

The Sex Industry in Western Australia

A Report to the Western Australian Government

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CONTENTS

LIST OF TABLES	vi
EXECUTIVE SUMMARY	vii
RECOMMENDATIONS	viii
CHAPTER 1: BACKGROUND	1
Legal responses to sex work	1
Public health responses to sex work	2
Health promotion	3
Sexual health services	3
Sexual behaviour	4
Sexually transmitted infections and HIV	4
Drug injecting	5
Mental health	5
Violence at work	5
Other issues	5
CHAPTER 2: METHODOLOGY	6
Objective	6
The law and policing	6
Key informant survey	6
Measuring health services	6
Sex worker survey	7
Ethical considerations	8
CHAPTER 3: THE SIZE AND STRUCTURE OF THE SEX INDUSTRY IN WESTERN AUSTRALIA	9
Demand for sexual services in WA	9
Typology and numbers	9
Brothel locations	9
Visibility of brothels	11
Male and transgender sex workers	11
Street sex workers in Perth	11
Outside Perth	11
LASH sex worker survey	11
Age	11
Country of birth and languages spoken	11
Income and living arrangements	12
Educational level	12

Working conditions in Perth brothels	12
Sexual behaviour at work	14
Sexual behaviour at home	15
STIs and blood-borne viruses	15
Psychological and social well-being	16
Drug and alcohol use	16
Use of health services	17
Health promotion	18
Encounters with the police and knowledge of the law	18
Sex workers attitudes toward their jobs and the law	19
CHAPTER 4: PROSTITUTION LAW AND POLICING IN WESTERN AUSTRALIA	21
Law and policing	21
Street offences	22
Brothel offences	23
Live on the earnings	24
Sole operators	25
Escort workers	26
Inducing/procuring	26
Advertising for sex worker recruitment and business sponsorship	27
Offences concerning acts of prostitution in specified circumstances	27
Child prostitution offences	29
Police powers and associated offences	29
Restraining orders and associated offences	30
Venereal disease offences	31
<i>Liquor Act</i> offences	32
Containment	32
History	32
The current status of containment	33
The empirical research	34
Summary of law and policing findings	34
CHAPTER 5: DISCUSSION	36
REFERENCES	39

LIST OF TABLES

Table 1	Australasian legal responses to sex work
Table 3.1	Perth brothel location by planning zone
Table 3.2	Age in years of Perth sex workers
Table 3.3	Country of birth of Perth sex workers
Table 3.4	Language spoken at home by Perth sex workers
Table 3.5	English language skills (self-rated) of Perth sex workers
Table 3.6	With whom Perth sex workers shared their income
Table 3.7	Permanent accommodation of Perth sex workers
Table 3.8	Years of formal education of Perth sex workers
Table 3.9	Self-description of type of work-place by Perth sex workers
Table 3.10	Health promotion resources in Perth brothels
Table 3.11	General amenity of Perth brothels
Table 3.12	Occupational health and safety conditions of Perth brothels
Table 3.13	Star rating of Perth brothels by LASH field staff
Table 3.14	Condom availability in Perth brothels
Table 3.15	Other workplace resources provided in Perth brothels
Table 3.16	Reasons for choosing current brothel in Perth
Table 3.17	Frequency of education outreach visits to Perth brothels
Table 3.18	Number of clients who asked for services without a condom in an average week in Perth brothels
Table 3.19	Condom use with clients in Perth brothels
Table 3.20	Frequency of condom use with male partners in the previous three months
Table 3.21	Number of sexual partners outside of work in the previous three months
Table 3.22	Contraception used by Perth sex workers
Table 3.23	Sexually transmitted infections (STIs) and blood-borne viruses in Perth brothel workers
Table 3.24	Social support of Perth sex workers
Table 3.25	Proportion of Perth sex workers who felt negative emotions most or all of the time
Table 3.26	Emotional well-being test of Perth sex workers
Table 3.27	Substance use in the previous 12 months by Perth sex workers
Table 3.28	Last time Perth sex workers consumed more than four alcoholic drinks in one day
Table 3.29	Sexual health check-ups by Perth sex workers
Table 3.30	Frequency of sexual health checks by Perth sex workers
Table 3.31	Provider of sexual health checks for Perth sex workers
Table 3.32	Reason given by Perth sex workers for seeing this provider
Table 3.33	Attendance by Perth sex workers at specific sexual health services in the previous 12 months
Table 3.34	Experiences with the police by Perth sex workers in the previous year
Table 3.35	Frequency of police visits to current Perth brothel in the past year
Table 3.36	Details of experiences with the police in the previous year
Table 3.37	Perth sex workers' experiences with police at current workplace
Table 3.38	Perth sex workers' comfort level in going to police with complaints
Table 3.39	Perth sex workers' belief about the legal status of sex work in WA
Table 4.1	Soliciting (street) offences finalised in the WA courts 2000–2005
Table 4.2	Brothel keeping offences finalised in the WA courts 2000–2005
Table 4.3	Procuring charges finalised in the WA courts 2000–2005
Table 4.4	Charges finalised in the WA courts for failure to use prophylactic 2000–2005
Table 4.5	Child prostitution offences finalised in the WA courts 2000–2005
Table 4.6	Charges finalised in the WA courts for failure to comply with police direction 2000–2005

EXECUTIVE SUMMARY

The Western Australian Government is currently reviewing its legislative approach to prostitution. In parallel with this process, the Law and Sexworker Health (LASH) team independently compiled extensive collateral data on the prostitution laws in WA, and prosecutions (2000–2005) resulting from those laws; the structure and function of the sex industry in Perth; the demographics, behaviour, health, and welfare of a representative sample of brothel-based sex workers in Perth; and the operation of health promotion and clinical services in WA. The WA Department of Health contracted the LASH team to compile this Report in order to better inform WA policy considerations.

The LASH team had been funded by the National Health and Medical Research Council to investigate if the various legislative approaches across Australian jurisdictions were associated with different health and welfare outcomes for the sex workers. Three capital cities were selected and the LASH team focused on urban brothel-based female sex workers for comparability reasons, and because such women provide the bulk of commercial sexual services in Australia. Perth was selected because most forms of commercial sex are illegal, Sydney because adult sex work is largely decriminalised, and Melbourne because sex work as ‘legalised’: that is, either brothels or individual sex workers must be licensed. Unlicensed brothels or sex workers in Melbourne remain criminalised.

In brief, the LASH team determined that:

- Perth had a small (and possibly contracting), diverse, and open sex industry commensurate with the size of Perth’s population. WA men are infrequent consumers of commercial sexual services, with only 1.9% purchasing sexual services in any one year, similar to the Australian average. This suggests that criminal sanctions in WA do not reduce the incidence commercial sex.
- Despite a remarkably large number of laws against prostitution-related activities, offenses finalised in the WA courts were overwhelmingly concentrated on the street-based sex industry. Indeed, more male clients of street workers

were prosecuted than street workers. Over the six-year period, 2000 to 2005, there were no prosecutions against several prostitution laws.

- Perth brothels remained concentrated in traditional inner-city areas and the police still maintained a database of sex workers, indicating that the ‘containment policy’ was still in effect despite its official abandonment in 2000. The police visited Perth brothels and required names and other information much more than in brothels in Melbourne and Sydney. Nevertheless, there was little evidence of police corruption in Perth.
- Compared to sex workers in Melbourne and Sydney, brothel-based female sex workers in Perth were less educated, and fewer were born in Asian or other non-English speaking countries. Though one in five Perth workers rated their English language skills as ‘fair’ or ‘poor’, no health promotion staff with foreign language skills were available. The organisation charged with delivering health promotion services to the WA sex industry, Magenta, had limited access to most brothels because of the illegal status of the industry.
- Nevertheless, condom use at work approached 100% in Perth brothels and when the LASH team tested the Perth women the prevalence of four sexually transmitted infections (STIs) – chlamydia (2.7%), gonorrhoea (0), *Mycoplasma genitalium* (3.6%), and trichomoniasis (0.9%) – was at least as low as the general population. These low STI rates were similar to the rates in sex workers in Melbourne and Sydney.
- Similar to Melbourne and Sydney, 10% of Perth brothel workers were found to be severely distressed on psychological testing (the Kessler-6 scale) and this was strongly associated with injecting drug use. This proportion was twice as high as the general population.

Based on these findings and a review of the recent literature on the outcomes of various legislative approaches to prostitution, the LASH team developed the recommendations that appear in the following section.

RECOMMENDATIONS

- 1 That a bipartisan Working Group be formed to review the WA legislative response to prostitution.** Through the LASH study and other recent research, extensive new data have emerged on the functioning and policing of the WA sex industry as well as evaluations of alternative legislative approaches operating in other jurisdictions. The Working Party should recommend a broad legislative strategy as well as addressing the specific anomalies that are detailed in Chapter 4 of this Report. The Working Party should be convened by the Attorney General's Office, with representation from all major political parties, the Police Force, and the Departments of Health, Planning, and Local Government. As poor prostitution laws are usually generated in intense political climates, the current absence of evidence of widespread police corruption or imminent public health threat offers an ideal opportunity for WA to achieve a broad and pragmatic consensus.
- 2 Licensing of sex work ('legalisation') should not be regarded as a viable legislative response.** For over a century systems that require licensing of sex workers or brothels have consistently failed. Most sex workers remain unlicensed, so criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services. Thus licensing represents a potential threat to public health – most jurisdictions that once had licensing systems abandoned them long ago.
- 3 If the WA Government opts to proceed with decriminalisation of most of the adult sex industry is should recognise that prime responsibility for the industry will move from the Police to local government. Local government should be resourced for this new role.** Decriminalisation in New South Wales has been associated with many local governments refusing to approve development applications for brothels. This has resulted in substantial legal costs and, in isolated

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instances, corruption by local government officials. Overseeing brothels to ensure compliance with planning law and the development and enforcement of occupational health and safety standards requires human resources. A suggested ratio is one local government officer for every 10 brothels in any local government area.

- 4 **If the WA Government opts to continue with criminalisation of all or part (the unlicensed sector if there is a licensing system) of the sex industry steps should be taken, through legislation if necessary, to ensure that possession of safe sex supplies cannot be used as evidence of prostitution.** This self-evident recommendation has been made by every national and international agency concerned with HIV/AIDS control for the past 20 years.
- 5 **The Department of Planning, in consultation with local government, community representatives, and the Health Department, should draw up planning guidelines for brothels.** Perth brothels rated relatively poorly for access by Magenta, Occupational Health and Safety (OH&S) practices, and display of health messages. These guidelines should ensure that both public amenity and public health considerations are addressed. Conditions of approval for brothels should include:
 - (a) access for health promotion programs
 - (b) the free provision of safer sex equipment
 - (c) the prominent display of health messages, and
 - (d) the display of and adherence to purpose-designed OH&S guidelines.
- 6 **The Department of Health should commission an independent review of clinical and health promotion services available to sex workers. The review should include an analysis of current service specifications and a proposed funding model to ensure the sexual health and wellbeing of sex workers in WA.** Very few of the surveyed sex workers attended the Royal Perth Hospital Sexual Health Centre;

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continues

choosing instead to access the Fremantle Hospital Centre, GPs, or no services at all. Magenta's focus on clinical service provision, absence of evening outreach, and lack of staff proficient in relevant languages reflects their history and limited resource levels. Stronger community links should improve the coverage and appropriateness of health promotion services.

- 7 **The Working Party should investigate more effective and humane approaches to the dangers and loss of public amenity posed by street-based sex work.** Street-based sex work is problematic everywhere and WA's problem is not exceptional. Street sex workers comprise the most vulnerable and traumatised section of the sex industry. Though they are the smallest component of the industry, street sex workers are the major target for police prosecutions because of their high visibility. The aim of the investigation should be to explore methods of reducing the street presence and vulnerability of sex workers by means such as ensuring an adequate supply of indoor alternatives, including a 'safe house' facility.
- 8 **Considerations should be given to supporting research into the health and welfare of WA sex workers outside Perth; including the structure and determinates of the industry, and the knowledge, experience and behaviour of the workers.** The LASH survey was limited to urban female brothel-workers in Perth. Parts of regional WA have large numbers of unaccompanied men that could be expected to provide a ready market for sexual services. Such research could inform clinical service delivery and health promotion programs.

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CHAPTER 1: BACKGROUND

Around Australia and internationally there is an ongoing debate about legislative approaches to sex work. WA's recent debate has attracted international attention, not because the WA situation is particularly unusual but because the issues are pervasive across cultures (Jeffrey & Sullivan, 2009; Weitzer, 2009). Though there is evidence suggesting that better public health outcomes occur when sex work is decriminalised and health promotion and outreach programs are properly resourced (Rekart, 2005; Donovan et al., 2010) most jurisdictions continue to criminalise their sex industries.

Legal responses to sex work

The Australian Constitution does not grant general criminal law powers to the Commonwealth Government and thus prostitution laws are matters for the State and Territory Governments. Since the 19th century all Australian jurisdictions and New Zealand (NZ) had criminalised most activities around prostitution but in the later part of the 20th century these laws became increasingly diverse (Harcourt et al., 2005). Most recently, New South Wales (NSW) and the Australian Capital Territory (ACT) and NZ largely decriminalised prostitution (Table 1). The last WA government also voted for decriminalisation, but lost power before the new law was proclaimed. The new WA government is currently reviewing its options.

Earlier, the Victoria and Queensland governments had introduced licensing systems for brothels and some sex workers in the shadows of the emerging HIV/AIDS epidemic and extensive police corruption, respectively. The remaining states retain a variety of criminal laws against brothel-keeping and other prostitution-related activities (see Table 1),

but these seem to be infrequently policed and debates and enquiries about prostitution law reform are ongoing. Notably, a majority of Australians have long favoured a move away from criminal sanctions (Weitzer, 2009), and enforcing prostitution laws is unpopular with police forces (McDonald, 2004).

As governments considering prostitution law reform have a number of options, it is useful to briefly review these options in the Australian context – more data and discussion are available elsewhere (Harcourt et al., 2005). Broadly, these options are:

- 1. Criminalisation.** Otherwise known as prohibition or abolitionism, this legal approach has traditionally been seen as the most appropriate societal or moral response to conduct associated with the trade in sexual services. Criminal sanctions focus on related activities such as soliciting, brothel-keeping, procuring, rather than the act of prostitution itself.

Though criminalisation is the most common response globally, police discretion is often exercised to permit certain activities notwithstanding the criminal prohibitions. This tension between law and policing has a demonstrated potential to result in police corruption and/or abuse. Criminalisation may exacerbate opportunities for coercion and exploitation by encouraging sex workers to seek the protection of pimps and criminals (Harcourt et al., 2005). There is no evidence that criminalisation reduces the incident of prostitution (Abel, 2009; Rissel et al., 2003; Neave, 1988) and the Australian public no longer see it as a preferred option (Weitzer, 2009).

Table 1 Australasian legal responses to sex work

	Criminalised	Licensed ('legalised')	Decriminalised
Jurisdiction (year of change)	WA, SA, NT, Tas	Vic (1984) Qld (1992)	ACT (1992) NSW (1995) NZ (2003)
Proportion of sex workers operating illegally	>80% (typically, only private or escort work is not illegal)	Vic ~50% Qld ~90% (inc. unlicensed brothels and street workers)	<2% (street workers in the wrong location)
Corruption potential	Police	Police Local government Medical	Local government

- 2. Decriminalisation.** The removal of most of the criminal penalties applying to adult prostitution is based on an essentially pragmatic acceptance that sex work is here to stay: priority is given to protecting human rights and the public health. Restrictions on sex work remain, but these are normally administered by local government rather than the police (Harcourt et al., 2005).

In theory, decriminalisation could result in a more 'normalised' sex industry with improved working conditions (including paid leave, superannuation, security, and occupational health and safety programs), taxation obligations, reduced police corruption and a reduction in the involvement of organised crime. However, such advances are often slow and patchy (Harcourt et al., 2005). As they do not acquire criminal records, sex workers find it easier to move out of a decriminalised industry into alternative employment.

Better health outcomes for sex workers are typically reported from decriminalised systems such as the Netherlands, Germany, and NSW (Rekart, 2005; Donovan et al., 2010) but such jurisdictions usually also have strong public health systems.

