

RED LIGHT ON SEX WORK IN WESTERN AUSTRALIA

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After several failed attempts, the former Labor government in Western Australia was finally able to enact legislation to introduce a licensing system for sex work. While not condoning sex work, Labor saw the need to regulate 'prostitution in a manner that is conducive to public health, protects sex workers from exploitation and protects children from being involved in or exposed to prostitution.'¹ It felt that the best way to do this was through a minimalist decriminalised model, similar to that operating in New Zealand since 2003. This represents a simplified, less industry-specific model compared to other Australian jurisdictions, where licensing has been adopted. The *Prostitution Amendment Act 2008* therefore represents a major step forward in creating a framework for addressing sex work in a non-moralistic way. The road to reform was by no means easy with the government facing strong opposition to the Bill from those concerned about the perceived immorality of prostitution, the exploitation of women and harm to the community.

This article takes as its premise the belief that any laws relating to sex work should seek to minimise the harm associated with that work. It will argue that the criminalisation model has not eliminated prostitution and has the potential to further the exploitation of women. If the aim really is to protect women, children and the community then the preferred approach is to decriminalise sex work and adopt a minimalist licensing model. Licensing has been the trend in most Australian jurisdictions, with Queensland, Victoria, Northern Territory and Australian Capital Territory adopting licensing models. Efforts to introduce licensing schemes for sex work in South Australia and Tasmania have failed and in these states sex work remains criminalised. New South Wales is the only State in Australia which has decriminalised sex work.²

Licensing is not per se the panacea for addressing the problems associated with sex work; much depends on the detail of the model adopted. An invasive and morals-based licensing scheme is unlikely to represent an improvement on criminalisation.³ Our conclusion is that the licensing system introduced in Western Australia strikes an appropriate balance between the need to protect the vulnerable and the community while ensuring the autonomy of workers. We therefore urge the incoming Liberal-National government of Western Australia not to repeal this Act, as it promises to do in its 'Plan for the First 100 Days of

Government',⁴ but to have the courage to deal with prostitution in a non-moralistic way.

Opposition to the *Prostitution Amendment Act 2008* (WA)

In 2003 the Labor government in Western Australia produced a Prostitution Control Bill, based on a Bill from 2002, which sought to introduce a licensing system for sex work. However, as the government did not hold the majority in the upper house and without the support of the Liberal Party or the minor parties the licensing parts of this Bill were rejected. This Bill, which represented a 'social control model',⁵ was much more invasive than the 2007 Bill because it took a moralistic stance on sex work and sought to introduce a system which went beyond mere regulation. The Greens rejected this Bill because of the concern that it posed a threat to human rights and was unlikely to lead to a better regulated industry. The Liberal Party, on the other hand, rejected this Bill because of its opposition to the decriminalisation of sex work.

In 2006 the Labor government set up the Prostitution Law Reform Working Group to examine industry reforms with particular reference to the 2003 New Zealand reforms. The Group's recommendations, which were based heavily on the New Zealand model, formed the basis of the Prostitution Amendment Bill 2007. This Bill deviated significantly from the 2003 Bill and showed a commitment to a 'pure licensing model',⁶ aiming to remove moral judgment and regulate sex work in much the same way as other industries. The 2007 Bill gained the support of the Greens but did not change the Liberal Party's objection to decriminalisation. Opposition to the Bill also came from conservative groups and from some feminist quarters. Not all feminist groups opposed decriminalisation and women and feminists who supported the Bill received special scorn from the Liberal Party. Colin Barnett, now the Liberal Premier of WA, directed his criticism directly at women: 'this bill is about Labor women, the leftovers from the feminist movement of the 1970s and 1980s ... voting for prostitution and the exploitation of women.'⁷ He continued: 'Where are the women on the Labor side? ... [W]hen there is a real issue affecting women, young girls and families, not one of them has the courage to stand up.'⁸ In supporting this legislation women were labelled 'phoney feminists from the 1970s and 1980s',⁹ the implication being that a real feminist could not support decriminalisation.

