.1 Quality of life for local communities

The existence, operation, and legalisation of the sex industry have been and remain fiercely debated issues. Community opinion is frequently very polarised between those advocating a secure, transparent, and licit industry, and those rejecting any calls to legitimise any aspect

¹⁶ Queensland, Prostitution Licensing Authority (PLA), *Annual Report 2006-07* (Brisbane: PLA, 2007) 16.

¹⁷ For a complete list, see Prostitution Licensing Authority, *Licensed Brothels in Queensland*, (2009) Prostitution Licensing Authority <www.pla.qld.gov.au/brothels/licensedBrothels.htm> at 26 May 2009.

¹⁸ Prostitution Licensing Authority, *Licensed Brothels in Queensland*, (2009) Prostitution Licensing Authority <www.pla.qld.gov.au/brothels/licensedBrothels.htm> at 26 May 2009.

¹⁹ ‘Green light for first Toowoomba legal brothel’ (21 April 2009) *Australian Broadcasting Corporation News*.

²⁰ Queensland, PLA, *Annual Report 2007-08* (2008) 18.

²¹ Prostitution Bill 1999 (Qld), Explanatory Notes, 1.

of commercial sex. Community concerns over the morality of prostitution, the location of brothels, their managers and employees, and the profile and quantity of their clients generally dominate any public debate about prostitution, characterise many media reports, and frequently influence government policy. It is thus not surprising that 'ensuring the quality of life for local communities' features as the premier goal of prostitution regulation in Queensland.

To avoid any misunderstanding, it has to be noted that the legislator did not intend to 'enhance the quality of community life' by adding brothels as a service to local communities. In contrast, the objective of the legislative framework is to strictly limit the operation and location of licensed brothels to ensure that brothels are not 'an intrusion into the day to day lives of members of the community who do not want to be exposed to the nuisance of brothel activity or advertising.'²²

To achieve this objective, the *Prostitution Act 1999* (Qld) establishes tough brothel licensing and development standards, and limits the size of licensed brothels. Specifically, the legislation prohibits the establishment and operation of brothels in residential areas and in close proximity to places frequented by children and places of worship, hospitals, schools, and kindergartens.²³ The Act also prohibits the development and operation of multiple brothels in close proximity in order to prevent any area from becoming a 'red light district.'²⁴ Moreover, to separate brothels from the general entertainment and hospitality industry, the legislation does not allow the sale and consumption of liquor in licensed brothels.²⁵ The policy and legislative framework also seeks to discourage and suppress street prostitution as one of the most visible forms of commercial sex activity.²⁶

3.2 Corruption and organised crime

Key reasons behind prostitution reform are the realisation that brothels exist in any society, regardless of their legal status, and the recognition that an illicit sex industry is more likely to be controlled by organised crime, and more prone to corruption and bribery. When the Prostitution Bill was developed in 1999, Parliament recognised that it is more desirable 'to control and minimise the harm, or potential harm, associated with prostitution, rather than assuming that it can be eliminated'.²⁷ The *Fitzgerald Inquiry* also demonstrated that an illegal sex industry can be a significant source of corruption.²⁸

To limit the influence of criminal organisations over brothels and reduce the likelihood of corruption, the *Prostitution Act 1999* (Qld) established the Prostitution Licensing Authority (PLA) as a central agency to oversee stringent licensing application, approval, and administration processes.²⁹ Specifically, the legislation prohibits the granting of brothel licences to persons convicted of specific offences, especially for offences frequently associated with organised crime and corruption.³⁰ Additionally, the CMC has been charged with the responsibility to monitor the prostitution licensing process. Initially, the CMC was

²² Prostitution Bill 1999 (Qld), Explanatory Notes, 1.

²³ Section 64 *Prostitution Act 1999* (Qld).

²⁴ Section 16(2) *Prostitution Act 1999* (Qld).

²⁵ Sections 8(d), 34(d) 83 *Prostitution Act 1999* (Qld). See further Section 4.1 below.

²⁶ Prostitution Bill 1999 (Qld), Explanatory Notes, 1.

²⁷ Prostitution Bill 1999 (Qld), Explanatory Notes, 2.

²⁸ Queensland, Report of a Commission of Inquiry pursuant to Orders in Council, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (1989).

²⁹ Part 7 *Prostitution Act 1999* (Qld).

³⁰ Sections 8(e), 34(e) and schedule 1 *Prostitution Act 1999* (Qld).

statutorily obligated to report on the effectiveness of the Prostitution laws.³¹ The CMC is also mandated to investigate any allegations of corruption and organised crime.³²

3.3 Social factors which contribute to involvement in the sex industry

A third objective of prostitution regulation in Queensland is to address the social factors that may make some persons more vulnerable to involvement (and exploitation) in the sex industry. The legislative material specifically identifies homeless persons and drug users as vulnerable groups.³³

In order to assist sex workers, the Queensland Government established a separate, independent Prostitution Advisory Council. This entity was designed to work with sex workers, provide them with information and 'encourage and assist them to explore alternative employment options'.³⁴ This Council was dissolved in 2003 and its functions were transferred to the PLA.³⁵

3.4 Healthy society

Of particular concern to persons working in the sex industry and also to their customers is the risk of sexually transmitted diseases (STDs). Illegal brothels and other forms of illicit and unregulated sex work are particularly conducive to unsafe sexual practices, thus risking the spread of diseases such as HIV, gonorrhoea, syphilis and the like.

In order to reduce the health risks associated with the sex industry, the legalisation of brothels is accompanied by a framework that 'ensures that the health status of sex workers is regularly monitored and that health risks to workers, their clients, and the community are minimised'.³⁶ Specifically, sections 89 and 90 *Prostitution Act 1999* (Qld) create criminal offences for permitting sex workers in licensed brothels to work whilst infected with a sexually transmitted disease. For sex workers in licensed brothels it is an offence to work knowing they are infected. Further, it is a requirement that all sex workers use prophylactics when performing sexual intercourse or oral sex (regardless of the sector they operate in).³⁷

3.5 Safety

The fifth and final published goal of prostitution regulation in Queensland is to enhance the physical safety of sex workers. The legislature recognises that sex workers are especially vulnerable to sexual assault and physical violence. 'A properly regulated industry', argue the *Explanatory Notes* to the legislation, 'with sex workers operating in licensed brothels, should minimise the risk of personal harm to sex workers and offer them a better level of protection against a range of safety risks associated with the industry, including physical assault'.³⁸

³¹ Prostitution Bill 1999 (Qld), Explanatory Notes, 2; Section 141 *Prostitution Act 1999* (Qld).

³² Section 5 *Crime and Misconduct Act 2001* (Qld).

³³ Prostitution Bill 1999 (Qld), Explanatory Notes, 2.

³⁴ Prostitution Bill 1999 (Qld), Explanatory Notes, 2.

³⁵ *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld), No 92 of 2003.

³⁶ Prostitution Bill 1999 (Qld), Explanatory Notes, 2.

³⁷ Section 77A *Prostitution Act 1999* (Qld).

³⁸ Prostitution Bill 1999 (Qld), Explanatory Notes, 3.

The regulatory framework seeks to enhance the physical safety of sex workers by discouraging street prostitution and removing brothels (and their clients) from suburban areas. Furthermore, the Prostitution Advisory Council was established to work with sex workers to improve their safety. Following the dissolution of this Council, this function is now carried out by the PLA.

3.6 Hidden goals and missed opportunities

In addition to the stated objectives, prostitution regulation contributes directly and indirectly to a number of other purposes that require brief examination. Moreover, a number of issues are missing from the stated goals and may have been deliberately overlooked in Queensland's prostitution reform.

There is, for example, no specific mention anywhere in the legislative material of the link between the sex industry and trafficking in persons, and the role and status of foreign sex workers in Queensland's brothels. Foreigners are particularly vulnerable to sexual exploitation and recent police investigations confirm that the trafficking of persons, especially women, remains a problem that is equally associated with legal and illegal brothels around Australia. On the surface, it appears that foreign sex workers benefit equally from those measures introduced to enhance the physical safety, hygiene, and health of sex workers. But there are no specific clauses relating to persons that may have been brought into the country illegally, that are psychologically or economically exploited in the sex industry, or that are threatened with deportation. General questions remain as to whether the regulation of brothels assists in making human trafficking unnecessary or whether it contributes to an influx of foreign sex workers and their exploitation in Queensland's legal and illegal brothels.³⁹ The existing regime does not state the suppression of human trafficking as one of its purposes.

Also noticeably absent from the legislative and regulatory material are any references to the social welfare and economic security of sex workers (and others involved in the industry). Despite the introduction of a prostitution licensing system, the regulation scheme in Queensland does not fully legitimise professional involvement in the sex industry. It contains no provisions that give sex workers access to regular employment benefits (such as paid leave, sick leave, regulated working hours, etc), to special health care, and to tax benefits. Instead, the *Explanatory Notes* explicitly state that the role of the Prostitution Advisory Council involves 'encouraging and assisting [sex workers] to explore alternative employment options.'⁴⁰ It is noteworthy that prostitution regulation in Queensland is not designed to endorse prostitution and other forms of commercial sex work, and does not equip sex workers with the same rights offered to members of other legitimate professions.

The regulatory framework is also not designed to maximise the profits of brothel owners. In fact, economic and commercial objectives are completely absent from the prostitution licensing system and — as will be shown — many requirements of the *Prostitution Act 1999* (Qld) make the operation of brothels economically difficult, if not unfeasible. This may (deliberately) limit the number and spread of licensed brothels in Queensland, but it may in turn push many operations underground and contribute to the significant number of illegal brothels in this state.

Lastly, it is noteworthy that the current prostitution licensing system only addresses one aspect of the sex industry: brothels. Escorts and escort agencies (so-called 'out-call

³⁹ Queensland, CMC, *Regulating Outcall Prostitution* (2006) 28.

⁴⁰ Prostitution Bill 1999 (Qld), Explanatory Notes, 2.

prostitution') do not fall within this framework although these services constitute the greatest part of the prostitution industry. Street prostitution remains largely prohibited in Queensland. Massage parlours and premises offering exotic dancing and other forms of adult entertainment are illegal where they offer prostitution.

4. Brothel Licensing in Queensland

To legally operate a brothel in Queensland, it is first required to obtain development approval for the premises and, second, to acquire the necessary license for the brothel operation and also a certificate if the management of the brothel is carried out by a second person. The development approval and the licensing application are separate processes carried out by separate agencies at different levels of government. Local authorities decide whether or not to grant development approval while the granting of licenses is performed by the PLA, a State agency. Applicants may, however, request that the issue of a license be postponed until development approval is granted and the premises have been established.

4.1 Development and maintenance requirements

Any person seeking to establish a brothel needs local authority planning approval. The details of development approval for brothels are set out in Part 4, ss 62-64V *Prostitution Licensing Act 1999* (Qld). The exact process and form of development applications can vary between local authorities.

Appeals against decisions on development applications are generally heard and decided by the Planning and Environment Court, established under the *Integrated Planning Act 1997* (Qld). Since 2001,⁴¹ some appeals against decisions relating to applications for a material change of use of premises can be brought to the so-called Independent Assessor, appointed by the Minister under div 4, ss 64B–64J *Prostitution Act 1999* (Qld).⁴²

4.1.1 Location

The development restrictions placed on brothels mostly relate to their location. The legislative framework seeks to ensure that brothels are kept away from children, residential areas, and places of worship. Local authorities cannot grant development approval if the chosen location of the brothel is within 200 metres of the closest boundary to any residential building⁴³ or any land approved for residential development, any place of worship, hospital, school, kindergarten, or 'any other facility or place regularly frequented by children for recreational or cultural activities', s 64(1) *Prostitution Act 1999* (Qld).

