

## Sex work and the law

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**Abstract.** We reviewed publications, websites, and field observations to explore the health and welfare impacts and administrative effectiveness of different legal approaches to sex work. We identified three broad legal approaches: (1) prohibition, including the unique Swedish law criminalising sex workers' clients; (2) licensing; and (3) decriminalisation. Each of these models is employed under one or more jurisdictions in Australia. We make preliminary observations on their consequences and conclude that, on initial impression, decriminalisation may offer the best outcomes. However, more rigorous population-based research is needed to properly assess the health and welfare impacts of legal approaches to sex work.

*Additional keywords:* decriminalisation, legal responses, licensing, prohibition, prostitution.

### Introduction

For most of the 20th century, English-speaking countries (including Australia) attempted to suppress prostitution by using the criminal law to prohibit a range of associated activities such as owning or managing a brothel, living off the earnings of prostitution, and soliciting for prostitution in a public place.<sup>1</sup> In the last quarter of the 20th century, Australian state and territory governments initiated prostitution law reform in response to widespread police corruption, the adverse impacts of street prostitution in regenerating inner city localities, and community concern with the discriminatory impact of the law on sex workers.<sup>2–4</sup> By the mid 1980s there was also fear that a human immunodeficiency virus (HIV) epidemic would be spread by the largely covert, poorly managed, illegal sex industries operating in the capital cities.<sup>5</sup> Debates preceding these reforms were heavily influenced by the activities and policy advocacy of Australian women's movements and prostitutes' rights groups that had developed during the 1970s.<sup>6</sup>

These reforms have resulted in a continuum of legal approaches to prostitution operating across Australia, from prohibition through licensing to decriminalisation (Table 1). New South Wales (NSW) and the Australian Capital Territory (ACT) have decriminalised many of the key prostitution offences and left the sex industry largely under the regulation of town planning laws.<sup>7–9</sup>

Victoria and Queensland have introduced a system of legalising brothels through licensing, but traditional criminal

prohibitions are retained for those sectors of the sex industry not covered by the licensing schemes.<sup>10,11</sup> The Northern Territory (NT) has legalised escort prostitution but maintains criminal sanctions against managing or owning a brothel and soliciting in a public place (Table 1).<sup>12</sup>

Reform attempts have stalled in the other states. In Western Australia (WA), a recent attempt at prostitution law reform met strong opposition in the Legislative Council and lapsed when parliament was prorogued prior to the state government election in March 2005.<sup>13</sup> In South Australia (SA), there were unsuccessful attempts to reform prostitution laws in 1986, 1991, and 1999.<sup>5</sup> The Tasmanian Attorney-General is reportedly 'overhauling' a draft Bill to introduce brothel licensing, after comprehensive criticism by sex industry community groups.<sup>14,15</sup> In these three jurisdictions, most of the traditional criminal prohibitions remain, including brothel keeping, living off the earnings, and soliciting in a public place (Table 1).

In spite of numerous Australian state government reports,<sup>5</sup> there has not been a comprehensive assessment of the best methods of achieving universal improvements in the health, welfare, administrative, and amenity costs associated with the sex industry. Australian prostitution law reform in the past 50 years has, generally, been driven by perceived 'associated nuisance' aspects of the industry, such as criminal involvement, drug and alcohol abuse, official corruption, and loss of neighbourhood amenity. The health and welfare impacts of prostitution are

**Table 1. Summary of Australian prostitution laws**

State or territory	Legal status
New South Wales	<i>Partial decriminalisation.</i> Brothels are legal and only require local government planning approval. Escorts are not illegal. NSW is the only jurisdiction that allows street soliciting, provided it is away from dwellings, schools, churches, and hospitals. Living off the earnings is illegal (brothel employees exempted).
Australian Capital Territory	<i>Partial decriminalisation.</i> Brothels permitted in prescribed (industrial) locations with local government planning approval only. Escort agencies are legal. Both brothels and escorts must register the business but do not have to obtain a license. Single operators may work from home and there is no offence of living off the earnings. Soliciting in a public place is illegal.
Victoria	<i>Licensing.</i> Brothels and escort agencies with more than two workers must have a license plus local government planning approval. Small (1 or 2 sex workers) brothels and escorts need local government planning approval only. Operating an unlicensed brothel and soliciting in a public place are illegal. Living off the earnings is illegal.
Queensland	<i>Licensing.</i> Brothels must have a license and local government planning approval. Licenses and planning approvals need to be renewed annually. Escorts are illegal. Operating an unlicensed brothel is illegal. Knowingly participate in the provision of prostitution by another and soliciting in a public place are illegal.
Northern Territory	<i>Licensing.</i> Brothel keeping is illegal. Licensed escort agencies are legal and there is no offence of living off the earnings. Soliciting in a public place is illegal.
South Australia	<i>Prohibition.</i> Brothel keeping is illegal and some escort work is illegal. Living off the earnings and soliciting in a public place are illegal.
Western Australia	<i>Prohibition.</i> Brothel keeping with more than one sex worker is illegal. Escort agencies are not illegal but have been 'contained' by police. Living off the earnings and soliciting in a public place is illegal.
Tasmania	<i>Prohibition.</i> Brothel keeping is illegal. Escort work is probably legal. Living off the earnings and soliciting in a public place are illegal.