REFERENCES

1. Second Reading, Prostitution Amendment Bill 2007, Western Australia, *Parliamentary Debates*, Legislative Assembly, 29 August 2008, 4468 (Jim McGinty, Attorney-General).
2. In NSW brothels are regulated like any other business. *Brothels Legislation Amendment Act 2007* increased the power of local councils to close down unauthorised brothels, or authorised brothels where there are amenity complaints.
3. For discussion on the impact of moral concerns see Thomas Crofts and Tracey Summerfield, 'Licensing: Regulating Prostitution or Enforcing Morality?' (2007) 33(2) *University of Western Australia Law Review* 289–306. For a general overview of State approaches see the Scarlet Alliance webpage at scarletalliance.org.au/laws/
4. Available at wa.liberal.org.au/index.php?option=com_docman&Itemid=141, accessed 19 September 2008.
5. The label 'social control model' is one we adopt for systems where moral disapproval colours the detail of the licensing system, for instance where a major aim aside from licensing is to diminish the sex industry, see Crofts and Summerfield, above n 3.
6. Systems which take a largely neutral stance on prostitution and regulate as they would other areas of commercial activity, see Crofts and Summerfield, above n 3.
7. Western Australia, *Parliamentary Debates*, Legislative Assembly, 3 April 2008, 1857 (Colin Barnett).
8. *Ibid.*
9. *Ibid.* 1858.

The arguments against the Prostitution Amendment Bill 2007 (WA) focused on three main clusters of concern: the immorality of sex work, the exploitation of women and the harm to the community. Even adopting the term 'sex work' was criticised because this was seen as 'ton[ing] it down': 'They want to use euphemisms so that prostitution ... will not influence our daughters, our community, our kids, our families, or our marriages.'¹⁰ The preferred nomenclature was highly-charged terms such as 'sex slaves' and the 'slave trade for women',¹¹ displaying the desire to maintain a negative connotation. For, as noted by Sylvia Laws, the word 'prostitution' (let alone the other terms used by the Liberal Party) does more than merely describe, it condemns, carrying derogatory connotations. Further, while 'sex work' denotes an occupation, 'prostitution' 'conflates work and identity'.¹²

For some the immorality of sex work was sufficient grounds for it not to be decriminalised. For instance, Barnett argued that, '[M]aybe I am naïve, but to me a brothel is not an ethical or moral business.'¹³ Further: 'It is a horrible, disgraceful piece of legislation. It is completely lacking in ethics and morality.'¹⁴ In a similar vein Donna Faragher argued that 'this Bill is about breaking down our community and pulling out another thread from the moral fabric of our society.'¹⁵ Such claims are reminiscent of the arguments raised by Patrick Devlin¹⁶ in the 1960s in relation to the decriminalisation of homosexuality and prostitution. It raises the fundamental question of whether the perceived immorality of a practice is sufficient reason in itself to continue to criminalise that behaviour, especially on a subject matter where moral opinion differs greatly. This moralisation of sex work is not helpful and 'has strongly influenced the questions that have been asked about sex workers.'¹⁷ The result has been that sex workers have been reduced to a single stereotypical image with a dearth of research on the 'lived realities of being involved in sex work'.¹⁸ Given the divergent opinions on the morality of sex work the Labor Government correctly aimed to steer away from such a debate by making clear that, in seeking to enact this legislation, it did not wish to make a moral judgment about sex work. Rather its focus was on protecting public health, sex workers from exploitation and children's involvement in, or exposure to, sex work.

Regarding the exploitation of women and children, it is startling the degree to which the Liberal Party were prepared to engage in wild and unfounded assertions and fear-mongering in their bid to defeat this legislation. For instance, the (then) leader of the Liberal Party claimed that: 'The next thing we will have is compulsory training in schools for young girls so that they know whether they can go into a brothel.'¹⁹ It was also asserted that this Bill will legitimise and sanction sexual violence against women²⁰ and 'will lead to more girls and women being abused by men. These girls and women will end up with a drug habit and the government is doing nothing to help them get out of those brothels.'²¹ More widely the concern was that abuse would not only increase in relation to those directly involved in sex work, but also generally

'towards young women and men, and particularly children, in this state.'²² Further claims include that sex work shortens the lives of prostitutes²³ and leads to suicide.²⁴ While there has been research suggesting such a link (though causation may not have been proven), it is widely accepted that criminalisation in fact increases general occupational health and safety risks and that harm minimisation approaches are more effective.²⁵ Another argument was that the Bill would lead to an increase in the trafficking of women.²⁶ This is despite the fact that research has shown that, due to Australia's geographic situation and strict border control, trafficking numbers are low in Australia.²⁷