The development application also needs to comply with the *Integrated Planning Act 1997* which specifies general requirements about town planning and area use.⁴⁴ In addition, Schedule 3 of the *Prostitution Regulation 2000* (Qld) sets out a number of requirements relating to vehicular access, parking, access, and the outward appearance of brothels.

The legislation thus acknowledges the commercial nature of brothel operations and the fact that premises may be frequented by significant numbers of visitors, which may result in increased traffic and noise levels in their immediate vicinity. Given the severe restrictions placed on advertising and signage, it is unlikely that the physical presence of a brothel can

⁴¹ *Prostitution Amendment Act 2001* (Qld), No 77 of 2001.

⁴² See further Queensland, PLA, *Annual Report 2007-08* (2008) 30.

⁴³ 'Residential building' is defined in s 64(2) *Prostitution Act 1999* (Qld).

⁴⁴ Section 63A *Prostitution Act 1999* (Qld).

be seen as offensive to any neighbourhood or that people in that area will become unwitting witnesses of the brothel services.

To respect the interests of local communities, especially smaller towns, local governments of townships with a population of less than 25,000 can opt to prohibit any brothel in their territory. This requires an application by the local government to the Minister of Police to obtain her/his agreement to refuse all brothel applications for that township, s 64(c) *Prostitution Act 1999* (Qld). As of June 30, 2008, there were 204 exempt towns in Queensland.⁴⁵

4.1.2 Size

Development restrictions also apply to the size of brothels. Any premises may have no more than five service rooms (used to provide prostitution), s 64(1)(d) *Prostitution Act 1999* (Qld).

The number of people permitted to be present and work in a brothel is dependent on the size of the premises. A brothel of the maximum size of five service rooms can have up to eight sex workers in the brothel at any one time.⁴⁶ The total number of staff must not exceed 13, including manager, receptionist, sex workers, and all other employees.⁴⁷ There is no limit placed on the number of clients being present at the brothel.

4.1.3 Advertising prostitution services

The *Prostitution Act 1999* (Qld) places rigid restrictions on the level and type of advertising for brothels and other prostitution services in Queensland, s 93 *Prostitution Act 1999* (Qld). Section 13A *Prostitution Regulation 2000* (Qld) sets out a range of matters that may not be included in prostitution advertisements such as images of sex acts, genitals, minors or animals. It also requires, inter alia, that advertisements display the official brothel name and contact number of the licensed premises.

Until May 29, 2008, the PLA had to consider and approve every prostitution advertisement before publication. Since May 30, 2008, a system of self-assessment is used, which enables prostitution service providers to check proposed advertisements against guidelines issued by the PLA, s 139A *Prostitution Act 1999* (Qld).⁴⁸ Some limited types of advertisements continue to require pre-approval by the PLA. These are specified in the guidelines and include, for example, advertisements displaying pictures of bondage equipment.

In addition to requirements relating to the form and contents of prostitution advertising, the legislation prohibits various types of advertising, especially those visible by great numbers of people. This includes, for example, all forms of radio and television advertising, use of billboards, stickers, signage on buses, taxis, and advertising by sky-writing. Sponsorship of events and sporting competitions is also not permissible.

⁴⁵ Queensland, PLA, *Annual Report 2007-08* (Brisbane: PLA, 2008) 30. A complete list of exempt towns is available at www.pla.qld.gov.au/theLaw/exempt.htm (viewed 22 Jan 2009).

⁴⁶ The number was raised from five to eight sex workers in 2007: *Prostitution Amendment Act 2006* (Qld), No 40 of 2006.

⁴⁷ The number was raised from ten to thirteen staff in 2007: *Prostitution Amendment Act 2006* (Qld), No 40 of 2006.

⁴⁸ These guidelines substitute the former *Advertising Policy for Licensed Brothels* and the *Advertising Policy of Sole Operators*, including the list of approved words. Extracts and samples of the new, current guidelines are available online at www.pla.qld.gov.au/advertising/ (viewed 22 Jan 2009).

Criminal offences relating to prostitution advertising are set out in ss 93–95 *Prostitution Act 1999* (Qld).

4.1.4 Security and safety features

Section 13 *Prostitution Regulation 2000* (Qld) requires a brothel license holder to equip the premises with a number of safety features and security devices. To protect women from violent acts, unwanted sex, or other forms of immediate threats or coercion, the legislation requires that each room in a licensed brothel is equipped with concealed alarm buttons or equivalent security communication devices. To prevent the spread of diseases and protect the health of sex workers, each room also has to have sufficient lighting for sex workers to see visible signs of sexually transmitted diseases. Moreover, the reception area of each brothel needs to prominently display a sign stating that only safe sexual activities are practised on the premises.

4.2 Brothel owners and managers

Owners/operators and brothel managers are required to apply to the PLA for relevant licenses or certificates. The operation and management of a brothel without a license/certificate is a criminal offence.⁴⁹

4.1.1 Brothel owners and brothel licenses

Eligibility

Applicants for brothel licences need to meet a number of eligibility criteria that seek to ensure that brothels are not associated with organised crime, corporate organisations, the general entertainment and hospitality industry, or with persons who have previously violated licence conditions. Accordingly, corporations, minors, insolvents under administration, persons holding liquor licences, persons with certain prior serious convictions, and persons who had a licence, certificate or other authority to provide or manage prostitution cancelled in the last 3 years, or are subject to an order of the PLA (declaring the person to be ineligible), are unable to apply for brothel licences.⁵⁰ Moreover, a person may hold only one brothel licence at any one time,⁵¹ though it is possible for licensees to also operate brothels in other jurisdictions.

Application process

Applications for brothel licences must be lodged in the approved form,⁵² along with an application fee of \$5,500, a licence fee of \$7,165, plus \$2,867 for each room in the brothel (totalling \$27,000 for a 5-room brothel, the standard size of most Queensland brothels).⁵³ An applicant must also provide a variety of information to enable proper monitoring of the brothel.⁵⁴ The PLA must consider every application submitted by an eligible person, but is not obliged to do so until development approval for the brothel has been granted.⁵⁵

⁴⁹ See Section 6.1.1 below.

⁵⁰ Section 8 *Prostitution Act 1999* (Qld). Also, a licence is automatically cancelled if the licensee is convicted of any of a number of serious offences or if the licensee becomes an insolvent under administration, s 25.

⁵¹ Section 9 *Prostitution Act 1999* (Qld).

⁵² Section 10(2)(a) *Prostitution Act 1999* (Qld) s 10(2)(a).

⁵³ These are the fees currently proscribed by regulation: section 10(2)(b) *Prostitution Act 1999* (Qld); s 14, sch 2 *Prostitution Regulation 2000* (Qld).

⁵⁴ Sections 6(1)-(2), 10 (2)(c) *Prostitution Act 1999* (Qld) ss 6(1)-(2), 10(2)(c).

⁵⁵ Section 15 *Prostitution Act 1999* (Qld).

Section 16 *Prostitution Act 1999* (Qld) sets out a number of grounds on which a licence application must be refused. This is the case if the applicant is seen not to be a suitable person to operate a licensed brothel, has an existing interest in a licensed brothel, or holds a liquor licence. A licence must also be refused where its grant would, when combined with other similar premises in the locality, substantially affect the character of the locality, e.g. by turning that area into a 'red light district'. If the PLA refuses a licence, it must reveal the reasons to the applicant, unless there are legitimate grounds for not revealing such information, for example endangering another's life.⁵⁶

In deciding a licence application, the Authority also considers whether the applicant has or will be able to obtain adequate financial resources and business structures to run the brothel, and has arrangements to ensure the safety of sex workers.⁵⁷ It is noteworthy that previous work as a sex worker is not a valid basis for disqualifying an applicant.⁵⁸

License

Where the PLA grants a licence, it may do so with conditions or restrictions.⁵⁹ Once granted, the licence authorises the holder to operate a brothel at only one place, for a term of no more than three years, subject to the payment of annual licence fees⁶⁰ (presently \$7,165 plus \$2,867 for each room of the brothel, totalling \$20,555 annually for a 5-room brothel).⁶¹

A licensee may apply for renewal of his or her licence at least three months before the licence ends, in the approved form and accompanied by the renewal fee of currently \$12,665 plus \$2,867 for each room of the brothel. The PLA must make a decision on the application within three months of the application being lodged.⁶²

As of June 30, 2008, 220 applications for brothel licenses had been received by the PLA since the introduction of brothel licensing in 1999: 174 applications were approved. No application has ever been refused, but 30 applications have been withdrawn before consideration, and 16 remained under investigation.⁶³

4.1.2 Management certificates

If any person other than the license holder is to supervise the brothel, he/she must apply to the PLA for a manager's certificate. This process is largely similar to that of applying for a brothel licence, and is set out in ss 34–49 *Prostitution Act 1999* (Qld). In practice, most brothels employ several managers who work in the brothel at different times. Each manager must hold a valid certificate.

The eligibility criteria for a manager's certificate are the same as for brothel licences, ss 34, 8 *Prostitution Act 1999* (Qld). The application process is similar to that for brothel licenses,⁶⁴ though significantly less expensive (application fee of \$760, and a certificate fee of \$40).⁶⁵

⁵⁶ Sections 18(6), 138 *Prostitution Act 1999* (Qld).

⁵⁷ Section 17(1) *Prostitution Act 1999* (Qld).

⁵⁸ Section 17(4) *Prostitution Act 1999* (Qld).

⁵⁹ Section 18(1)(a) *Prostitution Act 1999* (Qld) s 18(1)(a).

⁶⁰ Section 19 *Prostitution Act 1999* (Qld).

⁶¹ These are the fees currently proscribed by regulation: section 14, sch 2 *Prostitution Regulation 2000* (Qld).

⁶² Section 23 *Prostitution Act 1999* (Qld).

⁶³ Queensland, PLA, *Annual Report 2007-08* (2008) 26. These figures represent the number of individual applications, not the number of brothel sites.

⁶⁴ Section 35(2) *Prostitution Act 1999* (Qld).

⁶⁵ Section 35(2)(b) *Prostitution Act 1999* (Qld); s 14, sch 2 *Prostitution Regulation 2000* (Qld).

The PLA must consider every application submitted by an eligible person, s 40 *Prostitution Act 1999* (Qld). The grounds for refusal are identical to those that apply to brothel license applications.⁶⁶ The PLA may attach conditions or restrictions to a management certificate,⁶⁷ and must give reasons if it refuses an application.⁶⁸

Once granted, a manager's certificate authorises the holder to be an approved manager of one or more licensed brothels, for up to three years, subject to the payment of annual certificate and return fees (\$40 and \$560 respectively⁶⁹) as well as several other conditions.⁷⁰ The renewal process for certificates is set out in s 49 *Prostitution Act 1999* (Qld). A certificate is automatically cancelled if an approved manager is convicted of any number of serious offences, or if he or she becomes an insolvent under administration.⁷¹

As of June 30, 2008, 621 applications for manager certificates had been received by the PLA since the introduction of prostitution regulation in 1999: 543 applications were approved. Only one application has ever been refused, 56 applications have been withdrawn before consideration, and 21 remain under investigation.⁷²

4.3 Prostitution Licensing Authority

Part 7 *Prostitution Act 1999* (Qld) establishes the PLA as the principal government agency to control prostitution in Queensland and implement the provisions of the Act.⁷³ The Authority reports to the Minister for Police and Corrective Services. As of June 30, 2008, the agency employed eight full-time staff.⁷⁴

Specifically, the PLA decides on brothel licence and brothel manager applications, collects licensing fees, receives complaints about prostitution, monitors the services offered in licensed premises, conducts inquiries in relation to license holders and, if necessary, disciplines license holders. Moreover, the PLA liaises with police and other government agencies about possible offences, and advises the Minister about policy issues relating to prostitution in Queensland, s 101 *Prostitution Act 1999* (Qld). Sections 102–108A of the Act outline the details about membership in and operation of the Prostitution Licensing Authority.

