



# What Happens When Prostitution Becomes Work?

An Update on Legalisation of Prostitution in Australia

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Coalition Against Trafficking in Women, Australia



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**I**nternationally, the legalisation of prostitution is increasingly promoted as the solution to the escalation of a global sex market coupled with the trafficking of between 600,000 and four million women and girls for sex and profit<sup>1</sup>. The Australian State of Victoria has now experienced over two decades of legalised prostitution and is promoted as a model for other Australian states and territories to pursue, as well as countries worldwide<sup>2</sup>. The Victorian Government regards brothel and escort prostitution as 'sexual services' and allows women and girls to be treated as common commodities to be bought and sold like any other marketable product in the capitalist marketplace. Pimps and brothel owners, now 'respectable' business entrepreneurs, are free to promote prostitution as a professional career and as a profitable business enterprise. The few restrictions the Government places on the industry relate to local planning laws and health regulations. Thus, prostitution is seen as a problem only where there is some 'measurable harm' such as traffic noises or prostitution taking place around children, or where there is a fear that

unregulated sex might affect the wider public health.

What underpins a government's decision to institutionalise prostitution as work? What impact does this choice have on women and girls in prostitution? And how does a society allegedly committed to a woman's right to equality and safety come to terms with a culture where the prostitution industry is influential, pervasive and most of all, acceptable?

**WHY LEGALISATION?** Victoria's decision to shift from prohibition to treating prostitution as work was based on the assumptions that a regulated industry could contain the rampant growth of the highly visible brothel and street prostitution trade, eliminate organised crime and end child prostitution and sex trafficking. Overall the Victorian Government adopted a harm minimisation approach to tackle the social problems and human rights abuses that prostitution created. However, in every category, legalisation has exacerbated these harms and produced many of its own making.

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1. According to the 2005 U.S. Department of State's Trafficking in Persons Report, the numbers of people trafficked ranges from 600,000 to 800,000, mainly for sexual exploitation. The International Labour Organisation has estimated that these figures expand to between two million and four million when intracountry trafficking is included (2005).

2. Legalisation is when the State regulates the industry permitting some forms of prostitution, while others, such as street prostitution, remain criminalised. Normally, specific industry-based health regulations apply. Decriminalisation means prostitution and prostitution-like activities are completely withdrawn from the criminal code and treated as no different from legitimate commercial activity. But importantly, both legalisation and decriminalisation permit prostitution to be recognised as legitimate work and pimps and brothel owners as legitimate business operators.

A further catalyst for the Government's liberalisation of the State's prostitution laws was its belief that legalisation is essential to protecting public health. The Government uncritically accepted the claim that discouraging prostitution impeded AIDS intervention programs among prostituted women—considered by health professionals as a high risk group for HIV and other sexually transmitted infections—as it places those within the industry outside the care of health care workers. In addition, for women caught up in systems of sexual exploitation, legitimising prostitution as work ostensibly promises to eliminate harmful work practices by introducing occupational health and safety standards for brothels and escort agency 'workers' standards that are guaranteed under international labour conventions to workers in the mainstream labour force. Such justifications are equally unfounded. The Victorian experience demonstrates that legalisation does nothing to protect the health and safety of those within the industry.

State endorsement of prostitution intensifies the commodification of women's bodies and greatly expands the illegal, as well as legal, sectors of the industry. In effect, Victoria has created a two-tiered system—a regulated and an unregulated prostitution industry. Other consequences of legalisation include the encroachment of pros-

titution on public life, its integration into the State tourism industry and the growing role of Australian financial institutions in supporting the industry. There exist minimal opportunities for self-employment for prostituted women and no exit

**State-sanctioned prostitution is big business.**

programs have been established for the huge majority who want to leave. Street prostitution, which is illegal, has not disappeared but risen commensurate with the overall demand for prostitution sex.

Organised crime also remains inherent across the industry, blurring the boundaries between legal prostitution and unregulated sex businesses. Sex exploiters indiscriminately traffic women for commercial sexual exploitation, into both legal and illegal brothels, the former often a safe entrepot for the illicit trade. Sexual exploitation of children continues. The increased tolerance of prostitution in Victoria, in effect, requires a steady flow of women and girls to meet the demands of the vastly expanding and lucrative market. And sex business interests are quick to devise new forms of sexual exploitation to ensure continuing profits and meet consumer demands. Consequently, the Government must introduce catch-up legislation in an attempt to deal with the myriad of unforeseen problems that has accompanied

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Victoria's new, liberalised prostitution state.

Even given the supposedly optimum circumstances in which prostitution can take place—that is, in Victoria's legal brothels and escort agencies—women continue to be raped and traumatised. Attempts to treat prostitution businesses as similar to other mainstream workplaces actually obscure the intrinsic violence of prostitution. This violence is entrenched in everyday 'work' practices and the 'work' environment and results in ongoing physical and mental harm for women who must accept that in a legal system such violence has been normalised as just part of the job.

### CREATING A PROSTITUTION CULTURE

One of the Victorian Government's core justifications for legalising prostitution was that it would limit the visible and tangible impact of the industry on the community. At the beginning of the twenty-first century, prostitution is no longer simply a legally accepted industry in Victoria. State-sanctioned prostitution is big business—a major economic activity that is legitimised not only by the Government, but also by financial institutions and the health professions. Successive Victorian governments, in allowing prostitution to be recognised as a legitimate commercial transaction and sex businesses as a legal land use under local planning laws, created the conditions for brothels and other permitted prostitution 'services' to proliferate. In practice, this laissez-faire economic

approach has meant that every municipality is open to organisers of the brothel industry, for example. Multiple legal brothels now exist in seven suburban municipalities, while most suburbs have at least a single brothel. The State's increasing tolerance of prostitution, in turn, has encouraged an unprecedented demand for 'sexual services' resulting in more and more women being prostituted for sex and profit, with negligible benefits to themselves.