The third main cluster of concerns was in relation to the harm that prostitution may cause to the community. For instance, it was claimed that this Bill was 'about Labor members of Parliament voting for prostitution in our suburbs and towns throughout Western Australia.'²⁸ It was also argued that legalisation in other states had led to 'a proliferation of both legal and illegal brothels.'²⁹ An associated alarm was that brothels might set up in residential places, near schools and churches: 'Under the Labor Party's plan, prostitutes will be allowed to operate in the suburbs near and around family farms-family homes.'³⁰ This will 'increase the danger to women and girls. It will also expose hundreds of small children in Western Australia to the violence and thuggery associated with prostitution.'³¹ This criticism may be partly fuelled by the fact that the Act does not dictate where brothels may or may not be situated. Instead it leaves this as a matter for local government planning laws. Although this has been criticised as 'handballing' the problem to local government it is actually consistent with the approach of a pure licensing model to allow local government to regulate the location of brothels in the same way it regulates the location of other businesses.

Opinion may be divided on the morality of sex work and even on whether the perceived immorality is a sufficient basis to criminalise this work. There is, however, no doubt that sex work *can* lead to the exploitation of women and therefore *can* be harmful to the community. The real issue in this debate is therefore what legislative framework is most appropriate for addressing this type of work to avoid these harms.

The problem of criminalisation

Criminalisation in one form or another is the most common legislative approach to sex work worldwide.³² Generally, there are two alternative approaches: criminalising the provision of sex services or particular aspects of the industry or criminalising clients. The approach is commonly founded on a belief that criminalisation, that is prohibition, will lead to the abolition of the sex industry.³³ The alternative approach to criminalisation is that adopted in Sweden, where the clients are criminalised and service providers are regarded as victims of crime. This is a response to feminist concerns of the impact of sex work on women, who represent the majority of workers. Demand is

10. Western Australia, *Parliamentary Debates*, Legislative Assembly, 20 September 2007, 5538 (Graham Jacobs).

11. *Ibid.*

12. See Sylvia A Law, 'Commercial Sex: Beyond Decriminalization' (2000) 73 *Southern Californian Law Review* 523, 525. See also Jenny Pearce and Jo Phoenix, 'Editorial' (2007) 6(1) *Community Safety Journal* 3, 3–4.

13. Western Australia, *Parliamentary Debates*, Legislative Assembly, 25 September 2007, 5685 (Colin Barnett).

14. Western Australia, *Parliamentary Debates*, Legislative Assembly, 3 April 2008, 1866 (Colin Barnett).

15. Western Australia, *Parliamentary Debates*, Legislative Council, 13 March 2008, 834 (Donna Faragher).

16. This led to the famous debate between Devlin and Hart, see Patrick Devlin, *The Enforcement of Morals* (1965); HLA Hart, *Law, Liberty and Morality* (1963).

17. Antonia Quadara, *Sex Workers and Sexual Assault in Australia*, Australian Institute of Family Studies *Issues* 8, 2008, 31.

18. *Ibid.*

19. Western Australia, *Parliamentary Debates*, Legislative Assembly, 25 September 2007, 5683–4 (Paul Omodei).

20. Western Australia, *Parliamentary Debates*, Legislative Assembly, 19 September 2007, 5332 (Robert Johnson).

21. Western Australia, *Parliamentary Debates*, Legislative Assembly, 19 June 2008, 4224 (Janet Woollard).

22. Western Australia, *Parliamentary Debates*, Legislative Assembly, 1 April 2008, 1427 (Barbara Scott).

23. Western Australia, *Parliamentary Debates*, Legislative Assembly, 18 September 2007, 5140 (Paul Omodei).

24. Western Australia, *Parliamentary Debates*, Legislative Assembly, 25 September 2007, 5678–9 (Janet Woollard).

25. John Lowman, *Prostitution Law Reform in Canada* (1997).

26. Eg. Western Australia, *Parliamentary Debates*, Legislative Assembly, 20 September 2007, 5517 (Troy Buswell).

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targeted with a view to reducing the number of sex workers.³⁴ The Swedish model was held up as the most appropriate model for Western Australia by many opposing decriminalisation.³⁵