acknowledged but rarely receive priority in the formulation and enforcement of legislation.<sup>1,16</sup>

In this paper, we review national and international publications to explore the health and welfare impacts and administrative effectiveness of the different legal approaches to sex work. Information was also gathered from key informants and relevant websites.<sup>17</sup> Different models of prostitution laws are broadly identified and preliminary observations are made on their effectiveness and outcomes.

We identify three broad approaches to managing prostitution: (1) prohibition, including the unique Swedish approach of criminalising the purchasers but not the sellers of sexual services; (2) regulation through licensing; and (3) decriminalisation.

### Prohibition

Globally, prohibition remains the most common legislative response to prostitution. Prohibitionist arguments usually have a strong moral content and may contain an assumption that prohibition will lead to 'abolition' (the disappearance of prostitution from society).<sup>6</sup> At the same time, it appears to offer a conventional 'law and order' solution to complex criminological, social and economic problems, such as the protection of women and minors from sexual coercion and exploitation, and the reduction of organised crime. However, with possible short-term exceptions in totalitarian settings, such as the Taliban regime in Afghanistan and during the Cultural Revolution in China,<sup>18,19</sup> prohibition has neither eradicated prostitution nor markedly reduced the other social ills traditionally associated with the industry. In Australia,

from the early 20th century, it was evident that prohibition bred corruption and fostered a close association between prostitution and serious crime.<sup>20,21</sup> There is no evidence that prohibition reduced the size of the commercial sex industry,<sup>22</sup> but there is evidence to suggest that it had adverse effects on public health. By the late 1970s, in the context of harsh anti-prostitution legislation and burgeoning police corruption,<sup>23</sup> brothel-based sex workers in Sydney had health profiles comparable to sex workers in some of the poorest developing countries today.<sup>24</sup>

Enforced prohibition is administratively expensive and damaging to human rights.<sup>19,25</sup> Often the primary objective of law enforcement is to keep prostitution invisible by preferentially targeting public soliciting and street-based sex work.<sup>20,26–28</sup> The victims are the most vulnerable people in the sex industry, already at serious risk from violence and other occupational hazards, including 'homicide, suicide, drug- and alcohol-related problems, HIV infection and accidents...'.<sup>26,29,30</sup> Law enforcement directed primarily at visible prostitution does not address the underlying causes of social harms, and may exacerbate opportunities for coercion and exploitation by encouraging prostitutes to seek the protection of pimps and criminals.<sup>20,28</sup>

Typically, in spite of prohibitive laws, sex industry activity persists and is even tolerated, as long as it does not become a political embarrassment. In countries such as Thailand and the Netherlands, prostitution in red light areas figured as a tourist attraction, in spite of 'abolitionist' laws.<sup>31,32</sup> For many years the Australian state governments of WA and Queensland tolerated police-initiated 'containment'

policies that allowed certain brothels to operate contrary to criminal law so long as they adhered to police imposed 'rules'.<sup>33,34</sup>

The 'selective enforcement' of criminal laws resulting in the 'de facto regulation of prostitution', may deliver some benefits to sex workers and the wider community.<sup>1</sup> A pragmatic approach can encourage community discussion and rational public debate.<sup>30</sup> It has been argued that the containment policy in Queensland prior to 1958 delivered a relatively stable and prosperous industry within the confines of the inner Brisbane tolerance zone.<sup>34</sup> Similarly, the five or six brothels in Hay Street, Kalgoorlie in Western Australia, reportedly functioned smoothly for many years under police control.<sup>1,33</sup>

However such policies are inherently corrupting. Prostitution-related police corruption had serious political, social and legal consequences in New South Wales and Queensland,<sup>1,3,4</sup> and is currently causing major concern in Western Australia.<sup>35</sup> Individual sex workers have no security of employment and their ability to self-advocate or to seek information, health care and support is severely limited by the risk of prosecution. Equally, health professionals and community-based organisations providing outreach services are constrained by the forced invisibility of their target population. Even under the so-called 'containment' policies, simply turning a blind eye to the law does nothing to reduce the social isolation and criminalisation of sex workers, improve their occupational health and safety, or protect their human rights.

