SSPAN (SEXUAL SERVICE PROVIDERS ADVOCACY NETWORK) RESPONSE TO THE QUEENSLAND CRIME AND MISCONDUCT COMMISSION INTERIM POSITION PAPER (DECEMBER 2005)

31st January 2006

Introduction

SSPAN details below our response to the Crime and Misconduct Commission's Interim Position Paper (2005) *Should legal outcall prostitution services in Queensland be extended to licensed brothels and/or escort agencies?*. In Section 1 we comment on the overall debate and reiterate our rebuttal of the argument for licensed brothels to conduct escorts. In Section 2 we outlay our response to all of the CMC model provisions and comment on how we think these will affect sex workers and whether they will be effective.

Section 1 Clarifying the debate on escorts

We applaud the CMC for rejecting the call of the legal brothel sector to be allowed to provide escort services, despite visible political pressure from the Premier Peter Beattie (Courier Mail 2005:3). However, the escort debate has raised an important subsidiary issue: the anti-competition mentality of the legal brothel sector towards law-abiding sole operators which has been poorly-disguised as an attack on the 'illegal' sector and is reflected in their proposed approach to combating illegality.

We feel it is imperative to clarify the debate and examine its central justificatory issue: illegal escort services. It has been cited that illegal escort services account for a staggering 75% of the prostitution industry in Queensland (CMC 2004:83, 110) and that these illegal operators are a damaging threat to the income of legal brothel operators. We emphatically reject this statistic and caution against placing any reliance upon it in the policymaking process. It is unproven and consequently unreliable. Statistics are readily manipulated, therefore without providing an alternative statistic, we assert that **the vast majority of prostitution services in Queensland are provided by law-abiding 'sole operators' and only a relatively small proportion by illegal escort agencies.** Logically, since there is no reliable data which proves the existence of a huge illegal escort industry in Queensland, the true source of competition for the legal brothels are independent legal sole operators. Accordingly, the sole operators' interests are heavily at stake.

The brothels' catch-cry that they ought to be allowed to expand into escort services because they are losing money should not be persuasive. If it is true, it is hardly surprising given it is bound to happen when a growth industry becomes more competitive. The number of legal brothels in Queensland has increased dramatically with no correlation in the increased demand. In such a situation businesses usually respond by improving their services, thus weeding out poorer performers. The only factor likely to increase demand for prostitution is consumer spending power. The hospitality and

entertainment sector is experiencing weaker profits generally. Greater availability of a service does not equate to increased demand for a service, and escort services are already provided **legally** elsewhere, so expanding brothels into escorting would fail to magically affect their claimed diminishing profitability. Accordingly, the brothels have tailored their proposed legislative changes to combat competition from **legal** sole operators.

Section 1.1 – The need for recognition of sex worker rights and interests

Giving even greater advantages to a party already holding substantial bargaining power can only further marginalize and oppress the rights and interests of the smaller party. Sex workers are already at a substantial disadvantage vis-à-vis brothel operators. QABA is a well-equipped lobby group with money and expertise. They have a 'place at the table' and a relationship with the PLA. Conversely, Queensland sex workers have had little involvement in the legislative process to date and have no union representation. SQWISI have not been vocal about sex work issues for some time, and sex workers lack formal communication channels with the PLA. Therefore it is essential that the rights and interests of sex workers outlined herein are recognized; fairness would dictate that the rights and interests of sex workers be an equal consideration with those rights and interests of brothel operators.

Section 1.2 – Would legalising escorts actually entice workers into licensed brothels?

In its *Regulating Prostitution* (2004) report the CMC expressed the consideration that legalising escort services for brothels would entice illegal workers into the legal system. We reject the logicality of this assertion. For many sex workers brothel work simply isn't feasible, regardless of whether brothels are allowed to do escort services or not. For those who do have the option of working for a brothel the financial disincentives are obvious - brothels take a large margin on each job and thus significantly limit workers' incomes. The only potential incentive for workers to do outcalls for brothels would be increased safety, but as we will explain below, the means by which this could be achieved are unlikely to appeal to brothels since they are not cost effective.