### HIGH PROFITS AND HIGH DEMAND

Victoria's prostitution industry is a high economic growth area in terms of size, profits and throughput of male buyers. From 1984, when Victoria first legalised brothels, to 2004, the number of licensed 'sexual services providers' increased from 40 to 184 (Business Licensing Authority 2004a, p.1). Significantly, these figures do not include the growth in illegal prostitution, estimated to be four to five times the size of the regulated sector. Further, using the data of the Australia and New Zealand Standard Industry Classification (ANZSIC), 'sexual services' Australia-wide ranks highest of all 'personal service' industries in terms of revenue (reaching as high as 80 per cent) and drives the overall growth of this economic sector. Sex-based industries in Australia are the financial equals of the 50 top-ranking, publicly-traded companies and are growing at about 4.6 per cent annually, higher than the Gross Domestic Product (GDP). Industry revenue Australia-wide has increased from

A\$1,525 million in 1999–2000 to A\$1,780 million in 2004–05, representing a percentage increase of 17 per cent. Put simply, Victoria’s legal brothels service approximately 3.1 million buyers per year in an adult male population of 1.3 million. This trend is predicted to intensify<sup>3</sup>.

Financial experts such as IBIS World have pointed out that over the next five years, there will be ‘strong growth in the volume of demand for sexual services’ and ‘continued growth in the “premium” segment... such as escort services’ (2005, p.26). Thus, Victorian men, who may have never previously involved themselves in illegal prostitution, are now comfortable in purchasing a woman for sexual gratification. Legalisation has created an ever-increasing ‘lawful’ supply of women for men’s use, a commodity which sex entrepreneurs heavily market to the male consumer.

Despite the prostitution industry’s efforts to suggest that women are increasingly using ‘sexual services’, prostitution remains an explicitly sex-segregated industry. Women make up 90 per cent of the prostitution ‘labour force’ and men have the purchasing power (Banach and Metzenrath 2000, p.20). Recent research into Australia’s sexual behaviour found that one in six men

has paid for sex, while for women the figure is negligible (Ritcher and Rissel 2005, p.100). Under Victoria’s legalisation regime the number of women involved in the industry has risen from 3,000–4,000 two decades ago for the industry as whole—legal and illegal brothels, escort agencies, private workers and street prostitution—to around 4,500 women in the legal sector alone. There are no estimates of the numbers of women exploited in the massively expanded illegal sector.

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Equally important, students now make up a significant proportion of those who are drawn into the industry. Jenny Macklin, the Federal Australian Labor Party Shadow Minister for Education, raised the topic nationally in 2002 when she criticised the Australian Liberal Government’s funding of education and the resulting student poverty. Macklin’s estimate was that students made up at least ten per cent of those in the industry (Macklin 2002, p.1). These include increasing numbers of international students, as they have particular difficulty in accessing viable work because of restrictions to their student visas (Latz 2003, pp.320–328). However, where prostitution is legal this is entirely acceptable. By 2004, the Student Union for the Victorian Institute of Technology

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3. Major sources: IBISWORLD Business Information Pty. Ltd. *Personal Services n.e.c. in Australia* reports (1998 – October 2005). ABS (2005) Gross Domestic Product, ANS CAT NO: 5206.0, September 2005. See also Victoria 1999, pp.963 and 967.



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(RMIT), one of the State's prominent tertiary educational institutions, had created a web page for students involved in prostitution under the heading 'Your Work, Your Rights' (RMIT Union 2004).

**A DYNAMIC CAREER CHOICE OR EXPLOITATION?** The idea that legalisation would allow prostituted women more control over their 'working' lives appears up front a compelling argument. Victoria's legal system has, in fact, delivered the reverse. Legalisation does not alter the reality that economic vulnerability to homelessness remains the prime reason why women in the State 'choose' prostitution (Mitchell 2000, p.52). Most women who enter prostitution are in immediate financial difficulty and are not in a position to build up a capital base or pay the licensing fees to operate sex businesses.

At the end of the 1990s, IBIS Business Information Services exposed that fees charged by prostituted women had not changed significantly over the previous ten years. Women on average earned between A\$400 to A\$500 per week, did not receive holiday pay or sick leave, and worked around four ten-hour shifts per week (1998, p.9). Five years later the situation has deteriorated further. As sex businesses recruit more and more women to service Victoria's thriving prostitution trade, competition for buyers has increased. Thus, while sex businesses benefit exceedingly from rising demand for 'sexual

services', in real unit prices, that is, the money women take home, their earnings have dropped significantly (IBIS World 2005, p.18).

One woman responding to a Prostitutes' Collective of Victoria survey on the impact of legalisation explained how with 'far more competition, the clients are extremely demanding [and] the control over what the women will and won't do is often taken out of their hands' (Keogh 1992, p.7). Another interviewee told how her agency threatened to fine her A\$300 per booking if she refused a buyer who she had found 'abusive', 'drunk' and 'threatened physical violence' (ibid, p.22). This is in circumstances where prostituted women in legal sex operations already give 50 – 60 per cent of their earnings to the brothel or escort agency. Defining prostituted women as 'legitimate workers' may serve sex entrepreneurs' quest to gain legitimacy, but it does nothing to ameliorate the economic vulnerability that draws, then traps women in a cycle of prostitution.

The one legal avenue for women within Victoria's prostitution industry to become self-employed is to operate an exempt brothel. However, the Government restrictions that exist around these small owner-operator prostitution businesses make it almost impossible for prostituted women to take up this option. Under the 1994 Prostitution Control Act, Victoria's principal prostitution legislation, the Government allows one or two women to set up as 'sexual service providers'

without having to obtain the normal license and the accompanying probity check that is required for larger prostitution operations. Nonetheless, these small 'exempt' brothels must comply with local zoning laws. Women cannot 'work' from home as prostitution is barred from residential areas. Prostituted women therefore find themselves competing unsuccessfully with the established players who control the industry. The regulations have in fact resulted in some prostituted women paying exorbitant rents to landlords because when renting premises, prostituted women must disclose their business (Business Licensing Authority 2004, p.1).