#### *A recent variant of prohibition (the Swedish experiment)*

Most prohibitionist laws punish sex workers and ancillary workers in the sex industry, but in 1998 Sweden adopted a novel approach to prostitution control. Officially acknowledging prostitution as a form of male sexual violence, harmful to women, children and society at large (and intrinsically linked to trafficking in women) the government criminalised the purchase of sexual services and introduced harsh penalties for procuring and profiting from another's prostitution.<sup>36</sup> The full impact of these laws is still being assessed. Supporters note that the exploitation of sex workers by pimps and profiteers is now illegal and heavily punished, that sex workers are not criminalised and are offered protection and support, and that there was a decrease in overt prostitution when the laws came into force.<sup>36,37</sup>

However, the laws met strong opposition from a variety of sources in Sweden, including the National Police Board, the National Social Welfare Board, the Attorney-General and the National Courts Administration.<sup>37</sup> There are many imponderables, including definitional problems within the legislation in the use of key words such as 'remuneration,' 'procures,' 'temporary,' and 'sexual relationship'.<sup>37</sup> After some years of operation it appears only the clients of street

sex workers have been targeted. Police have been reluctant to devote resources to enforcement and lawyers have gone out of their way to shield prosecuted clients from publicity.<sup>36</sup> Sex workers have complained that they are denied choice of work site and clients, and their work conditions have become more dangerous and difficult. They also complain that police harass them to give evidence against clients.<sup>37</sup> Prostitution has not ceased but it has become more covert, and possibly more dangerous as sex workers 'are forced to accept not only more clients (since prices have dropped) but also more unstable and dangerous clients'.<sup>37</sup> A Norwegian comparison of Swedish and Dutch prostitution law concludes that the *Law on the Purchase of Sex* has reduced street prostitution by '~41%' but is ineffective against the two-thirds of all prostitution that takes place indoors.<sup>36</sup> By comparison, in Australia close to 90% of sex workers work indoors.<sup>5</sup>

#### **Regulation through licensing**

Acknowledging the poor outcomes of attempted prohibition, many policy-makers have supported regulation through licensing. This has been seen as a way of excluding criminal and other unsuitable persons from owning, managing or working in the industry, and of enhancing government control over the number and location of sex industry premises.<sup>38</sup> Further, licenses can be made contingent upon adherence to public and sexual health guidelines and appropriate workplace conditions, thus delivering positive gains to sex workers and their clients.<sup>38,39</sup> Theoretically, licensing models permit revenue collection in an area otherwise notoriously difficult to tax effectively.

Unfortunately, experience with licensing regimes has not delivered the anticipated positive outcomes in the regulation of the sex industry. Historically, many European countries introduced licensing systems, both at home and in their colonies, but by the end of the 19th century most of these laws had been repealed in Europe, although they persist in some former colonies in Latin America (Table 2). The recent enthusiasm in many Australian states and territories for licensing schemes does not appear to be tempered or informed by the past failures.

The reasons for abandoning licensing are varied and embrace both institutional and individual impacts. From a political and administrative viewpoint, such systems are problematic because they involve government in matters of personal morality.<sup>40</sup> Further, state licensing regimes may be incompatible with an abolitionist, or even a reductionist, agenda because they carry the inference that 'legal' prostitution is in some sense 'state approved' prostitution. 'Licensing ... fees ... become part of government revenue'.<sup>22,38,39,41</sup>

An effective licensing regime requires significant administrative, police and health resources.<sup>42</sup> It is particularly costly where frequent health screens and other interventions

**Table 2. History of licensing prostitution**

Location	Introduced	Abandoned
France	1700s	1960
Italy	1800	1905
Spain	1840s	1956
Holland	1860	1958
Thailand	1908	1960
Singapore	1976	Ongoing
Victoria	1984	Ongoing
Queensland	1999	Ongoing
NT	1992	Ongoing

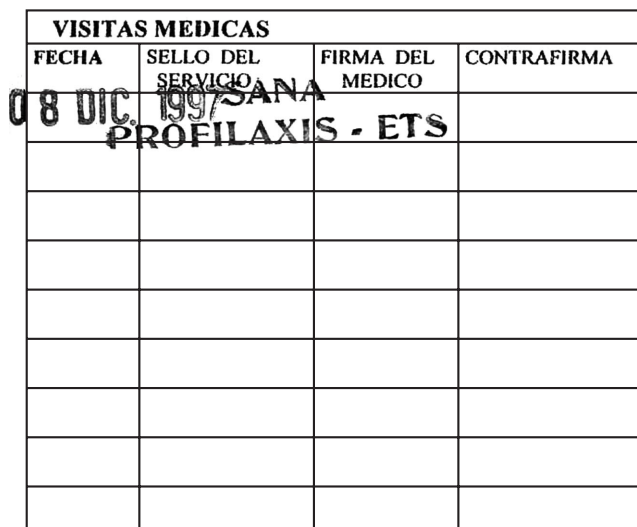
are required by law rather than by evidence-based clinical guidelines.<sup>43</sup>

Licensing models are also open to criticism for imposing restraints on (predominantly female) sex workers but not on (predominantly male) clients. This is particularly the case when regimes enforce invasive sexual health screens on sex workers, regardless of the worker’s symptoms, work practices and consent.<sup>44</sup>

Globally, it is more usual to license individual sex workers rather than their work-site. Under these laws, registered sex workers are socially labelled, acquiring an official history that is not readily buried if their circumstances change. Depending on the severity of the regime, licensed sex workers may have their movements restricted, their travel documents identified and their choice of medical care limited to approved clinics.<sup>43</sup> Sex workers’ reliance on official approvals to work makes them vulnerable to corrupt action by police and health officials (Fig. 1).