Section 1.3 – The feasibility of working for a brothel

Brothel work is simply not an attractive option for the silent majority of sex workers. Brothels are oppressive working environments. Whilst legally brothel owners are not employers, they impose working conditions on sex worker 'contractors' such as the hours they can work, what they can wear to work and the prices that they may charge for their services. Workers cannot choose which days they wish to work, and cannot even always decide to whom they choose to provide sexual services. Workers who refuse to see clients, or commit other forms of 'misbehaviour' in the brothel owners' eyes are subject to sanctions. Sanctions take the form of being allocated quiet shifts where there is little opportunity to make money, having shifts allocated taken away, and in the most extreme form permanent removal from the roster. Given the inordinate amount of control brothels have over workers and the lack of worker unionization, brothel workers are often referred to as 'employees without benefits'. Despite stressing the independent status of their

sexual service providers (see Code of Ethics in QABA 2005:9), brothel owners will threaten expulsion if these workers decide to work shifts at other brothels or conduct private work outside the brothel.

Brothels are arguably pimps in the classical sense: they find business for prostitutes in order to live off the earnings of prostitution. Many workers do not want a 'pimp' relationship with a brothel and desire personal autonomy and control over their work choices.

Further it should be noted that brothel workers must fit a profile which is judged as marketable but many sex workers do not fit this profile and thus won't be hired. For example male, transgender, 'mature' and disabled sex workers are unlikely to be able to gain employment in a Queensland brothel.

Section 1.4 – the purported health benefits of brothel work as a justificatory concern

We also reject the public health argument as a supposed justification for compelling workers to work for licensed brothels. It has been inferred that it is in the interests of safety that sex workers work for brothels because they are subject to health checks and less likely to practice unsafe sex. This is false. Sex workers from all sectors have the same approach to safe sexual practices since having a healthy body is vital to maintain the ability to work. Studies conducted prior to legalisation reveal that sex workers are proactive in maintaining their sexual health voluntarily (Banach 1992; Boyle 1997). We are inclined to believe that brothel workers are just as likely, if not more likely to engage in risky activities than other workers (including illegal workers) because 'extras' are necessary to supplement their 50-60% cut. If SQWISI are of the opinion that non-brothel workers are less health savvy than their brothel counterparts, outreach programs and peer-support must be reinstituted.

Section 1.5 – the issue of safety

SSPAN members are disappointed that the brothels have not adequately addressed safety concerns in their submission to the CMC. Given that currently there are very little complaints mechanisms in brothels, safety issues remain and would only be likely to increase with provision of outcalls as the concept inherently involves certain risks. The procedures that are currently in place in brothels won't apply to outcall work systems therefore proper guidelines and contingency plans would need to be developed before a decision to expand their services could be made.

Outcalls are by their nature very different to incalls:

- persons unknown could be hiding in the premises, there could be hidden cameras.
- In a brothel situation large bags cannot be taken into work rooms so that weapons cannot be taken in but in a house weapons are easily concealed and there are no panic buttons.
- Workers may arrive at an outcall to find the premises unhygienic or unsafe.
- Workers cannot 'id' the client first to see if they know them,

- once a worker has arrived at the premises there is no one available to do a 'second check', and if the client shows signs of an STI or appears threatening or intoxicated the worker must leave the house and go back to their 'base'.

To a degree these risks could be reduced if the brothel provided a driver/licensed security guard who would wait outside of every booking and took measures to authenticate the identity of each client. Unless they could provide this most workers would see little incentive to do outcalls for the brothel since they could work for themselves for far greater income and take the same risks! Unfortunately, the fee for such security would probably be prohibitively expensive and a waiting driver cannot be in more than one place at a time so this may not even be viable.

Section 2 - CMC model points

Whilst we applaud the CMC's recognition of the need for a 'level playing field' for sole operators, several of the recommendations made pose great concern. Since law-abiding sole traders are the true source of competition for brothel owners, it is essential that the CMC have account for potential ill-effects that legislative changes may have on this group. Unfortunately several recommendations made in the report are antithetical to the notion of a 'level playing field' because they unfairly discriminate against sole operators and at the same time favour the interests of the legal brothel sector. The proposed changes to advertising could have a devastating effect on sole operators because it is their **only** means of attracting clients.