4.4 Enforcement and compliance

4.4.1 Compliance

The PLA carries out its monitoring function⁷⁵ through audits and inspections of licensed brothels by compliance officers. The officers inspect the premises prior to the opening of new brothels and during the license renewal process (generally after three years). They are also authorised to inspect the premises at other times.⁷⁶ In practice, PLA compliance officers

⁶⁶ Sections 41, 42 *Prostitution Act 1999* (Qld)

⁶⁷ Section 43(1)(a) *Prostitution Act 1999* (Qld).

⁶⁸ Sections 43(6), 138 *Prostitution Act 1999* (Qld).

⁶⁹ Section 14, sch 2 *Prostitution Regulation 2000* (Qld).

⁷⁰ Section 44 *Prostitution Act 1999* (Qld).

⁷¹ Section 51 *Prostitution Act 1999* (Qld).

⁷² Queensland, PLA, *Annual Report 2007-08* (2008) 26. These figures represent the number of individual applications, not the number of brothel sites.

⁷³ Section 100 *Prostitution Act 1999* (Qld).

⁷⁴ Queensland, PLA, *Annual Report 2007-08* (2008) 40.

⁷⁵ Section 101(c) *Prostitution Act 1999* (Qld)

⁷⁶ Cf ss 26, 52 *Prostitution Act 1999* (Qld).

undertake a number of audits and inspections of each licensed brothel throughout the year. This includes both announced and unannounced audits and inspections. Where warranted, officers will undertake inspections of brothel premises in response to complaints.

The compliance activities of the PLA focus specifically on four key areas:

1. Harm minimisation and infectious disease control in brothels, including infection control procedures, promoting safe sex practices, sexual health checks for sex workers, monitoring of waste disposal protocols, provision of prophylactics;
2. Development, implementation, and maintenance of brothel operation policies, specifically in relation of business records, employment of staff, workplace health and safety, sexual health, hygiene and sanitation;
3. Safety and security risks in brothels; and
4. Layout, structure, and amenities for brothels.

Disciplinary Action

The PLA may conduct inquiries to decide whether there are grounds for taking disciplinary action against a licensee⁷⁷ on its own initiative, or on the application of the Police Commissioner or an authorised officer of a relevant local government.⁷⁸ Grounds for disciplinary action are set out in s 27 *Prostitution Act 1999* (Qld) and include a licensee or an associate being charged with or convicted of an offence, the provision of prostitution in breach of licence conditions, or improper management.

Section 29 of the Act equips the PLA with a variety of forms of disciplinary action including reprimand, adding conditions or restrictions to the licence; or requiring undertakings to perform or not perform particular tasks or to comply with a requirement within or for a specified time. The PLA may also impose fines, suspend a licence for up to one year, cancel the licence, or order the licensee ineligible to hold a licence temporarily or permanently. In exercising these powers, the PLA is subject to various restrictions, depending on the grounds for taking action. There are also several limitations on the PLA's powers regarding certain licences.⁷⁹

The PLA may also conduct inquiries to decide whether there are grounds for taking disciplinary action against an approved manager⁸⁰ on its own initiative or on the application of the Police Commissioner or an authorised officer of a relevant local government.⁸¹ Grounds for disciplinary action are set out in s 53 and include an approved manager being charged with or convicted of an offence,⁸² the provision of prostitution in breach of certificate conditions,⁸³ or improper brothel management.⁸⁴ Section 55 *Prostitution Act 1999* (Qld) gives the PLA a variety of forms of disciplinary action similar to those available against brothel licensees in s 29.

4.4.2 Policing and enforcement

To facilitate the policing of licensed brothels and enhance the enforcement of prostitution offences, the *Prostitution Act 1999* (Qld) requires brothel licensees, managers, and sex

⁷⁷ Section 26(1) *Prostitution Act 1999* (Qld).

⁷⁸ Section 26(2) *Prostitution Act 1999* (Qld).

⁷⁹ Sections 29, 30 *Prostitution Act 1999* (Qld).

⁸⁰ Section 52(1) *Prostitution Act 1999* (Qld).

⁸¹ Section 52(2) *Prostitution Act 1999* (Qld).

⁸² Section 53(a) *Prostitution Act 1999* (Qld).

⁸³ Section 53(b) *Prostitution Act 1999* (Qld).

⁸⁴ Section 53(c) *Prostitution Act 1999* (Qld).

workers to cooperate with police, produce relevant documents, and assist in compliance and enforcement efforts. Accordingly it is an offence not to:

- assist police, who have lawfully entered a licensed brothel under the Act, provide documents requested by police at a licensed brothel, s 84;
- provide particulars about age that are requested by police at a licensed brothel, s 85;
- provide the name and address of licensees and managers to police, s 86;
- display the licence or a notice stating the licensee's licence number, the address of the brothel and the date on which the licensee's licence expires prominently at the entrance to the brothel, s 87; and
- produce a licence or manager's certificate if requested by police, s 88.

In an attempt to limit the vulnerability of police officers to corruption and collusion between brothel owners and police, only police of the rank of inspector or above may enter, or authorise an entry, to a licensed brothel when it is open for business.⁸⁵ Police officers who wish to inspect, copy or take possession of documents or things must seek prior written authorisation from the PLA.⁸⁶ Details about any police entry of licensed brothels must be reported to the PLA.⁸⁷ During the 2007-08 financial year, police made 31 entries into 15 different brothels.

5. Unregulated and Illegal Prostitution

As mentioned earlier, licensed brothels only make up a small part of Queensland's sex and prostitution industries. Several reports by the Crime and Misconduct Commission (CMC) suggest that the vast majority of prostitution on offer in Queensland is unregulated and frequently involves illegal forms of prostitution. About 75% of prostitution is carried out by escorts (so-called outcall prostitution) and is not regulated by the existing framework.⁸⁸

5.1 Sole operators

Queensland's prostitution licensing system does not regulate the work of individual sex workers. Specifically, sole operators are not required to hold any licenses. The services offered by individual sex workers are legal — or, to be precise, unregulated — unless they violate provisions in the *Criminal Code* or the *Prostitution Act 1999* (Qld). It is, however, illegal for more than one sex worker to operate in the same premises, even at different times (s 229I *Criminal Code* (Qld)). In the absence of any regulatory or registration system it is not possible to estimate the number of sole operators offering sex work in Queensland. 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.

Sole operators may use licensed brothels to offer their services. Generally, Queensland brothels do not technically employ sex workers, but instead maintain contracts or other forms of arrangements with them. It is also legal for an individual to work as a sex worker independently of a licensed brothel, subject to a number of conditions.⁸⁹ Sole operators may work from their own home or in rented (but not shared) premises (so-called incall

⁸⁵ Section 59 *Prostitution Act 1999* (Qld).

⁸⁶ Section 60 *Prostitution Act 1999* (Qld).

⁸⁷ Section 61 *Prostitution Act 1999* (Qld).

⁸⁸ Queensland, Crime and Misconduct Commission (CMC), *Regulating Prostitution* (Brisbane: CMC, 2004) xiii.

⁸⁹ The offence of participating in prostitution in s 229H *Criminal Code* (Qld) is limited to participation 'in the provision of prostitution by another person'.

prostitution), and they are able to legally provide outcall prostitution or escort services so long as they work independently. As mentioned earlier, outcall prostitution is the most popular form of prostitution among clients and sex workers. It is also not uncommon for sole operators to advertise under multiple names. However, a considerable part of outcall prostitution is run or facilitated by agencies or other prostitution rings, which employ or otherwise contract multiple sex workers. This is an illegal form of prostitution.⁹⁰

The strict requirement that sole operators work independently has the consequence that apart from a bodyguard (holding a valid crowd controller's license⁹¹) a sole operator must not engage any other staff, or work in conjunction with another sex worker. In 2006, the CMC recommended that sole operators be allowed to employ a receptionist or a driver, which may contribute to the safety of independent sex workers.⁹² In August 2009, the *Prostitution and Other Acts Amendment Bill 2009* (Qld) was introduced to amend s 229H(5) *Criminal Code* (Qld) in order to allow a person holding a current crowd controller licence⁹³ to act as a driver for a sole operator sex worker,⁹⁴ amending the previous provision which allowed a person to act only as a bodyguard for a sole operator. In either case, however, the driver or bodyguard may only perform this function if he/she is not him/herself a sex worker and does not assist another person who is engaged in prostitution.⁹⁵

Although the *Prostitution Act 1999* (Qld) does not regulate sole operators, individual sex workers have to meet certain requirements relating to their work, otherwise they may face criminal penalties.⁹⁶

5.2 Unlicensed brothels and other shared premises

Any brothel that operates without a license is illegal and subject to criminal offences set out in the *Criminal Code* and *Prostitution Act 1999* (Qld). Multiple sex workers sharing premises (even at different times) and other businesses offering prostitution, such as massage parlours, are also treated as illegal brothels ('places being used for prostitution').⁹⁷ The PLA submitted in 2004, that

a large component of the illegal [brothel] industry consists [inter alia] of the provision of sexual services by two workers who prefer not to work as sole operators because of the dangers inherent in that work, and who do not wish, either for financial reasons or for commercial reasons, to establish a brothel solely in respect of two persons.⁹⁸

Estimates about the number of illegal brothels in Queensland vary greatly. For example, in 2002, the then president of the Queensland Adult Business Association (QABA), Ms Debbie Nielson, suggested that there were 100 illegal operators for every legal brothel.⁹⁹ With 12 brothels operating legally in Queensland at that time,¹⁰⁰ her suggestion would put the

⁹⁰ See Section 5.3 below.

⁹¹ Section 229H(5) *Prostitution Act 1999* (Qld).

⁹² Queensland, CMC, *Regulating Outcall Prostitution* (Brisbane: CMC, 2006) xiv.

⁹³ As issued under the *Security Providers Act 1993* (Qld).

⁹⁴ *Prostitution and Other Acts Amendment Bill 2009* (Qld) clause 16, amending *Criminal Code* (Qld) s 229H(5).

⁹⁵ *Prostitution and Other Acts Amendment Bill 2009* (Qld) clause 16, amending *Criminal Code* (Qld) s 229H(5).

⁹⁶ See further Section 6.2 below.

⁹⁷ See further Section 6.1 below.

⁹⁸ Queensland, CMC, *Regulating Prostitution* (2004) 80.

⁹⁹ Dianne Butler, 'Crisis in the Sex Trade: Rogue Operators use Dirty Tricks' (15 Sep 2002) *Sunday Mail* (Brisbane); cited in Queensland, CMC, *Regulating Prostitution* (2004) 81.