Among feminist writers there is divergent opinion on the nature and consequence of sex work, with some arguing that sex work is an extension of male violence towards women and demeans and debases women, reducing them to their physicality. Others take a liberal view that sex work is a legitimate occupation, and that participation is a personal choice.³⁶ Regardless of which viewpoint is taken Sylvia Law argues that feminist scholars converge on three points:

- on a condemnation of criminalising sex workers;
- that authentic consent is a necessary precondition to legitimate commercial or non-commercial sex; and
- that sex workers often fall victim to violence and economic oppression, with governments failing to develop measures in response.³⁷

As noted by Elaine Dowd:

Whilst we are waiting for a non-patriarchal society, it is essential for feminists to respond to abuses within prostitution ... just as they respond to other abuses. Current legislation and policy in WA, and in many other jurisdictions, supports potential police corruption and creates an environment in which the safety and security of sex workers is compromised.³⁸

Criminalisation attracts a range of philosophical and pragmatic criticisms. Liberal moral philosophers such as David Richards argue that the belief in human rights assumes two normative positions: that a person has right to autonomy which extends to the capacity for a person to make their own life choices, and that everyone has a right to equal concern and respect in exercising that autonomy. While the realisation of individual liberty requires state protections against anti-social behaviour, it is argued that sex work is not itself anti-social³⁹ and so should not attract criminal sanctions. In a similar vein, Albert, Gomez and Franco posit the legal regulation of the sex industry in a market economy as a matter of protecting the fundamental rights of the sex worker to freedom, to vocational choice, to physical integrity, to personal dignity, and to physical/psychological health, whilst noting competing rights such as the client's right to privacy.⁴⁰

Some authors note the futility of criminalisation given that sex work is deeply embedded in the economies of many cultures, and itself constitutes an economic exchange, driven by the laws of supply and demand.⁴¹

As such, according to Phyllis Coontz and Anne Stahl, criminalisation has little deterrent impact.⁴² Aside from the question of how the industry fits within a capitalist market, economists have also challenged the efficiency of criminalising sex work in that it fails to reduce the incidence of the sex trade or the negative consequences of a poorly regulated industry.⁴³ Many studies have pointed to the failure of criminalisation to meet its core goal of abolishing the sex industry. According to Coontz and Stahl, despite 100 years of criminal sanctions in the United States, there were 90 000 arrests for prostitution in 2004 alone, with additional workers being arrested for more general offences such as disorderly conduct, loitering and vagrancy.⁴⁴ A review of the literature by Harcourt, Egger and Donovan discloses that, aside from totalitarian states such as China during the time of the Cultural Revolution and Afghanistan under the Taliban regime, prohibition has not led to eradication of the sex work globally or to a marked reduction in the negative social consequences associated with the industry.⁴⁵

As a mode of regulation, criminalisation has also been criticised for fostering a range of social problems. The 'problems of externalities'⁴⁶ associated with sex work include reinforcing negative stereotypes of sex workers (and of women generally), and therefore also of increasing the stigma of sex work, of avoiding the regulation of an ever present industry and driving the industry underground. This is said to lead to greater risk to workers, an inability for government to control other criminal conduct that might attach itself to the industry and an inability for government to ensure positive health measures for workers and clients.⁴⁷ The criminalisation of sex work increases the risk of physical and sexual violence, as workers are unable to safely negotiate conditions with clients or employers, resist client abuse and positively use law enforcement agencies and legal remedies.⁴⁸ It also fosters an environment that is conducive to public and in particular police corruption,⁴⁹ as was noted by the Wood Royal Commission's findings on the nexus between brothel operations and police corruption in New South Wales.⁵⁰ Here it should be noted that the Western Australian police welcomed the 2007 Bill because, as explained by a Police Royal Commission in WA, 'it would avoid the possibility of police corruption in terms of turning a blind eye to something illegal but unenforceable.'⁵¹ As Ronald Weitzer argues:

Many of the harms that seem to be associated with prostitution are traceable to its prohibited and penalized