Many of the proposed advertising changes appear to be taken from the Victorian model. The CMC should be reluctant to rely on the Victorian Model in its recommendations. It is imperfect and arguably a failure. It is not a 'solution' and was never intended to be a 'one size fits all' approach to legalized prostitution Australia-wide. It was drafted with Victoria in mind and consequently should be regarded as partially relevant but largely inappropriate for Queensland. The Queensland sex industry differs in its historical development, is clearly much smaller than the Victorian industry and does not have the same tensions with regards to organized crime.

We detail below our response to each of the proposed changes. **Where relevant, we have evaluated whether there is an actual possibility it will impact on illegal services or whether it acts as an unjustified penalty on law-abiding sole operators:**

Section 2.1 - Social escorts

As a group which advocates for individuals who identify as sex workers, SSPAN does not feel that the social escorts issue is relevant to us. In general we believe that sexual escort agencies posing as social escort agencies constitute only a small part of the sex industry. Certainly we agree that if social escort agencies had to declare that the services they offer are non-sexual this would deter clients seeking only a sexual service. However, it is true that the transaction can change after the booking has commenced. For

example, sometimes sex workers on sexual escort bookings do not end up providing sexual services because the client desires companionship only. The reverse also occurs.

Section 2.3 – Advertising and the role of the PLA in monitoring advertising

SSPAN believes that proposed changes to advertising for sexual services go further than is necessary and will be largely ineffective in decreasing the yet to be properly quantified illegal escort sector. Legal sole operators already have very limited opportunities for advertising and promoting their businesses. The size of the brothels allows them to do things such as take a stand at sexpo, create a coffee business for cross-promotion (Purely Blue coffee) or build corporate alliances such as ones with taxi companies to draw in customers; all sole operators can do is advertise in periodicals and on the internet.

Section 2.3.1 Changes to the role of PLA in monitoring advertising

We agree that advertising content should be left to the media to self-regulate (under guidance from the PLA approved form). The content of advertisements was kept pretty much 'socially acceptable' for many years prior to the legalization of brothels in Queensland. Since the introduction of the Act, the system has worked quite well with the dissemination of the 'PLA approved form' to sex workers. We cannot understand why the practice changed (mid 2005) to require individual approval of advertisements by the PLA and this change has resulted in much confusion.

Section 2.3.2 – Prohibitions on references to race/ethnicity

SSPAN believes that this measure is based on unsubstantiated arguments about international trafficking, is discriminatory and would prove ineffective in decreasing illegal escort agencies.

The alleged connection between illegal outcalls and non-Anglo identity has not been quantified or qualified by the Queensland Police Service or the PLA or SQWISI. We believe that many of the illegal sex services are conducted by individuals working in co-operation, not by well-organised Asian or Russian agencies.

We believe that it is reasonable to suppose that readers of advertisements in Australia would assume that the sexual service provider is of Caucasian (Anglo-Saxon)/Australian ethnicity unless otherwise indicated. To deny a legal sole operator the opportunity to distinguish themselves by describing what is actually a part of their physical description and social attribution, seems to be discriminatory and un-necessary. It is dehumanizing – sex workers are people and they sell a social service! This provision also neglects the nature of the business, yet again. The fetishisation of race and ethnicity are an integral part of the sex industry. Clients want to be able to locate a 'type' without ringing dozens of advertisements. Furthermore it ignores the everyday reality of sole operators who already waste a lot of their time fielding phone calls from potential clients. This is a very time consuming and sometimes stressful part of the job. Having to field further phone calls to explain whether they are white/black/multi-coloured/orange would be onerous.

Even if subject to the same advertising restriction in print, brothel operators can use their websites to actively market their workers under ethnic identities - this gives them a competitive edge and monopoly. Additionally, if sole operators can't inform potential clients of their skin colour they will potentially be exposed to violent situations - racist people exist everywhere and some of them pay for sex.