- 3. Licensing.** Often called 'legalisation', under this system either brothels or individual sex workers can apply to the state for a license to operate. Seen as a means of excluding undesirable persons from the industry and of enhancing government control over the number, location, and operation of brothels, licensing has not generally lived up to the expectations. Unlicensed premises and sex workers remain criminalised, and the unlicensed sector normally comprises a large proportion of the industry (Table 1). In Queensland, for example, after 18 years of operation, only 25 brothels (around 10%) have joined the scheme (Prostitution Licensing Authority, 2009).

Licensing systems are self-serving, expensive and exclusive, often pushing sex workers onto the street (Harcourt et al., 2005), while undermining access by surveillance and health promotion programs (Chen et al., 2010). As well as being questionable from a human rights perspective, mandatory sexual health screening of sex workers has been shown to waste millions of dollars (Wilson et al., 2010) and to

displace higher risk patients from finite public health services (Samaranake et al., 2010).

- 4. The Swedish Model.** In 1998 the Swedish Government introduced a new system that has attracted international attention largely because of its apparent novelty and controversy. Positioning sex workers as 'victims', the Swedes decriminalised sex work while imposing criminal sanctions on their clients (Harcourt et al., 2005). In other words, purchasing sexual services is a crime while selling such services is not. The Swedish model appears to only affect street-based sex work (Sweden had a very large migrant street industry) and they claim to have reduced street prostitution, but no formal evaluation of the system has been reported to date. Notably, criminal sanctions against clients were already common around the world, including WA, so the Swedish model isn't entirely novel.

The distinctions between these systems may be largely illusory, with substantial overlap. For example – as a result of the containment policy and relatively benign policing practices – the WA sex industry really had an informal licensing system for most of the 20th century.

Policing practices are often more important than the law. Even though Thailand's large sex industry is criminalised, it is lightly policed and socially tolerated. By contrast, 50,000 sex workers are incarcerated in China every year for a period of two years of brutal 're-education', with a high re-offending rate. As the Chinese system expands so do the epidemics of HIV and other STIs in China (Tucker et al., 2010). One can only guess what sort of arrangement the other 99% of Chinese sex workers has reached with the police to avoid detention.

Public health responses to sex work

Sex workers in other Australian states have achieved substantial improvement to their sexual health since the 1980s and this appears to have been sustained (Lee et al., 2005; Donovan et al., 2010). This has been attributed primarily to the consistent use of condoms by sex workers with commercial partners (Harcourt et al., 2001; Lee et al., 2005). Most Australian jurisdictions have supported health promotion programs targeting sex workers for over 20 years (Donovan & Harcourt, 1996). Highly successful harm reduction programs have also resulted in HIV not entering the sex industry in any

substantial way through drug injection (Donovan et al., 2010).

However, there are ongoing changes with potential impacts on the sex industry. These include demographic changes through migration and travel (Pell et al., 2006), prostitution law reform, and an increased incidence of HIV infection and other STIs in Australia and in neighbouring countries (NCHECR, 2009). Men from WA, NT and northern Queensland, where Asia is closer, may be at particular risk. Numbers of recent heterosexually-acquired HIV cases in Australia have been linked to travel by Australian men to countries with high HIV prevalence in Asia and Papua New Guinea. Such travellers have the potential to act as a bridging population to spread HIV to the Australian heterosexual population.

Demographic changes within the Australian sex industry include an increased number of migrant sex workers from high HIV prevalence countries in Asia. This has been most marked in NSW (O'Connor et al., 1996; Pell et al., 2006) and to an extent in Victoria, but the numbers may also be rising in WA. Fortunately, female sex workers in Australia who are HIV-positive are rare (O'Connor et al., 1996; NCHECR 2009), but with the ongoing potential for this situation to change.

Health promotion

In response to the HIV epidemic, a range of initiatives were implemented in Australia in the 1980s that have contributed greatly to the health of sex workers. Among these initiatives was the formation of community-based organisations representing at-risk groups with the mandate of providing health education, community support and advocacy. They did so with the assistance of health professionals and national and state AIDS funding (Mulhall et al., 1995a; Donovan & Harcourt, 1996).

In WA, SIERA (Support Information Education Referral Association WA) was created in 1987 and received funding from the state and commonwealth health departments to provide STI/HIV prevention and education to sex workers and their clients (Donovan & Harcourt, 1996). SIERA operated from 1987 till 1999; followed by Phoenix 1999–2003; and by Magenta, 2003 to the present time (McKewon, 2005). Today, Magenta, along with the Street Worker Outreach Project WA (SWOPWA), provides outreach services, a sexual

health clinic one day a week, workshops on sexual health and personal safety, as well as information and safe sex supplies.

In 1987 the Health Department of WA recommended compulsory condom use in the sex industry to stem the spread of HIV/AIDS in the community (McKewon, 2005). AIDS education programs for the general public increased awareness among sex workers' clients of the importance of safer sex (Donovan & Harcourt, 1996).

Needle and syringe programs, opiate substitution programs and other initiatives aimed at drug injectors were also introduced in the 1980s throughout Australia. These programs continue to have positive benefits for those working in the sex industry who also inject drugs (Donovan et al., 2010).

Sexual health services

The 1980s and 1990s also saw an increase in the number and quality of clinical sexual health services in many parts of Australia (Donovan & Harcourt, 1996). In 1988, the Australasian College of Sexual Health Physicians was incorporated as a professional training body, and became a Chapter of the Royal Australasian College of Physicians in 2004. Similarly, sexual and reproductive health nursing was recognised as a specialist area and the Australian Sexual Health Nurses Association was established in 1991 (Mulhall et al., 1995b). These developments fed into career structures and allowed clinical staff to become better consultants and advocates on behalf of their priority populations, including sex workers. Also, in 1985 Medicare began to allow rebates for STI-related consultations for sex workers with private doctors, although there are still restrictions on rebating pathology testing (at the insistence of the WA Government of the time). In all Australian jurisdictions, GPs provide most of the STI screening for sex workers and their clients.

In some Australian centres, culturally-specific resources have been developed to address the unique needs of non-resident sex workers. For example, the Multicultural Health Promotion Project was established in 1990 at the Sydney Sexual Health Centre. This Project includes Asian language clinics, and outreach services employing Asian peer educators, conducted in collaboration with a community-based organisation – the Sex Workers Outreach Project (O'Connor et al., 1996; Pell et al., 2006).

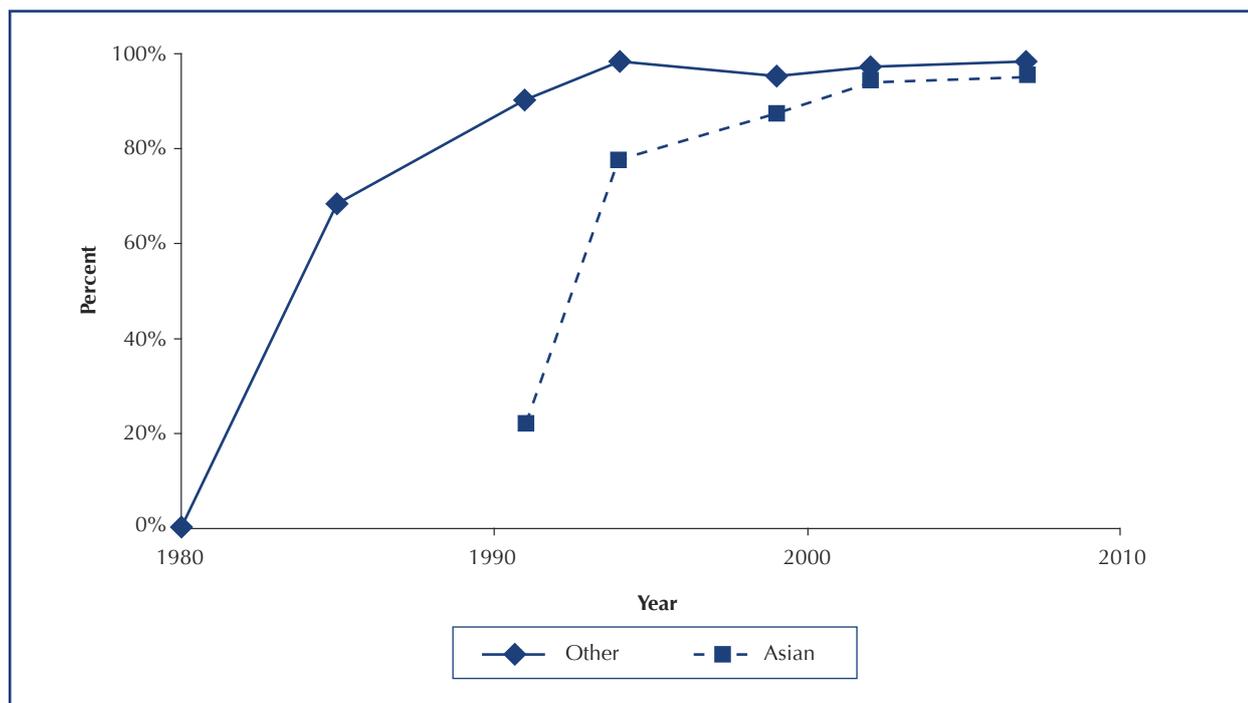


Figure 1 The proportions of Asian and non-Asian brothel-based sex workers in Sydney that reported condom use for vaginal or anal sex with all clients, 1980–2007. (Source: Donovan et al., 2010.)

Sexual behaviour

The health promotion programs and HIV prevention services provided by health professionals and community-based groups led to a dramatic increase in condom use by Australian brothel sex workers since the 1980s (Harcourt, 1994; Harcourt & Philpot, 1990). Since the mid-1990s repeated surveys of female sex workers working privately or in brothels in other states show almost universal condom use with clients (Harcourt et al., 2001; Perkins & Lovejoy, 2007; Pyett et al., 1996; Lee et al., 2005; Donovan et al., 2010) (see Figure 1).

There have been some sex workers who have been less likely to use condoms with clients. Sex workers from Asia, sex workers who are young and inexperienced, sex workers who are drug-dependent and male sex workers have been found to use condoms less consistently (Harcourt, 1994; O'Connor et al., 1996; Morton et al., 1999; Minichiello et al., 2001; Minichiello et al., 2000; Pell et al., 2006; Roxburgh et al., 2008; Roxburgh et al., 2006). Street sex workers in Melbourne and Sydney have also reported lower rates of consistent condom use at work than brothel workers (Morton et al., 1999; Harcourt et al., 2001).

All sex workers, regardless of their age, sex, ethnic background or type of sex work are much less likely to use condoms with non-paying partners

(Fox et al., 2006; Harcourt, 1994; Prestage et al., 2007; Pyett et al., 1996). Inconsistent condom use with non-paying partners is associated with a low perception of risk and the use of condoms to differentiate sexual activity with paying versus non-paying partners. This is sometimes of concern because non-paying partners may have other female and male partners or engage in injecting drug use, putting sex workers at risk for HIV (Harcourt et al., 2005). In a Melbourne study, unprotected sex with non-paying partners was the major risk factor for incident STIs (Lee et al., 2005). Nevertheless, because the same sex workers consistently use condoms at work, further transmission to their clients is largely averted (Wilson et al., 2010).

Sexually transmitted infections (STIs) and HIV

Due to the consistent use of condoms by sex workers Australia has seen a steady decline in STIs in sex workers and their clients (Harcourt, 1994). These low levels of STIs have been maintained over the last decade (Donovan et al., 2010; Lee et al., 2005). There is still no documented case of a female sex worker in Australia acquiring or transmitting HIV infection at work and HIV in female sex workers remains rare (NCHECR, 2009). The few resident female sex workers identified as HIV-positive have all had IDU as the probable source of infection (Harcourt, 1994).

The prevalence of STIs among certain groups of sex workers tends to be higher. For example, in one review of medical records in Sydney, almost one third of male sex workers had one or more STIs at clinical presentation, which was double the prevalence of STIs among female sex workers (Estcourt et al., 2000).

Female sex workers from Asia, teenaged sex workers, those who engage in high levels of illegal drug use, and street sex workers have typically had higher rates of STIs (O'Connor et al., 1996; Estcourt et al., 2000; Harcourt, 1994; Morton et al., 2002; Morton et al., 1999). However, STI rates in Asian sex workers in Sydney are now as low as in their local peers (Donovan et al., 2010).

Drug injecting

Only 7% to 17% of brothel and escort sex workers in Australia report ever injecting drugs (Harcourt et al., 2001; Perkins & Lovejoy, 2007; Pyett et al., 1996). The proportion is much higher among more marginalised groups such as street workers (typically >85%), teenage sex workers, and occasional sex workers (Morton et al., 1999; Harcourt et al., 2001; Lee et al., 2005; Roxburgh et al., 2008; Roxburgh et al., 2006; Sharp, 1995). Sex workers who inject drugs have the added risk factors of being more likely to have intercourse without a condom and to have partners who are also drug users (Sharp, 1995).

Australian sexual health services provide clean injecting equipment and free hepatitis B vaccination. The Kirketon Road Centre in Sydney – which has a large clientele of IDU street workers – also provides opiate substitution therapy and counselling for IDUs.

Mental health

Sex workers face a number of other health and safety concerns in their work. Stress, depression and a sense of isolation have all been reported by sex workers (Perkins, 1994). However, the psychological distress experienced by brothel-based sex workers may not be substantially different than that of women in the general population. In a sample of 171 female sex workers in Queensland, it was found that 28% were above the threshold for mild psychiatric morbidity, a rate similar to that of women from the general population (Boyle et al., 1997).

However, sex workers engaging in street-based work and who inject drugs were much more likely to report poor mental health (Boyle et al., 1997; Perkins, 1994; Roxburgh et al., 2006; Seib et al., 2009). Roxburgh et al (2006) found that just under half of Sydney street workers met the criteria for post-traumatic stress disorder.

Violence at work

Client violence is another issue that faces sex workers. While 5% to 10% of brothel and private workers have reported some form of violence in their work (e.g., robbery with violence, rape, bashing, stabbing) (Perkins & Lovejoy, 2007) for street workers violence is a more pervasive issue. Upwards of 50% of Sydney street workers report violence at work (Boyle et al., 1997; Harcourt et al., 2001; Roxburgh et al., 2006; Seib et al., 2009).

The illegal, visible, and stigmatised status of street sex work attracts extreme violence. Between 1990 and 2003, 87 street workers in the UK were murdered (Kinnell, 2004), heralding the five Ipswich murders in 2006 (Goodyear & Cusick, 2007). In 2002, one man was charged with the murder of 26 of the 63 'missing' sex workers in Vancouver (Jeffrey & Sullivan, 2009). No comparable statistics are available for Australia. It has been argued that the state contributes to these murders by promoting stigmatisation and exploitation of sex workers while alienating them from the security that should be provided by the police (Kinnell, 2004; Goodyear & Cusick, 2007).

Other issues

Among sex workers high levels of tobacco consumption is a consistent finding, with up to 82% reporting currently smoking cigarettes (Perkins, 1994). Unless provisions are made for this high rate of smoking, brothels can be very smoky environments that raise occupational health and safety concerns.

Other issues faced by more vulnerable sex workers include child care, lack of social support, and unstable accommodation (Harcourt et al., 2001; Pyett et al., 1996).

CHAPTER 2: METHODOLOGY

Between 2007 and 2008 we conducted a comparative study of the health and welfare of sex workers in three Australian cities with different legal climates – the Law and Sexworker Health (LASH) study. The chosen cities were: Perth, with extensive criminal sanctions against most prostitution-related activities; Melbourne, where licensed brothel prostitution was permitted, but most other prostitution related activities remain criminalised; and Sydney, where adult prostitution is largely decriminalised. While Sydney brothels do not require a license, they are subject to local planning laws.

Australia was arguably the only place where such a study could be conducted because of its diversity of legal approaches to prostitution (Jeffrey & Sullivan, 2009), while other societal and institutional factors are common to all jurisdictions.

In this report we collated data from a variety of authoritative sources, including the LASH study, to better inform policy decisions affecting the sex industry in WA.

Objective

The LASH study sought to determine whether the differing laws and policing practices in cities in three states affected the health and welfare of sex workers.

The law and policing

As part of the LASH Study, the law relating to the sex industry in each State was analysed with particular attention devoted to the criminal offences in each jurisdiction. In addition, requests for prosecution data over a five year period were made to each of the court statistics agencies in each State: BOCSAR in NSW, the Department of Justice in Victoria and the Crime Research Centre at the University of Western Australia. The data sought related to all charges heard in court for prostitution related offences, separately reported for each Act, section and where relevant, sub-section. Information was also requested on the age and gender of the accused, plea, outcome, penalty and court location as a function of offence.