27. Global Alliance against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (2007) 29.

28. Western Australia, *Parliamentary Debates*, Legislative Assembly, 3 April 2008, 1857, (Colin Barnett).

29. Western Australia, *Parliamentary Debates*, Legislative Assembly, 3 April 2008, 1864 (Janet Woollard).

30. Western Australia, *Parliamentary Debates*, Legislative Assembly, 18 September 2007, 5140 (Paul Omodei).

31. Western Australia, *Parliamentary Debates*, Legislative Assembly, 1 April 2008, 1427 (Barbara Scott).

32. Christine Harcourt, Sandra Egger and Basil Donovan, 'Sex Work and the Law' (2005) 2 *Sexual Health* 121, 122.

33. *Ibid.*

34. Jan Jordan, *The Sex Industry in New Zealand: A Literature Review* (2005) 78, 80. See also Julie Bindel and Liz Kelly, *A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden*, Child and Woman Abuse Studies Unit (2003) 25.

35. See, eg, Western Australia, *Parliamentary Debates*, Legislative Assembly, 1 April 2008, 1427 (Barbara Scott); 4 December 2007, 8121 (Simon O'Brien); 13 November 2007, 6989 (Janet Woollard); 18 October 2007, 6473 (Robert Johnson).

36. This is the position of many sex industry representative bodies. Scarlet Alliance, the peak Australian body for sex workers' rights, argues the sex industry is no different from other service industries and should not be subject to complicated regulation: Linda Banach and Sue Metznerath, *Principles for Model Sex Industry Legislation* (2000).

37. Law, above n 12, 532–533.

38. Elaine Dowd, 'Sex Workers' Rights, Human Rights: The Impact of Western Australian Legislation on Street Based Sex Workers' *Outskirts Online Journal*, chloe.uwa.edu.au/outskirts/VOL110/article5.html at 6 November 2008. See also Barbara Sullivan, *The Politics of Sex, Prostitution and Pornography in Australia since 1945* (1997) 264.



39. David Richards, 'Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution' (1979) 127 *University of Pennsylvania Law Review* 1195.

40. Rocío Albert, Fernando Gomez and Yanna Gutierrez Franco, 'Regulating Prostitution: A Comparative Law and Economics Approach' unpublished, available online at fedea.es/pub/papers/2007/dt2007-30.pdf at 6 November 2008.

41. Phyllis Coontz and Anne Stahl, 'Revisiting Anti-Prostitution Sanctions: An Argument for Changing Policy' (2007) 43(3) *Criminal Law Bulletin* 1, 2.

42. *Ibid.*

43. Law above n 12, 531-532 and fn 42.

44. Coontz and Stahl, above n 41, 1.

45. Harcourt et al, above n 32, 122.

46. Albert et al, above n 40, 15.

47. See generally, Banach, above n 36, 24; Alison Arnot, *Legalization of the Sex Industry in the State of Victoria, Australia* (MA thesis, Melbourne University, 2002) 22-23; Crime and Misconduct Comm, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (2004) 29-30; Jordan above n 34, 78-79; Harcourt et al, above n 32, 122. Evidence suggests the industry self regulates physical health issues, with safe practices and low rates of sexually transmitted infections; some reports reveal a higher standard of sexual health among workers than the general population. There are nevertheless differences in the practices of street and brothel based workers and reports of high levels of violence in street based work and non-licensed brothels: Queensland Prostitution Licensing Authority *Annual Report 2003-04* (2004) 34; John Godwin 'Two Steps Back?' (2003) 2(3) *HIV Australia*, afao.org.au at 11 November 2008.

48. Marcia Neave, 'The Failure of Prostitution Law Reform' (1988) 21 *ANZ Journal of Criminology* 202, 207; Banach, above n 36, 6-8; Harcourt et al, above n 32, 122.

status: 'It is not sex work per se that promotes oppressive values of capitalist patriarchy but rather the particular cultural and legal production of a marginalized, degraded prostitution that ensures its oppressive characteristics while acting to limit the subversive potential that might attend a decriminalized, culturally legitimized form of sex work'.⁵²