¹⁰⁰ Queensland, PLA, *2002-2003 Annual Report* (2003) 14.

number of illegal operators well over one thousand. Official figures are more moderate; data published by the Queensland Police Service for the 2007-08 financial year show that during that period 14 people were charged with having an interest in an illegal brothel (s 229K *Criminal Code*), and 92 persons were charged with being knowingly involved in the provision of prostitution (s 229 H).¹⁰¹ Based on the available information, it thus seems plausible that the number of illegal brothels exceeds the number of licensed brothels in Queensland.

5.3 Outcall prostitution (escorts)

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 personal websites or chat-rooms), or by telephone, after the client calls a number listed in the personals section of a newspaper. Outcall prostitution, commonly known as escort services, is illegal in Queensland if it is offered through an agent or brothel. Sole operators are able to legally provide this service, however, anyone assisting a sole operator in the provision of those services by taking phone calls, making bookings at hotels et cetera would be criminally liable for the offence of knowingly participating in the provision of prostitution.¹⁰²

Figures released by the CMC in 2004 suggest that escort services make up 75% of prostitution in Queensland.¹⁰³ The majority of escort services are provided by agents or organised groups.¹⁰⁴ As the provision of escort services by any person other than a sole operator is illegal, this is indicative of the profitability of providing such services. The PLA submitted that outcall prostitution rings frequently consist of

a network of people connected by mobile phones to a central console or telecommunications service centre which takes bookings and then diverts them to a particular worker by personal mobile phones. These sex workers are in various locations, each attempting to present as a legal single operator [...].¹⁰⁵

The frequency and profitability of outcall prostitution prompted the CMC to conduct an inquiry into *Regulating Outcall Prostitution* that was published in 2006.¹⁰⁶ Representatives of legal brothels argued that to maintain their competitiveness and financial viability, licensed brothels should be allowed to offer outcall prostitution services. They also argued that this would add to greater transparency and control by rendering many illegal operations legal. The CMC, however, felt that these proposals would ultimately lead to an increased demand in the provision of illegal services, and may add to the number of trafficked and underage workers in the illegal industry. Such an occurrence was considered too great a risk to justify modification of what was generally seen as a successful system.

On October 13, 2008, the Police Minister issued a media release confirming that the prohibition on outcalls from licensed brothels and independent escort agencies will remain. So-called social escorts that in reality provide sex services will be held criminally liable and new regulations of social escort advertising has been introduced.¹⁰⁷ Legislation was presented in August 2009 to amend the *Prostitution Act 1999* (Qld) to create a regulation-making power to prohibit any advertisements that do not unequivocally display the words

¹⁰¹ Queensland, CMC, *Regulating Prostitution* (2004) 79.

¹⁰² Section 229H *Criminal Code* (Qld).

¹⁰³ Queensland, CMC, *Regulating Prostitution* (2004) xiii.

¹⁰⁴ Queensland, CMC, *Regulating Prostitution* (2004) 83; Queensland, CMC, *Regulating Outcall Prostitution* (2006) 16; Chris Griffith, 'Black Trade in Sex Flourishes' (27 Jan 2007) *The Courier Mail* (Brisbane).

¹⁰⁵ Queensland, CMC, *Regulating Prostitution* (2004) 80.

¹⁰⁶ Queensland, CMC, *Regulating Outcall Prostitution* (2006).

¹⁰⁷ *Prostitution and Other Acts Amendment Bill 2009* (Qld).

'non-sexual' or 'sexual services are not provided'.¹⁰⁸ The maximum penalty for advertising in breach of this requirement is 70 penalty units where the cost of publishing the advertisement is less than \$1000, or 10 times the cost of publishing where that cost exceeds \$1000.¹⁰⁹ Similarly, the amendments require that clients of social escort services be clearly informed by a social escort provider or employee that prostitution is not included as part of the social escort service.¹¹⁰ A social escort is defined as: a person who is held out for public hire, under a commercial arrangement, 'to accompany another person to social affairs, places of entertainment or amusement; or consort with a person in any place, whether public or private' though it does not include a person who does so as part of health services or who provides prostitution.¹¹¹ A social escort provider includes a person or entity that, under an arrangement or a commercial character, provides or offers to provide the names of escorts, introduces or offers to introduce a person to escorts.¹¹² However, where this information is not provided to a client, a provider will have a defence where he or she issues appropriate instructions to employees and escorts regarding such disclosure, the provider is not aware of the improper disclosure and the provider could not have prevented the improper disclosure through the exercise of reasonable diligence.¹¹³ Finally, the *Child Employment Act 2006* (Qld) is amended to create a new offence of permitting a child under 18 years of age to work as a social escort.¹¹⁴

5.4 Street prostitution

Street prostitution is probably the most visible and perhaps most controversial form of sex work.¹¹⁵ Street prostitution occurs when a sex worker loiters in a public area in order to be approached by clients for the purpose of prostitution. The actual sex act is usually performed in the vehicle of the client, a public place, or in premises that are shared by street prostitutes for this purpose. Public soliciting is a criminal offence in Queensland under s 73 *Prostitution Act 1999* (Qld). Unlike some other jurisdictions, there are no exempted areas in which street prostitution is legal or otherwise tolerated. Regardless of this prohibition, certain parts of Brisbane and areas in other urban centres in Queensland are known to be used for street prostitution.

Despite the publicity street prostitution frequently attracts, this type of prostitution is generally regarded as constituting only a small percentage of sex work in Queensland. The Scarlet Alliance, an advocacy group for sex workers, and the Queensland Police Service (QPS) estimated in 2004 that street-based work represents around two percent of the prostitution industry in Queensland.¹¹⁶ The illegal nature of this work, innovative policing techniques,

¹⁰⁸ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 8, inserting *Prostitution Act 1999* (Qld) s 96A(1).

¹⁰⁹ Prostitution and Other acts Amendment Bill 2009 (Qld) clause 8, inserting *Prostitution Act 1999* (Qld) s 96A(2).

¹¹⁰ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 8, inserting *Prostitution Act 1999* (Qld) s 96B(1)-(3).

¹¹¹ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 12, amending *Prostitution Act 1999* (Qld) sch 4.

¹¹² Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 12, amending *Prostitution Act 1999* (Qld) sch 4.

¹¹³ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 8, inserting *Prostitution Act 1999* (Qld) s 96B(4).

¹¹⁴ Prostitution and Other Act Amendment Bill 2009 (Qld) clause 21, inserting *Child Employment Act 2006* (Qld) s 8B.

¹¹⁵ The impact of street prostitution on the community is further explored in Queensland, CMC, *Regulating Prostitution* (2004) 24–25.

¹¹⁶ Queensland, CMC, *Regulating Prostitution* (2004) 85–86.

and the dangers associated with street prostitution probably prevent this phenomenon from being more common.¹¹⁷ However, public soliciting remains the single most common prostitution offence, constituting about 60% of reported prostitution offences.¹¹⁸

Many reports confirm that persons engaged in street prostitution are the most disadvantaged sex workers. In particular, illicit drug use is prevalent among street sex workers.¹¹⁹ There is a widely held view that persons engaged in street-based sex work do so to pay for their drug habits.¹²⁰ Street-based sex workers are also more likely to experience violence.¹²¹ The persistent threat of detection, arrest, and criminal sanctions associated with street prostitution forces many sex workers into areas that are less populated but well-known for this purpose.¹²² High levels of street sex workers also reported that they had unwanted sexual experiences. For example, 48.5% stated they had sexual intercourse when they did not want to because someone used force. 78.8% said they had been raped, and 90.9% had suffered physical violence during their work.¹²³

The sexual and general health of street-based sex workers remains problematic, especially as street-based sex workers and their clients are at greater risk of contracting or transmitting STDs. Even though it is a criminal offence for any sex worker to offer unprotected sex — and it is also a criminal offence for clients to request such services — unsafe practices continue to occur and it is difficult, if not impossible, to enforce relevant offences outside licensed premises. Further adding to the health risks associated with street-based sex work are hygiene problems, high levels of drug abuse, and the sharing of needles used for intravenous administration of illicit drugs.¹²⁴ Given the criminalisation of street-prostitution, street-based sex workers are unlikely to report violence against them to police or otherwise assist law enforcement agencies in investigations. And even if street workers are arrested and convicted, this does not deter them from returning to this type of work.¹²⁵

On the other hand, street-based work also appears to be the most profitable form of prostitution due to the low operating costs. It has been estimated that street sex workers earn on average \$1814 per week, compared to sex workers in licensed brothels who only earn on average \$1341 per week.¹²⁶ This fact alone prevents many street sex workers from entering the legal brothel industry or operating as sole operators from their homes. In surveys, street-based workers have also expressed their inability to comply with restrictions on working hours, prohibitions on drug use placed on sex workers in legal brothels, and an unwillingness to share part of their income with a brothel operator.¹²⁷

Public opinion remains fiercely opposed to any legalisation of street prostitution. Research conducted in Queensland in 2003 found that 83.15% of respondents did not believe that sex workers should be allowed to attract clients in a public place.¹²⁸ For example, residents in Fortitude Valley and in proximity to Brunswick Street, New Farm — well known areas for

¹¹⁷ Cf Queensland, CMC, *Regulating Prostitution* (2004) 45.

¹¹⁸ QPS, *Annual Statistical Review 2007-08* (2008) 6.

¹¹⁹ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 44.

¹²⁰ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 28.

¹²¹ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 57.

¹²² Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 57.

¹²³ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 47.

¹²⁴ Queensland, CMC, *Regulating Prostitution* (2004) 67.

¹²⁵ Queensland, CMC, *Regulating Prostitution* (2004) 80.

¹²⁶ Queensland, PLA, *Select Prostitution Statistics* (December 2007) 2; Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 29.

¹²⁷ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 35; Queensland, CMC, *Regulating Prostitution* (2004) 58.

¹²⁸ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 101.

public soliciting¹²⁹ — have repeatedly expressed their discontent over sexual and other prostitution related activities in parks, gardens, driveways, car parks, and unlocked areas of houses, such as open laundries. They also reported of condoms and syringes being left in public places, and of frequent altercations and fights between sex workers, and between sex workers and clients.¹³⁰

5.5 Massage parlours

Massage parlours that provide sexual services which fall within the definition of prostitution in s 229E *Criminal Code* (Qld) are illegal if such massages are offered by any person other than a sole operator or in a legal brothel. The new offence of carrying on a business concerned with the provision of prostitution, recently proposed by the Queensland Government,¹³¹ will more comprehensively criminalise massage parlours offering sexual services. The exception for the holders of Adult Entertainment Permits are dealt with in the next Section.

Despite this prohibition, illegal massage services are easily available and advertised widely on the internet using expressions such as 'nude massage with relief'. These advertisements are illegal,¹³² as the services offered meet the definition of prostitution. To protect themselves from prosecution, some massage service providers state explicitly in their advertisements that they offer 'no full service'.

Exact figures about the number of massage parlours offering sexual services in Queensland are not available.

5.6 Adult entertainment including exotic dancing

Since July 2008, adult entertainment in Queensland is regulated and controlled by the Office of Liquor, Gaming, and Racing. Sections 103E-103K *Liquor Act 1992* (Qld) allow applications for so-called Adult Entertainment Permits which allow permit-holders to provide sexually explicit entertainment in accordance with the *Adult Entertainment Code 2002* (Qld).¹³³

This Code, promulgated in 2002,¹³⁴ sets the limits on sexually explicit entertainment permissible in adult entertainment businesses. In summary, 'sexually explicit entertainment' is taken to mean any entertainment where the genitalia are exposed or where there is sexualised physical contact. The definition (and thus the entertainment permissible in adult entertainment businesses) does not include any acts of masturbation, oral sex, or intercourse,¹³⁵ or any of the sexual activities set out in s 14 *Adult Entertainment Code 2002* (Qld). This section also specifically prohibits the soliciting of any person for the purposes of prostitution in an adult entertainment business.¹³⁶

¹²⁹ Cf Queensland, CMC, *Regulating Prostitution* (2004) 81.