The law and prosecution analysis was supplemented with information from the following sources:

- The self-administered LASH questionnaire (described in more detail below) sought information about the policing and prosecution experiences of sex workers within brothels.
- A further questionnaire offered to all managers/owners of brothels visited by the LASH team that elicited information about the impact of the laws on their business practices and management.
- Workers and managers volunteered information about the relationship with police in discussions with the LASH research staff at the time of the visits. The latter comments were recorded in field diaries shortly after the visit.
- The location of all identified brothels was mapped in each city.

Key informant survey

During the first year of the LASH project, we conducted semi-structured interviews with key informants. In WA, we interviewed eight key informants, including community and outreach workers, former brothel managers and sex workers, and a public health professional.

Information was sought regarding the numbers and locations of sex workers, local policies and policing practices and the informants' understanding of the major issues faced by sex workers.

We analysed information from the key informant questionnaires through cross comparison and thematic grouping of responses to the open-ended questions. The results of this analysis were used to supplement information about the size and location of the sex industry in Perth, to determine local policing practices, to provide a broad picture of health and welfare services targeting sex workers, and to refine the sex worker questionnaire.

Measuring health services

For each state we quantified health promotion programs targeted at the sex industry. We defined health promotion broadly and included issues such as policy framework, work environment, community action, health education, outreach, condom supply, and health service delivery.

We used information from the key informants to determine resource levels, including budgets and staff numbers, and their accessibility and outreach to target populations. The survey of sex workers provided supplementary information and specifically sought the sex workers' personal experiences of delivery of educational services to their work-sites, availability of condoms and other safety equipment, and their access to public sexual health services. The sex worker questionnaire also included questions about work-site security.

While administering the questionnaire, field staff also recorded brothel features such as security measures (external lights, front of house security, and internal alarms), general layout and presentation of premises (cleanliness, lighting, staff rest areas, staff-friendly environment, etc.). Based on their observations, data collectors assessed brothels on their merits as worker-friendly workplaces, awarding them a star rating from one star (lowest) to five stars (highest) developed for the purposes of the LASH study.

Sex worker survey

To achieve a sample of sufficient statistical power we planned to survey and test 200 female sex workers for STIs at their work place in each city. We limited the sample to women in urban brothels as this is the most common type of sex work in Australia and to allow comparison between the three cities. Health issues vary according to the type of sex work (Harcourt & Donovan, 2005).

To map Perth brothels, we cross-referenced advertisements in the telephone book and other print media (including foreign language newspapers) with lists compiled from key informant interviews and consultations with Magenta. We ruled out duplicate listings, and brothels that had closed or changed address by phoning or visiting all brothels, which resulted in a final list of all brothels operating in Perth.

We also placed small advertisements in publications targeting the sex industry and sent out flyers to known brothels to assure management of the independence and anonymity of our research. This was necessary in Perth because all brothels were operating illegally and there were a number of enquiries being conducted in relation to imminent proposed changes to WA prostitution

laws. The advertising was followed by phone calls and in some cases, unannounced visits to brothels resulting in immediate access or in requests for more information and follow-up visits.

As far as possible, in each state, we included similar numbers of women who worked day and night shifts, a similar spread of both 'high' and 'low class' brothels (as determined by charges for sexual services), and smaller and larger brothels.

The questionnaire survey was carried out in Perth between July and November 2007. Of the 34 confirmed brothels 28 (82.4%) agreed to participate in the study. Field staff made a total of 69 visits to brothels, an average of 2.5 visits per brothel. Thirty-seven (53.6%) of the visits were made during the day and 32 (46.4%) were made at night.

Once access to the premises was made all of the sex workers that were present were invited to participate in the study. Those who agreed gave informed verbal consent to complete a 20-minute questionnaire and to provide a self-collected tampon for STI testing. The questionnaire gathered information on demographics, working conditions, sexual behaviour at work, private sexual and drug use behaviours, and contact with a variety of authorities as well as health promotion programs while at work. The tampons were forwarded to a laboratory at Royal Women's Hospital in Melbourne and tested for four STIs: *Mycoplasma genitalium* infection, chlamydia, trichomoniasis, and gonorrhoea. The women were compensated for their time with a \$25 cash payment. Refusals to participate by work-sites or by individual women were recorded.

A total of 202 sex workers were approached and 175 (86.6%) participated in the survey: of these 175 women, 111 women (63.4%) also self-collected tampon specimens for STI testing. The most common reason for the women declining STI testing was that they had recently been tested elsewhere.

Response rates for individual questions ranged between 35.5% and 98.3%, with the lowest rates for questions relating to experiences with the police. For example, among those who had reported having had an experience with a police officer in the previous year, only 35.5% reported whether or not they had been threatened, physically assaulted or pressured into providing sexual services.

Ethical considerations

Approval was obtained from Human Ethics Committees at the University of New South Wales, the AIDS Council of New South Wales, the University of Melbourne and the Alfred Hospital, Melbourne.

Confidentiality was maintained throughout. We identified sex workers and key informants by a code only, and no names or addresses were entered on data collection forms. Codes were used for laboratory testing and conveying results to participants. To obtain test results, field staff provided participants with a contact name and number to ring. Women diagnosed with a sexually transmitted infection (STI) were referred to a local clinical service for management.

CHAPTER 3: THE SIZE AND STRUCTURE OF THE SEX INDUSTRY IN WESTERN AUSTRALIA

Demand for sexual services in WA

Australian men are infrequent consumers of commercial sexual services by world standards. In a representative sample of Australian men aged 15 to 59 years in 2001–2002, 1.9% of WA men reported paying for sex in the last year (20% had ever paid) which was similar to Australia overall and lower than most countries (Rissel et al., 2003). Though not broken down by state, Australian men who had recently paid for sex had met the women in a brothel (64.6%), via an escort service (32.6%), massage parlour (26.8%), private premises with a single sex worker (25.5%) or premises with two or more sex workers (11.5%), or on the street (5.9%) (Rissel et al., 2003).

Typology and numbers

Based on advertisements and websites, key informant interviews and consultations with Magenta, 51 potential brothel listings were identified within a 20km radius of central Perth. After eliminating duplicates and those that had closed down or moved, we confirmed the existence of 34 brothels in 2007.

Key informants felt that the number of sex workers in Perth had decreased and that the average age of sex workers and length of time spent in the industry had increased. This trend toward a downsizing of the industry was thought to be because of an overall decrease in demand and, possibly, a new law prohibiting advertisements for new staff.

Based on key informant information, there were estimated to be about 530 brothel-based sex workers in Perth in any one year, and perhaps 50 private workers and 50 women providing escort services. Perhaps ‘a few dozen’ women and a few male and transgendered workers sporadically worked on the streets, though normally only one or two were on the street at any one time. During the LASH study where all female sex workers present in 28 urban brothels in Perth were approached over several weeks only 202 women were counted. Of these woman 175 (86.6%) participated in the LASH survey.

In addition, according to responses from key informants in WA and clinical observations at the Sydney Sexual Health Centre, a significant

number of sex workers, including Asian women, were travelling from the eastern states for ‘working holidays’. These women travelled alone or in small groups to Perth or mining towns for up to six weeks. Women travel to WA because there is a perception that more money can be earned. Notably, in the LASH survey sexual services in Perth brothels were more expensive than Melbourne or Sydney.

The LASH field researchers also noted that some Perth sex workers periodically travelled to the eastern states to work, hinted at by 5.1% of the Perth brothel workers having attended the Sydney Sexual Health Centre in the previous 12 months (Table 3.33).

Overall, WA appeared to have a diverse, open, and mobile sex industry of comparable typology to other Australian states and of commensurate size.

Brothel locations

Most identified brothels were clustered in central Perth, chiefly around Burswood and Victoria Park areas, East Perth, and Northbridge (Figure 2, p10). Most brothels were located in commercial or industrial areas, and rarely in residential zones (Table 3.1).

Table 3.1 Perth brothel location by planning zone (n=28)

	No.	%
Commercial	11	39.3
Industrial	11	39.3
Residential	3	10.7
Mixed zone areas	3	10.7
Total	28	100.0

The few brothels that were located in suburban/residential zones tended to be smaller and more isolated, staffed by older or Asian women, and rarely visited by the police.

This geographical clustering of Perth brothels was presumed to be a hangover of the containment policy, if not a continuation. The location of the brothels (Figure 2) differed little from 30 years ago (McKewon, 2003). Brothels in Melbourne and Sydney are much more diffuse in their location, and are found throughout the suburbs.



Figure 2 Location of Perth brothels in 2007



Figure 3 A Perth brothel in 2007

Visibility of brothels

Prior to commencing the research we had expected that, given their illegal status, the street view of most Perth brothels would have been discrete if not hidden. However, the LASH team found that many brothels were well lit at night and brightly painted (Figure 3). The services being offered were often displayed in clear terms; for example, an image of a female figure prominently displayed at the front of the building. Some brothels were on busy roads leading out of the CBD.

Simple Google searches with obvious terms were used to locate many of the brothel websites. Some of the larger brothels had elaborate websites and some brothels had detailed price lists for the range of sexual services provided. Several also contained recruitment advertisements for workers in apparent breach of the prohibition contained in s 9 of the *Prostitution Act*.

Male and transgender sex workers

Male and transgender sex workers advertised their services in the Perth press, apparently providing private escort services. No brothels specialising in male or transgender services were identified. In a recent national survey of gay men (n=2,306), one in six men reported having ever been paid for sex and for 100 men (4.3%) this had occurred in the last year. These proportions were similar in all states (Prestage et al., 2010).

Street sex workers in Perth

A few dozen street sex workers populate the streets north of the CBD in Perth well into the night, though typically only a few are present at any one time. Their exact location varies as a result of police and resident pressure. There are no known 'safe houses' for street workers to take their clients or for security. Key informant advice was that more Aboriginal women work on the street but no Asian women, as is also the case in Sydney and Melbourne.

Outside Perth

The brothels of Kalgoorlie are legendary (McKewon, 2005), but were outside the ambit of the LASH study. Magenta reported periodic visits to brothels in the north of WA, particularly Port Hedland. Hearsay was that there were several smaller brothels staffed by more mature women in south

coast towns, but no key informants had any direct knowledge of these establishments and they were not visited by Magenta.

LASH sex worker survey

Age

The 175 Perth sex workers that participated in the LASH survey were aged between 19 and 55 years, with a median age of 31 years (Table 3.2). The median age was similar to the Sydney women but four years younger than the Melbourne women in licensed brothels in the LASH survey.

Table 3.2 Age in years of Perth sex workers

	No.	%
≤ 19	4	2.3
20–29	71	40.6
30–39	62	35.4
40–49	24	13.7
50–59	6	3.4
No response	8	4.6
Total	175	100.0

Country of birth and languages spoken

Approximately half (46.8%) of the Perth respondents were not born in Australia: 50 (28.6%) were born in an Asian or another non-English speaking country (Table 3.3). These proportions were similar to Melbourne brothels, though less than Sydney brothels where most (53%) of the women were Asian-born.

Table 3.3 Country of birth of Perth sex workers

	No.	%
Australia	89	50.9
China	17	9.7
Thailand	6	3.4
New Zealand	5	2.9
Other Asian	17	9.7
Western Europe (inc. UK/Ireland)	23	13.1
Other English speaking	4	2.3
Other non-English speaking	10	5.7
No Response	4	2.3
Total	175	100.0

Most Perth sex workers spoke English at home (139, 79.4%) (Table 3.4). However, almost one in five rated their English language skills as 'fair' or 'poor' (Table 3.5).

Table 3.4 Language spoken at home by Perth sex workers

	No.	%
English	122	69.7
English and other	17	9.7
Other	29	16.6
No response	7	4.0
Total	175	100.0

Table 3.5 English language skills (self-rated) of Perth sex workers

	No.	%
Good	138	78.9
Fair	19	10.9
Poor	13	7.4
No response	5	2.9
Total	175	100.0

Only three (1.7%) Perth brothel workers self-identified as having Aboriginal or Torres Strait Islander background.

Income and living arrangements

Almost half of the Perth sex workers (82, 46.9%) reported sharing their income with someone else. This was significantly higher than sex workers in Sydney (36.3%) and Melbourne (31.4%, $p=0.01$). Those that did share their income with someone else were most likely to share it with dependent children and/or a partner (Table 3.6).

Table 3.6 With whom Perth sex workers shared their incomes^a (n=82)

	No.	%
Dependent child(ren)	51	62.2
Partner	33	40.2
Parents	10	12.2
Other dependents	7	8.5
Flat mate	6	7.3
Other	1	1.2

(a) Adds up to more than 100% because respondents could report more than one.

Most respondents reported having permanent accommodation (144, 82.3%) (Table 3.7).

Table 3.7 Permanent accommodation of Perth sex workers (n=175)

	No.	%
Yes	144	82.3
No	23	13.1
No response	8	4.6

Educational level

More sex workers in Perth (112, 64.0%) reported having 12 years or less of formal education than sex workers in Melbourne (53.7%) and Sydney (43.8%, $p=0.005$).

Table 3.8 Years of formal education of Perth sex workers

	No.	%
12 years or less	112	64.0
13 years or more	45	25.7
No response	18	10.3
Total	175	100.0

Working conditions in Perth brothels

Most Perth sex workers described their current worksite as a brothel (99, 56.6%) or a massage parlour (73, 41.7%). Smaller numbers described their worksites as escort agencies (23, 13.1%), private services (17, 9.7%), bondage and discipline services (11, 6.3%) or 'other' arrangements (7, 4.0%).

LASH field staff recorded the general appearance and working conditions of the workplaces they visited. Most of the workplaces they visited were typical brothels (20, 71.4%) (Table 3.9).

Table 3.9 Self-description of type of work-place by Perth sex workers^a (n=28)

	No.	%
Brothel	20	71.4
Massage	10	35.7
Escort	5	17.9
Bondage and discipline	2	7.1
Other	2	7.1

(a) Adds up to more than 100% because responses were not mutually exclusive.

The reported number of sex workers working in any brothel during the day and during the night ranged between 0 and 20. The median number of workers during the day was four, and six for the night.

The sex workers were also asked how many hours they worked in an average week and how long they had spent in the industry. Reported hours worked per week ranged from three to 72 hours, with a median of 31 hours: this was significantly more than the women in Melbourne and Sydney ($p=0.006$). The Perth women reported working in the industry between one month and 21 years, with a median of three years.

Compared to Melbourne and Sydney, LASH field researchers found few differences in the safety and general ambience of Perth brothels. However, Perth brothels had the fewest on-site health promotion resources aimed at sex workers and their clients. In Perth, only 25% of brothels had health education resources for sex workers and only one (3.6%) had a poster targeting clients (Table 3.10). This compared to 61% and 40% of Melbourne and 40% and 5% of Sydney brothels.

Table 3.10 Health promotion resources in Perth brothels^a (n=28)

	No.	%
Sex worker resources	7	25.0
Occupational health and safety information	5	17.9
Client resources	1	3.6

(a) Responses were not mutually exclusive

The LASH field staff felt most of the brothel staff approached during the survey were friendly and the premises were clean. Most provided a staff room, however most lacked a separate room for smokers (Table 3.11). Most brothels had visible security cameras and a well-lit exterior (Table 3.12).

Table 3.11 General amenity of Perth brothels^a (n=28)

	No.	%
Staff friendly	27	96.4
Tidy/clean	25	89.3
Staff room	24	85.7
Rules/regulations (punitive) i.e., fines or bonds	13	46.4
Smokers room/area	11	39.3

(a) Adds up to more than 100% because responses were not mutually exclusive

Table 3.12 Occupational health and safety conditions of Perth brothels^a (n=28)

	No.	%
Security cameras	20	71.4
Exterior well lit	18	64.3
Regular sex worker outreach	13	46.4
Regulatory signs	9	32.1
Close to public transport/taxis	7	25.0
Security guard	5	17.9
Other (intercoms, first aid, etc)	4	14.3

(a) Adds up to more than 100% because responses were not mutually exclusive

The LASH field staff awarded the brothels a semi-objective star rating, ranging from one to two stars (poor) to five stars (good). No Perth brothel was awarded five stars, while most workplaces were given three or four stars (reasonable) (Table 3.13). Low occupational health and safety standards, including little or no evidence of health promotion resources, ensured that no brothels achieved a five-star rating.