Licensing may also foster a sex industry where the price and organisational structure exclude prostitutes who are not ‘young . . . conventionally attractive, well dressed and able to perform the rituals of middle class society’.<sup>9</sup> The managers of licensed brothels may choose, or be required to exclude, sex workers who are known drug users, those with criminal records, and those with identified health problems, including infections. These issues have been identified in the Victorian model.<sup>9</sup> From a client’s perspective, licensed prostitution services may become more expensive and homogenised. It is unlikely that a licensing regime, which favours large-scale brothel prostitution, can meet the full range of demand for prostitution services.<sup>45</sup> Unsatisfied or less affluent clients are likely to fuel demand for cheaper, covert, unsafe and marginalised sexual services.

From a public health perspective, licensing systems raise a number of concerns, not least, money spent on administration and unnecessary health screens is lost to more productive health programmes. Pressure on resources can lead to poor medical standards; including insensitive or inhumane treatment of sex workers,<sup>44</sup> poor-quality examinations (Fig. 1), and breaches of confidentiality. At the same time



**Fig. 1.** Uruguayan Sex Worker Health Card. A page from a Uruguayan sex worker’s health card stamped *sana* (Spanish for ‘healthy’). At the time—1997—registered sex workers had to attend government clinics twice a week for inspections that consisted solely of internal examinations and gram stained smears. The stamps had to be validated by another stamp at the local police station after each inspection. It was common for sex workers to avoid the inconvenience by paying both the health service and the police for a stamp.

a false sense of security may be engendered by an apparently comprehensive system of regulation.

Licensing systems do not deal effectively with street prostitution (soliciting in public) although this is probably the most common operational mode for sex work globally and certainly the one which draws the most public attention. Street-based sex workers are among the most vulnerable in the industry and their position is exacerbated when brothels are licensed or tolerated but street work is prohibited.<sup>46</sup> In all jurisdictions with regulated sex industries, most sex workers are *clandestinas* (Table 3).<sup>46–49</sup> *Clandestinas* are people, including most street workers, who regularly or occasionally engage in commercial sex but do not participate in the licensing regime. This is the case whether the licensing applies to individuals (e.g. Austria, Singapore), or businesses (e.g. Victoria).<sup>9,48,49</sup>

In Queensland, and to a lesser extent Victoria, the number of brothel licenses granted falls short of the demand, forcing most sex workers in those states to operate illegally.<sup>9,45</sup> Further, Victoria is estimated to have a larger street-based sex industry than in decriminalised New South Wales, providing further evidence of inadequate legal sex work options in Victoria.<sup>47,50</sup>

*Clandestinas* are usually less healthy than licensed sex workers because they are officially excluded from reputable health services, are afraid to present for care, and are easily missed by health promotion programmes. The public health problem posed by *clandestinas* has been exposed by a number

**Table 3. Proportions of sex industries comprised of *Clandestinas***

City	Year	(%)	Source
Sweden	1917	90	Lundberg <sup>48</sup>
Vienna	1990	75	Stary <sup>46</sup>
Singapore	1995	66	Goh <sup>49</sup>
Uruguay	1997	94	Delphi poll <sup>51</sup>
Melbourne	1999	60	Morton <sup>47</sup>
Sydney	2001	0	By definition <sup>50</sup>

of surveys that compare gonorrhoea rates in registered or 'legal' prostitutes with rates in those working illegally (Table 4).<sup>46,47,49,50</sup>

The higher sexually transmitted infection (STI) rates found in unregistered sex workers has sometimes been taken as evidence of the success of regulation, yet it can as easily be argued that the same data confirm the failure of licensing systems because they create *clandestinas* with limited access to health interventions.<sup>9</sup>

Licensing systems deal primarily with brothel-based commercial sex, which is relatively easy to control. But this is only one of the many forms of prostitution.<sup>52</sup> In some countries the occupational conditions of sex workers range from courtesan to 'semi-slave'.<sup>53</sup> In Australia it appears that a growing number of sex workers are working independently, as 'private workers'.<sup>54</sup> Others work as escorts (through phone-based agencies), in clubs and hotels, at mining sites, holiday resorts, in small cooperatives, or on the streets of major cities. Regulation through licensing traditionally adopts an inappropriate 'one size fits all' approach and may make the sex industry unhealthier as a whole by supporting only the minority (Table 4).<sup>46,47,49,50</sup>