The main option for self-employment for women who wish to work legally is to find premises in industrial areas or docklands. This leaves already vulnerable women open to further violence, fear and isolation. It is therefore predictable that only three of the 1,958 women who registered as 'exempt' brothel operators with the Victorian Business Licensing Authority run their own prostitution business. The remaining women continue to work for a third party, mainly for escort agencies (Business Licensing Authority 2004a, p.2).

That the Victorian Government never seriously considered the welfare of prostituted women is

best illustrated by the absence of any programs to help the majority of women in the industry who want to leave<sup>4</sup>. The 1994 Act stipulated that the State's specialist Prostitution Control Board set up exit programs to be financed through brothel and escort agencies' licensing fees. Between 1995 and 1998, the Board collected A\$991,000 from licensing. One must question in the first place the warped logic of a government employing monies derived from the exploitation of women to assist them to escape their exploitation. In any case, there are no Victorian Government-sponsored exit programs.

#### **PIMPING ON A GRAND SCALE**

One of the stated objectives of the Victorian Government's prostitution legislation was to stop the concentration of ownership. The Government declared that its 'strict' licensing system would reduce the risk of exploitative employment practices and inhibit the involvement of large-scale criminal involvement. But while the Government may acknowledge that the takeover of the industry by big business is undesirable, it has given its permission for this to occur.

Multi-ownership is a feature of Victoria's regulated prostitution system. At the end of the 1990s, the State Office of Public Prosecutions exposed that 'sham operations' with

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4. There is no comprehensive study of how many women in Victoria want to leave prostitution. A 1997 survey carried out by the Prostitutes Collective of Victoria found 64.2 per cent wanted to leave the industry (Noske and Deacon 1996, pp.9-10). A 2003 study in the Netherlands, where prostitution is also legal, placed the figure at 75 per cent (in Bindel and Kelly 2004, p.1,417).

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front people meant that six multiple operators dominate the industry (Forbes 1999, p.12). The Government's transference of its specialist Prostitution Control Board's role to the State's Business Licensing Authority in 1998 makes clear that any concern to ensure strict licensing procedures, and thus protect

women against exploitation, has disappeared. Prostitution licensing is now dealt with in a similar way to real estate agencies and used car sales businesses, foreshadowing what occurs when all restrictions on prostitution are lifted, as is the hope of prostitution industry advocates.

The hypocrisy that underlies Victoria's legalisation system is starkly obvious when one looks at the present prostitution law in practice. Victoria hosted the world's first stock market listed brothel, the Daily Planet Ltd, which began operating in 1975 prior to legalisation and began trading publicly on 3 May 2003. The float raised A\$8.9 million. Under its new name, Planet Platinum Limited, the company directors expanded into tabletop dancing and Showgirls Bar 20 Strip Clubs. They intend to operate a chain throughout Australia and Asia and may expand into escort services.

The claim that legalisation will prevent big business concerns

dominating the industry becomes nonsensical given that together with the Australian Stock Exchange, mainstream financial institutions are facilitating the expansion of Victorian industry. Media reports, for example, revealed that National Australia Bank provided the bank guarantee for the Daily Planet

float (Webb 2003, p.4). Absurdly, Victoria's lawmakers still make it an indictable offence, with a ten-year maximum sentence, for a person to 'live wholly or in part on, or derive a material benefit from, the earnings of prostitution' (Prostitution Control Act 1994 s 10[1]). Those who fall within this group are limited to pimps or partners. But the Government sees no contradiction in allowing 'sexual service providers', shareholders, financial institutions and the State all to profit from men's purchase of women for sexual gratification.

The Victorian Government undoubtedly benefits both directly and indirectly from the State's thriving prostitution trade—through taxation, through brothel licensing fees, which increased by some 400 per cent between 2003 and 2004, and through sex tourism. Prostitution, for example, is intrinsically linked to Victoria's casino culture. When the State-owned Crown casino opened in May 1994, Labor parlia-

**64% of women in prostitution in Victoria want to leave the industry. In the Netherlands, that number reaches 75%.**

mentarian, Jean McClean, brought attention to the fact that prostituted women 'are becoming an accepted and an expected sideline of the tourism and casino boom [with] our scummy casino chips accepted as legal currency in local brothels' (Victoria 1994, p.1,265). McClean's reference was to Melbourne's Top of the Town brothel encouraging its 'clients' to pay for their brothel booking with casino chips as a means of cross promotion between the two businesses.

Additionally, within six months of the casino's opening, there were six applicants for brothel licenses in South Melbourne in close proximity to the casino (Naidoo 1996, p.1). By 2004, the police disclosed that prostitution 'services' were being provided to gamblers and hotel guests of the casino's Crown Towers hotel. But as Crown's representative pointed out to its critics, prostitution in Victoria 'is a legitimate and legal service' (Moor 2004, p.1). Moreover, as a legal and legitimate service, sex entrepreneurs have all the techniques and marketing tools that are open to other businesses to sell their products.

### **MAKING PROSTITUTION RESPECTABLE**

Sexpo, an annual trade show for the 'adult' sex industry, highlights just how significant an economic player the prostitution industry has become in the Victoria. Through Sexpo, prostitution businesses and other sex-based industries display and compare products and ideas for the benefit of potential buyers—the

general public. Its products include pornography, sex toys, private lap dances, brothel and escort agency promotions and sado-masochist services—all part of a legal sex industry.