Nevertheless, it is true that the Swedish model seeks to remove the stigma normally attached to workers and so may address some feminist concern over the inequality of traditional models which focus on workers' (primarily women's) conduct, without criminalising the client's involvement. However, it has been noted that this model may have simply reduced the visibility of sex work rather than actually leading to a reduction in the incidence of prostitution⁵³ and sex workers have expressed similar concerns as those working under the conventional approach to criminalisation, that they are endangered by the laws that purport to protect them.⁵⁴ Hence, the ideal that placing the legal burden on the client would empower workers, placing them in a stronger position to negotiate conditions with clients and ward off violence, has not necessarily been realised,⁵⁵ with reports that there have been few if any legal complaints against clients.⁵⁶ Further, a set of unintended consequences is said to have arisen from the Swedish model. The Norwegian Working Group on the Legal Regulation of the Purchase of Sexual Services reports that a new form of crime has been created by the approach. It is alleged that women, purporting to be sex workers, have robbed clients who in turn are fearful of reporting the robbery, and that some sex workers have been known to demand additional money after the service

has been provided, knowing that the client will be fearful of legal sanction if they refuse.

It would appear then that whatever the goal, criminalisation, by sanctioning either the worker or the client, or both, fails to eliminate sex work and leads to negative consequences which themselves may be worse than the original social phenomenon.

Is licensing the solution?

Licensing involves repealing criminal offences and penalties relating to sex work generally or particular aspects of the industry, and instead instituting a requirement that a licence be obtained to carry out this work legally. Some advocates of licensing conceive the industry either as an inevitable social phenomenon (whether that is good or bad), others that sex work is a legitimate occupational choice and that the individual's fundamental right to choose their profession should be protected. Some moralists and feminists, while objecting to sex work, still regard licensing as the best means of protecting worker interests and women generally. Licensing is just a means of regulating an industry to try and avoid harms arising from that industry.

Licensing permits the exclusion of those deemed unsuitable from owning, managing or working in sex businesses through express legislative provisions and the scope to rescind licences,⁵⁷ and enables the criminal protection of people considered vulnerable, such as children or others unable to consent. It is perceived as a method of drawing the industry into a regulatory framework, rendering sex work liable to general legal regulation, crossing issues such as industrial rights, planning provisions, occupational health and safety. Licensing can also permit regulation to be tailored to the particular industry either within its own provisions or through other external instruments, such as town planning laws. However we hold to the view posited by Australian reformer Marcia Neave that any regulation should recognise that social and economic inequality is at the root of the industry, with women generally the victims of that inequality⁵⁸ and that this requires the pursuit of policies which improve women's economic choices, reduce sexual inequality and challenge women's objectification in public forums.⁵⁹

The general regulatory capacity of a licensing model, however, rests in the detail of the legislation. A system of regulation that models itself on general administrative and pragmatic concerns, with a clear commitment to the protection of the human rights of workers (a 'pure licensing model'), is less inclined to attract the unintended consequences associated with criminalisation than one which seeks to impose moral values (a 'social control model'). Under a social control model, such as those proposed in the 2002 and 2003 WA Bills, the goal of eliminating or reducing the incidence of sex work underlies the system and pervades the whole licensing process. Separate industry-specific licensing bodies are created which have functions that go beyond merely issuing licences, such as policy formation, control and disciplinary powers. Methods for applying for licences tend to be complex and licensing bodies tend to

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have wide discretionary powers, such that they can require invasive information. Generally there can be no expectation of receiving a licence even if all conditions of application are satisfied and even when licences are issued they may contain restrictive conditions. Such systems tend to perpetuate the problems associated with criminalisation because licensing is made so onerous in pursuit of the goal of elimination of the industry that many workers operate outside of the system, thus defeating the regulatory goal.

In our view, the model adopted by the *Prostitution Amendment Act 2008* in Western Australia and the *Prostitution Reform Act 2003* in New Zealand represent pure licensing models. In both jurisdictions licensing applications are made to a generic licensing body — the Registrar of a District Court (NZ) and CEO of the Department of the Public Service (WA). This maximises the prospect of objective morally-neutral decision-making, because sex industry applications are considered alongside other types of commercial applications, free from the contamination of a social agenda. The licensing body's powers are limited and specific and the application process in both jurisdictions is clear with transparent applicant disclosure requirements which do not unnecessarily impinge on privacy and personal integrity.