### Decriminalisation

Decriminalisation (the removal of most of the criminal penalties applying to adult prostitution) has been adopted by NSW and the ACT. It is also the model in Denmark, Germany, New Zealand and the Netherlands.<sup>36,37,55</sup> Decriminalisation does not mean that prostitution is totally unregulated, but that the regulation is not applied through the criminal law. The model in NSW assumes that the sex industry will largely self-regulate under local government controls,

**Table 4. Gonorrhoea prevalence by type of sex worker**

	Gonorrhoea prevalence (%)		Overall
	Registered	<i>Clandestinas</i>	
Vienna <sup>46</sup>	0.3	6.9	5
Singapore <sup>49</sup>	2.5	5.8	4
Melbourne <sup>47</sup>	0.1	11.0	?5
Sydney <sup>50</sup>	0.1	NA	0.1

NA = not applicable (no *Clandestinas*).

which set planning, public amenity and public health parameters.<sup>54</sup> In the Netherlands, by comparison, although voluntary prostitution is no longer covered by the penal code, municipalities can choose the form of regulation they wish to impose, and most have used by-laws to set up local 'licensing' schemes.<sup>36</sup>

Arguments for adopting decriminalisation of the sex industry are based on an essentially pragmatic acceptance that prostitution is a fact of life that has persisted through recorded history and will not go away in the foreseeable future. This is explicitly the attitude of law makers in the Netherlands.<sup>36</sup> According to this view of prostitution, the criminal law should be directed at 'involuntary prostitution', identified as trafficking persons for sex, coercive and underage prostitution. This argument assumes that some adult persons may voluntarily choose sex work as an appropriate way to earn a living, in contrast to Swedish legislators who believe that prostitution is by definition coercive.<sup>36</sup> The pragmatic approach is clearly more easily sustained where people have a number of options and where their basic human rights are protected.

Under these conditions, many would argue that sex work should be 'normalised' and sex workers protected by the same industrial conditions as other workers.<sup>16</sup> In the developed democracies, the acknowledgement of sex work as an occupational category would trigger a number of beneficial employment conditions and responsibilities.<sup>4,9,16,56</sup> However, whereas improvements in occupational health and safety may be facilitated,<sup>56</sup> it is less clear that other industrial conditions, such as annual leave, sick leave and superannuation, will improve with decriminalisation because of the preference of brothel owners to treat sex workers as subcontractors.<sup>9</sup>

The 'normalisation' (including taxation) of sex work has proved to be complicated in the Netherlands and has not been entirely popular with sex workers or brothel owners.<sup>36</sup> One of the major problems with the Netherlands scheme is that, as with state licensing regimes, the emphasis is heavily on brothel prostitution. Street prostitution is permitted only in 'tolerance zones' and other forms of prostitution such as escort work are inadequately dealt with under the legislation. There is a clear and laudable intention to distinguish between legal 'voluntary', and illegal 'involuntary', prostitution but the 'self-regulating market mechanisms', promulgated by brothel licensing conditions, work to reduce the illegal sector by attrition, reducing the options and further marginalising under-aged, non-resident, coerced and trafficked sex workers.<sup>36</sup>

In a decriminalised regime, one of the primary objectives must be to de-link the sex industry from associated crime and corruption. This appears to have been achieved in NSW, where police charges for prostitution offences have declined dramatically since the 1980s<sup>42</sup> and also, benefiting the wider community, police corruption involving street workers

seems to have disappeared.<sup>50</sup> The ability to operate legally, even with restrictions, means prostitution is less covert and less motivated to seek 'protection' through corrupt or illegal associations. Sex workers can seek redress against exploitation or poor work conditions without exposing themselves to criminal charges, or to criminal pay-back. Changes in policing levels have been achieved without major disruption to public amenity. Where local governments have worked within the spirit of legal reform and adopted appropriate policies there are few public complaints.<sup>54</sup> This has also been the experience in the Netherlands.<sup>36</sup> Significantly, there is no evidence that decriminalisation leads to a massive increase in the numbers of sex workers or the proliferation of sex industry premises.<sup>36,54,57</sup>

Similarly, health promotion for the sex industry is much easier when the target group is not covert and is working without the daily fear of a criminal prosecution.<sup>6</sup> Local government regulations can be just as effective in setting public health parameters for sex industry premises, as state licensing regimes<sup>36,54–56</sup> with the added bonus of encouraging a high degree of self-regulation.<sup>56</sup> Unlike state licensing, decriminalisation does not mean beneficial regulations and health promotion activities are confined to legally recognised establishments. In Victoria for example, health outreach by the state sponsored RhED (Resourcing Health and Education in the Sex Industry) organisation and Melbourne Sexual Health Clinic is confined to legal (licensed) brothels, thus neglecting the more problematic sectors of the industry.<sup>47</sup>

In NSW, decriminalisation has helped to ensure that the benefits gained in one sector are not denied to people working in less well-tolerated sectors. Street prostitution remains a contentious issue in parts of Sydney (see below) but generally, a balance has been struck which permits the adoption of a holistic approach to the management of health and welfare across all sectors including street sex workers and non-resident 'international' sex workers.<sup>50,58</sup>

