VICTORIAN SITUATION WITH LEGALISATION

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THE PROSTITUTES' COLLECTIVE OF VICTORIA (PCV) HAS BEEN CONCERNED with industrial issues affecting sex workers, taxation and health issues in the sex industry. For law reformers it has been a matter of focusing on the consequences and effects of legalisation of brothels in Victoria. The PCV is concerned about how legalisation has affected the way workers are able to conduct their occupation, the choice of how they work and the disregard for civil, industrial and human rights that has arisen.

Law reform in Victoria was supposed to provide a legal and administrative framework to regulate the industry and decrease the powerlessness of males and females working in the sex industry. It has been of great interest to Prostitutes' Rights Organisations and sex workers that all those involved in prostitution law reform acknowledged that legislation in Victoria has failed to meet its stated objectives and should be viewed as a lesson in seriously defective policy making and how to avoid it. Hopefully this lesson has prevented similar mistakes being made in other states.

In Victoria, sex workers are left to deal with the problems legal reform has exacerbated and the new problems it has created. The legal codification of more stringent controls over adult sexual behaviour has largely gone unnoticed.

In preparation for this paper old submissions to the Neave Inquiry by the PCV, Australian Prostitutes' Collective and supporters of prostitutes rights were re-read. These submissions were written before the existing prostitution regulation in Victoria, with the amendments made in the Upper House. It was a chilling experience to realise that the outcomes Victoria is experiencing today were so aptly predicted.

This certainly raises the issue of the purpose of involving sex industry workers in the legislative process and then ignoring their input. Sex workers are best able to determine the way the industry is conducted—a right not denied to other occupations but, sadly, with a long history of denial in prostitution.

State and local government, the Australian Taxation Office, the police, the wider community and sex industry management all have a vested interest in prostitution. This is at the expense of the sex workers themselves, whose access to adequate occupational health and safety conditions, ability to pay tax correctly and control conditions in the workplace have been ignored. This results in a limited understanding of the sex industry, perceived and unsubstantiated threats to public morality and possible nuisance factors. However, it can be argued that public bars have a far greater capacity to create a public nuisance than a brothel

or one or two females working from home, yet these bars are not zoned in lightly industrial areas.

The *Prostitution Regulation Act 1986* (Vic.), of which about half was proclaimed, is basically the consolidation of already existing prostitution-related offences. The outcome is that prostitution is only legal in brothels with planning permits granted by local government. The creation of only one legal option for sex workers is doomed to fail. The shift in prostitution from a temporary job to a more permanent occupation was a result of 19th Century agitation, legal reform and police persecution. The situation in Victoria reflects the worse form of institutionalised prostitution, that is, there is no industrial, occupational health and safety protection or control in the workplace. It is imperative to understand what is going on in Victoria, in order to make informed decisions about what policies and practices to oppose and support and the consequences for sex workers.

The shift away from the legal brothels should not be seen in terms of just maximising workers' income: although the economic reality is that illegal sex work is more profitable for comparable hours (as workers keep all their earnings). Illegal sex work also allows choice of services provided, choice of clients and flexible working hours. It is the only option for sex workers wishing to direct the way they work. Despite the drawbacks of riskier circumstances and the possibility of criminal penalties, as one worker put it; 'I'll cop it sweet'. It is interesting that illegal workers—either in street work, escort work, working from home or in illegal massage parlours—are doing better financially, because the clients of sex workers also prefer a choice of what area of the industry they visit. The clients are also dissatisfied with the legal structure but, except for gutter crawling offences, the client is not penalised. However, while the introduction of laws penalising clients is not advocated, unfair application of the law needs to be highlighted.

Other sex workers—including male workers, transsexuals, workers on methadone programs, stereotypical drug users, non-competitive workers and old workers who cannot operate in the legal sector due to house rules—must also operate illegally. This is also true in country areas of Victoria, where no legal brothel has been granted a permit. Consequently, the women in these areas have no choice but to break the law.

The current move towards the illegal sector essentially means that more Victorian sex workers are working exactly the way they did pre-legalisation. It is ironic that the partial legalisation 'designed to protect' workers has facilitated its expedient growth, putting workers at risk of violence and HIV infection, with limited access to the PCV and peer support.

A comment on the power given to local government in regulating the sex industry will now be given as there appears to be a leaning towards this option in other states. The glaring inconsistency in Victoria is that councils are reluctant to give brothels permits based on morality rather than planning guidelines. It is not difficult to obtain a permit for a relaxation centre. Under the *Vagrancy Act 1966* they are deemed illegal brothels, as hand relief takes place. Usually females working in relaxation centres are unaware they are breaking the law.

It must be considered that local councils are more concerned with their own political agendas and are largely unaccountable in the policies and regulations they make. Camberwell Council wanted to enact local government laws to regulate the local brothel. These included the registration of all staff for a fee of $50, compulsory medical checks, the posting of a sign warning clients of the risk of disease and a million-dollar public liability insurance policy. Most of these proposed laws were inconsistent with government policies and the National HIV strategy. It was clearly apparent that the intent of this was to make the continuation of the brothel in this area impossible—a sentiment shared by all councils. Camberwell is so intent on this that the case will be heard in the Supreme Court later this year and, if successful, other councils will follow.