Table 3.13 Star rating of Perth brothels by LASH field staff (n=28)

	No.	%
Five stars	0	0
Three – four stars	20	71.4
One – two stars	5	17.9
Missing	3	—

The Perth women were significantly less likely to report having condoms available at their work free of charge (Table 3.14): only 10.9% in Perth said that condoms were available and that they were free, compared 86.9% in licensed brothels in Melbourne and 35.8% in Sydney ($p < 0.001$). The higher proportion in Melbourne can be attributable to this being required by the licensing system.

Less than half of Perth sex workers had dental dams provided for them at work and sharps disposal bins were rare (Table 3.15).

Table 3.14 Condom availability in Perth brothels

	No.	%
Condoms are not available	21	12.0
Available, but I pay for them	123	70.3
Available and free	19	10.9
No response	12	6.9
Total	175	100.0

Table 3.15 Other workplace resources provided in Perth brothels^a (n=175)

	No.	%
Receptionist	140	80.0
Security cameras	115	65.7
Lubricant	106	60.6
Smokers' room	90	51.4
Dental dams	72	41.1
Room alarm	46	26.3
Security guard	28	16.0
Needles disposal bin	9	5.1
None of these	2	1.1

(a) Adds up to more than 100% because responses were not mutually exclusive

Half of Perth sex workers (52.0%) reported choosing their current work place because they felt safe due to better security (Table 3.16). Flexible hours and likeable work-mates and management were also factors mentioned by around half of the women.

Perth sex workers were asked how often educators or outreach workers visited their current place of work: 70 (40.0%) reported that this was at least once a year (Table 3.17). Frequency of contact

Table 3.16 Reasons for choosing current brothel^a in Perth (n=175)

	No.	%
Safer (better security)	91	52.0
Hours are flexible	89	50.9
I like management	88	50.3
I like my workmates	87	49.7
It pays better	60	34.3
Clients are better	52	29.7
More discreet	51	29.1
I live near here	31	17.7
Sex worker support comes here	27	15.4
Better services	21	12.0
Not as many rules	19	10.9
Avoid hassles with the police	9	5.1
It was all that was available	7	4.0
I go where I'm told	2	1.1
I can get drugs here	0	0.0
Other	23	13.1

(a) Adds up to more than 100% because responses were not mutually exclusive

Table 3.17 Frequency of education outreach visits to Perth brothels

	No.	%
Never	36	20.6
Less than once a year	15	8.6
1 to 4 times a year	37	21.1
5 or more times a year	33	18.9
Other	37	21.1
No response	17	9.7
Total	175	100.0

Table 3.18 Number of clients who asked for services without a condom in an average week in Perth brothels (n=175)

	Vaginal sex		Anal sex		Oral sex	
	No.	%	No.	%	No.	%
None	33	18.9	40	22.9	25	14.3
1	14	8.0	8	4.6	12	6.9
2	19	10.9	2	1.1	19	10.9
3–10	31	17.7	15	8.6	50	28.6
11+	6	3.4	3	1.7	8	4.6
No response	72	41.1	107	61.1	61	34.9
Median	2		0		3	
Range	0–20		0–20		0–30	

with outreach workers did not vary between the three cities.

Sexual behaviour at work

The Perth women were asked to estimate how many clients they saw in an average week. They reported between two and 75 clients per week, with a median of 15 clients. This was similar to the women in Melbourne and Sydney.

When asked to estimate how often clients asked for services without a condom, the Perth women reported a median of two men per week asking for vaginal sex without a condom and three men for oral sex without a condom (Table 3.18). In spite of this, no sex workers reported inconsistent (<100%) condom use for vaginal sex, only one reported using condoms inconsistently during anal sex, and four reported inconsistent condom use for oral sex with clients (Table 3.19).

Table 3.19 Condom use with clients in Perth brothels (n=175)

	No.	%
Vaginal sex		
All clients wear condoms	132	75.4
Do not have vaginal sex with clients	33	18.9
Do not use condoms 100% of the time	0	0.0
No response	16	9.1
Anal sex		
All clients wear condoms	31	17.7
Do not have anal sex with clients	97	55.4
Do not use condoms 100% of the time	1	0.6
No response	52	29.7
Oral sex		
All clients wear condoms	104	59.4
Do not have oral sex with clients	42	24.0
Do not use condoms 100% of the time	4	2.3
No response	28	16.0

Sexual behaviour at home

The Perth women were also asked about sexual behaviour with men away from work. Among those who had a male partner outside of work, 46.2% reported using condoms inconsistently or not at all (Table 3.20).

Most of those women who had private male partners reported only one, while less than one in ten reported having three or more male partners away from work. Eighteen women (10.3%) reported female sexual partners (Table 3.21).

Although almost no respondents reported inconsistent condom use with clients (Table 3.19) only 126 (72.0%) reported using condoms as a form of contraception (Table 3.22). Ten sex workers (5.7%) reported not using any form of contraception. Reasons for not using contraception included being in a steady relationship (2, 1.1%), being pregnant (2, 1.1%), and being a lesbian (1, 0.6%).

Sexually transmitted infections (STIs) and blood-borne viruses

A quarter of the Perth women reported having had at least one previous STI or blood-borne virus infection; most commonly chlamydia, PID and hepatitis C. None reported having HIV. Among those who agreed to testing as part of the LASH study, STI prevalences were comparable to the general population (Table 3.23) with no significant differences between sex workers in the three cities.

Table 3.20 Frequency of condom use with male partners in the previous three months

	No.	%
Never	42	24.0
Sometimes (less than half the time)	8	4.6
Usually (more than half the time)	10	5.7
Always	70	40.0
No partners	41	23.4
No response	4	2.3
Total	175	100.0

Table 3.21 Number of sexual partners outside of work in the previous three months

	Male partners		Female partners		Transgender partners	
	No.	%	No.	%	No.	%
None	41	23.4	104	59.4	115	65.7
One	81	46.3	12	6.9	1	0.6
Two	12	6.9	4	2.3	0	0.0
Three+	17	9.7	2	1.1	0	0.0
No response	24	13.7	53	30.3	60	34.3
Total	175	100.0	175	100.0	175	100.0

Table 3.22 Contraception used by Perth sex workers^a (n=175)

	No.	%
Condoms	126	72.0
The pill	35	20.0
Injection/implant	11	6.3
IUD/Coil	13	7.4
Hysterectomy or tubal ligation	9	5.1
Do not have sex	3	1.7
Other	2	1.1
Husband had vasectomy	1	0.6
Do not use contraception	10	5.7
No response	4	2.3

(a) Adds up to more than 100% because some respondents reported more than one form of contraception

These low STI rates were consistent with clinic-based studies of sex workers in Melbourne and Sydney in recent years (Lee et al., 2005).

One hundred and eight women (61.7%) reported having been vaccinated against hepatitis B and 130 (74.3%) reported prior testing for HIV infection.

Table 3.23 STIs and blood-borne viruses in Perth brothel workers

	No.	%
History of infection (self-reported) (n=175)		
Chlamydia	18	10.3
Pelvic inflammatory disease (PID)	11	6.3
Hepatitis C	11	6.3
Genital warts	9	5.1
Genital herpes	7	4.0
Gonorrhoea	5	2.9
Syphilis	2	1.1
Hepatitis B	1	0.6
HIV	0	0.0
One or more of the above	44	25.1
Current infection (tampon test) (n=111)		
<i>Mycoplasma genitalium</i>	4	3.6
Chlamydia	3	2.7
Trichomoniasis	1	0.9
Gonorrhoea	0	0.0

Psychological and social well-being

Previous research suggested that many sex workers suffer from a lack of social support and high levels of psychological distress (Perkins, 1994). A quarter of Perth sex workers reported not being in a supportive relationship; for example, having someone who would look after them if they were sick at home. This did not differ from the Melbourne and Sydney samples. Those who did have a supportive relationship could typically call on friends, partners or parents (Table 3.24).

Table 3.24 Social support of Perth sex workers

	No.	%
Has supportive relationship/s	116	66.3
No supportive relationship/s	43	24.6
No response	16	9.1
If 'yes', with whom? (n=116)		
Friend	54	46.6
Partner	51	44.0
Parent	30	25.9
Several people	20	17.2
Pet	14	12.1
Flatmate	12	10.3
Another sex worker	9	7.8
Group (religious/community/self-help)	1	0.9
Other	12	10.3

Respondents were also asked a series of questions to assess their emotional well-being using the internationally-standardised Kessler 6 scale (Table 3.25 and Table 3.26). Of the 154 respondents who answered all six questions, 18 (11.7%) scored 13 or higher on the K6 (Table 3.26), indicative of 'extreme distress'. This was similar to sex workers in Melbourne and Sydney but considerably higher than the general female population (~4%) (Pratt, 2007).

Table 3.25 Proportion of Perth sex workers who felt negative emotions most or all of the time (n=175)

	No.	%
Nervous	17	9.7
So sad that nothing could cheer you up	11	6.3
Restless or fidgety	22	12.6
Hopeless	14	8.0
Everything was an effort	16	9.1
Felt worthless	13	7.4

Table 3.26 Emotional well-being test of Perth sex workers (n=175)

	No.	%
Likely to have a serious mental illness (K6 score ≥ 13)	18	10.3
Unlikely to have a serious mental illness	136	77.7
No response	21	12.0
Total	175	100.0

Drug and alcohol use

Over two thirds of Perth sex workers reported smoking cigarettes in the previous year, significantly higher than their counterparts in Melbourne and Sydney ($p < 0.001$) and much higher than the general population. Many respondents used marijuana, speed and/or ecstasy in the previous year, though the use of opiates (or substitution therapy) was uncommon (Table 3.27).

Also of note, was that 25 (14.3%) of Perth respondents had injected a drug in the previous 12 months, significantly more than in the other two cities ($p < 0.001$). Previous research has found that between 7% and 17% of Australian brothel sex workers were currently injecting drugs. Drug injecting is much more a feature of street sex workers (Harcourt et al., 2001; Perkins & Lovejoy, 2007; Pyett et al., 1996).

Table 3.27 Substance use in the previous 12 months by Perth sex workers^a (n=175)

	No.	%
Cigarettes	119	68.0
Marijuana	45	25.7
Speed	40	22.9
Ecstasy	29	16.6
Cocaine	12	6.9
Heroin	4	2.3
Methadone	4	2.3
Buprenorphine	3	1.7

(a) Adds up to more than 100% because some respondents reported more than one drug

Previous research suggests that sex workers who inject drugs are more likely to have added risk factors; for example, they may use condoms less consistently (Sharp, 1995). In the Perth sample, however, there was no significant difference ($p = 0.67$) between IDUs (50%) and non IDUs (44.8%) in the proportion of sex workers who were using condoms inconsistently with their private partners.

However, IDUs in the Perth sample were more likely to score 13 or higher on the K6 (7, 29.2%) (experiencing 'extreme psychological distress') than non-IDUs (11, 8.8%; $p=0.005$), consistent with previous research (Boyle et al., 1997).

Ninety-seven participants (55.4%) had consumed more than four standard drinks in any one day during the previous three months, of whom 23 (13.1%) had done so the day of the survey (Table 3.28).

Table 3.28 Last time Perth sex workers consumed more than four alcoholic drinks in one day

	No.	%
Never	40	22.9
More than 3 months ago	30	17.1
2–3 months ago	37	21.1
2–4 weeks ago	18	10.3
Last 7 days	9	5.1
Yesterday	12	6.9
Today	23	13.1
No response	6	3.4
Total	175	100.0

Use of health services

Most sex workers reported having regular sexual health check-ups (Table 3.29), typically at least every six months (Table 3.30).

Table 3.29 Sexual health check-ups by Perth sex workers (n=175)

	No.	%
Have regular sex checks	155	88.6
Do not have regular sex checks	10	5.7
No response	10	5.7
Total	175	100.0

Table 3.30 Frequency of sexual health checks by Perth sex workers (n=175)

	No.	%
Weekly	2	1.3
Monthly	26	16.8
Every 2–6 months	82	52.9
Every 7–12 months	18	11.6
Less than once a year/other	6	3.9
Other	10	6.5
No response	11	7.1
Total	175	100.0

Just over half of respondents (94, 53.7%) reported going to their local general practitioner for their sexual health checks (Table 3.31). The most common reasons for seeing their chosen provider(s) were confidentiality, expertise, friendliness and ease of access (Table 3.32).

Table 3.31 Provider of sexual health checks for Perth sex workers^a

	No.	%
Local GP/doctor	94	53.7
Public (free) sexual health clinic	39	22.3
Women's health/family planning clinic	20	11.4
GP/doctor in another town	18	10.3
Private sexual health clinic	16	9.1
Other	11	6.3

(a) Adds up to more than 100% because respondents could report more than one provider

Table 3.32 Reason given by Perth sex workers for seeing this provider^a

	No.	%
Confidentiality	76	43.4
Expertise	60	34.3
Friendly	46	26.3
Easy to get there	42	24.0
Recommended	30	17.1
Cost	24	13.7
Only place I know	13	7.4
Required by employer	8	4.6
Other	24	13.7

(a) Adds up to more than 100% because respondents could report more than one reason for seeing the provider(s)

With a view to future enhanced surveillance strategies each of the sex workers in the three cities was asked about her attendance at one of three specific sexual health services (Table 3.33). Only five (2.9%) of the Perth women had attended the Royal Perth Hospital Sexual Health Centre. If the Perth women use a public sexual health service at all it tends to be the Fremantle Sexual Health Centre that provides a specific service targeting sex workers (L Marshall, personal communication).

Table 3.33 Attendance by Perth sex workers at specific sexual health services in the previous 12 months (n=175)

	No.	%
Sydney Sexual Health Centre	9	5.1
Royal Perth Hospital Sexual Health Centre	5	2.9
Melbourne Sexual Health Centre	1	0.6
None of the above	143	81.7

Health promotion

Respondents were asked if they had learnt about safer sex and sex work skills, and if so, where. The most common responses were from: other workers while on the job (98, 56.0%), educational booklets (64, 36.6%), the sexual health centre (62, 35.4%), the local GP (33.1%), educators through face-to-face sessions (41, 23.4%), friends outside work (36, 20.6%) and the internet (15, 8.6%). The small number of women reporting that they had not learnt from anywhere or anyone (17, 9.7%) did not differ between cities.

Encounters with the police and knowledge of the law

More women in Perth than in the other two cities had direct experiences with the police in the year prior to the survey (17.7%, $p=0.001$) (Table 3.34). Similarly, women in Perth were more likely to report more police visits to their current work place at least once a year than women in Melbourne and Sydney ($p=0.001$) (Table 3.35).

Table 3.34 Experiences with the police by Perth sex workers in the previous year (n=175)

	No.	%
Yes	31	17.7
No	124	70.9
No response	20	11.4
Total	175	100.0

Table 3.35 Frequency of police visits to current Perth brothel in the past year (n=175)

	No.	%
Never	50	28.6
Less than once a year	9	5.1
1 to 4 times a year	17	9.7
5 or more times a year	11	6.3
Unsure	75	42.9
Other	10	5.7
No response	3	1.7
Total	175	100.0

Most of the Perth sex workers that had contact with the police in the previous year said that the police were supportive and friendly (77.4%). However, a small number of these women reported threats of arrest, and one reported being threatened with violence, and physical assault, while most did not respond to questions about police behaviour (Table 3.36).

Table 3.36 Details of experiences with the police in the previous year (n=31)

	No.	%
Police were supportive/friendly	24	77.4
Police were not supportive/friendly	1	3.2
No response	6	19.4
Threatened with arrest	3	9.7
Not threatened with arrest	10	32.3
No response	18	58.1
Threatened with violence	1	3.2
Not threatened with violence	10	32.3
No response	20	64.5
Physically assaulted	1	3.2
Not physically assaulted	10	32.3
No response	20	58.1
Had money demanded from	1	3.2
No money was demanded of me	11	35.5
No response	19	61.3
Pressured to provide sexual services	0	0.0
Not pressured to provide sexual services	11	35.5
No response	20	64.5

Only a handful of sex workers reported someone from their work being arrested or charged (Table 3.37). It is not known if these arrests were for prostitution-related offenses.

Table 3.37 Perth sex workers' experiences with police at current workplace (n=175)

	No.	%
Police arrested/detained someone in the workplace	9	5.1
No one was arrested or detained	108	61.7
Unsure	54	30.9
No response	4	2.3
Police charged someone in the workplace	5	2.9
No one was charged	96	54.9
Unsure	65	37.1
No response	9	5.1

Over a third of the Perth women reported that they would be uncomfortable or very uncomfortable about going to the police with problems concerning sexual and physical assault, threats, theft and unpaid services (Table 3.38).