It is of major importance to sex workers that they do not acquire a criminal record simply because of their means of earning a living. In decriminalised regimes, sex workers may find it easier to move into alternative employment and/or to undertake further education and training to ensure their longer-term employability. Government funded, peer organised and led sex worker organisations in most states have already provided opportunities for skill development and career options for many former sex workers, as well as giving current workers direct input into the management and conduct of their industry.<sup>5,56</sup>

The decriminalisation approach in NSW is not problem-free. Street sex workers in some locations come into conflict with residents. In parts of Darlinghurst (inner Sydney) and some of the western suburbs, for example, there is intense public pressure on the police to adopt an uncompromising,

literal and repressive approach to the enforcement of the soliciting laws. Street-based sex workers who work in these locations continue to risk prosecution and also appear to be relatively disadvantaged in health care access.<sup>50</sup> A number of local governments have been unwilling to make any planning provisions for brothels. More frequently, planning laws have been interpreted rigidly to minimise the opportunities for legitimate premises to operate. The legislated definition of a brothel as premises occupied by 'one or more sex workers' has made it very difficult for private sex workers to comply with council regulations. There is a need for a redefinition, which allows a small number (perhaps up to three, for personal safety reasons) of sex workers to work from private premises with minimal regulation, under a 'home occupation' category. Other states (Victoria, WA, Queensland, and the ACT) already have special 'small brothel' or single occupant provisions (Table 1).<sup>8,10,11,59</sup> However these provisions are still over-prescriptive, either requiring sex workers to work alone, or, unlike many other home-based occupations, to make a public application for a planning permit (Table 1). Unlike the New Zealand legislation, in NSW there is no provision for a Review Committee to monitor outcomes and initiate further reform.<sup>7,55</sup>

## Conclusion

We have briefly described the usual legal approaches to prostitution and identified associated outcomes. In summary we found that most prohibitionist regimes only achieve their aim through the suppression of democratic and human rights. More often, they do little to reduce prostitution or its associated social ills, but breed corruption and seriously damaged public health. The Swedish experiment may have adverse consequences for sex workers, particularly the most disadvantaged street workers, and has potentially criminalised a very large number of men.

There are sound arguments against formally involving governments in the organisation of prostitution through licensing or registration.<sup>38</sup> Licensing regimes, like prohibition, have large administrative costs that could be better directed towards health care and health promotion. As far as the sex workers are concerned, licensing schemes deliver few obvious benefits. They have the potential to undermine human rights and encourage discriminatory behaviour towards sex workers. They may not remove corruption, and they deliver unsatisfactory health and welfare outcomes because usually they 'capture' only a minority of sex industry workers.

On initial impression, decriminalisation appears to avoid many of the pitfalls of the other legal approaches and to have enabled the maintenance and further improvement of good health outcomes within the sex industry in NSW and the ACT. Where there are already effective laws protecting minors and adults from sexual abuse, coercion, exploitation, and related

harms, decriminalisation may offer the greatest benefit to sex workers and the broader community. However, more rigorous population-based research is needed to properly assess the health and welfare impacts of the various legal approaches to the control of prostitution.

### Conflicts of interest

None exist.

### Acknowledgement

The authors' research is supported by an NHMRC Grant.