Adult products available at most exhibits conform to stereotypical ideas of women's sexuality as defined through pornography—large dildos supposed to enhance 'sex play' or a video screening of two women (one with her nipples chained together)—whose sexual interplay consists of one woman inserting a medical instrument used for abortions into the other woman's vagina. Typically, women are placed on a massive central stage floor and a male stripper simulates intercourse, finishing by kneading her breasts, or opening her legs and simulating cunnilingus. These sex shows work to normalise the sex of pornography and prostitution as 'just sex' for the thousands of Victorians who come to the trade show.

One of the more successful strategies adopted by Sexpo's organisers to 'soften its image' is to promote itself as a 'health and lifestyle' exhibition. It has also gained support from the health profession, specifically specialists in sexual health. In reality, health professionals' participation rate averages around ten stands out of some 300 Sexpo exhibitors, and these are physically located on the fringe of the trade show. Yet their presence allows Sexpo's organisers to present the trade show as 'an important and expensive public service'

### The Sexpo annual trade show drew

# 65,000

### visitors over four days.

(ClubXSexpo 2004). The prostitution industry, in particular, has been extending its market by selling itself as offering sex therapy for disabled men.

That Sexpo has been a successful marketing tool for the sex industry is indisputable. Within ten years, the industry's exposition of its products had undergone a rapid transition from a relatively insignificant event to a mainstream public production. In 2005, Sexpo opened in five capital cities with the Melbourne showing drawing 65,000 visitors over four days.

Sexpo's success clearly has been dependent on the implicit endorsement of the Government. Since 1997, the Melbourne Sexpo has been held at the State-operated Melbourne Exhibition and Convention Centre and listed by the City's Convention and Marketing Bureau. The ability of Sexpo to also deliver its message via the Internet means that it is the perfect marketing tool to offer both Australia's and Victoria's sex industry's services internationally. However, in addition to the pretence that this massive commodification of women's bodies is a harmless entertainment, the State's prostitution industry is far from the

well-ordered and regulated system that the Government likes to promote.

### VICTORIA'S SEX ECONOMY

By 1997, the then Attorney-General for Victoria, Jan Wade, and her supporters were promoting Victoria's prostitution trade as a 'highly regulated, profitable, professional and incredibly well patronised industry that of course operates differently in other parts of the world where it is not subject to the level of scrutiny and regulation that applies in Australia' (Victoria 1997, p.1, 147). Victoria's actual experience is that in addition to legal brothel and escort agencies, the State's prostitution industry comprises a vast unregulated sector (tabletop dancing, bondage and discipline clubs and other forms of sexually explicit entertainment), illegal brothels and street prostitution. Ongoing criminal involvement persists across both the legal and illegal industry.

### TABLETOP DANCING?

Today's thriving tabletop dancing trade emerged in 1992 and has progressively involved more physical contact, as well as increased harassment and abuse of dancers<sup>5</sup>.

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5. The main sources for the discussion on tabletop dancing are the Attorney-General's Prostitution Control Act Advisory Committee 1997 *Final Report* and an interview with Pauline Burgess (Melbourne 1999) who was an industrial relations and women's officer for the Shop Distributors and Allied Employees Association and a member of Victoria's Prostitution Control Act Advisory Committee.

The main clubs bring in around 1,000 male customers a night and offer between 60 – 100 dancers. Tabletop dancing clubs provide male customers with a volatile concoction of exploitative sex and alcohol. Premises normally hold a liquor license, although the only restric-

tion occurred were to be subject to the same regulations and probity checks as brothels, while sexually explicit entertainment venues were now required to get a local planning permit to open.

The new legislation did nothing to deal with either the ex-

**Sex clubs are serving up a volatile concoction of exploitative sex and alcohol.**

tions on sexually explicit entertainment relate to overt advertising and prohibiting minors. Performances include double acts with other women or men (showers, oil wrestling), and personal or lap dances where the dancer sits on a man's lap 'gyrating, twisting and generally stimulating his groin area, or rubbing her breasts in the patron's face. Digital penetration of women with fingers or objects that include mobile telephones being inserted into the dancer's vagina also occurs. Prostitution takes place in VIP rooms set aside for private dancers away from public viewing.

The eruption of the tabletop dancing trade was a further demonstration that Victoria's regulatory regime was failing. In 1999, the Government introduced an amendment to the State's principal prostitution legislation attempting to bring the tabletop dancing trade under regulatory control by redefining prostitution to take account of prostitution-like practices occurring at the clubs. Clubs where prostitu-

tion occurred were to be subject to the same regulations and probity checks as brothels, while sexually explicit entertainment venues were now required to get a local planning permit to open.

tion occurred were to be subject to the same regulations and probity checks as brothels, while sexually explicit entertainment venues were now required to get a local planning permit to open. The new legislation did nothing to deal with either the expansion of the tabletop dancing trade or curtail the clubs' prostitution activities. Between April and July 2001, 34 clubs applied for planning permits and local councils could do little to prevent their encroachment into local shopping strips and business centres.

Moreover, there existed no mechanism to determine whether tabletop dancers were providing prostitution. The Business Licensing Authority has responsibility for prostitution services at the clubs. But what qualifications its inspectors have for evaluating whether prostitution is occurring or just simulated has never been questioned. The ludicrous inadequacy of the new arrangements is illustrated by the following government guideline: 'If exposure is evident of the genitalia, either accidentally or intentionally it may be safer to have a permit in place to avoid possible prosecution... the performer's g-string or other apparel would have to completely cover relevant areas of the body and be sizeable enough

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so that no “accidental removal” could occur’ (Victorian Department of Tourism and Trade’s Licensing Division 2002, p.1). However, Victoria’s justifications for introducing legalised prostitution are incontestably flawed given the existence of an extensive illegal trade in women and girls. In parallel with sexually exploitative businesses that operate on the margins of Victoria’s legalised prostitution system, illegal brothel prostitution has burgeoned to meet buyers’ demands for ‘cheaper’ or ‘unrestricted’ sexual services.