¹³⁰ Queensland, CMC, *Regulating Prostitution* (2004) 45.

¹³¹ Queensland, Ministerial Media Statements, Minister for Police, Corrective Services and Sport, The Hon Judy Spence, *Cabinet endorses tougher approach to illegal prostitution* (13 Oct 2008) available at <http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=60757> (accessed 9 Jan 2009).

¹³² Section 95, *Prostitution Act 1999* (Qld).

¹³³ Tom Young, 'Adult Entertainment Permits' (2000) 20(10) *Proctor* 22.

¹³⁴ *Liquor (Approval of Adult Entertainment Code) Regulation 2002* (Qld).

¹³⁵ Section 2 *Adult Entertainment Code 2002* (Qld).

¹³⁶ Section 14 *Adult Entertainment Code 2002* (Qld).

Adult entertainment businesses for exotic dancing offering sexual services within the meaning of prostitution under s 229E *Criminal Code* (Qld) are illegal and subject to the same criminal penalties as illegal brothels. However, s 229E(2) exempts exotic dancing in adult entertainment businesses from the definition of prostitution if it is adult entertainment authorised under a permit and does not involve sexual intercourse, masturbation, or oral sex. This exemption makes lap dancing legally permissible. It also appears from *R v O'Keefe*¹³⁷ that where a client pays to merely watch the manipulation by one performer of another performer's genitals, this will not offend this construction of s 229E.

It has to be noted that most adult entertainment businesses in Queensland avoid the requirement of a permit by offering entertainment that does not amount to 'sexually explicit entertainment'. Research published in 2004 showed that only around 26% of premises providing adult entertainment sought an adult entertainment permit.¹³⁸ The main reason for this is that adult entertainment businesses are not allowed to sell liquor. Businesses holding a general liquor license, however, may provide sexual entertainment that does not go as far as 'sexually explicit entertainment'. Thus, these businesses are not allowed to provide entertainment involving the exposure of genitals or physical contact between the entertainer and the client. In short, entertainment is generally limited to a topless striptease.

From the available information, prostitution available in or through adult entertainment businesses appears to be very limited in Queensland and the two industries are largely separate and 'culturally distinct'.¹³⁹ A recent study by the CMC found that only a small number of adult entertainers or proprietors had been involved in the provision of prostitution. Where prostitution did occur, it was generally in the form of a private arrangement between the entertainer and the client, and did not occur on adult entertainment licensed premises.¹⁴⁰ However, recent media reports have indicated that sexual services amounting to prostitution are currently being offered in a number of Queensland clubs with tacit managerial approval. Such reports have also indicated that enforcement of the *Adult Entertainment Code*, and liquor licensing restrictions are not being complied with, and compliance reviews are being undertaken less frequently by the Office of Liquor, Gaming and Racing.¹⁴¹

6. Prostitution Offences

Offences relating to prostitution are set out in Chapter 22A *Criminal Code* (Qld) and Part 6 (ss 73–99) *Prostitution Act 1999* (Qld). The legislation sets out offences for persons involved in the management and operation of illegal brothels, persons living off the earnings of another person's prostitution (commonly known as 'pimping'), sex workers, and clients. Special offences apply if the prostitution involves minors¹⁴² or persons with an impairment of the mind;¹⁴³ these offences are not further explored here. In the 2007-08 financial year, the Queensland Police Service (QPS) recorded 382 reported prostitution offences.¹⁴⁴

¹³⁷ (1999) 20 Qld Lawyer reps 97.

¹³⁸ Queensland, CMC, *Regulating Adult Entertainment* (2004) xii.

¹³⁹ Queensland, CMC, *Regulating Adult Entertainment* (2005) 43.

¹⁴⁰ Queensland, CMC, *Regulating Adult Entertainment* (2004) 29.

¹⁴¹ Patrick Lion, 'Brisbane Strip Clubs Caught Breaking Adult Entertainment Laws', *Courier Mail* (Queensland) 20 February 2009.

¹⁴² Sections 229L, 229I, 229K(3), 229G(2), 229H(2) *Criminal Code* (Qld); s 85 *Prostitution Act 1999* (Qld).

¹⁴³ Sections 229I(2), 229K(3), 229H(2), 229G(2), 229L *Criminal Code* (Qld).

¹⁴⁴ QPS, *Annual Statistical Review 2007-08* (2008) 6.

6.1 Offences for brothel owners, managers, and pimps

6.1.1 Illegal brothels

Under s 229K *Criminal Code* (Qld) it is an offence to 'have an interest' in unlicensed premises used for prostitution. This applies specifically for persons owning, renting, or controlling the premises, knowing that the facility is or will be used for prostitution by two or more sex workers. The maximum penalty for first offenders is 3 years imprisonment while higher penalties apply for repeat offenders and in situations where the prostitution involves minors or persons with an impairment of the mind. Persons who otherwise knowingly participate in the provision of prostitution by another person may be liable under s 229H *Criminal Code* (Qld).¹⁴⁵ In both of these offences the word 'prostitution' does not require the offender to have had knowledge of a specific act of prostitution; knowledge of continuing activity consisting of a series of acts is sufficient.¹⁴⁶

In August 2009, legislation was introduced to amend the *Criminal Code* (Qld) in order to make it an offence to carry on the business of enabling illegal prostitution, that is, 'prostitution by two or more prostitutes, other than at a licensed brothel in accordance with the brothel licence for that brothel'.¹⁴⁷ To 'carry on a business' a person must provide finance for the business and either control it or take part in its management;¹⁴⁸ the inclusion of this definition is intended to ensure that this offence does not operate so broadly as to apply to those who would otherwise fall within the lesser offence at s 229H *Criminal Code* (Qld) of knowingly participating in the provision of illegal prostitution.¹⁴⁹ Where a person does carry on the business of providing unlawful prostitution, they face a maximum penalty of 7 years imprisonment,¹⁵⁰ though the offence is aggravated where the offender knows that a child or person with an impairment of the mind is engaged in the provision of the prostitution, doubling the maximum penalty to 14 years.¹⁵¹ In either case, the penalty imposed renders the offence a 'serious crime' under the *Criminal Proceeds Confiscation Act 2002* (Qld), enabling any assets of illegal prostitution providers to be confiscated. This addresses an imbalance between the punishment of offenders in the illegal industry versus those committing offences in relation to legal brothels. Similarly, a person engaging in or obtaining prostitution through a business suspected of providing unlawful prostitution also commits a crime, with maximum penalties of 3 years imprisonment for a first offence, 5 years for a second offence, and 7 years for any subsequent offence.¹⁵²

6.1.2 Licensed brothels

Operators of licensed brothels may be criminally liable if they fail to comply with certain requirements of the *Prostitution Act 1999* (Qld). Under s 76 *Prostitution Act 1999* (Qld) it is an offence to cause unreasonable annoyance or disruption to the privacy of another person

¹⁴⁵ For case examples see *R v Ashton and Leyden* [1995] QCA 422; *R v Beissel and Beissel* [1996] QCA 488.

¹⁴⁶ *R v Armstrong* [1996] 1 Qd R 316.

¹⁴⁷ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 14, amending *Criminal Code* (Qld) s 229C.

¹⁴⁸ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 15, inserting *Criminal Code* (Qld) s 229F.

¹⁴⁹ Prostitution and Other Acts Amendment Bill 2009 (Qld), Explanatory Notes, 11.

¹⁵⁰ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 17, inserting *Criminal Code* (Qld) s 229HB(1).

¹⁵¹ Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 17, inserting *Criminal Code* (Qld) s 229HB(2).

¹⁵² Prostitution and Other Acts Amendment Bill 2009 (Qld) clause 17, inserting *Criminal Code* (Qld) s 229HC.

as a result of prostitution, in the vicinity of a place reasonably suspected of being used for prostitution.

Licensees are criminally liable if they fail to ensure the use of prophylactics by sex workers,¹⁵³ or if they knowingly permit a sex worker to work if that person is infected with a sexually transmitted disease.¹⁵⁴ A licensee/manager must also take reasonable steps to prevent the fact that a prostitute has been medically examined from being used to induce a client to believe the prostitute does not have STDs.¹⁵⁵

Criminal offences relating to brothel licenses and advertising are set out in ss 78-87, 93 *Prostitution Act 1999* (Qld).¹⁵⁶

6.1.3 Pimping

Section 229G *Criminal Code* (Qld) is aimed at preventing pimping. In short, this section makes it an offence to recruit another person into prostitution. It is an offence for a person to procure another person to leave Queensland, come to Queensland, or leave the person's usual residence (wherever that may be) for the purpose of engaging in prostitution. Licensees and approved managers of licensed brothels are exempted from liability. A person who knowingly participates, whether indirectly or directly, in the provision of prostitution by another, commits an offence under s 229H *Criminal Code* (Qld).¹⁵⁷ This replaces the former offence of living off the earnings of prostitution. Exceptions apply for certified bodyguards and for persons holding an adult entertainment permit that allows sexually explicit activity. Under s 77 *Prostitution Act 1999* (Qld) it is an offence to threaten or intimidate a person so as to induce them to continue providing prostitution.

6.2 Offences for sex workers

As mentioned earlier, prostitution is not criminalised if it is carried out by a sole operator. Nevertheless, criminal liability for sex workers arises if two or more sex workers offer their services from the same premises (even at different times),¹⁵⁸ unless that facility is a licensed brothel or the person has a reasonable excuse, s 229I *Criminal Code* (Qld). In *Kelsey v Hill*¹⁵⁹ it was held that the purpose of this offence was to prevent the creation of unlicensed brothels, thus a person could not use the fact that it is not illegal for a person to provide prostitution as a defence. A reasonable excuse also does not include an incorrect, albeit genuine belief that an act does not constitute a sexual act.¹⁶⁰ It was, however, later suggested in *R v Newcombe and Barns*¹⁶¹ that a person whose purpose in being in such a place was unrelated to the purpose of prostitution, for example to deliver goods, would have a reasonable excuse.

Sections 73, 75 *Prostitution Act 1999* (Qld) create offences for publicly soliciting for the purposes of prostitution. Publicly soliciting means solicitation that occurs in a public place or in a place that can be viewed or heard by a person in a public place, or, loitering for the purpose of soliciting, in or near a public place or a place that can be viewed from a public

¹⁵³ Section 77A(6) *Prostitution Act 1999* (Qld).

¹⁵⁴ Section 89 *Prostitution Act 1999* (Qld).

¹⁵⁵ Section 89(4) *Prostitution Act 1999* (Qld).

¹⁵⁶ See further Section 4 above.

¹⁵⁷ For case examples see *R v Norris* [2006] QCA 376; *R v Brown* [1997] QCA 134.

¹⁵⁸ *R v Newcombe and Barns* [1996] 1 Qd R 323.

¹⁵⁹ [1995] 1 Qd R 182.

¹⁶⁰ *R v Newcombe and Barns* [1996] 1 Qd R 323.