### References

- 1 Neave M. Prostitution laws in Australia: past history and current trends. In: Perkins R, Prestage G, Sharp R, Lovejoy F, editors. *Sex work and sex workers in Australia*. Sydney: UNSW Press; 1994. pp. 67–99.
- 2 Neave M. *Inquiry into Prostitution. Final Report (2 vols)*; 1985.
- 3 Report of the Select Committee of the Legislative Assembly upon Prostitution. (Chair P, Rogan MP) Sydney: Parliament of New South Wales; 1986.
- 4 Criminal Justice Commission. *Regulating morality? An inquiry into prostitution in Queensland* (Chair, Sir Max Bingham QC). Brisbane: Research and Coordination Division; 1991.
- 5 Donovan B, Harcourt C. The female sex industry in Australia: a health promotion model. *Venereology* 1996; 9: 63–7.
- 6 Sullivan B. The women's movement and prostitution politics in Australia. In: Outshoorn J, editor. *The politics of prostitution*. Cambridge: Cambridge University Press; 2004. pp. 21–40.
- 7 (a) *Prostitution Act 1979*. Brisbane: New South Wales State Parliament. (b) *Disorderly Houses Amendment Act 1995*. Brisbane: New South Wales State Parliament.
- 8 *Prostitution Act 1992*. Canberra: Australian Capital Territory Parliament.
- 9 Sullivan B. Prostitution law reform in Australia. A preliminary evaluation. *Social Alternatives* 1999; 18(3): 9–14.
- 10 (a) *Prostitution Regulation Act 1986*. Melbourne: Victoria State Parliament. (b) *Prostitution Control Act 1995*. Melbourne: Victoria State Parliament.
- 11 *Prostitution Act 1999*. Brisbane: Queensland State Parliament.
- 12 *Prostitution Regulation Act 1992*. Darwin: Northern Territory Parliament.
- 13 *Prostitution Control Bill 2003*. Perth: Western Australia State Parliament.
- 14 *Sex Industry Regulation Bill 2004*. Hobart: Tasmania State Parliament.
- 15 Legal Briefs. Tasmanian sex work Bill: back to the drawing board. (The Mercury, 24 April 2004). *HIV Australia* 2004; 3: 37.
- 16 Banach L. Sex work and the official neglect of occupational health and safety: the Queensland experience. *Social Alternatives* 1999; 18(3): 17–21.
- 17 Key informants comprised health professionals in sexual health clinics in New South Wales and Victoria, and sex industry peer outreach workers from the New South Wales Sex Workers Outreach Project (SWOP) and from the Australian sex workers' umbrella organisation, Scarlet Alliance. We consulted the following websites: [www.cmc.qld.gov.au/](http://www.cmc.qld.gov.au/); [www.europap.net/](http://www.europap.net/); [www.homeoffice.gov.uk/](http://www.homeoffice.gov.uk/); [www.petraostergren.com/](http://www.petraostergren.com/); [www.scarletalliance.org.au/](http://www.scarletalliance.org.au/); [www.sexworker.org.au/](http://www.sexworker.org.au/); [www.swop.org.au/](http://www.swop.org.au/); [www.timbarnett.org.nz/](http://www.timbarnett.org.nz/); [www.wa.gov.au/](http://www.wa.gov.au/)
- 18 Cohen MS, Henderson GE, Aiello P, Zheng H. Successful eradication of sexually transmitted diseases in the People's Republic of China: implications for the 21st century. *J Infect Dis* 1996; 174(suppl 2): S223–9.
- 19 Pan S. Three 'red light districts' in China. In: Micollier E, editor. *Sexual cultures in East Asia*. London: Routledge Curzon; 2004. pp. 23–53.
- 20 Allen J. The making of a prostitute proletariat in early twentieth century New South Wales. In: Daniels K, editor. *So much hard work. Women and prostitution in Australian history*. Sydney: Fontana/Collins; 1984. pp. 192–232.
- 21 Report of a Commission of Inquiry Pursuant to Orders in Council (Chair GE, Fitzgerald QC). Brisbane: Government Printer; 1989.
- 22 Neave M. The failure of prostitution law reform. *Aust NZ J Criminol* 1988; 21: 202–13.
- 23 Allen J. Disclosures. In: *Sex and secrets. Crimes involving Australian women since 1880*. Melbourne: Oxford University Press; 1990. pp. 189–94.
- 24 Donovan B. Medico-social aspects of a house of prostitution. *Med J Aus* 1984; 140: 272–5.
- 25 Criminal Justice Commission. Chapter Ten. Conclusion and recommendations. *Regulating morality? An inquiry into prostitution in Queensland* (Chair, Sir Max Bingham, QC). Brisbane: Research and Coordination Division; 1991. pp. 214–17.
- 26 Anonymous. Prostitution laws: health risks and hypocrisy. *Can Med Assoc J* 2004; 171: 109. doi: 10.1503/cmaj.1041057
- 27 Kantola J, Squires J. Prostitution policies in Britain. In: Outshoorn J, editor. *The politics of prostitution*. Cambridge: Cambridge University Press; 2004. pp. 62–81.
- 28 Jeffrey LA. Prostitution as public nuisance: prostitution policy in Canada. In: Outshoorn J, editor. *The politics of prostitution*. Cambridge: Cambridge University Press; 2004. pp. 83–102.
- 29 Ward H, Day S, Weber J. Risky business: health and safety in the sex industry over a 9-year period. *Sex Transm Infect* 1999; 75: 340–3.
- 30 Poterat JJ, Brewer DD, Muth SQ, Rothenberg RB, Woodhouse DE, Muth JB, *et al.* Mortality in a long-term open cohort of prostitute women. *Am J Epidemiol* 2004; 159: 778–85. doi: 10.1093/aje/kwh110
- 31 Venema PU, Vissar J. Safer prostitution: a new approach in Holland. In: Plant MA, editor. *AIDS, drugs and prostitution*. London: Routledge; 1990. pp. 41–60.
- 32 Chitwarakorn A, Sittitai W, Brown T, Mugrditchian D. Thailand. In: Brown T, Chan R, Mugrditchian D, Mulhall B, Plummer D, Sarda R, *et al.*, editors. *Sexually transmitted diseases in Asia and the Pacific*. Armidale: East-West Center, Thai Red Cross, Venereology Publishing; 1998. pp. 304–39.
- 33 Hancock L. Impact of prostitution-related laws in Western Australia. In: *Regulating morality? An inquiry into prostitution in Queensland* (Chair, Sir Max Bingham, QC). Brisbane: Research and Coordination Division, 1991. pp. 191–210.
- 34 Appendix 1. Historical background to prostitution in Queensland. In: Criminal Justice Commission, editor. *Regulating morality? An inquiry into prostitution in Queensland* (Chair, Sir Max Bingham, QC). Brisbane: Research and Coordination Division; 1991. pp. 236–50.
- 35 Roberts M. Summary notes: a green bill for a new prostitution control Act. Minister for Police and Emergency Services. Perth: Parliament of Western Australia; 2002.