Many Perth sex workers (71, 40.6%) reported having a negative experience with a client in the previous year: 27 (15.4%) reported being threatened by clients, and 18 (10.3%) said they had been assaulted. Almost a third (51, 29.1%) reported

Table 3.38 Perth sex workers' comfort level in going to police with complaints (n=175)

	No.	%
Very comfortable	57	32.6
Comfortable	25	14.3
Somewhat comfortable	14	8.0
Not comfortable	31	17.7
Very uncomfortable	31	17.7
No response	17	9.7
Total	175	100.0

being pressured by a client to “do something they didn’t want to do”. These proportions did not vary significantly across the three cities.

During the visits to the brothels by the research team, some sex workers and brothel managers offered additional comments about their dealings with police and the role of the police database. Some of the comments were written on the managers or workers questionnaires and others were made orally to research staff. The latter comments were recorded in the researchers’ field diaries immediately after the visit. Several of the written and oral comments related to a criminal records check of workers by police and the banning of workers with drug convictions. The written comments included:

Manager: “A young girl who worked for me whom had a drug charge, caught with 7 grams meth + scales. She’d done her time. I was told by organised crime that she could not work in the industry. My argument for her is that: she had paid her penalty but was still persecuted by being told she could not work. If she is unable to work and is not well educated what do you think she will do? Go back to what she was doing in the first place. I have submitted my views on this and still waiting for a reply. I know there has to be guidelines, but please don’t persecute the vulnerable ... ”

Worker: “Workers who have been charged with drug trafficking should have an appeals board to go to if it happened a long time ago and they are rehabilitated in society.”

Oral comments included:

Manager: “I always insist on knowing her real name, seeing a photo ID and ask her to declare any medical conditions, medications,

drug use and prior convictions. The police do a criminal record check.”

Manager: “I was harassed by police to give the names and contact details of all the workers.”

Manager: “Police said that we have to give the names and numbers of all workers or we will have problems when the new Brothels Bill goes up.”

Manager: “I have a very good relationship with the police and invite them to speak to new girls and take names and contact details.”

Manager: “Police visit to get names and details of workers. We were told if we didn’t comply, it would go badly against us under the new licensing system.”

When asked about the impact of prostitution laws, seven (4.0%) Perth sex workers indicated that they had moved state or country, and four (2.3%) reported changing workplaces within the state due to state law.

Only 30% of Perth brothel workers were aware that sex work was illegal, a third incorrectly thought that it was legal (Table 3.39). This low awareness of the law was despite the fact that prostitution law reform was being actively debated by the WA parliament, with much associated publicity at the time.

Table 3.39 Perth sex workers' belief about the legal status of sex work in WA (n=175)

	No.	%
It is legal	63	36.0
It is illegal	53	30.3
Not sure	55	31.4
No response	4	2.3
Total	175	100.0

Sex workers attitudes toward their jobs and the law

At the end of the questionnaire, participants were given the opportunity to provide additional comments about the impact of the law on their work conditions, health and wellbeing: 59 (33.7%) participants provided comments.

Of these, five participants (8.5%) indicated they were comfortable with their work and had had no problems with the law or the police. One woman commented:

“Being involved in this industry for a long period I have always felt safe and comfortable

with the law and always been a friendly and efficient worker."

An additional two participants expressed concerns that the new laws would force women to work privately. A further 18 respondents (30.5%) indicated that the sex industry should be decriminalised/legalised and/or better regulated.

Nine (15.3%) women felt that improvements are needed in the area of health and safety, including the provision of free condoms and lubricant, education for sex workers on sexual health, and regular health checks. These improvements were sometimes, but not always, discussed in the context of decriminalisation. For example, one woman commented:

"Health and safety could play a bigger part in the general running of brothels."

Other individual suggestions included: a need for support for drug users, licensing and laws regulating brothels, providing sex workers with information on the laws, on taxes, and managing finances.

Several women commented on tax issues and the lack of sex worker rights relating to tax and superannuation. Some felt, as they were paying tax, the same rights should be extended to them as in other industries:

"I constantly think about the fact that I have to so diligently pay tax and yet my job is not legal."

"One previous employer would take GST monies from the girls' pay when we were told by the Tax Office it's supposed to come from the client."

Despite the fact that stigma was not specifically mentioned in the questionnaire, stigma was an issue that was spontaneously raised by 14 women. These women described feelings of being misunderstood by the public, despite their hard work and the services they provided to the community. They also commented on the impact of stigma on sex workers:

"I believe you make this industry all that you want as with everything in life. A lot of people that do not work in or understand this industry have a very one track mind and [their] view of sex workers and are very judgemental. But at the end of the day, it like any other job pays the bills! This can make it hard for some workers."

Some women felt that decriminalisation would lead to better acceptance of their work. One woman commented:

"I am sick of all the stigma surrounding sex workers. I believe it should become legalised and we should all be considered an important part of society for the service we provide."

In contrast, one sex worker commented:

"... legalising sex work will never take away from the stigma society has and pigeon-holing our career as dirty and personally having lack of self-respect. It will be a cold day in hell before I am able to be completely honest with my partner as to where I am every day, something I struggle with massively."

CHAPTER 4: PROSTITUTION LAW AND POLICING IN WA

This chapter explores the legal, policing and criminal justice policy framework applying to the sex industry in Western Australia:

1. The laws

The criminal laws in Western Australia formally prohibit most prostitution related activities. However, like the laws in many common law jurisdictions, the simple act of prostitution *per se* is not an offence. Most prostitution related criminal offences are contained in the *Prostitution Act 2000*, although there are a small number of offences in the *Criminal Code*, the *Health Act 1911* and the *Liquor Control Act 1988*. Prior to 2004, a number of offences were also contained in the *Police Act 1892*. These offences were repealed in 2004 and 2006.¹ The offences applying to sex work in Western Australia as of March 2009 are examined in the following sections.

2. Policing and prosecution

Information on all finalised court appearances in Western Australia for prostitution related offences between 2000 and 2005 (inclusive) was requested from the Crime Research Centre at the University of Western Australia (specified according to Act and section number).² The research request was approved by the Department of Attorney General Research Application Review Committee.³ In the following sections, data on all prosecutions are presented where relevant. The data presented in this report relates to all appearances in the courts over 2000–2005 (n=587) and includes appearances where the prosecution was discontinued (n=9), appearances where the accused was found not guilty (n=4) and appearances where the outcome was “other” (undefined, n=12). The analysis was primarily directed at assessing policing activity, rather than prosecution outcome in the courts, and it

was considered that court appearance provides a more direct reflection of policing activity than conviction.

3. The intersection between law and policing: “Containment”

The final section of this Chapter examines the containment policy in Western Australia: the history, application, legal underpinning, critiques and current status.

Law and policing

As noted above, the laws in Western Australia formally prohibit most prostitution related activities, but the simple act of prostitution *per se* is not an offence. Prostitution is defined in s 4 of the *Prostitution Act 2000*:

When this Act refers to prostitution it means prostitution in which payment is consideration for the sexual stimulation of a person (the client) by means of physical contact between the client and another person (the prostitute), or between either of them and anything controlled by or emanating from the other, and it is irrelevant whether payment is in money or any other form.

This is a relatively broad definition which goes beyond the provision of sexual intercourse in exchange for money. It includes massage for sexual stimulation and is not confined to monetary payment.

The following sections examine the criminal offences applying to various sex worker activities in broad offence groupings: street offences, brothel offences, live on the earnings, sole operators, escort workers, inducing/procuring, advertising and sponsorship, act of prostitution in certain circumstances, child prostitution, police powers and the associated offences, restraining orders and associated offences, venereal disease offences and liquor legislation offences.

1 The repeal was achieved by the passage of the *Criminal Law Amendment (Simple Offences) Act 2004* (No. 70 of 2004, commencement date 31 May 2005) and the *Criminal Investigation (Consequential Provisions) Act 2006* (No. 59 of 2006, commencement date 1 July 2007).

2 To Anna Ferrante, Crime Research Centre UWA; a further request has been submitted for the same data set for 2006 and 2007.

3 A condition of the Committee’s approval was that the Department of Attorney General reviews any papers prior to publication. Please note that the provision of this draft report to the Department of Health for discussion as to the content of the final form of the report does not constitute a publication and no information regarding prosecution data should be further circulated at this stage in order to meet the Committee’s requirements.

Street offences

Offences are created in ss 5 and 6 of the *Prostitution Act 2000* for both workers⁴ and clients⁵ who seek another to act as a prostitute in or within view or hearing of a public place. The penalty differs for clients and workers. The maximum penalty for the client offence is two years imprisonment, but seven years imprisonment if the person sought to act as a prostitute is a child. The maximum penalty for the worker offence is one year imprisonment, but three years if the person sought is a child. A child is defined as a person below 18 years age in s 3 of the *Prostitution Act*.

These penalties are considerably higher than the penalties imposed for roughly comparable offences in Victoria. Under the *Prostitution Control Act 1994 (Vic)*, the penalty for both workers and clients for soliciting in a public place is imprisonment for one month, although higher maximums apply for repeat offences. The maximum penalty for clients and workers in NSW under ss 19 and 19A of the *Summary Offences Act 1988 (NSW)* is three months imprisonment.

The Western Australian soliciting offences are also widely drafted, as noted by Gilmour-Walsh.⁶ They cover acts of soliciting, but also extend to loitering and frequenting a place. Considerable assistance is given to the prosecution of these offences by the presumption in s 52 of the *Prostitution Act 2000 (WA)*.⁷ Under s 52, a person is presumed to have the intent of loitering or frequenting a place with the intention of inviting another to act as a prostitute unless the contrary is proved. This places a burden of proof on the defendant to prove that they had no intent to invite another to act as a prostitute. For example, a defendant may seek to claim that they were waiting at a bus stop located near a street soliciting beat and thus had no intent to invite another to act as a prostitute. Under these circumstances, the defendant has a burden of proof on the balance of probabilities.

There is also a relatively unusual soliciting offence contained in s 19 of the *Prostitution Act 2000 (WA)*.⁸ It is a specific offence for a child to invite, loiter or frequent a place with the intention inviting another person to act as a prostitute and the

4 s 6 of the *Prostitution Act 2000* provides:

“Seeking client in or in view or within hearing of public place

- (1) A person who, in or in the view or within hearing of a public place, seeks another person to be a prostitute’s client commits an offence under this subsection.
- (2) A person who commits an offence under subsection (1) is liable —
 - (a) if the person whom the offender seeks to be a prostitute’s client, or any of them if there are more than one, is a child, to imprisonment for 3 years;
 - (b) in any other case, to imprisonment for one year.”

5 s 5 of the *Prostitution Act 2000* provides:

“Seeking prostitute in or in view or within hearing of public place

- (1) A person who, in or in the view or within hearing of a public place, seeks another person to act as a prostitute commits an offence under this subsection.
- (2) The offence under subsection (1) is a crime if the person whom the offender seeks to act as a prostitute, or any of them if there are more than one, is a child.
- (3) A person who commits an offence under subsection (1) is liable —
 - (a) if it is a simple offence, to imprisonment for 2 years;
 - (b) if it is a crime, to imprisonment for 7 years.”

6 Gilmour-Walsh, B. N., (2003). ‘No Bad Sex Workers, Just Bad Laws? The Legal Regulation of Prostitution in Australia’, unpublished PhD thesis, ANU.

7 s 52 (1) : A person loitering in or frequenting a place in circumstances giving reasonable grounds for suspecting that the person had an intention described in section 5(4)(b) or 6(3)(b) is to be presumed to have had that intention unless the contrary is proved.

8 s 19 of the *Prostitution Act 2000* provides:

“(1) A child is not to seek another person to act as a prostitute.

Penalty: \$6 000.

- (2) For the purposes of subsection (1), a child seeks another person to act as a prostitute if the child —
 - (a) invites or requests another person to act as a prostitute; or
 - (b) loiters in or frequents a place for the purpose of, or with the intention of —
 - (i) inviting or requesting another person to act as a prostitute; or
 - (ii) receiving an invitation for another person to act as a prostitute.
- (3) It makes no difference —
 - (a) whether or not the child is the prospective client;
 - (b) whether or not a particular person is sought to act as a prostitute; or
 - (c) whether the child makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the child seeks to act as a prostitute.”

maximum penalty is a \$6,000 fine. Under s 19, the child client commits the offence and is the person charged. Unlike the worker and client offences in ss 5 and 6 of the *Prostitution Act*, there is no requirement that the offence occur in or in view or within hearing of a public place. There is no comparable offence in either New South Wales or Victoria where a child client may be charged with soliciting. The charges finalised for the soliciting offences in the courts are presented in Table 4.1 (see page 23).

In common with many jurisdictions, the public soliciting offences are the most heavily prosecuted prostitution offences in Western Australia. Of particular interest, is the higher number of client prosecutions as compared to workers. There have been no prosecutions of child clients under s 19 of the *Prostitution Act* between 2000 (when the legislation was enacted) and 2005 (inclusive).

Brothel offences

The offences prohibiting brothel keeping or management are contained in s 190 of the *Criminal*

Code, introduced in 2004 and proclaimed in 2005.⁹ Section 190 is broadly drafted and prohibits a wide variety of acts relating to premises used for the purposes of prostitution: keeping, managing, assisting in the management, being the tenant, lessee or occupier, lessor, landlord, agent or rent collector.¹⁰

The maximum penalty is three years imprisonment, reduced to one year if disposed of summarily and or a fine of up to \$12,000. The penalty is relatively light compared to the penalties imposed under s 22 of the *Prostitution Control Act 1994 (Vic)* for operating a brothel without a license: a maximum of five years imprisonment and/or a fine of up to \$68,000.

The previous Western Australian brothel keeping offences (ss 209 and 213 of the *Criminal Code*¹¹ and s 76F of the *Police Act 1892*¹²) were repealed in 2004. Section 76F of the *Police Act* was largely re-enacted as the current s 190 of the *Criminal Code*, with one notable exception. The proviso in s 76F that the offence can be committed even if the premises are kept or occupied by one person

9 s 190 was introduced into the *Criminal Code* by the *Criminal Law Amendment (Simple Offences) Act 2004* (No. 70 of 2004, commencement date 31 May 2005).

10 s 190 provides:

“Being involved with prostitution

(1) Any person who —

(a) keeps or manages, or acts, or assists in the management of any premises for purposes of prostitution; or

(b) being the tenant, lessee, or occupier of any premises, permits such premises, or any part thereof, to be used for purposes of prostitution; or

(c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same, or any part thereof, or collects the rent with the knowledge that such premises, or some part thereof, are or is to be used for purposes of prostitution, or is a party to the continued use of such premises, or any part thereof, for purposes of prostitution, is guilty of a crime.”

11 s 209:

“Bawdy houses

Any person who keeps a house, room, set of rooms or place of any kind whatever for purposes of prostitution, is guilty of a misdemeanour, and is liable to imprisonment for 3 years”.

s 213:

“Acting as keeper of bawdy houses

Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in section 209, is to be taken to be the keeper thereof, whether he is or is not the real keeper.”

12 s 76F:

“Keeping etc premises for prostitution

Any person who:

(1) keeps or manages, or acts, or assists in the management of any premises for purposes of prostitution; or

(2) being the tenant, lessee, or occupier of any premises, knowingly permits such premises, or any part thereof, to be used for purposes of prostitution; or

(3) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same, or any part thereof, or collects the rent with the knowledge that such premises, or some part thereof, are or is to be used for purposes of prostitution, or is a party to the continued use of such premises, or any part thereof, for purposes, of prostitution, is liable, on summary conviction:

(a) to a fine not exceeding \$100; and

(b) on a second or subsequent conviction, to a fine not exceeding \$200, or to imprisonment not exceeding 12 months.

It is immaterial whether the premises kept or occupied for prostitution are kept or occupied by one person or more than one person.”