This restriction would also be ineffective. Removing someone's ethnic identity is a totally implausible means of reducing illegal outcalls. Illegal escort operators will merely place advertisements without racial/ethnic information. Sex worker organizations in Victoria (RhEd) and the Northern Territory (SWOP) have provided information suggesting that this measure has been easily circumvented by the use of 'foreign sounding' names which connote ethnicity. E.g. 'Suki' (read Japanese), 'Natascha' (read Russian), 'Ling' (read Chinese), 'Bella' (read Italian), etc. Stopping short of preventing the use of all non-Anglo Saxon sounding names, there is no way of making this proposal practically effective. The overall number of calls is not going to reduce if ethnicity is removed so it will not have any effect on illegal service.

Section 2.3.3 – Advertising using only one name

The recommendation that the: 'PLA only approve one name for each sole operator' was originally proposed by QABA (Skinner In State Government Reporting Bureau 2005:180) and reflects their desire to squash all competition through increased restrictions which impact on sole operators. This offers an unfair advantage to licensed brothels and their workers who may have fluid identities which can be changed at will. It is clear that in tailoring this 'recommendation' QABA endeavour to restrict and undermine the earning capacity of, and thus eliminate competition from, their main competitors - law-abiding sole operators.

Again, this proposal does not take into account the realities of the business. Some sole operators have two or more different target groups and advertise accordingly. Why should **legal** workers have their trade potential blocked in this way?.

Identity change is also a safety mechanism. You often need to reinvent yourself: sometimes it is essential for safety. If something bad happens and a worker needs to 'disappear', perhaps a regular client becomes aggressive/stalking then the turnaround time is prohibitive. The **delay** in having the new name 'processed' would **cost sole operators** income in the meantime.

SSPAN also believes that this measure would not aid in the policing of illegal escort agencies. At the CMC hearing into escorts (September 14, 2005) hearing the QPS representative, Detective Superintendent Gayle Hogan, highlighted that it would be unlikely that a restriction on plural names would enable them to more effectively pursue illegal operators, saying "it would still be a challenge to do it whether there's one or six" (State Government Reporting Bureau 2005:181). Essentially it is impossible to differentiate between sole providers and agencies without a phone tap.

Section 2.3.4 – Provision to register with the PLA in exchange for larger advertisements or be restricted to a two-line advertisement.

Again, SSPAN argues that a registration number simply isn't going to be a realistic option for most sex workers and places a discriminatory burden on a group which is already marginalized and stigmatised. Registration compounds stigma and 'otherness'. Furthermore the registration system adopted in Victoria, where sole operators must register as an exempt brothel or escort agency, may be the primary reason for the growth of the illegal industry there. Sex workers there who do not want a permanent record of their sex worker status are locked into either working for a licensed brothel or an illegal option. This is an undue assault on civil liberties and it imputes guilt on innocent parties. Obviously, if there were no stigma attached to prostitution there would be no problem with registration. However, while the Queensland Government maintains an approach of not condoning sex work, sex workers continue to work within a hypocritical system. There are inherent privacy issues associated with any form of registration and a record impedes a clean exit from the industry for those who desire to do so. Most workers are happy to pay tax but they do not want evidence that they are sex workers. Who could access this information? How could privacy be guaranteed? In the United States, a government imposed registration system for the pornographic film industry has proved devastating for porn actors recently when the database of names was posted on the internet.

To restrict sole operators to two-line advertisements is placing an unfair restriction on their ability to trade. Sole operators will suffer whilst brothels get larger advertisements. It makes it very difficult for 'touring' workers and may discriminate between out-of-state residents. There is no real link between size of advertisement and illegal status and even if there were the provision would ultimately prove ineffective; clients will continue to call the two-line ads and sometimes find themselves chatting with an agency.

Section 2.3.5 New Penalties

We have serious concerns regarding the proposed increases in penalties for advertising infringements. Sole operators are already subject to charges for minor advertising infractions which create a permanent record of their sex worker status. Specifically, we strongly suggest that these increased penalties be well-publicised, raising the need for increased outreach. We believe that any new penalty system should be introduced with amnesty periods, and a first-infringement warning system. As was the case when anti-smoking laws were introduced in Queensland recently, a warning system should be introduced first to fairly account for the time it will take for these changes to be disseminated to the neglected private workers sector.