### **ILLEGAL BROTHELS IN A LEGAL SYSTEM**

In 2003, the Committee on the Australian Crimes Commission, a Federal Government parliamentary inquiry into sex trafficking into Australia, exposed that Victoria had an extensive illegal prostitution trade (Commonwealth of Australia 2003). Police sources estimate that there are a minimum of 400 illegal brothels throughout the State (Rose M. 2003, p.4). This does not take account of the number of escort agencies operating outside the law. One city council claimed that between 2002 and 2004, there were 26 illegal brothels operating in its municipality (Monash City Council 2003, p.1). Again, the reality is that Victoria’s prostitution legislation provides no effective mechanisms to tackle the illicit trade.

Because legal brothels had fallen within a planning framework, the common perception was that municipal councils also had the role of policing illegal brothels. Councils’

only deterrent against illegal prostitution is to request the Victorian Civil and Administrative Tribunal (VCAT) to close an illegal brothel for failing to hold a license or having a valid planning permit. They are then free to impose a fine (a mere A\$1,000) if brothels continue to operate. Councils’ experience is that the brothels simply open up in a different locality (Commonwealth of Australia, 2003, p.14). As with tabletop dancing, the Government responded to public unease over the illegal trade by again introducing catch-up legislation.

As well as attempting to redefine prostitution to address the rampant problem of prostitution within the table top dancing trade, the 1999 Prostitution Control (Amendment) Act introduced provisions intended to improve the policing of the illegal brothel trade. Similar to municipal authorities, the police could seek a declaration from the VCAT (Office of Attorney-General 1999, p.1). The Prostitution Control (Proscribed Brothels) Act 2001 went further by allowing police to gain a conviction if prostitution occurred anytime during 14 days previous to an operator’s arrest (ibid, 4 ss 1,2,3). In practice these measures have done little to assist local councils. The disbandment of the Victorian Gaming and Vice Squad in the mid-1990s because of fears of police corruption meant that local police lacking specialist skills dealt with the illegal trade. Thus, while police powers have been widened, municipal councils have remained

largely responsible for eliminating the problem.

In 2003, the Municipal Association of Victoria resorted to using undercover people to close the brothels. Melbourne's Age newspaper reported that a major Melbourne law firm, Maddocks, Lonies and Chisholm, acting on behalf of municipal councils, employed private investigators to enter suspected brothels to elicit 'sexual services' (Murphy 2003a, p.5). Such evidence is proving inadmissible under the State's prostitution legislation, which makes it illegal for anybody, including private investigators, to be on the premises of an illegal brothel.

**LEGAL VERSUS ILLEGAL: THE FALSE DISTINCTION** The Government's focus on illegal brothels as the hub of illegal activity in Victoria is, in itself, a faulty strategy for eliminating illegal activity within the State's prostitution industry. 'Legitimate' sex entrepreneurs, often associated with criminal elements, own and operate both legal and illegal brothels simultaneously. The legal brothels frequently provide vehicles for the laundering of money. And sex businesses across the spectrum readily exploit victims of sex trafficking and underage girls to meet the increased consumer demand that has resulted from legalisation.

The link between organised crime and Victoria's 'model' regulated prostitution trade was exposed in an extensive media campaign beginning in 2003, in the aftermath

of 18 'gangland' murders (see Bottom 2004a and 2004b; Bottom and Medew 2004). Speaking during the Crimes Commission hearings on sex trafficking, Ken Wolfe, from the City of Yarra, also confirmed that 'gangs were involved in the ownership of some... legal brothels'. These criminals, he reported, simply 'get somebody licensed and operating' (Commonwealth of Australia 2003, p.18).

**CREATING A MARKET FOR SEX TRAFFICKERS** Estimates of the number of women and girls that crime syndicates traffic into Australia are around 1,000 at one time (Commonwealth of Australia 2003, p.37). Ten small 'gangs' are responsible for the trafficking of some 300 Thai women annually (ECPAT 2004). Once in Australia, women are frequently trafficked between states and territories and between legal and illegal brothels.

In Victoria, there have been few sex trafficking prosecutions, as again there has been no adequate legislation to deal with the problem. A 1997 amendment to the 1994 principal prostitution legislation allowed for operators using trafficked women to have their licenses suspended for employing illegal immigrants. However, this strategy restricted sex trafficking to an immigration offence, which normally results in the immediate deportation of trafficking victims.

More recent Federal and Victorian legislation has addressed the issue of sexual slavery directly,



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but such legislation remains ambiguous about who are 'victims'<sup>6</sup>. The Federal law insists that 'deceptive recruiting' must be employed irrespective of whether women find themselves in slave-like conditions and situations of debt bondage. The Victorian legislation improves on this slightly by acknowledging that 'manifestly excessive' debt bondage may be taken to be coercion, although what determines 'excessive' is never defined.

Convictions for sexual slavery within Victoria have all involved legal brothels. The most publicised case implicated Gary Glaszner, a local organiser of international prostitution. Glaszner was convicted in 1998 of the illegal importation of at least 20 Thai women to work in Melbourne brothels—both legal and illegal (Commonwealth of Australia 2004, p.66). Detective Senior Sergeant Ivan McKinney, from the Asian Squad of the Victorian Police, provided evidence of the slave-like conditions in which these women were kept to the Australian Crime Commission inquiry on sex trafficking. The women, after having had their passports confiscated, were indentured to pay off debts of between A\$35,000 – A\$40,000. This meant servicing 500 buyers, working six to seven days a week. They were imprisoned in the upstairs rooms of a hotel in squalid conditions, windows barred and shuttered from outside view (Commonwealth of Australia

2004, pp.42, 66). Police sources say that operators take about 40 per cent of the 'contract' money with the rest going to the brothel owner (Murphy 2003b, p.1).