Table 4.1 Soliciting (street) offences finalised in the WA courts 2000–2005

Offence	2000	2001	2002	2003	2004	2005	Total
Prostitution Act s 5							
Soliciting in a public place by client	20	94	38	9	23	71	255
Prostitution Act s 6							
Soliciting in a public place by worker	14	51	37	11	8	19	140

Table 4.2 Brothel keeping offences finalised in the WA courts 2000–2005

Offence	2000	2001	2002	2003	2004	2005	Total
Criminal Code s 209							
Keep a bawdy house for purpose of prostitution (repealed May 2005)	2	1	3	4	0	0	10
Criminal Code s 190							
Keep or manage premise for purpose of prostitution (commenced May 2005)	0	0	0	0	0	0	0
Police Act s 76F							
Keep or manage premises for the purpose of prostitution (repealed May 2005)	1	5	5	5	2	1	19

or more than one person was not re-enacted in the *Criminal Code* in 2004. This omission may be significant for sole operators and will be discussed later. The charges finalised for the brothel keeping offences in the courts are presented in Table 4.2.

Between 2000 and the present, there was a relatively low rate of brothel keeping offence prosecutions: between one and nine prosecutions per year for all brothel keeping offences. There appears to be a decline in prosecutions from 2004. At face value, given that brothel keeping was strictly illegal throughout this period, the low number of prosecutions is surprising and appears to be related to the containment policy and its variations after 2000.¹³

Live on the earnings

It is an offence to live on the earnings of prostitution under s 190 (3) of the *Criminal Code*.¹⁴ This provision was transferred from s 76G (1) (a) of the *Police Act 1892* in 2004.¹⁵ As observed by the Law Reform Commission of Western Australia, the live on the earnings offence applies to a person who lives with a prostitute and is wholly or partly kept by her, but may also apply in other situations, such as the supply of goods and services¹⁶:

“Prostitutes, like everyone else, need food, clothing, accommodation and so on, and so the courts have attempted to distinguish between the supply of goods and services which in their nature can only relate to prostitution, in which circumstances the supplier would commit the offence¹⁷; and

13 Advice to the Parliament of Western Australia was provided on 14 November 2000, that the containment policy was abandoned on 1 August 2000 by the then Minister for Police, Mr Kevin Prince: Parliament of Western Australia, Legislative Assembly, Hansard, 14 November 2000, p2978/2.

14 s 190 (3) of the *Criminal Code*:

“(3) Any person who lives wholly or partly on earnings that the person knows are the earnings of prostitution is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12,000.

(4) For the purposes of subsection (3), if a person lives with, or is habitually in the company of a prostitute, and has no visible means of subsistence, the person shall, unless he or she can satisfy the court to the contrary, be taken to be living on earnings that the person knows are the earnings of prostitution”.

15 The repeal of s 76F and the transfer to s 190 was achieved by the *Criminal Code* by the *Criminal Law Amendment (Simple Offences) Act 2004* (No. 70 of 2004, commencement date 31 May 2005).

16 Law Reform Commission of Western Australia, Project No 85, *Police Act Offences*, Discussion Paper, May 1989, p 89.

17 Footnote supplied by the Law Reform Commission of Western Australia, *ibid*, p89: “Eg *Calvert v Mayes* [1954] 1 QB 342 (the owner-driver of a taxi allowed his taxi to be used by American servicemen and prostitutes on short journeys during which sexual intercourse took place; the defendant was paid the proper fee, but without the presence of the prostitutes and the opportunities for sexual intercourse his income would have been very much reduced).”

the supply of goods and services which are not exclusively referable to prostitution but which will be used to further it in some way, in which case the supplier will only commit the offence where the charge made for the goods or services is exorbitant because the woman is a prostitute¹⁸.”

Australian case law supports this distinction and it has been held in NSW that an offence similar to s 190(3) of the *Criminal Code* requires some continuous association and habitual receipt of money.¹⁹

It should also be noted that s 190(3) is not restricted to exploitative relationships. It may also apply to the dependants of the prostitute even in the absence of any exploitation. A dependant who lives with the prostitute is presumed to be in breach of the section and must affirmatively establish that he or she has independent lawful means of support. The offence may also apply to co-workers of the prostitute, such as the cleaner or the receptionist in a brothel.

Between 2000 and 2005 (inclusive), no charges were prosecuted in the courts for live on the earnings.

Sole operators

The position of sole operators, commonly known as private workers in the industry, is somewhat unclear under Western Australian law. Sole operators or private workers are ordinarily defined as one woman working from a private residence which may be her home or may be a residence which is not her home, but leased or owned for the purpose of providing sexual services.

The offences prohibiting brothel keeping or management contained in s 190 of the *Criminal Code* were transferred from s 76F of the *Police Act* in 2004. However, as noted above, the proviso in

s 76F that “it is immaterial whether the premises kept or occupied for prostitution are kept or occupied by one person or more than one person” was not re-enacted in s 190 of the *Criminal Code* in 2004. It is necessary to examine some of the history of these sections and the previous decisions on related Western Australian laws in order to assess the ambit of s 190 in relation to sole operators.

According to the Law Reform Commission of Western Australia, the former s 76F proviso relating to one person:

“ ... was inserted to overcome the limitations of the common law, under which premises could not be a brothel unless they were used for the prostitution of more than one woman: *Moore v Guidotti* (1900) 2 WALR 123”.²⁰

In *Storey v Wick* [1977] WAR 47, it was held that the offence under s 76F could be committed where a woman leased premises for the purpose of prostitution of another woman whose fees she shared. However, *obiter* remarks by Jones J considered that, where a woman offered sexual services in her own home, no offence would be committed because the keeping of the premises is for the purpose of living in them and the prostitution is incidental. The Supreme Court of Queensland held that a similar provision in Queensland law also did not prohibit a sole operator providing sexual services from her own home: *Parker v Jeffrey ex parte Parker* [1963] QWN 32.

Whilst these decisions do not constitute strong authority, it is arguable that sole operators working from their own home in Western Australia are not committing an offence under s 190 of the *Criminal Code*. This view has been adopted by the Law Reform Commission of Western Australia²¹ and a former Attorney General and a former Minister

18 Footnote supplied by the Law Reform Commission of Western Australia, *ibid*, p89: “Eg *R v Thomas* [1957] 2 All ER 181, in which a man let a prostitute have the use of a room for prostitution between 9.00 pm and 2.00 am each night. The court said that the offence of living on the earnings would be committed if the rent was grossly inflated. It has however been suggested that the accommodation was provided for prostitution and nothing else, and whether the rent was inflated or not should have been irrelevant: *Shaw v DPP* [1962] AC 220, 265 per Viscount Simonds.”

19 In *Shaluga* (1958) 75 WN (NSW) 120, the appellant was described as “working and receiving substantial remuneration from honest and lucrative employment”. On one occasion, he drove a man and two women to and from Holsworthy Military Camp, where the women engaged in prostitution. *Shaluga* was summarily convicted of living partly on the earnings of prostitution in relation to the fee he earned for driving. The Court of Appeal unanimously quashed the verdict, noting that there was only one isolated incident. The court held that there must be some continuous association and some habitual receipt of money from the earnings of prostitution.

20 Law Reform Commission of Western Australia, Project No 85, *Police Act Offences*, Discussion Paper, May 1989, p 88.

21 Law Reform Commission of Western Australia, Project No 85, *Police Act Offences*, Discussion Paper, May 1989, p 88.

for Police & Emergency Services in advice to the Parliament of Western Australia²².

Escort workers

There appear to be no prohibitions regarding the conduct of an escort business or the work of escorts. It was held in *Powell v Devereaux* (unreported) Supreme Court of Western Australia, 12 June 1987, Appeal No 1053 of 1987 that the brothel keeping offence under s 76F of the *Police Act* (now s 190 of the *Criminal Code*) does not extend to the running of an escort agency where the workers and clients met elsewhere. However, as noted by the Law Reform Commission of Western Australia²³, a prosecution for the offence of live on the earnings may extend to those involved in the running of an escort agency.

Inducing/procuring

The laws in Western Australia contain two overlapping procuring offences. The first is contained in s191 of the *Criminal Code* and, as noted by Gilmour-Walsh²⁴, it is an older style procuring offence²⁵.

It prohibits procuring for a wide variety of purposes: unlawful carnal connection, to become a common

prostitute, to leave Western Australia with the intention of becoming an inmate of a brothel, or to leave her usual place of abode in Western Australia to become an inmate of a brothel. The offence does not contain any requirements relating to threats, exploitation or coercion. The consent of the prostitute is not a defence and the section appears to assert extra-territorial jurisdiction in so far as the prostitution may occur either in Western Australia or elsewhere. Also notable are the references to becoming "an inmate of a brothel", rather than an employee. The requirement of being an "inmate" of a brothel may mean that the offence has limited application in contemporary circumstances. Few sex workers today actually dwell in or reside in brothels.

The more modern procuring offence is contained in s 7 of the *Prostitution Act 2000*.²⁶ It prohibits seeking to induce a person to act as a prostitute by assault, threat of assault, intimidation, supplying a prohibited drug, making a false representation or fraud or doing anything else (emphasis added). The reference in s 7(1) (e) to "do anything else" renders the other nominated threats and acts superfluous and the offence does not require threat or coercion. The penalty difference between s 191 of the

22 Parliament of Western Australia as per Mr Peter Foss, Attorney General, Legislative Council *Hansard*, p7355/1, 23 October 1997 and Parliament of Western Australia as per Mrs Michelle Roberts, Minister for Police and Emergency Services, Legislative Assembly, *Hansard*, p7355/1, 25 June 2003.

23 Law Reform Commission of Western Australia, Project No 85, *Police Act Offences*, Discussion Paper, May 1989, p 88.

24 Gilmour-Walsh, B. N., 'No Bad Sex Workers, Just Bad Laws? The Legal Regulation of Prostitution in Australia', unpublished PhD thesis, ANU, 2003.

25 s 191 of the *Criminal Code* provides:

"(1) Any person who —

- (a) Procures a girl or woman who is under the age of 21 years, and is not a common prostitute or of known immoral character to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
 - (b) Procures a woman or girl to become a common prostitute either in Western Australia or elsewhere; or
 - (c) Procures a woman or girl to leave Western Australia, with intent that she may become an inmate of a brothel, elsewhere; or
 - (d) Procures a woman or girl to leave her usual place of abode in Western Australia, such place not being a brothel, with intent that she may, for the purposes of prostitution, become an inmate of a brothel, either in Western Australia or elsewhere; or
 - (e) Procures a man or boy for any of the above purposes;
- is guilty of a crime, and is liable to imprisonment for 2 years ...

(2) It is no defence to a charge of an offence against this section that the act of the accused person by which the offence was committed was done with the consent of the person with respect to whom the act was done."

26 s 7 of the *Prostitution Act 2000* provides:

"(1) A person is not to —

- (a) assault or threaten to assault anyone;
- (b) intimidate anyone;
- (c) supply or offer to supply a prohibited drug to anyone;
- (d) make a false representation or use any false pretence or other fraudulent means; or
- (e) do anything else, or refrain from doing anything, with the intention of inducing another person who is not a child to act, or continue to act, as a prostitute.

(2) An offence under subsection (1) is a crime.

Penalty: Imprisonment for 10 years.

Summary conviction penalty: Imprisonment for 3 years."

Table 4.3 Procuring charges finalised in the WA courts 2000–2005

Offence	2000	2001	2002	2003	2004	2005	Total
<i>Prostitution Act s 7</i>							
“Do anything” to induce a person to be a prostitute	0	0	0	0	2	0	2
<i>Criminal Code s 191</i>							
Procure a woman to become a common prostitute	0	7	0	0	0	0	7

Criminal Code and s 7 of the *Prostitution Act* is large: two years maximum imprisonment vs 10 years maximum imprisonment.

Both offences are broad in their application and could apply to a manager who offers a sex worker employment in a brothel. The procuring charges finalised in the courts are presented in Table 4.3.

The charging pattern is highly unusual. In the six years examined, prosecutions occurred only in one year for each offence. Little information is available about the circumstances surrounding these charges.

Advertising for sex worker recruitment and business sponsorship

The laws in Western Australia contain a very wide prohibition in s 9 of the *Prostitution Act* against advertising to recruit both sex workers and other employees who may be employed by a brothel, such as security guards, receptionists and cleaners.²⁷ Whilst the offence does not carry a prison sentence, a high maximum fine applies: \$50,000.

It is also an offence under s 10 of the *Prostitution Act 2000* to promote or publicise a prostitute or prostitution business under an arrangement which involves sponsorship or to provide a sponsorship.²⁸

Sponsorship is defined to include a scholarship, prize, gift or other like benefit. This is an unusual provision in so far as it does not appear to prohibit the advertising of brothels *per se* and is confined to the situation where a worker or brothel is subject to a “sponsorship”. The harm addressed by this offence is unclear and there are no comparable provisions in Victoria or NSW. The Minister’s second reading speech in 1999 does not provide an analysis of the scope or the underlying rationale for the offence.²⁹

No charges have been laid under either s 9 or s 10 since enactment in 2000.

Offences concerning acts of prostitution in specified circumstances

The Western Australian laws are relatively unusual in so far as the act of prostitution is a criminal offence under certain circumstances. As noted

27 s 9 of the *Prostitution Act 2000* provides:

“Promoting employment in prostitution industry

A person is not to publish or cause to be published a statement that is intended or likely to induce a person to —

(a) seek employment as, or act as, a prostitute; or

(b) seek employment in any other capacity in any business involving the provision of prostitution.

Penalty: \$50 000”.

28 s 10 of the *Prostitution Act 2000* provides:

“(1) A person is not, in Western Australia, to promote or publicize, or agree to promote or publicize —

(a) any person as a prostitute; or

(b) any business involving prostitution, under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person.

(2) A person (whether inside or outside Western Australia) is not to provide, or agree to provide, in Western Australia a sponsorship under a contract or arrangement of a kind referred to in subsection (1).

(3) In this section —

sponsorship includes —

(a) a scholarship, prize, gift or other like benefit; and

(b) any financial arrangement (other than a bona fide contract of employment or a bona fide contract for services) for directly promoting or publicizing a person or business as referred to in subsection (1)(a) or (b) through any medium.

Penalty: \$50 000.

29 Mr Kevin Prince, Minister for Police, Legislative Assembly 23 November 1999, *Hansard* p 3599, Parliament of Western Australia.

Table 4.4 Charges finalised in the WA courts for failure to use prophylactic 2000–2005

Offence	2000	2001	2002	2003	2004	2005	Total
<i>Prostitution Act s 8</i>							
Failure to use prophylactic	10	11	3	0	0	8	32

previously, most prostitution laws from common law countries do not create offences relating to the act of prostitution *per se*: the offences apply to the surrounding activities such as soliciting or brothel keeping. However, in Western Australia the act of prostitution is an offence if:

1. The act takes place without the use of a prophylactic.³⁰ Under this provision, both the worker and the client may be charged.
2. The act takes place with a child client.³¹ Under this provision, the worker is charged.
3. The act takes place with a child worker. Under this provision, the child worker is charged.³²
4. The act takes place with a prostitute who has been declared to be a drug trafficker. Under this provision, the worker is charged.³³
5. The act takes place with a prostitute who has been convicted of a Schedule 1 offence. Under this provision, the worker is charged.³⁴

Apart from the prophylactic offence, these are relatively unusual offences without clear legal

origins. No similar offences occur in Victoria or NSW. The offence contained in s 14(a) of the *Prostitution Act 2000* is quite exceptional in so far as the child worker is penalised. Most child prostitution laws regard child workers as victims. The laws seek to offer protection to the child and impose liability on those offering children for prostitution or clients using children for prostitution.

No charges have been laid for any of these offences since enactment in 2000, with the exception of s 8 of the *Prostitution Act 2000* (failure to use prophylactic). No information is available as to the circumstances under which failure to use a prophylactic has been charged or the evidence relied upon. Charges finalised in the courts for failing to use a prophylactic are presented in Table 4.4.

Notwithstanding the absence of prosecutions for the offences under s 14, the section appears to have considerable relevance to police practices under the containment policy and will be discussed later.

30 s 8 of the *Prostitution Act 2000*: "It is an offence for a person to engage in an act of prostitution without using a prophylactic that is appropriate for preventing the transmission of bodily fluid from one person to another.
Penalty: \$5 000".

31 s 15 of the *Prostitution Act 2000*: "A person who acts as a prostitute for a client who is a child commits an offence under this section.
Penalty: Imprisonment for 9 months".

32 s 14 of the *Prostitution Act 2000*: "A person who acts as a prostitute commits an offence under this section if —
(a) the person is a child;
Penalty: Imprisonment for 2 years".

