

# **POLICING OF THE SEX INDUSTRY IN THE AUSTRALIAN CAPITAL TERRITORY**

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IT SHOULD BE NOTED THAT POLICE DO NOT MAKE LAWS RELATING TO THE SEX industry or any other areas of community behaviour but are required to enforce those laws which are currently in place and which, in theory, represent the views and attitudes of the majority of the community. Obviously, in some cases the applicable laws were drafted many years ago and may no longer represent current community standards and expectations. Police do have discretion when considering what laws to enforce. However, use of that discretionary power must be finely balanced to avoid any inference or suggestion that one section or group is being shown favourable treatment at the expense of others or the community as a whole.

Members of the Australian Capital Territory (ACT) Region of the Australian Federal Police have the responsibility for policing of ACT and Commonwealth laws which govern the behaviour of those involved in the sex industry and those who use the facilities provided by that industry.

The following activities constitute the sex industry in the ACT:

- prostitution in massage parlours/brothels, through escort services and through soliciting in public places;
- management and conduct of brothels and the letting or sub-letting of premises knowing they are to be used as a brothel;
- procurement of persons to work as prostitutes;
- the production, duplication and distribution of X-rated videos, unclassified videos and videos which have been refused classification, and the distribution of advertising material relating to these types of videos;
- the production, sale, distribution or display of printed forms of pornography;

- the procurement of persons to model for printed pornography or to fill roles in the production of X-rated videos; and
- the employment of strip-tease acts and topless or nude waiters or waitresses.

## Prostitution

There is no current law within the ACT prohibiting the act of prostitution itself. There are prohibitions contained in the *Police Offences Act 1930* (ACT) against the use of premises as a brothel and being knowingly concerned in such use. It is also prohibited for persons to knowingly lease or sub-let premises for use as a brothel. These offences are directed at owners and/or managers of brothels, although technically they could be used against prostitutes who work in brothels on the basis that they are knowingly concerned in the owner's use of the premises as a brothel. Similarly, clients of the prostitutes could also technically be considered to be knowingly concerned with the conduct of the brothel. Other prohibitions within the *Police Offences Act* relate to knowingly living in part or in full off the earnings of prostitution, and permitting prostitutes to meet with other prostitutes in certain types of premises. Under the provisions of the *Crimes Act 1900* in its application to the ACT, it is an offence to employ or permit to be employed for the purposes of prostitution, any person who is under the age of 16 years.

There is no legislative discrimination between sexes and there is no legislative prohibition against prostitution or brothels which are exclusively used by persons of the same sex. Similarly, there is no specific prohibition against prostitutes visiting clients in motel rooms or their own homes. However, once again, technically it could be construed that the motel room, private home or other premises were being used as a brothel at that time.

It is no secret that a number of brothels currently operate in the ACT under the euphemism of massage parlours. The open existence and operation of these businesses is viewed by members of the general community in a number of ways. Apparently, a large proportion of the community either do not know they exist or do not care whether they do. Some sections of the community who are aware of their existence mistakenly believe they operate lawfully, while others see their existence and open operation as evidence of police collusion and corruption.

The true situation is as follows. Until recently, no prosecution for offences relating to the management or conduct of a brothel could be launched without the prior consent of the Commonwealth Attorney-General or his nominated delegate. On a number of occasions, police collected evidence in relation to alleged offences of this type, which was of a level believed to be sufficient to warrant the commencement of a prosecution, only to have the application declined by the Director of Public Prosecutions who was the Attorney-General's delegate.

When requested by police for the reasons behind these decisions, the Director of Public Prosecutions outlined certain conditions which he referred to as aggravating circumstances. These, he stated, would be considered when deciding whether to commence such a prosecution, notwithstanding the sufficiency of the evidence available to establish *prima facie* that the offence had been committed. As a result of this, police adopted the policy of monitoring the existence of brothels within the ACT with the view that applications for consent to prosecute would only be made when there was sufficient evidence and one or more of those aggravating circumstances was found.

When the section of the *Police Offences Act* relating to the Attorney-General's consent to prosecute was repealed, empowering police to launch prosecutions of their own accord, it was decided to continue with the policy of monitoring the situation and commencing

prosecutions only where there was believed to be sufficient evidence accompanied by one or more of the 'aggravating circumstances'. The 'aggravating circumstances' are:

- brothels should not operate within residential areas;
- there should be no possession, use or sale of any narcotic or other illicit drugs on or about the premises;
- there should be no minors on the premises, whether employed as prostitutes or otherwise;
- there should be no person involved in the management of a brothel who has a known criminal record of a serious nature;
- funding of the enterprise should not come from known criminals or organised crime sources;
- there should be no unruly or anti-social behaviour associated with, or caused by, the operation of the brothel, by clients, staff or other persons (breach of the peace);
- circumstances which would indicate an increased or significant risk to the public health through the operation of the brothel or the employment of particular individuals;
- any complaints received from members of the public concerning the existence and operation of a particular brothel.

The ACT Legislative Assembly's Select Committee on HIV, Illegal Drugs and Prostitution (Australian Capital Territory 1991) recently tabled a report on the findings of its investigations concerning prostitution and brothels in the ACT and its recommendations regarding the future of these enterprises. This report recommends radical changes and the elimination of police involvement in the control of the majority of areas of prostitution. Until the recommendations of the Select Committee are considered by the ACT Government, it is anticipated that police will continue with their current policies and practices in this area.

It should be pointed out that any decriminalisation of the prostitution industry in the ACT must acknowledge the potential for infiltration by undesirable and criminal elements. The potential for long-term community problems will continue to exist should any changes not involve police representation in the proposed licensing and monitoring process. The police do and will accept change but not at the expense of the ACT community, should a lack of effective control become a reality.