It is estimated that organisers of the trafficking in women and children into Australian brothels make approximately \$A1 million dollars per week (Victoria 2004, p.755). But trafficking thrives not just because of high profits but also because it is a relatively low risk activity as there are minimal laws against trafficking for sexual servitude. In a legal system, prosecutions are particularly hampered because trafficked women working in a licensed brothel are, in theory, 'legitimate workers' and police have no powers to question suspected victims.

But the real problem is that no Australian legislation, neither state or commonwealth, looks at the demand side of the sex trafficking trade.

In June 2004, a United States Trafficking in Persons report identified Australia as a destination country for Chinese and South-East Asian women trafficked for prostitution (Office to Monitor and Combat Trafficking in Persons 2004, p.1). McKinney reported to the sex trafficking inquiry that he had evidence that people were approaching legal brothels saying they could supply workers (Commonwealth of Australia 2004, p.42). Ultimately, the num-

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6. See the Federal *Slavery and Sexual Servitude Act* 1999 and the Victorian *Justice Legislation (Sexual Offences and Bail) Act* 2004.

ber of women depended, he said, 'on the market forces at the time and the availability of ways to get them into the country' (ibid, p.50).

A Herald-Sun investigation in May 2004 confirmed that at least ten Melbourne brothels ac-

knowledged that they were willing 'to take imported women even if their passports were confiscated' (Binnie 2004, p.6). To date we can only surmise the number of women trafficked for sex into Victoria. Any statistics that do exist do not consider the number

of women who are kept in conditions of sexual servitude as escorts or coerced into stripping or pornography. Finally, there exists a significant child sex trade throughout Australia, including Victoria, only some of whom may be trafficked from outside the country.

### **VICTORIA'S EXPLOITED CHILDREN**

According to a 2001 Australian Broadcasting Commission's report on sexual exploitation, Australia-wide the child sex industry is growing (Jennings 2001). A 1998 ECPAT study on children's involvement in 'commercial sexual activities', remains the most comprehensive study available on the trade. Nationally, some 4,000 children are in prostitution, the majority aged

between sixteen and seventeen, although a number were between ten and twelve years old, and some younger than ten years of age (1998, p.57).

As with sex trafficking, child prostitution occurs in all sectors

of the prostitution industry. The first conviction under Victoria's legalised system was made in 1999 against Sasha's International, one of Melbourne's licensed brothels. Fred Lelah, one of the operators charged, had already served a two-year term for

having sex with minors. Despite this, Government had permitted him to operate a legal brothel.

ECPAT reported that Victoria has around 1,800 children used in commercial sex. This is the highest number for all Australian states and territories (ECPAT 1998, p.32). We need to ask why a state that promotes itself as having among the most advanced regulation for the prostitution industry in Australia, and possibly the world, has the largest child prostitution trade in the country?

### **STREET PROSTITUTION: ANOTHER LIMITATION OF THE LEGAL MODEL**

The ongoing sexual exploitation of women and girls in street prostitution and the Government's intention to intro-

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duce further legislation to fix the problem is another primary example of the limitation of legal models that do not recognise the demand for prostitution. Since Victoria introduced its legalised system, street prostitution has become more prevalent (Attorney-General's Street Prostitution Advisory Group 2002, p.44). In 2002, Victoria's Attorney-General, Rob Hulls, was forced to acknowledge that street prostitution continued as a 'harmful' and 'unacceptable' practice in which 'street sex workers and residents, [are] being subjected to violence, abuse and harassment, and serious damage... caused to traders and the local amenity' (Hulls 2002, p.1).

**'STREET WORKER CENTRES' OR 'RAPE HOUSES'?** The Government responded to the crisis by proposing the introduction of 'tolerance areas' and 'street worker centres' in St Kilda in the City of Port Melbourne, the hub of the State's street prostitution trade (Attorney-General's Street Prostitution Advisory Group 2002, p.44). These state-owned and managed brothels promised to provide 'safe and more secure facilities in which workers could service clients' (idem). Trained outreach workers were to provide condoms, health information and referrals to those in the street trade as a means of ensuring public health (ibid, p.66).

The immediate flaw with 'street worker centres' is that to operate, the Government's already defective licensing system would need to be watered down even fur-

ther. Most women in street prostitution are drug dependent and are barred from legal brothels, for example. Health workers in the area have also estimated that three out of ten of those on the streets are children (Victoria 2001, p.640). Will these be permitted in the State's centres or just be pushed into an adjacent suburb?

A further limitation of the Government's proposed plan is that it ignores that street prostituted women and girls have minimal power to negotiate safe sex practices with their clients. A study carried out by the Sacred Heart Mission in St Kilda found that there was very little employment among the prostituted women, apart from prostitution (Mitchell 2000, p.52). The connecting factors that underpinned these women's experiences of being prostituted on the streets were a history of sexual abuse in childhood, domestic violence, mental illness, prison histories, heroin addiction and educational disadvantage (ibid pp.6, 13, 27). These women can protect neither themselves nor the community.

The issue of health and safety, though, is far more encompassing than the sexual health of the community. The Government's harm minimisation approach will do little to assist those involved in the street trade, as these women and girls will remain open to sexual exploitation by the buyers. The essential nature of street prostitution is that prostituted women, who work to support a drug habit or to earn

money quickly, are picked up off the street and taken in cars to unknown destinations. Their 'clients' are men who want to remain anonymous and who are sexually aroused by the illegal nature of buying a woman for sex (see Hoigard and Finstad 1992; Pope, Pyett and Warr 1999).

Any acceptance of street prostitution also creates male spaces where women and children cannot go. The Attorney-General Advisory Group on street prostitution found evidence that buyers and sex tourists who are increasingly drawn to Victoria's 'red light' district harass and proposition women and children walking in their own streets (2002, p.41).