33 s 14 of the *Prostitution Act 2000*: "A person who acts as a prostitute commits an offence under this section if —
(b) the person has been declared under section 32A of the *Misuse of Drugs Act 1981* to be a drug trafficker; or
Penalty: Imprisonment for 2 years."

Section 32A of the *Misuse of Drugs Act 1981* allows for a declaration to be made if a person has been convicted of two or more serious drug offences within 10 years or one serious drug offence where the quantity involved is not less than the quantity specified in Schedule 7 or 8 of the Act. Serious drug offences are defined in ss 6, 7 and 33 of the Act and relate to supply, manufacture or cultivate. By way of example, the quantity specified for cannabis leaf in Schedule 7 is 3 kilograms. In most Australian jurisdictions this quantity would be classified as an indictable quantity and carry a maximum sentence of between 10 and 15 years imprisonment.

34 s 14 (c) of the *Prostitution Act 2000*: "A person who acts as a prostitute commits an offence under this section if —
c) the person has been found guilty of an offence described in Schedule 1.
Penalty: Imprisonment for 2 years."

Schedule 1 of the *Prostitution Act* lists approximately 20 criminal provisions. Most are from the *Criminal Code*. The offences include murder, assault causing grievous bodily harm, kidnapping, deprivation of liberty, a number of serious sexual offences including child sexual assault offences and the possession of child pornography.

Table 4.5 Child prostitution offences finalised in the WA courts 2000–2005

Offence	2000	2001	2002	2003	2004	2005	Total
<i>Prostitution Act s 16</i>							
Cause or permit a child to act as a prostitute	0	1	2	3	3	4	13

Child prostitution offences

In common with other Australian jurisdictions, a number of serious criminal offences pertaining to offering a child for prostitution are contained in the *Prostitution Act 2000*. They include causing, permitting or induce a child to act as a prostitute³⁵, obtaining payment for prostitution by a child³⁶, agreements for prostitution by a child³⁷, prostitution at a place where a child is present³⁸ and allowing a child to be present at a place of prostitution³⁹. The most serious offences relate to causing or agreeing to a child to act as a prostitute and receiving payment. These offences carry maximum penalties of 14 years imprisonment. The penalties are comparable with the penalties for similar offences

in NSW and Victoria. The child prostitution offences finalised in the courts are presented in Table 4.5.

Charges have only been laid under s 16.

Police powers and associated offences

There are wide ranging enforcement powers granted to police under the *Prostitution Act 2000* and, associated with these powers, a number of offences created for failing to comply with police orders and directions. The powers granted to police include a power to order a person to move on⁴⁰, a power to require the production of documents or provide information⁴¹, the power to search people and premises with or without a warrant⁴².

35 s 16 *Prostitution Act 2000* provides:

“(1) A person is not to cause or permit a child to act, or continue to act, as a prostitute.

(2) A person is not to do anything with the intention of inducing a child to act, or continue to act, as a prostitute.

Penalty: Imprisonment for 14 years.”

36 s 17 *Prostitution Act 2000* provides:

“(1) A person is not to receive a payment, in money or any other form, knowing that it or any part of it has been derived, directly or indirectly, from a child taking part in an act of prostitution, whether as a prostitute or as a client.

Penalty: Imprisonment for 14 years.”

37 s 18 *Prostitution Act 2000* provides:

“(1) A person is not to enter into, or offer to enter into, an agreement under which a child is to act as a prostitute, whether for that person or anyone else.

Penalty: Imprisonment for 14 years.”

38 s 20 *Prostitution Act 2000* provides:

“(1) A person who takes part, whether as a prostitute or as a client, in an act of prostitution at a place where the person knows that a child is present commits an offence under this section.

Penalty: (a) for a first offence — \$25 000;

(b) for any subsequent offence — imprisonment for 2 years.”

39 s 21 *Prostitution Act 2000* provides:

“A person who allows a child to enter or remain at a place at which the person knows or could be reasonably expected to know —

(a) an act of prostitution is taking place; or

(b) a business involving more than one prostitute in the provision of prostitution is being carried on, commits an offence under this section.

Penalty: (a) for a first offence — \$25 000;

(b) for any subsequent offence — imprisonment for 2 years.”

40 *Ibid.* s 24.

41 *Ibid.* s 23.

42 *Ibid.* ss 25, 26 and 27.

Table 4.6 Charges finalised in the WA courts for failure to comply with police direction 2000–2005

Offence	2000	2001	2002	2003	2004	2005	Total
<i>Prostitution Act s 11</i>							
Hinder police	0	0	0	0	1	0	1
<i>Prostitution Act s 12</i>							
Contravene move on direction	14	16	8	3	13	7	61

The associated offences are:

- Contravene a move on direction⁴³,
- Failure to provide information or a document⁴⁴, and
- Hindering the police in the performance of any function under the Act⁴⁵.

Substantial numbers of prosecutions have occurred since 2000 for contravene a move on direction. No prosecutions have occurred for failure to produce a document or answer a question. The charges finalised in the courts are presented in Table 4.6.

This pattern of prosecution is consistent with the heavy prosecution of street offences discussed earlier.

Restraining orders and associated offences

Under s 37 of the *Prostitution Act 2000*, the courts have the power to issue a restraining order to prevent the commission of future offences when a person has been found guilty of a s 5 or s 6 offence (the soliciting offences) or any other offence under the *Prostitution Act*.⁴⁶ Under s 38, the court may also issue a restraining order where a person has in the past been subject to a move on direction.⁴⁷ The duration of the restraining order is as specified in the order or one year if not specified.⁴⁸ The terms of the order may include restraints against being on or near specified premises or in a specified locality or place, engaging in behaviour of a specified kind,

43 s 12 of the *Prostitution Act 2000* provides:

“A person is not to, without lawful excuse, contravene a direction given under section 24.
Penalty: For a first offence, \$6 000. For a subsequent offence, imprisonment for one year.”

44 s 13 of the *Prostitution Act 2000* provides

“(1) A person is not to, without lawful excuse, refuse or fail to produce a document or other thing as required under section 23.
(2) A person is not to, without lawful excuse, refuse or fail to answer a question or otherwise give information when required to do so under section 23.
Penalty: For an offence against subsection (1) or (2), imprisonment for 2 years.”

45 s 11 of the *Prostitution Act 2000* provides:

“A person is not to delay, obstruct or otherwise hinder a police officer or any other person in the performance of any function under this Act.
Penalty: Imprisonment for 2 years.”

46 s 37 of the *Prostitution Act 2000* provides:

“If a court finds that a person has committed an offence under section 5 or 6 or any other offence under this Act prescribed for the purposes of this section by the regulations and the court is satisfied that, unless restrained, the person is subsequently likely to commit an offence of a similar kind, the court may make a restraining order if it considers that making the order would be appropriate in the circumstances.”

47 s 38 of the *Prostitution Act 2000* provides:

“(1) If circumstances arise that would give sufficient grounds for a police officer to give a person a direction under section 24 and that person has previously been given a direction under that provision, the police officer may apply for a restraining order against the person.
(2) The application is to be made —
(a) if the person against whom the order is sought is a child, to the Children’s Court; or
(b) otherwise, to the Magistrates Court.
(3) If the court to which the application is made considers it appropriate in the circumstances to do so, it may make a restraining order.”

48 s 41 of the *Prostitution Act 2000* provides:

“(1) A restraining order takes effect when it is served on the person against whom it is made or, if a later time is specified in the order, at that time.
(2) Unless it is cancelled sooner, a restraining order remains in effect for the period specified in the order or, if no period is specified, for one year from the day on which it took effect.”

entering or remaining in a place, and may restrict the person's access to a place, even if the person has a legal or equitable right to be there.⁴⁹

A breach of a restraining order is an offence carrying a maximum penalty of a \$5,000 fine.⁵⁰ No prosecutions for a breach of a restraining order have been heard in the courts since 2000. No information is available on the number of restraining orders granted.

Venereal disease offences

The *Health Act 1911* contains an offence of knowingly infect another person with a venereal disease or knowingly do an act likely to lead to the infection of another.⁵¹ Under s 310(2), a special provision applies to a prostitute who is "residing" in a brothel and has received a notification under s 307 (1) of the *Health Act*. A s 307(1) notice contains an order from the Executive Director of Public Health requiring the person to consult a medical practitioner and to provide a certificate from the medical practitioner that the person is or is not suffering from a disease. Section 310(2) provides that if a prostitute continues to "reside" in a brothel after receipt of the notice, he or she is deemed to be knowingly doing an act likely to lead

to the infection of another person. From a doctrinal perspective, this is an extra-ordinary provision; both the *actus reus* and the *mens rea* are presumed to exist if the worker continues to reside in a brothel.

The requirement for a worker to "reside" in a brothel in the offence may create considerable problems for the prosecution of this offence in contemporary circumstances. The term "reside" is not defined in the Act and thus arguably, the ordinary meaning would apply: to permanently or continuously occupy a domicile. Few sex workers in contemporary Australia establish a domicile within a brothel; they usually live elsewhere. The first version of s 310 of the *Health Act* was enacted in 1915 (with subsequent minor amendments in 1944, 1965 and 1987). The sex industry has obviously changed substantially since 1915 and the offence has limited (if any) application today. There appears to be no justification for preserving an offence which has little prospect of prosecution under contemporary circumstances and which is not in fact prosecuted.

The penalty for this offence is a fine of up to \$2,500. No prosecutions under s 310 have occurred since 2000.

49 s 40 of the *Prostitution Act 2000* provides:

- (1) If the restraining order is made under section 37, it may impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court considers appropriate to prevent the person from subsequently committing an offence similar in kind to the offence the person is found to have committed or from subsequently giving a police officer grounds for giving the person a direction under section 24.
- (2) If the restraining order is made under section 38, it may impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court considers appropriate to prevent the person from subsequently giving a police officer grounds for giving the person a direction under section 24.
- (3) Without limiting the restraints that may be imposed, the order may restrain the person against whom it is made from —
 - (a) being on or near specified premises or in a specified locality or place;
 - (b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time, or in a specified manner.
- (4) A restraint may be imposed absolutely or on any terms the court considers appropriate.
- (5) A restraining order may restrain the person against whom it is made from entering or remaining in a place, or restrict the person's access to a place, even if the person has a legal or equitable right to be there."

50 s 46 of the *Prostitution Act 2000* provides:

"A person against whom a restraining order was made under this Part who contravenes the order commits an offence.
Penalty: \$5,000"

51 s 310 of the *Health Act 1911* provides:

- (1) A person who knowingly infects any other person with a venereal disease or knowingly does or suffers any act likely to lead to the infection of any other person with a venereal disease commits an offence.
- (2) Where a woman who is a prostitute, and while residing in a brothel or in premises reputed to be a brothel has received notice under section 307(1), and after the receipt of such notice continues to reside in a brothel or in premises reputed to be a brothel, such woman shall by reason of such continued residence be deemed knowingly to be doing an act likely to lead to the infection of any other person with venereal disease within the meaning and for the purposes of this section."

Liquor Act offences

Under s 115 of the *Liquor Control Act 1988*, it is an offence for a licensee or their employee to permit a prostitute to remain on licensed premises.⁵² The penalty for the licensee or manager is a fine of up to \$10,000 and up to \$4,000 for the employee. No prosecutions have been undertaken under s 115 since 2000.⁵³

Containment

Brothel keeping has been an offence in WA since June 1829⁵⁴ when the English common law offence of keeping a bawdy house was received into WA. Notwithstanding this long history of formal legal prohibition, brothel keeping has been allowed under a “containment policy”, at least since the early 1900s. The containment policy has been described in some excellent historical studies and recent reports from Royal Commissions and other inquiries.⁵⁵

History

Containment was first introduced in Kalgoorlie in the early 1900s and later transferred to Perth. In Kalgoorlie, police granted “immunity” from prosecution for brothel keepers provided that the brothels were located in particular areas nominated by police and that brothels were female only

operations. All workers were vetted and “registered” with police and were required to undergo medical examinations and to live at the brothel. Restrictions were also imposed by police that prevented workers from mixing freely in the community. Containment was applied in Perth in the 1920s, with some modification to meet the local constraints.

Until the Norris Royal Commission of 1975–76, the policy was not widely known in the community and “operated informally”⁵⁶. After 1975, it operated “as a stated policy of the Western Australian Police Service”⁵⁷. Unfortunately, the Kennedy Royal Commission did not provide any definitions as to the distinction between a policy which operates “informally” and a “stated policy”. The distinction has no basis in law and it appears that for approximately 100 years, the formal provisions of the criminal law prohibiting brothel keeping have been largely ignored by police.

Advice by the Minister for Police to the Parliament of Western Australia in 2000 stated that 10 brothels were permitted under the containment policy.⁵⁸

Over the years, the containment policy has been the focus of a number of reviews, and it has been criticised for its vagueness with regards to sex workers’ legal rights, its potential adverse impact on sex workers’ occupational health and safety, its

52 s 115 of the *Liquor Control Act 1988* provides:

“(1) Where a licensee, whether personally or by an employee or agent —

(a) permits —

(i) drunkenness; or

(ii) violent, quarrelsome, disorderly or indecent behaviour, take place on the licensed premises; or

(b) permits any reputed thief, prostitute or supplier of unlawful drugs to remain on the licensed premises; or

(c) permits or suffers to be conducted on the licensed premises any gaming or betting which contravenes section 110(1) of the *Gaming and Wagering Commission Act 1987* or any other activity which contravenes a provision of another written law, that licensee, and the employee or agent concerned, commits an offence.”

53 A related offence existed under s 42 of the *Police Act 1892*: refusal by a prostitute to leave a place of public entertainment. This offence was prosecuted relatively frequently until its repeal in 2007. There were 46 charges finalised in the courts between 2000 and 2005 (inclusive).

54 The English common law was received into the colonies of Australia at various times in the first part of the 19th century. The reception date for Western Australia was 1 June 1829: *Interpretation Act 1918 (WA)*, s 43.

55 Davidson, R. (1980). *Prostitution in Perth and Fremantle and on the Eastern Goldfields*, MA Thesis, University of Western Australia; McKewon, E. *The Scarlet Mile. A social history of prostitution in Kalgoorlie, 1894–2004*. Crawley, Western Australia: University of Western Australia Press, 2005; Norris G. J., (1976). *Report of The Royal Commission into Matters Surrounding the Administration of the Law Relating to Prostitution*, Perth, Government of Western Australia; Kennedy G.A., (2004). *Report of the Royal Commission into Whether There has been Corrupt or Criminal Conduct by any Western Australian Police Officer, Final Report, Volume 2*, Perth, Government of Western Australia.

56 Kennedy G.A. 2004, *Report of the Royal Commission into Whether There has been Corrupt or Criminal Conduct by any Western Australian Police Officer, Final Report, Volume 2*, Perth, Government of Western Australia, p 318.

57 Kennedy G.A. 2004, *Report of the Royal Commission into Whether There has been Corrupt or Criminal Conduct by any Western Australian Police Officer, Final Report, Volume 2*, Perth, Government of Western Australia, p318.

58 Per the then Minister for Police, Mr Kevin Prince: Parliament of Western Australia, Legislative Assembly, *Hansard*, 14 November 2000, p2978/2.

lack of legal foundation, and the potential for police corruption.⁵⁹ On the other hand, it represented a pragmatic approach by police to an industry which clearly had significant local markets and which had proved to be resistant to eradication by the provisions of criminal law in many other parts of the world. Containment, for most of the last century, may be appropriately characterised as an extralegal system of brothel licensing and worker registration.

The current status of containment

The containment policy has been managed in recent years by a unit within the Organised Crime Division of the WA Police.⁶⁰ An Australian Institute of Criminology report described the unit in the following terms:

*“The vice investigation unit provides advice, guidance and assistance to the police regions on matters associated with the sex industry. Unit officers monitor prostitution activities in Western Australia and bring charges on persons of interest contravening prostitution legislation ...”*⁶¹

A database of all workers is also maintained by the unit. It was described as follows by the Prostitution Law Reform Working Group:

*“The Working Group understands that information has been, and is collected by members of the liaison unit and is retained in a separate computer system to general police databases and that it is not generally accessible to other members of the WA Police.”*⁶²

More detailed information was reported to the Parliament of Western Australia by Ms Giz Watson, Member of the Legislative Council. Ms Watson had previously directed a number of questions to the Minister for Police and Emergency Services about the database and she quoted from the reply:

“The second question I asked was — What information is obtained and stored on the database? The answer was —

*“Information is collected regarding brothels and sex workers known to police, including the names, addresses and contact telephone numbers of brothel owners and employees. This information is provided to police voluntarily.”*⁶³

Ms Watson further stated to the Parliament:

*“The response indicated that personal information is collected on the database on an A4-size pro forma document. Sex licenses are demanded and all the information from the license is entered onto the form, including the license number. The car registration, make and model are also entered when available. The names and addresses of the brothel, private premises, and the sex workers’ working names are entered when the employee records from the brothel are demanded. Tax file numbers are also added. Sex workers who provide information voluntarily are usually asked for a photo, plus separate pictures of tattoos or other identifying features, which are added to the information ... It should also be noted that the register includes all WA sex workers, including private workers, escort workers and street-based workers, not just brothel owners and employees.”*⁶⁴

The legal basis under which such information is “requested” and stored is unclear. The suggestion that such information is offered “voluntarily” does not assist in understanding the legal framework, nor the way in which the information is used by police.