### **X-Rated Videos**

The ACT's position regarding X-rated videos and their sale and distribution has led to the ACT often being referred to as the 'Porn Capital' of Australia. The possession and viewing of X-rated videos is generally legal throughout Australia, however the sale and distribution of these videos is illegal in all other jurisdictions except the Northern Territory and ACT. Probably because of its central position when compared with the Northern Territory, the ACT appears to have a higher concentration of sale and distribution companies. Ironically,

while the ACT has the reputation as being the 'Porn Capital' of Australia, the proportion of ACT customers compared to those from interstate is believed to be relatively low.

Policing of the X-rated video industry in the ACT revolves around alleged offences committed against the *Publications Control Act 1989* (ACT), the *Business Franchise ('X' Videos) Act 1990* (ACT), the *Film Classification Act 1971* (ACT) and the *Customs Act 1901* (Cwth).

The policy of the Australian Federal Police regarding X-rated videos and other forms of pornography is reactive rather than proactive. Whilst any complaints received are fully investigated and alleged offenders prosecuted where sufficient evidence is available, because of resource limitations and higher priority operational commitments, police do not go out actively looking for breaches of the relevant statutes.

The retailing or wholesaling of X-rated videos from the ACT is limited to those persons or businesses which have been issued a licence by the ACT Government and who operate in accordance with those licences including the payment of the ACT Tax, the operation from premises within the zoned areas and compliance with other requirements of the licence and relevant legislation.

Very few complaints are received from members of the general public. The majority of those complaints relate to the receipt through the mail of unsolicited advertising material for X-rated videos. The principals of the firms concerned deny they are in the practice of forwarding unsolicited advertising material, stating that commercially it is a waste of money. Being aware that their industry is continually under the scrutiny of those opposed to it, such practices would provide their opponents with further ammunition to use against them.

Investigations of these complaints have revealed that the companies concerned have received written requests for their material, usually in the form of a completed coupon obtained from advertisements the firm has placed with various national magazine publications. Upon receipt of these written requests, it is virtually impossible for the company to determine whether it is a genuine application or one completed by someone else—either maliciously or as a practical joke. Other investigations have revealed that the complainant has been a long-standing customer of the firm and has lodged a complaint only after a parent or spouse has discovered X-rated material in their possession.

Complaints are regularly received from persons within the industry alleging offences against the various pieces of legislation by opposing firms. These complaints generally relate to firms advertising for sale and selling videos which have either not been classified or have been refused classification by the Office of Film and Literature Classification, or advertising and selling videos over which the complainant claims to have copyright. Whilst these complaints—often anonymous—are generally couched in terms of moral indignation, a more cynical view may be that they are based on commercial grounds. Regardless of the complainant's motives, these allegations are investigated by police and, where sufficient evidence is found, a prosecution is lodged.

One area which causes police, the legitimate operators and others concern is the practice of interstate X-rated video distributors who are operating outside the laws of their own state using ACT post office box addresses to give their operations an air of legitimacy. It appears that various national publications are willing to accept advertising from these firms as the provision of an 'ACT address' absolves them from responsibility of advertising an illegal operation. These firms hire an ACT-based post office box, then arrange for mail to be redirected from this box to interstate locations. Often what follows is a chain of similar redirects through suburban post office boxes in Sydney or Melbourne to make tracing of actual premises and identities more difficult. These firms are not the holders of ACT licences and are operating outside the laws of their own state. It has been suggested that such firms—because of their displayed preparedness to breach laws relating to the sale of X-rated videos—would be predisposed to the sale of unclassified videos, videos which have been

refused classification, or worse—videos which are legally regarded as objectionable publications such as child pornography, promotion of violence and bestiality.

The vast majority of X-rated videos are made and produced in either the USA or Europe, with local firms obtaining master copies under licence (sometimes this is not the case) and duplicating the films or cassettes here in Australia.

The only direct legislative prohibition in the ACT against employing persons to perform sexual acts for the purpose of producing pornography is contained in the Crimes Act relating to employing or permitting the employment of persons under the age of 18 years for this purpose.

Complaints relating to printed pornography are very rare. When received, they are investigated in a similar fashion to complaints relating to videos and, once again, policing of this area is reactive rather than proactive.

There is no specific legislation relating to strip-tease performances, or topless or nude waitresses or waiters. However, where such activities are performed or carried out in public places or in view of public places, those involved may find themselves liable to prosecution for offences of indecent exposure, or offensive or indecent behaviour. The main area of contention revolves around what is offensive or indecent and quite obviously what one person or group finds offensive or indecent may be quite acceptable to others. In such cases, police would be reluctant to intervene or commence any prosecution unless either direct complaints were received from members of the public or the behaviour was particularly outrageous.

If a strip-tease performer was to carry out sexual acts on stage with a person of the opposite sex and money was being paid to the performer for the act, then this could be regarded as prostitution and the premises where the performance was taking place could be considered to be a brothel.

The areas of behaviour covered by the sex industry are emotive ones and, while it is felt that a large proportion of the community is ambivalent about them, those with concerns either for or against various aspects of the industry are often very dedicated and vociferous in their beliefs. It is important that police ensure that their own personal beliefs and feelings do not affect the performance of their duties and the implementation of government and departmental policies.

## Reference

Australian Capital Territory. Legislative Assembly. Select Committee on HIV, Illegal Drugs and Prostitution 1991, *Prostitution in the ACT: Interim Report*, Canberra.