The 2003 Victorian State election forestalled the decision on street prostitution when residents who would have been affected if tolerance zones were created protested strongly at having them located in their neighbourhoods. The newly elected Labor Government provided police with new powers which allowed them—'at their discretion'—to issue A\$100 on-the-spot fines for sex tourists acting offensively. Hulls stressed that 'the fines would not punish well-behaved customers' (Silkstone 2004, p.9). The State's refusal to address the demand for prostitution means that street prostitution, although illegal, continues to flourish relatively unopposed. And as the Government remains committed to its harm minimisation approach to prostitution, the idea of some type of red light district is again being considered.

### **SAFE AND LEGAL?**

For some feminists and human rights activists, one of more persuasive arguments for legalisation is that legitimising prostitution as work offers prostituted women the protection offered to other workers. Victoria's Occupational Health and Safety Act 2004 stipulates that 'an employer must, so far as reasonably practicable, provide and maintain for employees... a working environment that is safe and without risks to health' (s 23[1]). However, OHS measures, when applied to the everyday reality of women in prostitution, show that prostitution can never be made safe.

### **WHAT'S WRONG WITH MANDATORY TESTING?**

Victoria's OHS strategies for sex businesses are unambiguously focused on containing the spread of sexually transmitted infections (STIs), particularly in brothels. But even in this limited capacity OHS fails to protect women. Mandatory testing of prostituted women for STIs is assumed within the 1994 Prostitution Control Act mandates, although testing of the male buyer is not. Women found working with an STI are penalised together with the brothel management and the only reliable defence is proof that the infected woman has undergone regular health checks (Prostitution Control Act 1994 ss 19 and 20). Critiques of mandatory testing have exposed the inadequacy of targeting women, as AIDS, for example, is overwhelmingly transmitted via male-to-female vaginal and anal

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intercourse, not vice versa (Farley and Kelly 2000, p.4).

By ignoring the male buyer, the Victorian Government not only discriminates against prostituted women, but also helps create the perception that they are purveyors of disease. Moreover, mandatory testing gives false hope to both prostituted women and the community that their health is protected. Compulsory testing is a relatively inaccurate and stressful means of determining whether a woman should continue to 'work', as there is a three-month dormancy window for the various STIs (Banach and Metzenrath 2000, p.6).

In addition to mandatory testing, Government legislation requires sex business operators to provide condoms and dental dams and gloves. This is particularly spelt out in the Health (Infectious Diseases) Regulations 2001. This emphasis on safe sex carries over to funding for the industry. Federal and Victorian Government funding has solely targeted safe sex education programs. The Prostitutes Collective of Victoria, and its successor, Resourcing Health and Education for the Sex Industry (RHED), have subsequently centred their OHS strategies on safe sex practices and screening, which gives 'sex worker organisations' legitimacy as sexual health educators. RHED<sup>7</sup>, in fact, is located within the State's Southern

Healthcare Network, and as its web page indicates, its sole purpose is 'to reduce the incidences of sexually communicated disease in the community by working with, and through, the prostitution industry' (2005).

**IS THERE SUCH A THING AS SAFE SEX?** Safe sex programs for the prostitution industry do not protect the health and safety of prostituted women. Australian 'sex worker organisations' OHS guides list 'condom breakage and slippage' as a 'severe health risk', causing 'death or disability'. Its probability is 'any-time' and the need for a contingency plan is 'immediate' (Sex Workers Outreach Project 1996, p.22).

An equally disturbing fact is that the contingency plan that is offered to women once a condom is broken or slips may cause as much harm as contracting an STI. The Australian national prostitutes' rights organisation, the Scarlet Alliance, deals with the problem of condom breakage and slippage extensively in its *Best Practices*. Its advice is that all semen must be scooped out 'though care must be taken to avoid scratching the lining of the vagina with fingernails' (2000, p.43). Scouring or flushing, mainly through douching or spermicides, is suggested as a follow-up procedure (ibid, p.67). Such practices are known to be inherently harm-

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7. RHED differs significantly from the former group, as it does not operate as a prostitutes' rights group, but represents sex business operators and buyers as well, and comes under the auspices of the State Government.

ful. Douching, for example, pushes semen up the vagina towards the cervix, causing pelvic inflammatory disease and ectopic pregnancy (idem). Spermicides such as Nonoxynol-9 cause genital irritation, vaginal and cervical ulcers and recurring yeast infections. *Best Practices* even makes the point that if Nonoxynol-9 is used it could result in a greater risk of STIs taking place' (ibid p.43).

It can be argued that any measure that may minimise or at least decrease the harm of prostitution is beneficial. But what other categories of workers have to accept STIs as an 'inevitable', rather than an accidental, consequence of just going to work? When it was established that the use of asbestos in buildings led to asbestosis, its further use was banned as workplaces could not be made safe. This is not the case with prostitution. The Victorian Government has accepted both the inevitability and legitimacy of prostitution. The State's OHS strategies must fall back on making it incumbent on the workers to wear protective equipment and be prepared to handle occasional emergencies. This is the only alternative option to mandatory testing that is available to women working in a legalised prostitution system.

**Many women prefer to risk violence at the hands of clients than be subjected to violence by clients and brothel staff**

**RAPE AND VIOLENCE AS OCCUPATIONAL HAZARDS** The most dangerous aspect of Victoria's OHS strategies for women in prostitution is that it assumes that women are able to negotiate safe sex. Studies have shown that male buyers in Victoria will not use condoms, with one in five men having admitted to unsafe sex (Louie 1998, p.23). Men have also become more demanding in the type of services they want. The demand for oral sex, for instance, has been replaced by the demand for anal sex (Arnett-Bradshaw 1999).