Section 2.4 - Improvement of enforcement measures

Section 2.4.1 Education / Proposal for PLA to focus on brothel outreach with SQWISI focusing on sole operators and illegal sex workers

SSPAN are very happy that the CMC recognise that SQWISI have had their activities diverted to the legal brothel sector since legalisation, leaving the sole operators and illegal sex workers neglected. Despite this development SQWISI's funding was reduced severely at the end of 2003 by the Queensland Health Department. SQWISI is simply not adequately funded or resourced to deal with all sectors of the industry. This has been exacerbated by the development of an 'unofficial' pro-legalisation, anti-peer education policy within SQWISI itself.

Nonetheless, the recommendation that the PLA undertake the important function of outreach to workers in licensed brothels while SQWISI focuses on sole operators and illegal workers is *extremely problematic*. This approach would exacerbate the undesirable 2-tier system which has developed since legalisation. Queensland needs a single inclusive outreach program with a strong emphasis on peer-education to ALL sex workers. It is imperative that all sex workers have equal recognition and access to education services to enable legislative compliance and promote community safety.

Section 2.4.2 Carrying on a business offence

We recognize the problems that currently exist for the QPS in policing escort agencies with the framing of the legislation as focused on 'premises'. However, we have serious issues with the section 229N offence provision, as it is currently and as proposed, because there is no actual examples given of what sort of evidence may infer prostitution. Given that safe-sex materials are exempt, what exactly might be used to infer that prostitution is occurring?

Section 2.4.3 Disabling telephones

We agree that it is logical to assume that a sex worker who has paid for a long-term advertisement (such as in Yellow Pages; set up a website) linked to a particular phone number would suffer devastating business collapse if the number was disabled by the QPS. For this **reason we would hope that this could not occur in any case until after the charge** of 'Carrying on a business' **was proved in court** and not be conducted in a punitive and unjust way such as occurs at present with persons charged on drugs offences who have their property confiscated under 'proceeds of crime' laws even before they face court!.

We also urge the CMC to clarify at present whether sole operators can on-sell the equity which exists in their advertising/telephone investments.

Section 2.4.4 Educating the public

We believe that one of the best means to eliminate illegal escort agencies would be through educating the public. At present many clients are unaware that escort *agencies* are illegal in Queensland as the legal situation is unclear. This confusion is not helped by brothel operators misinforming potential clients that escorts by sole operators are illegal in Queensland (see PLA 2005:4).

Section 2.5 - Improvement of safety for sole operators

SSPAN is delighted that the Chairman of the CMC has recognised that necessary changes must be made to allow for the safety of sole operators. This finally recognises the basic civil right of sole operators to a safe working environment. These changes would also encourage more sex workers, who for safety reasons currently work in co-operation with others, to become more compliant.

However, we have concerns about a few areas here. 1. The restrictions imposed by the provisions on the sex worker status of those who assist sole operators and 2. The provision that sole operators should not be able to attend bookings together. Generally, we feel that policing issues are still being held as more important than the civil rights and safety of sex workers.

Section 2.5.1 Sole operators should not be able to attend bookings together

It is a fact of the sex industry that escort bookings are **often** made by one client who wishes to see more than one sex worker and groups of clients who wish to see a sex worker each. In a trade environment where a sole operator cannot attend a booking with another sole operator these bookings could **only** be carried out by illegal escort agencies. Are we to assume that the CMC would argue that it should only be legal for a client to see two sex workers together in a licensed brothel setting?

Section 2.5.2 Provision to allow sole operators to notify persons of their movements

We agree with changes to legislation that would allow sole operators to notify persons of their movements – this is a necessary and basic precaution. We do have problems with the proposed restrictions around sex worker status of that person. Many sex workers are in situations where the only people who know of their sex work are other sex workers. Sex workers are sometimes married to or in de-facto relationships with other sex workers or former sex workers. Sex workers sometimes have members of their family who are also sex workers (see Bailey 2002:47, 167, 101). These are the facts of our lives – our loved ones are often also sex workers or former sex workers! SSPAN members know of many colleagues in these familial situations. One member has worked with a woman who was a sex worker and both of her adult daughters were sex workers. Given these types of scenarios we do not support this restriction and see it as impossible to enforce with clarity.