The containment policy was officially abandoned on 1 August 2000.⁶⁵ Unfortunately few details were made available as to what “abandonment” meant.

59 Kennedy G.A., (2004). *Report of the Royal Commission into Whether There has been Corrupt or Criminal Conduct by any Western Australian Police Officer, Final Report, Volume 2*, Perth, Government of Western Australia; Prostitution Law Reform Working Group. Prostitution Law Reform for Western Australia. Perth, Western Australia, 2007

60 Prostitution Law Reform Working Group. (2007). *Prostitution Law Reform for Western Australia*. Perth, Western Australia.

61 Australian Institute of Criminology, (2004). *The Worldwide Fight against Transnational Organised Crime: Australia, No 9*, Technical and Background Paper, p 38.

62 Prostitution Law Reform Working Group. (2007). *Prostitution Law Reform for Western Australia*. Perth, Western Australia, p 35.

63 Parliament of Western Australia, Ms Giz Watson, Legislative Council, *Hansard*, 11 March 2008, p590 b.

64 Parliament of Western Australia, Ms Giz Watson, Legislative Council, *Hansard*, 11 March 2008, p590 b.

65 Advice to the Parliament of Western Australia was provided on 14 November 2000, that the containment policy was abandoned on 1 August 2000 by the then Minister for Police, Mr Kevin Prince: Parliament of Western Australia, Legislative Assembly, *Hansard*, 14 November 2000, p2978/2.

At face value, it may have meant that the police would no longer offer immunity from prosecution to any brothels and would enforce the brothel keeping offences contained in WA laws. However, evidence from the empirical research in the present study suggests that “abandonment” did not mean adhering to the formal provisions of the law. Rather, it appears to refer to a *laissez-faire* policy approach to brothels in which there was a low level of law enforcement and some tolerance of both containment brothels (i.e. those approved under the former policy) and non-containment brothels. For both “types” of brothels, however, it appears that the database of workers continued to be maintained as an informal register of sex workers in WA.

The empirical research

The empirical research thus found a thriving and relatively open brothel industry in Perth. The location of brothels was relatively easy to establish and many were clearly visible from the street and in the virtual world. They appeared to be subject to an informal system of zoning around the CBD and police continued to maintain a register of sex workers and prohibit workers with convictions for “drug trafficking” from working in brothels.

We were unable to establish any previous research examining the police practice of banning workers with drug trafficking convictions in Western Australia. However, it appears that police may base this practice under the provisions of s 14(b) of the *Prostitution Act*. As noted previously, this provision provides that a person who acts as a prostitute commits an offence if the person has been declared under section 32A of the *Misuse of Drugs Act 1981* to be a drug trafficker. It may be that police consider that this provision entitles them to collect information on all workers, conduct criminal records checks and ban those who they consider are drug traffickers. If so, the legal foundation is dubious. Police do not have a general power to require the production of documents or the provision of information under the *Prostitution Act*. Under s 23, the power to compel is restricted to performing any function in respect of an

offence under section 7 (inducing a person to act as a prostitute) or any offence involving a child. Outside of these functions, the police have no special powers to compel documents or answers. Furthermore, the offence of acting as a prostitute having been declared to be a drug trafficker requires a declaration by the court convicting the person of the serious drug offence.⁶⁶

These provisions do not provide a legal foundation for the practice of compelling personal information from sex workers, conducting criminal record checks, maintaining a database or register of sex workers and banning those who police may consider to have trafficked in drugs.

Summary of law and policing findings

Prostitution laws in WA are a patchwork of prohibitions, some overlapping, some without a clear rationale and others drafted in terms which have no application to the contemporary circumstances in which the sex industry operates. Apart from the street offences – which are heavily policed and prosecuted – many offences are infrequently prosecuted and other offences do not appear to be prosecuted at all, either since enactment in 2000 or in recent history for some of the older offences.

The public soliciting offences in ss 5 and 6 of the *Prostitution Act 2000* impose higher maximum penalties than the comparable offences in Victoria and NSW. The client offence under s 5 has a higher maximum penalty (two years imprisonment) than the worker offence in s 6 (one year imprisonment). The client offence is also prosecuted more frequently than the worker offence (255 court appearances vs 140 appearances over 2000–2005 inclusive). The use of the police move on power appears to be relatively common and there were substantial numbers of prosecutions for the offence of contravene move on direction⁶⁷ (61 between 2000 and 2005).

The relatively unusual soliciting offence in s 19⁶⁸ which applies to a child client has not been prosecuted since enactment in 2000. The rationale

66 It should be noted that the example given by one manager of a worker being banned by police because she had been convicted of being in possession of “7 grams of meth” would not lead to a court declaring her to be a drug trafficker. The quantity of methylamphetamine prescribed for drug trafficking in Schedule 7 of the *Misuse of Drugs Act 1981* is 28 grams, not 7 grams.

67 s 12 of the *Prostitution Act*.

68 *Ibid.* s 19.

for the offence is unclear because a child client soliciting in, within view or hearing of a public place may be prosecuted under the s 5 offence.

The prohibition against brothel keeping, contained in s 190 of the *Criminal Code* was largely transferred from the *Police Act* and was proclaimed in May 2005. No prosecutions were finalised for this offence in 2005. The two previous brothel keeping offences⁶⁹ were repealed in May 2005. In the period, 2000–2005 there were relatively few brothel keeping prosecutions overall and the rate appears to be declining. In 2004 and 2005, there were only three prosecutions in total. Such a pattern may be related, in part, to the continued operation of a variation of the containment policy. As noted above, no offences exist for sole operators working from their own home or escort workers.

The live on the earnings offence⁷⁰ is broadly drafted and may apply to a sex worker's dependants, others working in a brothel (such as the receptionist) and to those involved in running an escort agency. It has been suggested elsewhere that this offence should be confined to exploitative relationships.⁷¹ No charges were prosecuted for this offence between 2000 and 2005 inclusive.

The two procuring/inducing offences⁷² overlap to a considerable degree and there appears to be little rationale for the retention of the older offence in s 191 of the *Criminal Code*. Few prosecutions occurred for either offence in 2000–2005. No prosecutions were undertaken under the recruitment advertising offence or the sponsorship offence⁷³ and the rationale underlying the sponsorship offence is unclear.

The unusual group of offences⁷⁴ in the *Prostitution Act* which prohibit the act of prostitution in specified circumstances are rarely prosecuted. Apart from failure to use prophylactic, no prosecutions of the other offences have occurred since enactment in 2000. The policy underlying the offence which penalises a child worker is questionable.

As noted above, the deeming provision attached to the offence of knowingly infect another person with a venereal disease in the *Health Act 1911* has little application to contemporary circumstances. The provision only applies to a prostitute who *resides* in a brothel. Not surprisingly, no prosecutions have occurred for this offence since 2000. Given the limited contemporary application of the provision because few sex workers reside in brothels and the fact that prostitutes may be charged under s 310(1) if they commit the act, there appears little justification for retaining s 310(2).

Notwithstanding the large number of prostitution offences contained in Western Australian laws, the present study found that, apart from the street offences, there was a relatively low rate of law enforcement, that a variation of the brothel containment policy continues to apply today and that police maintain a “register” of all sex workers.

69 s 209 of the *Criminal Code* and s 76F of the *Police Act 1892*.

70 s 190(3) of the *Criminal Code*.

71 NSW Parliament. (1986). *Report of the Select Committee of the Legislative Assembly Upon Prostitution*.

72 s 191 of the *Criminal Code* and s 7 of the *Prostitution Act*.

73 ss 9 and 10 of the *Prostitution Act*.

74 *Ibid.* ss 8, 15 and 14.

CHAPTER 5: DISCUSSION

The LASH study found a diverse and open female sex industry in Perth. The number of brothels was comparable to Melbourne and Sydney on a per capita basis. The geographical clustering of brothels in Perth and regular police visits to 'request' information on sex workers and other brothel staff suggest that the containment policy remains in effect. That is, Perth effectively has a licensing system that is administered by the police, but with the licensees' conscious that they still have criminal status.

Globally, including WA in the past, such discretionary police powers typically result in corruption. However, in 2007 in a climate of prostitution law reform debate, we found no evidence of systemic corruption by the police or any other authorities. As elsewhere in Australia and globally, the high visibility of street-based sex work attracted the bulk of criminal prosecutions. Most laws against indoor sex work were uncommonly, if ever, prosecuted in WA.

The issue of licensing commercial sex needs to be examined because the WA Government is currently considering such a system. Licensing prostitution was introduced as a 'modern' approach in Europe as part of the Napoleonic code two centuries ago. In 1899 a European conference reached a consensus that licensing systems were invariably failures and, one by one, most European countries abolished such systems through the 20th century. Licensing was deemed to fail because most of the industry remained outside the system, and the system generated an unlicensed underclass with high rates of STIs (de Vries, 2001; Harcourt et al., 2005). Only in Australia – in Victoria in 1984 and Queensland in 1992 – were licensing systems recently introduced, shaped by a perceived urgent need to control the spread of HIV or to rid the industry of organised crime. However these aims have been achieved anyway in the decriminalised environment of NSW (Donovan et al., 2010)

The licensing systems in Victoria and Queensland have created large clandestine sectors. In Melbourne up to 80 unlicensed brothels are operating with little or no access by health educators or public health surveillance (Chen et al., 2010; Harcourt et al., 2010). The mandatory

monthly STI testing of sex workers in Victoria has wasted millions of dollars (Wilson et al., 2010) and is displacing high risk patients from limited public health services (Smaranake et al., 2010). Because documents recording STI test results have become a commodity, a Melbourne GP has been de-registered for selling bogus sexual health certificates to sex workers.

In Queensland, only around 10% of brothels have joined the licensing system, yet administering the system requires six full-time staff (Prostitution Licensing Authority, 2009). Surveillance of the health needs in the unlicensed sector of the sex industry in Queensland is virtually non-existent (Seib et al., 2009)

At a political level, licensing systems have other costs. Licensed brothel owners have a vested interest in publically exaggerating the scale of their "illegal" competition, goading politicians and police to prosecute. Indeed this phenomenon is even seen to some extent in the decriminalised environment of Sydney where owners of development-approved brothels loudly lobby to minimise competition. Moreover, limiting the number of brothels pushes sex workers into the streets – with even greater visibility and political consequences. Philosophically, licensing systems are also problematic because they can be described as the government endorsing sex work (Weitzer, 2009).

The LASH study has demonstrated that excellent public health and human rights outcomes can be achieved without criminal sanctions or licensing of a sex industry, and at a fraction of the cost. Sydney should arguably be the city at the highest STI/HIV risk because its brothels are staffed in the main by women who have recently migrated from Asia. Yet, through entirely voluntary and respectful means, Sydney brothel workers have achieved historically high condom rates (Figure 1) and historically low STI rates. Because the Sex Workers Outreach Project is a community-based organisation it enjoys the trust and unfettered access to virtually all Sydney brothels to provide peer education and distribute safe sex equipment.

However, decriminalisation is not a panacea. While decriminalisation largely removes the responsibility

(and potential for corruption) for the sex industry from the police, it shifts it to local government and to planning law. This can result in corruption of local government agents as has occasionally occurred in Sydney. Local governments are reluctant to approve brothel developments for both political and resource reasons. A LASH survey of urban councils in Sydney has demonstrated that recent approvals for brothels fall far short of demand (unpublished).

If the WA Government moves toward decriminalisation of sex work, a proper planning framework should be adopted and appropriate human resourcing should be supported at the local government level. This could result in improved occupational health and safety standards and better scrutiny of these standards. The administration of such standards is beyond the expertise of the police.

So how did Perth brothels and their workers measure up, particularly when compared to Melbourne and Sydney?

Firstly, in both Perth and Sydney the LASH team found that most brothel managements were welcoming and cooperative with the research. This contrasted with the unlicensed sector in Melbourne that was largely inaccessible (Chen et al., 2010). The high participation rate by Perth sex workers (86.6%) may have been affected by the law reform debate that was occurring in parallel with the research.

The brothel-workers in each city were considerably older (31–34 years) than in most international samples; as well as Sydney workers in the 1990s, who were then six years younger on average (O'Connor et al., 1996). This suggests a gradually contracting industry at a national level (a 'cohort effect') with limited entry into brothels by young women.

A quarter of the women in Perth and Melbourne, compared to over half of the Sydney women, were Asian-born. Of concern, almost one in five Perth sex workers rated their English language skills as 'fair' or 'poor', yet no health promotion staff that were competent were employed to address the educational needs of these women.

While the Perth women were more likely to report recently injecting drugs (14%) than the Melbourne and Sydney women this may have been determined by the differing demographics. The Melbourne women were several years older and Asian women, who were the majority in Sydney, rarely inject drugs. Nevertheless, health promotion programs for brothel workers in Perth need to address the issue of drug injecting.

The physical condition and layout of Perth brothels was comparable to the other cities. However a relative paucity of health education resources was noted, and Perth workers were the least likely to be provided with free condoms. Nevertheless, in common with Melbourne and Sydney, condom use with clients was virtually 100% in the Perth brothels, and all three cities the STI prevalences were remarkably low. These STI prevalences were at least as low as the general population (Chen & Donovan., 2004) and lower than any other population of sex workers globally. It is reassuring to see that health promotion efforts with brothel-based sex workers in Perth have also been highly effective.

Overall, Perth brothel workers rated well on an emotional well-being test (the Kessler-6 scale). However, in common with Melbourne and Sydney workers, a subset of 10% of the women was likely to have a serious mental illness: this was about twice the general population rate. Preliminary analysis indicates that drug injecting was most strongly associated with such poor scores (LASH, unpublished). Notably, street-based sex workers are much more likely to score poorly on such tests (Roxburg et al., 2006).

The Perth sex workers reported more police visits to their brothels than their counterparts in Melbourne and Sydney. Most said the police were supportive or friendly, though many did not answer questions about police behaviour. Nevertheless, reports of the police being threatening, violent or demanding sexual services were rare. Brothel managers and workers often reported that police coerced identities from them, indicating that the containment policy is still operating.

The relationship between the sex industry and police is clearly compromised by the illegal status

of prostitution. About a third of the Perth brothel workers said that they would be reluctant to go to the police for help with violence or theft. As 15% of the women reported threats by clients and 10% reported being assaulted in the past year this is clearly a vulnerable population.

Interestingly, despite the public debate about prostitution laws at the time, only 30% of Perth brothel workers were aware that sex work was illegal in WA. This challenges the claim that criminal sanctions 'send a signal' to discourage people from sex work, particularly in the lightly-policed brothel setting.

Though it was not explicitly raised in the LASH questionnaire, many sex workers spontaneously raised the issue of stigma. Obviously this issue causes distress and leaves the women feeling more vulnerable. Unfortunately decriminalisation is not a panacea for stigma as the principle drivers of stigma are societal. Nevertheless, criminal status officially sanctions stigma in the minds of the general population.

In summary, WA has a physically healthy and open sex industry. Brothel-based sex work is probably gradually shrinking, perhaps replaced in part by less visible working arrangements. The industry continues to be managed through an unofficial police licensing system, though with no current evidence of wide-spread corruption or abuse by the police. Globally, poor legislative responses to prostitution are frequently passed in times of panic. The WA Government is in the fortunate position of being able to review its prostitution laws without a sense of urgency, with more data being available to it than ever before, including recent evaluations of the effects of legal reforms in other jurisdictions. The chances of achieving the goal of maximising public amenity and public health while protecting the human rights of the sex workers in WA have never been greater.

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