Exempting single or small groups of workers from the licensing requirements recognises the opportunistic and transient nature of sex work for some workers, so that those who move momentarily in and out of the industry do not face the threat of criminalisation. Where the exemption applies only to sole operators, workers are exposed to a greater safety risk than in systems where people may work in small groups. Both the New Zealand and WA schemes recognise the difficulty of drawing individual workers into a licensing system and therefore the risk of creating an illegal workforce. In New Zealand a small owner operated brothel with no more than four workers does not need a certificate. In Western Australia, out of a concern for the potential neighbourhood nuisance of permitting groups of peoples to work together, only two workers may co-operate without licence.

Although the 2008 Act provides for an appropriate model for regulating the sex industry, there are further steps required to realise the benefits of WA's licensing model. Under similar approaches elsewhere, Councils have adopted a quasi-social control model, through restrictive planning codes. Others have expressed a concern at being at a loss on how to regulate, feeling

that the issue has been handballed to them. It is important that the next step is taken to work with local government to develop model-planning guidelines and with State government agencies to institute appropriate support services.

Conclusion

The Labor government faced strong opposition to the introduction of a licensing system in Western Australia. Claims were made about the immorality of sex work and the dangers that it poses to women and the community. A wide range of literature suggests, however, that criminalisation (whether the traditional or Swedish model) actually causes harm to both workers and the community. Similarly, a licensing system that reflects the negative values underpinning criminalisation ('social control model') fails to achieve the goal of regulation. A 'pure licensing model', on the other hand, has the capacity to provide an efficient regulatory framework for the industry. It has the scope to address nuisance problems that might be associated with the industry, to minimise the capacity for official corruption and criminal conduct and to increase public confidence in administrative regulation. Further, such a licensing system has the potential to reduce the stigma associated with the industry and to guarantee workers' industrial rights, empowering them in their interactions with both employers and clients. Our hope is that the incoming Liberal-National government in Western Australia will have the courage to look beyond the moral clichés and narrow stereotypes apparent in the Parliamentary debates and engage in a less emotive consideration of the issue. In our view this would lead to the implementation of the licensing system contained in the *Prostitution Amendment Act 2008*. This system has the potential to foster the autonomy of people engaging in sex work, giving them a real choice about their work while continuing to protect them from exploitation both from clients or industry controllers. With appropriate planning laws, this system will also protect the community.

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49. Neave, above n 48, 208; Jordan, above n 34, 83–84; Harcourt et al, above n 32, 122.

50. Jordan, above n 34, 84.

51. 'Police Welcome Sex Worker Laws', *The West Australian* (Perth), 12th August 2007.

52. Ronald Weitzer, 'New Directions in Research on Prostitution' (2005) 43 *Crime, Law and Social Change* 211, 214, quoting Noah Zatz, 'Sex Work/Sex Act: Law, Labour, and Desire in Constructions of Prostitution' (1997) 22 *Signs: Journal of Women in Culture and Society* 277, 291. More recently Weitzer examined the role of moral panics and crusades in the State's approach to sex work. Weitzer, 'Legalizing Prostitution' (2008) *British Journal of Criminology*, advanced access online on May 15 2008, doi 10.1093/bjc/azn027.

53. WA, Prostitution Law Reform Working Group *Prostitution Law Reform for Western Australia* (2007) 12.

54. Petra Östergren, *Sexworker's Critique of Swedish Prostitution Policy* petraostergren.com/content/view/44/108/ at 6 November 2008.

55. As of 2004 there were a lack of official records on client violence towards workers in Sweden, but it has been reported that legislation has moved work from the street to the client's premises, leaving workers more vulnerable, and driven away mainstream clients, leaving a greater proportion of dangerous ones with rougher, more peculiar demands. Socialstyrelsen, *Kännedom om prostitution 2003, SoS-rapport -03* ss 8–9 reported in Norway Ministry of Justice and the Police Affairs (2004) *Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences*. Abbreviated English Version, 12–13.

56. Norway Ministry, above n 55, 20.

57. Harcourt et al, above n 32, 123.

58. This may also be true for men working in the industry, yet the nature of the economic and social oppression may have different roots.

59. Neave, above n 48, 207–209.