¹⁶¹ [1996] 1 Qd R 323.

place. According to a 2004 study, 75.8% of street based sex workers stated that they had been charged for soliciting offences.¹⁶²

A number of offences arise if sex workers violate health and safety requirements set out in the *Prostitution Act 1999*. Specifically, it is unlawful for all sex workers to provide or offer to provide prostitution involving sexual intercourse or oral sex without the use of a prophylactic.¹⁶³ Further, sex workers in licensed brothels must not work knowing he/she has contracted a sexually transmitted disease. A sex worker is taken to have known he/she is infected unless the person proves that he/she had been medically examined at intervals as prescribed under the regulations and he/she believed on reasonable grounds he/she was STD free. However, a sex worker must not use the fact that he/she has been medically examined or the results of such a test to induce a client to believe he/she is STD free, s 90 *Prostitution Act 1999* (Qld).

In practice, these types of offences are not uncommon, for example, in early 2008 the PLA reported that a sex worker was convicted of fraudulently altering medical certificates relating to sexual health examinations.¹⁶⁴ Also in 2008, a Queensland doctor has been investigated by the Medical Board of Queensland for issuing sexual health certificates to a sex worker without conducting a physical examination for visible signs of sexually transmitted diseases.¹⁶⁵

6.3 Offences for clients

Using the services of a sole operator and visiting licensed brothels are not criminal offences. However, liability will arise if a client visits an unlicensed brothel, i.e. premises used for prostitution by two or more sex workers, s 229I *Criminal Code* (Qld), or if they publicly solicit for prostitution, ss 73–75 *Prostitution Act* (Qld).

To protect the health and safety of sex workers and prevent the spread of sexually transmitted diseases, clients must not request unsafe sexual practices. Specifically, it is an offence for a person to ask, accept, or actually obtain prostitution involving sexual intercourse or oral sex without the use of a prophylactic. It is also an offence for clients to interfere with the efficacy of a prophylactic used by a prostitute, or continue to use a prophylactic which the client knows or could reasonably be expected to know is damaged, s 77A *Prostitution Act* (Qld).

7. Lessons Learned

Prostitution regulation in Queensland is driven by the realisation that prostitution can at best be controlled, but can never be fully regulated:

Despite attempts to control and eradicate it through criminal sanctions, it remains a feature of most societies over recorded time. Even in societies where the sanctions for prostitution include death, prostitutes continue to provide services, albeit in what might be reduced numbers and in clandestine form.¹⁶⁶

¹⁶² Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 38.

¹⁶³ Section 77A *Prostitution Act 1999* (Qld).

¹⁶⁴ Queensland, PLA, 'Beware forged Sexual Health Certificates' (2008) 27 *In Touch*, PLA Newsletter 1.

¹⁶⁵ Queensland, PLA, 'Sexual health certificates' (2008) 25 *In Touch*, PLA Newsletter 2.

¹⁶⁶ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 8.

The current prostitution control and regulation regime in Queensland is a peculiar mixture of limited, stringent legalisation, laissez-faire, and comprehensive criminalisation. The *Prostitution Act 1999 (Qld)* creates a very detailed system to authorise the operation of some brothels in Queensland. The above analysis shows that the licensing of brothels is subject to a great number of conditions and that the legalisation of prostitution offered through brothels is very limited. Prostitution offered by sole operators, at their homes or as escorts, which constitutes most of Queensland's prostitution industry — is largely unregulated and tolerated. Some critics may argue that authorities 'turn a blind eye' to this phenomenon as long as sex workers work on their own and do not solicit in public places, work in illegal brothels, or use escort agencies. Any other aspect of prostitution in Queensland that does not involve licensed brothels or sole operators, is illegal and criminalised comprehensively in the *Criminal Code (Qld)*.

From the available information, Queensland Government agencies appear to be satisfied with the scope and operation of the current system and — ten years after its creation — do not see the need for any significant reform. The Chair of the PLA stated in the agency's 2007-08 annual report that: 'Queensland can be rightly proud of its safe and effective licensed brothel industry. The Prostitution Licensing Authority administers a regime that has high guarantees of health and safety for sex workers and their clients.'¹⁶⁷ Proposals to introduce a licensing system for outcall prostitution were rejected in October 2008,¹⁶⁸ although the PLA previously supported the lifting of the prohibition on outcall prostitution.

7.1 Health and safety of sex workers (legal prostitution)

One of the main objectives and achievements of prostitution regulation in Queensland has been the protection and improvement of the health, well-being, and safety of sex workers. A 2003 report found that 'women in legal sex work appear to have good occupational health and are safer from violence, harassment, and intimidation that often exist in illegal or unregulated prostitution.'¹⁶⁹ This was also confirmed in later reports.¹⁷⁰

7.1.1 Health issues

The many legislative and regulatory requirements relating to the use of prophylactics along with other safe sex practices have significantly reduced the risk of STD transmission in licensed brothels; a fact that is also of primary importance to clients and, more generally, the wider community.¹⁷¹ In fact, some sources suggest that the risk of STD transmission in legal brothels is lower than in the general population. In 2004, the CMC reported that:

Australia had avoided an HIV epidemic among sex workers. [...] Condom use among brothel-based workers had approached 100 per cent and ... condom use with non-client partners was probably as good as, if not better than, that reported by others and their sexual partners. [...] The proportion of females from the general population with chlamydia [...] was actually found to be twice as high as the proportion of sex workers with chlamydia [...].¹⁷²

¹⁶⁷ Queensland, PLA, *Annual Report 2007-08* (2008) 4.

¹⁶⁸ Queensland, Ministerial Media Statements, Minister for Police, Corrective Services and Sport, The Hon Judy Spence, *Cabinet endorses tougher approach to illegal prostitution* (13 Oct 2008) available at <http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=60757> (accessed 9 Jan 2009).

¹⁶⁹ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 8.

¹⁷⁰ Queensland, CMC, *Regulating Prostitution* (2004) 60.

¹⁷¹ Queensland, CMC, *Regulating Prostitution* (2004) 23.

¹⁷² Queensland, CMC, *Regulating Prostitution* (2004) 22.

From the available evidence it is probable that sex workers are at greater risk of acquiring a STD from a client than vice versa.

Some concerns have been raised about the nature, frequency, and anonymity of sexual health services and the reliability of personal protective equipment such as condoms, lubricants, and dental dams. But these matters relate to problems of STD transmission, prevention, and testing generally and are not unique to the prostitution industry.¹⁷³

Given the unregulated and often clandestine provision of prostitution services outside licensed brothels, it is difficult to make conclusive observations about the health of sole operators. While their services are legal, their sexual health is not monitored and, specifically, there is no requirement for them to be tested regularly and to hold and/or display sexual health certificates. This issue has been the subject of fierce debate, but there seems to be general consensus that the introduction of mandatory health checks for sole operators remains difficult – if not impossible – to introduce, monitor, and enforce.¹⁷⁴

7.1.2 Physical safety

The risk of physical violence, sexual assaults and other forms of harassment against sex workers also appears to be much lower in licensed brothels. Sex workers in licensed brothels and also those working as sole operators have much lower rates of unwanted sexual experiences compared to street workers. Surveys conducted by the CMC ‘identified licensed brothels as the safest place to work’.¹⁷⁵

Rates of non-consensual sexual intercourse among private sole operators are, on the other hand, of concern. A 2004 survey found that 7.3% of private operators reported having been raped once by a client, 6.1% reported having been raped more than once.¹⁷⁶ Sole operators remain at greater risk of physical assaults and other forms of threats and violence. Many sole operators cannot afford the services of a licensed bodyguard or a driver. Advocates of sex workers have questioned the logic of requiring sole operators to work alone and argue that it ‘places them at unnecessary risk of violence’.¹⁷⁷

7.2 Brothel development, licensing, and local communities

There is ample evidence to show that the legalisation of brothels did not impact negatively on local communities and that the operation of licensed brothels does not have any negative impact on local areas and surrounding neighbourhoods. A 2004 study found that

[t]here is absolutely no evidence [...] that those geographic areas in which brothels have been located have experienced a negative response from local residents.¹⁷⁸

Almost half of the respondents in areas with brothels indicate that prostitution is not noticeable in their area. [...] [A]lmost half of those persons living in areas with a legal brothel are unaware of their existence.¹⁷⁹

This statement is supported by similar findings in CMC reports, which also stress that most brothels actively seek to liaise and engage with local communities and that there are some

¹⁷³ Queensland, CMC, *Regulating Prostitution* (2004) 59–63.

¹⁷⁴ Queensland, CMC, *Regulating Prostitution* (2004) 66.

¹⁷⁵ Queensland, CMC, *Regulating Prostitution* (2004) 71.

¹⁷⁶ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 47.

¹⁷⁷ Queensland, CMC, *Regulating Prostitution* (2004) 74.

¹⁷⁸ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 113.

¹⁷⁹ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 91–92.

suggestions that brothel operations may have a beneficial effect on adjacent businesses.¹⁸⁰ Otherwise, the impact on surrounding areas appears to be limited as brothels attract less traffic than businesses of comparable size, and clients generally seek to avoid drawing any attention to their activity. This also applies to incall and outcall services offered by sole operators.¹⁸¹

Despite these findings, the general public seems to favour restricting the development of licensed brothels to designated areas.¹⁸² It has also been noted that 'the practice of locating brothels in specified zones appears to be effective.'¹⁸³ An incident that took place in Mackay in May 2002 has thus far been the only instance in which a brothel development attracted public protests and harassment.¹⁸⁴ Some applicants have stated that they find it hard to locate a site that complies with the many legislative requirements,¹⁸⁵ and some concerns have been expressed that the location of some brothels in industrial or deserted areas creates a heightened risk for the safety of sex worker and other brothel staff.¹⁸⁶

It is interesting to note that reservations by the public towards the location of brothels seem to be fuelled by paranoia rather than fact. Surveys conducted in 2003 revealed that 'over one-third of people living in areas without legal brothels [wrongly] perceive there are legal brothels operating in their council area.'¹⁸⁷

7.3 Prostitution, organised crime, and corruption

Ten years of prostitution regulation appear to have been highly effective in reducing the nexus between Queensland's sex industry, corruption, and organised crime. There is no evidence of any corruption or other forms of collusion between the sex industry and government officials. Twenty years on, the comprehensive reforms that followed the 1989 *Fitzgerald Inquiry* have been successful in reducing corruption and bribery in Queensland, especially in the sex industry. Owners, managers, and others involved in the operation of legal brothels have few, if any incentives to offer bribes; the risk of corruption appears to be higher within the illegal brothel industry, though even here there are no reported cases.¹⁸⁸ The policing of prostitution is undertaken by the Prostitution Enforcement Taskforce (PETF) of the Queensland Police Service (QPS). To minimise the risk of corruption, officers serve in the PETF on a rotational basis.¹⁸⁹ Other measures to reduce the likelihood of corruption have been explored in Section 4.4.2 above.

There is, to date, no open source evidence to suggest any involvement of organised crime groups in Queensland's licensed brothel industry. The current framework features a number of mechanisms to reduce the likelihood of the involvement of criminal elements in licensed brothels. Comprehensive background checks on applicants for and holders of brothel licences, and management certificates, by the QPS ensure that no person with a (serious) criminal record is involved in brothel operations. A monopolisation of the brothel industry is also unlikely, since no person is allowed to run multiple brothels or operate brothels with

¹⁸⁰ Queensland, CMC, *Regulating Prostitution* (2004) 43.

¹⁸¹ Queensland, CMC, *Regulating Prostitution* (2004) 44, 45.