Section 2.5.3 Provision to allow receptionist for sole operators

Again, SSPAN agrees with changes to legislation that would allow sole operators to have a receptionist/driver but have the same concerns with restrictions around status of that person/s. Given the stigma surrounding sex work, we feel there would be definite difficulties associated with finding a receptionist to work for a sole operator when they

could make the same money working in a more socially acceptable industry (which would transfer better to their resumes!). It would also be impractical to have a receptionist with no sex work experience. We also see reception work as a possible exit strategy for sex workers and alternate employment for former sex workers.

More pressing is the need to prevent unjust and invasive policing of law-abiding sole operators. How would this provision operate in policing practice and in law? What would the standard of proof be for inferring knowledge on a person suspected of contravening this provision – actual or constructive knowledge? Unless a receptionist had previously been charged with a prostitution offence how would the police ascertain their 'sex worker status'?.

These safety provisions are something of a Clayton's gift for sole operators. Whilst on one hand beneficial, they would also contribute to the current situation of over-policing and confusion for those subject to what is already a difficult, complicated legislative framework.

Conclusion

In conclusion, we refer to the underlying objectives of the *Prostitution Act 1999* (Qld). It is some people's view that a healthy society does not include legalized prostitution, however most Australians would agree that a healthy society is founded on a sound legislative framework which adopts non-discriminatory laws, fairness, a level playing field in business dealings, equal personal freedom to choose one's workplace and autonomy. A healthy society requires laws which foster personal safety and discourage violence. To give effect to the notion of promoting safety it is strongly recommended that laws are changed to allow private workers greater personal safety.

As workers and businesspeople ourselves we understand the economic paradigms facing brothel owners, however the appropriate legislative response is not the introduction of 'protectionist' laws. In any crowded marketplace, businesses are able to find new ways to adapt and improve their existing services to capture a greater portion of the market share. Allowing the licensed brothel operators their desired reforms would result in a situation which is exploitative to Queensland sex workers. The proposed changes have disproportionate effects which would result in a monopoly on who can sell sex in Queensland where it is easy for 'pimps' in the form of brothel operators and very difficult for independent sole traders.

There is no demonstrable need for the legalization of outcall prostitution by brothels, unlike Victoria or New South Wales, the Queensland industry simply isn't large enough at present to require it. Additionally, expansion of the brothel sector would require an increased need for regulation by the PLA. Given that a number of occupational health and safety issues remain in brothels and no studies have been undertaken on the risk of assault in brothels, it would be dangerous to expand their operations without adequate remedial actions and assurance that they would not unfairly prejudice workers who did not want to do outcalls.

References

Bailey, Jacquelynne (2002) *Conversations in a brothel: Men tell why they do it.* Sydney: Hodder.

Banach, Linda Mary. (1992) *Sex Workers Experiences on the Impact of the Law on Their Daily Lives: A Qualitative Survey.* Unpublished Masters Thesis, University of Queensland, Department of Social Work and Social Policy.

Boyle, Frances M. (1997) *The sex industry: A survey of sex workers in Queensland, Australia.* Aldershot, England: Ashgate.

Crime and Misconduct Commission (2004) *Regulating prostitution: An evaluation of The Prostitution Act 1999 (Qld).* Brisbane: Crime and Misconduct Commission.

Courier Mail (2005) *Brothel reforms to allow escorts.* 11th August 2005, page 3.

Prostitution Licensing Authority 2005 *In Touch Newsletter* (September 2005). Brisbane: Prostitution Licensing Authority. (see page 4 wherein the PLA notes disinformation by brothels to clients regarding sole operators)

Queensland Adult Business Association Inc. [QABA] (2005) *Submission to the Crime and Misconduct Commission Discussion Paper "Should outcall or escort services in Queensland be legalized?"*. Published online: http://www.cmc.qld.gov.au [Accessed 25th October 2005].

Queensland Government, State Reporting Bureau (2005) *Transcript of proceedings: Crime and Misconduct Commission, Public hearings into whether escort services in Queensland should be legalized*. Day 2, 14th September 2005. Published online: http://www.cmc.qld.gov.au [Accessed 25th October 2005].