- 36 Stridbeck U, editor. Purchasing sexual services in Sweden and the Netherlands. Legal regulation and experiences. (Abbreviated English version). Report by a Working Group to the Norwegian Minister of Justice and Police Affairs, Ministry of Justice and the Police (G-0367); 2004.
- 37 Kulick D. Sex in the new Europe: the criminalization of clients and Swedish fear of penetration. *Anthropological Theory* 2003; 3: 199–218. doi: 10.1177/1463499603003002005
- 38 Chapter 10. Prostitution and the law. In: Report of the select committee of the legislative assembly upon prostitution. (Chair P, Rogan MP) Sydney: Parliament of New South Wales; 1986. pp. 238–9.
- 39 Neave M. Inquiry into prostitution. Options Paper. Victoria, 1984. pp. 79–86.
- 40 Morris N, Hawkins G. The honest politician's guide to crime control. Melbourne: SunBooks; 1970. p. 1.
- 41 Outshoorn J. Introduction: prostitution, women's movements and democratic politics. In: Outshoorn J, editor. The politics of prostitution. Cambridge: Cambridge University Press; 2004. pp. 1–20.
- 42 Brown D, Farrier D, Egger S, McNamara L. Criminal laws. Sydney: Federation Press; 2001. pp. 1051–68.
- 43 Wong M-L, Chan RKW, Chua WL, Wee S. Sexually transmitted diseases and condom use among female freelance and brothel based sex workers in Singapore. *Sex Transm Dis* 1999; 26: 593–600.
- 44 Loff B, Overs C, Longo P. Can health programmes lead to mistreatment of sex workers? *Lancet* 2003; 361: 1982–3. doi: 10.1016/S0140-6736(03)13595-7
- 45 Richardson P. The Victorian brothel owners' perspective. In: Gerull S-A, Halstead B, editors. Australian Institute of Criminology Conference Proceedings, number 14. Sex industry and public policy: proceedings of a conference held 6–8 May 1991. Canberra: Australian Institute of Criminology; 1992. pp. 135–7.
- 46 Sary A, Kopp W, Söltz-Szöts J. Medical health care for Viennese prostitutes. *Sex Transm Dis* 1991; 18: 159–65.
- 47 Morton A, Wakefield T, Tabrizi SN, Garland SM, Fairley CK. An outreach programme for sexually transmitted infection screening in street sex workers using self-administered samples. *Int J STD AIDS* 1999; 10: 741–3.
- 48 Lundberg A. Passing the 'Black Judgement' Swedish social policy on venereal disease in the early twentieth century. In: Davidson R, Hall LA, editors. Sex, sin and suffering. London: Routledge; 2001. pp. 29–43.
- 49 Goh CL, Chan RKW. Prevalence of sexually transmitted diseases among commercial sex workers in Singapore from 1977 to 1993: the effects of screening measures. *Ann Acad Med Singapore* 1995; 24: 500–4.
- 50 Harcourt C, van Beek I, Heslop J, Donovan B. The health and welfare of female and transgender street sex workers in New South Wales. *Aust N Z J Public Health* 2001; 25: 84–9.
- 51 Delphi poll of participants at a seminar on health services for sex workers, Montevideo, Uruguay, December 1997.
- 52 Harcourt C, Donovan B. The many faces of sex work. *Sex Transm Infect* 2005; in press.
- 53 Huang Y, Henderson GE, Pan S, Cohen MS. HIV/AIDS risk among brothel-based female sex workers in China: assessing the terms, content, and knowledge of sex work. *Sex Transm Dis* 2004; 31: 695–700.
- 54 Harcourt C. Whose morality? Brothel planning in South Sydney. *Social Alternatives* 1999; 18(3): 32–7.
- 55 New Zealand Parliament. Prostitution Reform Act 2003.
- 56 Pinwill S. Occupational health and safety in the Australian sex industry: the ACT experience. *Social Alternatives* 1999; 18(3): 32–4.
- 57 Barnett T. *Prostitution Reform Act*. What is the story June 2003 to November 2004? www.timbarnett.org.nz, verified August 2005.
- 58 Donovan B, Knight V, O'Connor CC. Migrant sex workers in Sydney: a decade of successful health promotion. [Abstract] *Int J STD AIDS* 2001; 12(Supplement 2): 48.
- 59 *Prostitution Act 2000*. Perth: Western Australia Parliament.

Received 29 September 2004, accepted 3 June 2005