It is interesting to note that these acts were formulated with the stated rationale of protecting sex workers, yet the brothel in that area gained a permit without providing a workers' area (currently, the steps), or tea/coffee-making facilities. The kitchen sink where cups are washed out is the toilet wash basin shared by clients and workers. No other business would be granted a permit in such sub-standard conditions.

Workers in brothels are classified as employees and Workcare has publicly stated that as such they are entitled to workers' compensation. This is all well and good but how is it administered and how accessible is it to sex workers in reality? No brothel owner pays the Workcare levy of 2.7 per cent, nor are steps taken by Workcare to ensure sex workers have access to compensation.

The PCV has been involved in two Workcare advocacy cases. One worker, under pressure from management once her claim was lodged, was coerced into withdrawing it. The second was followed through. The worker submitted a claim for a back injury. When attending the Workcare doctor, he performed a rectum examination (that was not medically applicable) without her consent. At the hearing, no evidence was presented in relation to the worker, the decision to disallow the claim was based on the brothel management testimony and no action was taken against them for failure to pay the levy. The worker decided to appeal the decision and, on the recommendation of her lawyer, it would have been successful. However, an appeal by the brothel manager could not guarantee worker confidentially and no further action was taken. Subsequently, she was sacked from the brothel and black banned from other brothels and she moved interstate.

This is indicative of the double bind for sex workers. If women object to pornographic videos in the workplace they can do nothing about it. Yet in South Australia a female employee in the public service received huge amounts of money in compensation for mental trauma caused by a fluffy penis in the workplace. Women are not allowed to knit between bookings. Instead they have to socialise with clients unpaid. Fire stairs are blocked so the sex workers will not leave work and there are no meal breaks. Workers rooms (if they exist, or if workers are allowed to use them) are inadequately lit, ventilated and heated.

The PCV is banned from some brothels as management do not want sex workers to be made aware of industrial rights. The fines and bond system for breaches of 'house rules' still exists. Workers are asked to sign contracts waiving their civil rights to public liability claims or Workcare. Sexual harassment by owners and the practice 'of try before you're hired' is still practised in the industry. A menu of services provided is displayed so females are unable to refuse such services as allowing clients to perform oral sex on them (during which they cannot protect themselves against diseases such as hepatitis B, chlamydia and genital herpes). Sex workers are responsible for the cleaning of the brothel and receive no remuneration for this. The list is endless, yet at the end of the shift a worker may only take home $40. And brothel owners wonder why it is difficult to keep staff! Would you work in such a system?

At least we have the Brothel Health Regulations. These have been in force exactly twelve months. This legislative act was a Health Department initiative, as the Prostitution Regulation Act failed to address health issues in brothels. The Act highlights the inadequacies in the legislative process in regulating the sex industry. It is retrospective and possibly, at the time of drafting, areas of limitations of the Act could not be foreseen. To change the law requires an Act of Parliament. Recently the issue of management discouraging condom use (by threatening with the sack) in a sex act between a male client and a female sex worker arose. This cannot be addressed under the *Health Act 1959* as there are no provisions to penalise management. Consequently, management are effectively immune from prosecution. There was no thought in how the Health Act would be enforced, and this raises the complex question of administration after law reform.

The aim of the Act was to empower sex workers, enabling them to refuse clients and to work safely. It placed much of the onus on management to supply condoms, 'lube' and educative material free. However in reality, the onus rests on the sex worker or client to make an official complaint that the law has been breached and provide evidence. This is unlikely to happen.

Paying tax does not make sex workers equal in the community or give sex workers adequate access to public services, housing and bank loans—nor does it improve industrial conditions for sex workers. In Victoria the Australian Tax Office (ATO) has attempted to implement a PAYE system. Initial opposition by brothel management was that sex workers were subcontractors only renting the room. (This option, if it were a reality, would be ideal as a means for workers to control the way they operated.)

The implementation of the PAYE has been a nightmare for sex workers, however. Thousands and thousands of untaxed dollars have gone into management pockets. Tax file numbers are used for consecutive workers after the initial worker has left, no receipts or group certificates are given, and the ATO is unwilling to follow worker's complaints about breaches of the PAYE system. The workers do not lodge claims as they fear audits for back-taxes. Despite a commitment by the ATO not to audit workers, several females have been slandered by tax officers, and there is a very real fear of confidentiality being breached by either taxation officials or brothel management. Sadly, the initial law reformers are very quiet and the situation remains unaddressed.

In reality, dealing in situations with police, hospitals, banks and public officials is more difficult. In fact, several banks in Victoria have written to sex workers asking them to close their bank accounts as they prefer not to have dealings with the sex industry.

There does not seem to be much hope of readdressing the situation despite the community, PCV and police pressure. The government has refused to confront the structure they have created. The Victorian Attorney-General is guilty of dereliction of duty, making no comments or attempts to revive the Prostitution Management Committee–which was formulated after legalisation–to look at problems and issues as they arise. Sex workers are burdened with an excess of significant and unfair restrictions when already existing laws deal with the issues, such as areas of violence, public nuisance, exploitation and coercion. It must be accepted that the sex worker community does not need separate laws to enable them to have access to the same protection–industrial or otherwise–that the wider community receives.