¹⁸² Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 8.

¹⁸³ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 9.

¹⁸⁴ Queensland, CMC, *Regulating Prostitution* (2004) 43.

¹⁸⁵ Queensland, CMC, *Regulating Prostitution* (2004) 93–94.

¹⁸⁶ Queensland, CMC, *Regulating Prostitution* (2004) 72.

¹⁸⁷ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 91–92.

¹⁸⁸ Queensland, CMC, *Regulating Prostitution* (2004) 46.

¹⁸⁹ Queensland, CMC, *Regulating Prostitution* (2004) 46–47. This practice has, however, been criticised for reducing the expertise of PETF officers.

more than five service rooms (see above). The legislation is ambiguous as to whether a person can hold a license in Queensland and simultaneously operate a brothel in another jurisdiction. There are anecdotal reports that brothel owners from other jurisdictions sought to open premises in Queensland but were barred from doing so because of their licenses held elsewhere. Theoretically, it is conceivable that a ring of brothel owners and managers may collaborate across Queensland and beyond, and form a cartel or collectively engage in criminal activities, but there is, to date, no evidence for any such incidence.

The CMC, however, has previously pointed to surveys showing that many sex workers in legal and illegal brothels, sole operators and street-based workers reported affiliations with organised crime groups involved in a great variety of criminal activities. It is not possible to make generalisations from these surveys and the CMC has suggested that exposure of sex workers to organised crime is more likely in the illegal sector than in the legal prostitution industry.¹⁹⁰

7.4 Economics of prostitution

7.4.1 Brothel operations

The economics of brothel operation were not a consideration when the current prostitution regulation system was conceived in the late 1990s. In fact, the restrictions placed on size, location, and other features of licensed brothels severely limit the profit any brothel operation can make.¹⁹¹ The current system does not recognise that the principal reasons for involvement in the sex industry — as a brothel owner, manager, or sex worker — are economic considerations. Social factors contributing to the involvement of persons in the sex industry are not further discussed in this report.¹⁹²

The development and operation of a licensed brothel in Queensland is very expensive. As mentioned earlier, licensing fees amount to approximately \$30,000 per year which has been described by some as ‘excessive’. Brothels are obligated to pay these fees in addition to normal development and maintenance costs, wages, equipment, cleaning, utilities, advertising et cetera. In order to maximise their income, most, if not all brothels in Queensland, operate at maximum capacity (5 rooms) but do not always keep the maximum number of sex workers on the premises. ‘The costs and constraints of’ operating smaller brothels, such as two sex workers sharing licensed premises, are seen ‘to be prohibitive’.¹⁹³

In summary, the operation of a licensed brothel in Queensland is very costly while the achievable income is capped in a number of ways. Figures discussed earlier show that few brothels in Queensland have been operating for long periods and that many businesses become insolvent rather quickly. It is particularly difficult to sustain brothel operations outside the Brisbane and Gold Coast area, as is illustrated in the case of a Gladstone brothel that went bankrupt in 2008.

Licensed brothels also have a competitive disadvantage to their illegal counterparts and the PLA has submitted that the *Prostitution Act 1999* (Qld) ‘provides little incentive [...] to seek legal status’.¹⁹⁴ Brothel licensees have also made a significant investment in their business and have to unfairly compete with illegal operators, who by their very nature are not subject

¹⁹⁰ Queensland, CMC, *Regulating Prostitution* (2004) 48.

¹⁹¹ Cf Queensland, CMC, *Regulating Prostitution* (2004) 84.

¹⁹² For more, see Queensland, CMC, *Regulating Prostitution* (2004) 51–56.

¹⁹³ Queensland, CMC, *Regulating Prostitution* (2004) 74.

¹⁹⁴ Queensland, CMC, *Regulating Prostitution* (2004) 84.

to associated regulation and scrutiny and can also avoid taxes.¹⁹⁵ Accordingly, the existing system may push some entrepreneurs and their businesses underground, thus contributing to the high number of illegal brothels in Queensland.

Contributing to the relatively high number of illegal brothels may be the fact that detection rates appear to be low. Furthermore, that convictions are rare and sentences for prostitution-related offences are usually not very high,¹⁹⁶ thus offering little deterrent for persons operating illegal brothels.

To reduce operating costs and enhance the financial viability of licensed premises, representatives of brothel licensees, of sex workers, and the PLA have made submissions to increase the maximum number of service rooms per brothel from five to six or eight, and also to increase the permissible number of sex workers on a premises. It has also been argued that the current restrictions increase the risk of 'occupational overuse', give sex workers limited opportunity for breaks, and creates 'an unnecessary restriction that impedes staffing flexibility.'¹⁹⁷ The CMC, however, recommended that the number of working rooms remain at five.¹⁹⁸

In this context, the CMC suggested in 2004 that the regulatory system 'makes it difficult for licensees to operate under a corporate structure',¹⁹⁹ which also adds to concerns over accountability and transparency of licensed premises. Sections 8(a) and 81 *Prostitution Act 1999* (Qld) effectively criminalise the incorporation of brothels. To facilitate the operation of licensed premises, the CMC recommended that brothels be allowed to operate under a corporate structure.²⁰⁰ This may also increase the financial viability of sex workers obtaining a license for shared premises.²⁰¹ In the four years since this recommendation was made, no legislative changes have yet followed.

7.4.2 Sole operators and street-based workers

Earnings of street sex workers and sole operators appear to be higher than those of sex workers in licensed brothels. Data collected in 2003 suggests that the average weekly income of street sex workers was \$1814, compared to \$1541 for sole operators, and \$1341 for workers in licensed brothels.²⁰² These earnings are reflective of the fees charged for prostitution services, which appear to be higher for street workers and sole operators than for services offered in licensed brothels.²⁰³ A survey of clients, however, found that only 13.6% felt that legal brothels were too expensive²⁰⁴ and 64.1% of persons using illegal prostitution services responded that the cost of the service was very important.²⁰⁵

These figures suggest an attitude which may lead some people to engage in prostitution outside legal brothels, including illegal brothels and as sole operators. While it has to be recognised that some sex workers operate in more than one type of environment, 84.8% of street workers and 89% of private operators agreed that 'good pay' was a principal advantage of working outside licensed brothels. A majority of sole operators also stated that

¹⁹⁵ Queensland, CMC, *Regulating Prostitution* (2004) 83–84.

¹⁹⁶ See, for example, the sentences in *R v Crocker* [1998] QCA 153;

¹⁹⁷ Queensland, CMC, *Regulating Prostitution* (2004) 64.

¹⁹⁸ Queensland, CMC, *Regulating Prostitution* (2004) 65.

¹⁹⁹ Queensland, CMC, *Regulating Prostitution* (2004) 49.

²⁰⁰ Queensland, CMC, *Regulating Prostitution* (2004) 49-50.

²⁰¹ Queensland, CMC, *Regulating Prostitution* (2004) 74.

²⁰² Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 33.

²⁰³ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 34.

²⁰⁴ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 69, 73.

²⁰⁵ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 72.

the working conditions, atmosphere, and clients were better outside licensed brothels. 62.5% of street workers remarked that they preferred to work outside legal brothels as they did not wish to give a portion of their income to a brothel owner.²⁰⁶

7.5 Illegal forms of prostitution

The introduction of licensed brothels in Queensland has had little, if any impact on illegal forms of prostitution. The spirit of the *Prostitution Act 1999* (Qld), ‘which is to draw as many of the illegal operators and workers as possible into the legal industry’,²⁰⁷ has clearly failed. A 2004 study found that ‘illegal sexual services remain a visible feature of some Brisbane areas indicating that illegal service providers continue to operate despite the emergence of a legal sex industry.’²⁰⁸

Legalising some parts of the industry, while policing and suppressing illegal forms of prostitution has not eliminated the existence of and demand for illegal brothels, escort agencies, and street prostitution. It has been estimated that the current regime only addresses as little as 10% of all forms of prostitution in Queensland. In other words, 90% of prostitution remains unregulated in this state and most sex workers continue to work outside the regulated industry.²⁰⁹

Escort agencies and other prostitution rings probably constitute the largest part of the illegal sex industry — which also reflects the high demand for this type of service. The QPS Prostitution Enforcement Task Force (PETF) submitted in 2004 that many escort services offered by sole operators are in fact organised or controlled by criminal syndicates. Often these rings operate from interstate, especially from Sydney.²¹⁰ CMC surveys found that about 18% of sex workers reported that they had worked in association with some kind of organisation, including escort agencies, illegal brothels, or by sharing premises with other sex workers.²¹¹

Street prostitution is small in comparison, but continues to exist in Queensland and the PLA remarked that ‘the notion that the Act was passed to eliminate street prostitution has no substance.’²¹² The health and safety of sex workers soliciting on streets or in other public places give rise to serious concerns. It has been noted that

street prostitution exposes people to extreme and frequent risk of violence. [...] Consistently, the rate of violence reported by sex workers is high. [...] Unreported violence is an important issue as many sex workers are reluctant to pursue legal action against clients for fear of not being taken seriously within the justice system.²¹³

The killings of several street-based sex workers are the most extreme manifestation of the risks associated with this type of prostitution.²¹⁴

Illegal forms of prostitution cater for a demand that is not met by the legal industry. Client surveys have found that anonymity was one of the chief reasons for seeking an illegal type of

²⁰⁶ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 38.

²⁰⁷ Queensland, CMC, *Regulating Prostitution* (2004) 65.

²⁰⁸ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 112.

²⁰⁹ Cf Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 55.

²¹⁰ Queensland, CMC, *Regulating Prostitution* (2004) 50.

²¹¹ Queensland, CMC, *Regulating Prostitution* (2004) 50.

²¹² Queensland, CMC, *Regulating Prostitution* (2004) 85.

²¹³ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 21; Queensland, CMC, *Regulating Prostitution* (2004) 75.

²¹⁴ Queensland, CMC, *Regulating Prostitution* (2004) 68.

prostitution.²¹⁵ On the other hand, clients are equally concerned about protection from prosecution when choosing a sex service. Ironically, even among those clients using illegal sex services, 80% felt that protection from prosecution was very important. 'One might wonder', comment Charlotte Woodward et al, 'why these clients are patronising an illegal facility if the risk of prosecution matters to them.'²¹⁶

Contributing to the relatively high levels of illegal prostitution is the fact that prosecutions and convictions of offenders are few and far between. The CMC reported that the QPS 'acknowledged there have been few charges or convictions since the Act was implemented. Such agencies have the capacity to close down and reopen elsewhere very rapidly, which means that police efforts have limited effect.' Effective policing is very difficult 'for an industry that is highly fragmented, decentralised and mobile.'²¹⁷

But even if prosecutions are successful, convictions usually only result in fines and gaol terms are very rare and do little to deter them from future involvement in the industry.²¹⁸ The CMC has received submissions suggesting that the penalties for prostitution offences are also too low especially in relation to high income that is achieved in the illegal industry. Some have argued that 'tougher penalties for illegal brothels and escort agencies would help to reduce the illegal industry', but '[o]n the other hand, penalties for street-based sex workers are thought to be not only ineffective but also dangerous because many prostitutes have to return to the streets to earn money to pay their fines.'²¹⁹

7.6 Queensland's sex industry and human trafficking

Little is known about the nexus, if any, between Queensland's prostitution industry and trafficking in persons, especially women. There seems to be general consensus that human trafficking is more likely to involve unregulated and illegal forms of prostitution, especially illegal brothels.²²⁰ Actual examples of trafficking into prostitution in Queensland are, however, currently limited to a single incident in which a man deceptively recruited two Thai women to work as prostitutes on the Gold Coast.²²¹ Rumours that the raid of an illegal brothel in Brisbane in December 2008 will result in trafficking charges against one of the persons arrested remain unconfirmed.

Insofar as licensed premises are concerned, all government agencies agree that there is no evidence of any case of human trafficking into a legal brothel in Queensland. As recently as November 2008, the PLA noted that

there has not been a single instance of human trafficking discovered in the eight year history of the licensed brothel industry in Queensland. The PLA's probity and compliance functions mean that there is a low risk of this happening in licensed brothels.²²²

The available data suggests that the great majority of sex workers in Queensland are Australian. A survey of sex workers in Queensland conducted in 2003 found that the number

²¹⁵ Queensland, CMC, *Regulating Prostitution* (2004) 23.

²¹⁶ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 69.

²¹⁷ Queensland, CMC, *Regulating Prostitution* (2004) 81.

²¹⁸ Queensland, CMC, *Regulating Prostitution* (2004) 80.

²¹⁹ Queensland, CMC, *Regulating Prostitution* (2004) 82.

²²⁰ Queensland, PLA, 'Human trafficking & sexual servitude' (2008) 31 *In Touch, PLA Newsletter* 1–2.

²²¹ See further, UQ Human Trafficking Working Group, *Case report: R v Dobie* (2009) The University of Queensland <www.law.uq.edu/human-trafficking-case-reports> at 20 Jan 2009.

²²² Queensland, PLA, 'Human trafficking & sexual servitude' (2008) 31 *In Touch, PLA Newsletter* 1–2; Queensland, CMC, *Regulating Prostitution* (2004) 47.

of foreigners working in the prostitution sector is relatively small. In legal brothels, 22% of sex workers were born outside Australia (13% Europe, 4% Asia, 5% other, not including New Zealand). About 24.3% of sole operators were foreign born (13.4% Asian, 8.5% European, 2.4% other). The level of foreign-born sex workers appears to be particularly low among street workers (6.1%, all European).²²³ While it has been noted that the proportion of sex workers born overseas has increased over the last two decades, this trend only reflects general demographics of the Australian population and is not a unique feature of the sex industry.²²⁴ The information presented in the 2003 report does not reflect the immigration status of these sex workers, including their current nationality and their visa status (permanent, temporary, or no visa) in Australia. It also is highly unlikely that these surveys involved any women that had been trafficked or were otherwise forced to engage in prostitution against their will, given that such women are likely to be well-hidden by their traffickers. Accordingly, this data does not allow generalisations about trafficking to be made.

A submission by the organisation Self-Help for Queensland Workers in the Sex Industry (SQWISI) noted that it 'had not been able to find any women working in the sex industry in Queensland in sexual servitude' and that it was 'not even aware of any plausible rumours regarding such operations in Queensland.' It was noted that some brothels, including illegal brothels, exclusively employ foreign-born, especially Asian women, but that the risk of trafficking was low because 'these sex workers were either permanent residents or held tourist or student visas'.²²⁵ This statement, however, is somewhat misleading as the experience in Australia has shown that the visa or resident status of a sex worker is generally unrelated to human trafficking. Furthermore, the submission ignores the fact that persons holding tourist visas (and some holding student visas) are not entitled to work in Australia and would thus be committing a criminal offence under s 236 *Migration Act 1958* (Cth).

The 2004 report *Regulating Prostitution* by the CMC discusses the general phenomenon of sex trafficking over two pages, but does not contain any specific references to Queensland and does not explore actual or potential weaknesses of the current system in that respect. In preparation of this report, the CMC received submissions from some brothel licensees stating 'that they had identified some illegal immigrants in the industry, particularly from Thailand, and had worked very closely with the Immigration Department to have these workers removed'.²²⁶ The report does not further explore these statements and instead concludes with the simple observation that: 'In general, sex trafficking appears to be one of the unfortunate consequences of an industry driven by excessive demand for services with insufficient safeguards to protect vulnerable people.'²²⁷

In short, human trafficking and the exploitation of foreign sex workers in Queensland's prostitution industry remain phenomena not well understood and poorly researched. The experience elsewhere in Australia has been that human trafficking involves illegal as well as legal brothels. While Queensland's prostitution licensing system may be more prescriptive than, for example, regulations in New South Wales or Victoria, the current system contains few, if any safeguards to prevent and suppress human trafficking. In particular, the principal authorities have generally limited contact to sex workers. The PLA, for instance, does not check the immigration status and work permits of sex workers, and collaboration with immigration authorities to identify cases of human trafficking appears to be minimal, if not non-existent.

²²³ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 25–26.

²²⁴ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 49.

²²⁵ Queensland, CMC, *Regulating Prostitution* (2004) 50.

²²⁶ Queensland, CMC, *Regulating Prostitution* (2004) 47.

²²⁷ Queensland, CMC, *Regulating Prostitution* (2004) 27.

8. The Way Ahead

This study has shown that Queensland's *Prostitution Act 1999* has established a comprehensive regime to control and regulate the operation of licensed brothels in this state. Ten years after its introduction, the Act and the agencies involved in its operation and enforcement have successfully improved the health and safety of persons, especially women, working in the brothel industry and has introduced transparency and oversight into an industry that previously had a history of crime and corruption. The achievements of the 1999 reform are apparent and, as the above discussion has shown, the legislation meets many of the stated objectives.

It is also noteworthy that public opinion on prostitution has changed since the late 1990s and that community fears about the operation of brothels are usually unwarranted. Surveys have shown that the great majority of Queenslanders (80% of persons surveyed)

do not believe that selling sex from a brothel should be illegal. [...] [T]he population as a whole strongly agrees with the availability of legal prostitution. Four out of five respondents do not believe it should be against the law to be a client of a prostitute. [...] Respondents are approximately equally divided on the issue whether it should be against the law for a person to sell sex from home. [...] The vast majority of respondents disagree with the banning of prostitution.²²⁸

The current regulatory regime, however, leaves most aspects of prostitution in Queensland unaddressed. Several sources confirm that licensed brothels constitute only 10% of the state's prostitution industry.²²⁹

The most significant and most profitable part of this industry, escort services, remains unregulated and earlier analysis has shown that most escort services involve practices that are currently illegal. The criminalisation of escort agencies is ineffective and also places licensed brothels at a disadvantage as they offer a service that responds to only a fraction of the demand. Calls from the within and outside the industry are growing to allow licensed brothels in Queensland to offer outcall prostitution or to otherwise decriminalise escort services. In comparison, escort agencies have been legal in Victoria for more than a decade. The *Prostitution Control Act 1994* (Vic) treats escort agencies and brothels alike, collectively labelled prostitution services. In Victoria, prostitution service providers – those carrying on the relevant prostitution business – must not operate without a licence.²³⁰ The proposed reform of prostitution laws in Western Australia would also make outcall prostitution legal if it is provided by a licensed sexual service business, sole operator or small owner-operated business.²³¹

Concerns about the health and safety of sex workers engaged in unregulated and illegal types of prostitution have been highlighted. In short, most forms of prostitution in Queensland remain illegal and dangerous for the persons involved. Woodward et al remarked that

[T]he continued activity of an illegal sex industry [...] is likely to have a larger impact than the present legal industry. It may be unrealistic to base policy on the likelihood of eliminating the illegal industry and there is a need to consider ways this illegal industry might be managed and controlled.²³²

²²⁸ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 100–101.

²²⁹ See Section 7.5 above.

²³⁰ *Prostitution Control Act 1994* (Vic) s 22(1)-(1A).

²³¹ Prostitution Law Reform Working Group, *Prostitution Law Reform for Western Australia: Report of the Prostitution Law Reform Working Group* (2007) 5.

²³² Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 112.

Some may see statements of this type as a manifestation that prostitution regulation in Queensland has failed. Recent statements by the Premier and relevant Ministers reveal that the Government is unwilling to further regulate prostitution in this state, despite strong evidence recommending further reforms.

A small step towards improving the safety of sex workers would be to allow them to work from shared premises. A model for this can be found in Western Australia's proposed prostitution law reform which authorises sex workers to operate from rented premises shared by not more than one other sex worker, and still avoid brothel licensing requirements: this is termed a small owner-operated business in the Western Australian legislation. A small owner-operated business is defined 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.

Of further concern is the almost complete absence of independent, critical, and analytical literature on Queensland's sex industry and the state's prostitution laws. The existing information is made up almost exclusively by reports either authored or commissioned by the PLA and the CMC. Both agencies frequently cross-reference each other's work and some of the referencing is circular.

A lot of information relating to Queensland's sex industry is classified. The authors acknowledge that the subject matter may be sensitive and that much information held, especially by law enforcement agencies, must remain confidential. This includes material about criminal intelligence, current investigations and prosecutions, and all matters affecting the personal safety and privacy of individuals. However, over the course of this study, concerns have grown that some key agencies maintain unnecessary secrecy and have general information about prostitution and its regulation in Queensland that should be made public, but which the agencies regard, by and large, as confidential.

Especially, in-depth economic analysis of the current licensing system is needed. The available information suggests that most people involved in the unregulated and illegal prostitution industry (as sex workers, managers, or in another capacity) do so simply for economic reasons. This raises the question: is it feasible and profitable to run a licensed brothel in Queensland or is it better to do it illegally, taking into account all associated costs and risks? Furthermore, there is general consensus that the current system fails to cater for three quarters of the demand, which is directed at outcall prostitution. The Queensland Government's refusal to thoroughly explore options for regulation in this field does not eliminate this type of prostitution. Instead, it pushes the industry further underground and places the health and safety of sex workers engaged in outcall prostitution at risk.

There is also little to no knowledge on the existence of the national sex industry in Queensland. The issue of prostitution is looked at exclusively at a state level. There is, to date, no coordination at operational and policy levels across Australia. The regulation systems in different states and territories across Australia are worlds apart. However, there is ample evidence showing that some people operate brothels in more than one state and that many sex workers move or are moved between different states. The lack of any coordination and collaboration at the federal or intra-state levels significantly hampers control and enforcement efforts.

The situation of street-based sex workers also requires urgent attention. While the phenomenon may be small in comparison, the risks and dangers associated with street prostitution need to be addressed and new ideas are needed to improve the safety and health of street-based prostitution. In 2004, the then Chair of the PLA called for the provision

of a safe house for Brisbane's street-based prostitutes.²³³ Others have called for a partial legalisation or safety zone trials based on similar models used in New South Wales.²³⁴ The CMC, however, recommended 'that safe house or safety zone trials should not be implemented in Queensland'²³⁵ and, accordingly, the State Government has not instigated any reform in this field.

In conclusion, there is much to celebrate at this tenth birthday of brothel licensing in Queensland. But the current system ignores many facets of the reality of prostitution in this state. There is further work to be done to make prostitution regulation in Queensland more effective and meaningful, to improve the health and safety of sex workers outside licensed brothels, and address the problem of human trafficking. Hopefully, by the twentieth birthday of prostitution regulation in Queensland, these issues will have been properly considered and addressed, and a greater cause for celebration provided than that which currently exists.

²³³ Queensland, CMC, *Regulating Prostitution* (2004) 87.

²³⁴ Charlotte Woodward et al, *Selling Sex in Queensland 2003* (2004) 57, 99.

²³⁵ Queensland, CMC, *Regulating Prostitution* (2004) 87.