Priscilla Pyett and Deborah Warr's sociological study of prostituted women at risk exposed that despite Victoria's legalised system, 'client resistance, whether in the form of threats or enticements, was a continual obstacle to be overcome by negotiation in the sexual encounter', a problem that is exacerbated by brothel operators who do not insist on condom use (1999, p.4). Similarly, a 2001 Government impact study concluded that some users 'found condoms unacceptable' and when refused sex without condoms, they 'would seek other avenues for unsafe sex' (Victoria 2001, p.61). The Melbourne-based legal advocacy group for women in prison also drew attention to the fact that, 'despite claims

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to say that**

**I will do something that I don’t want to.**

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that brothels provide safer working environments, many women report to us that they *prefer to risk violence at the hands of clients* [my emphasis] than be subjected to violence by both clients and brothel staff and security’ (Darebin Community Legal Centre and the Advocacy Program for Women in Prison 2003, p.8).

All OHS strategies to minimise harmful ‘work’ practices or the ‘work’ environment will ultimately prove ineffectual as prostitution is like no other form of work. It involves the use of a woman’s body by the buyer for his sexual gratification. No other workplace has to cover the range of health and safety issues that ensue from this sexual and economic exchange. Together with STIs, verbal abuse, battering, sexual harassment and violence, rape and unwanted pregnancies are recognised occupational health and safety risks within the prostitution industry. This does not change because prostitution is legalised.

Ingrid Barclay’s study, which looks at the experience of four women in one of Melbourne’s legal brothels, shows how even

when overt coercion is not present, women remain disempowered. The women in her study found that they had to agree to any sexual acts a buyer demanded to obtain a booking. They are then later forced to attempt to renegotiate the way the sexual act will be performed when the booking has commenced and they are alone with the buyer. One interviewee responded that she ‘always has to say that I will do something in the booking that I don’t want to... I know that he will ask everyone. If you want to get booked, you have to do these things (2002, p.32). Another woman agreed that ‘to get regulars you have to conduct the booking all about him. You have to indulge in his type of conversation, his type of sex’ (idem).

### **LEGAL ‘SEX WORKERS’: LIKE HOSTAGES NEGOTIATING THEIR SAFETY**

Australian prostitutes’ rights organisations recognise prostitution to be a high-risk occupation in terms of violence and coercion. Their guidelines contain risk management procedures that include introducing safety devices (panic/alarm

buttons) in workrooms and video surveillance to screen clients (see, for example, Sex Worker Outreach Project, 1996, p.30). This emphasis, though, is changing as the focus is progressively on 'worker control', suggesting the obvious unworkability of these tactics to prevent harm to women.

Specialist groups now offer brothel management programs on self-defence and conflict resolution that superficially provide some avenue of defence against the violence of prostitution. These are eligible for government funding under various work training schemes. Pacific Martial Arts is a typical example. Its promotional material suggests that its course 'allows employees in the sex industry to react to threatening situations in a number of ways, often behind submissive but protective postures and teaches them how to create a common vision with an aggressor, which can often lead to a compromise of initial harmful intentions' (Brental c1998 p.1).

Other advertising catchphrases include 'controlling self-violation that pre-empts negative outcomes'; 'creating a common vision that shares an empathetic rapport with the violator'; 'de-escalation negotiation'; 'maintaining "first strike" advantage' (ibid). This program is suggestive of crisis management for hostage situations. In what other non-military profession can hostage negotiations be deemed necessary to cope with the normal workday?

Risk management procedures for escort workers require

even stronger security precautions and highly developed psychological and interpretive skills. Recommended precautionary tactics for escort workers include 'avoid working alone' or 'pretend you are not working alone' (Bridgett 1997, p.5). Other strategies are to 'try and see one client at a time [and] make sure there is no-one hiding at the job'; 'Keep your client on your turf so you know how to escape'; 'Code Red: Be prepared for any emergencies—set up a safety code system with your co-workers, manager or receptionist' (idem). That these risk prevention strategies are considered normal safety procedures for women in prostitution expose how the prostitution work environment is unquestionably a place of extreme and constant violence that cannot be compared to other workplaces.

### **'HAVE I BEEN RAPED?'**

Supporters of legalisation have argued that once prostitution was legitimised as work, women who had experienced violence would more readily seek assistance from police and health services. A critical problem with recognising the violence of prostitution is that in a legalised prostitution system, the boundaries between what constitutes work and what constitutes violence is blurred for women. In *9 Lives*, a booklet produced by the Sex Worker Outreach Project, one of Australia's larger prostitutes' rights organisations, women are told that, 'learning to recognise violence is the first step we can take in protecting our-



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selves' (Bridgett 1997, p.2). Contradictorily, *9 Lives* equally advises women that it is exceedingly difficult to distinguish between 'when a client has "gone too far" and when a sexual assault has occurred' (ibid). The real problem is that legalisation has allowed violence that is unacceptable in any other workplace to become normalised for prostituted women as just sex and just part of the job. No occupational health and safety strategy can deal with this reality.

### CONCLUSION

The Victorian State Government, despite more and more evidence that legalisation has failed to achieve any of its aims, continues in its belief that prostitution can be regulated like any other industry. Victoria's legitimisation of prostitution created a prostitution culture throughout the State and made it acceptable for Victorian men to purchase women for sexual gratification. The Government, apparently appreciating the financial benefits it gains from the market in women's bodies, is progressively linked with other vested interests in encouraging the industry's growth. These include some of Australia's mainstream financial institutions. Sex entrepreneurs' increasing economic power facilitates this normalisation of prostitution even further as the staging of Sexpo well demonstrates.

These same sex entrepreneurs have proven that they will engage in activities, whether legal or illegal, which will allow them to

continue to profit from the sexual exploitation of others. Sex businesses have been quick to utilise any loopholes in Government legislation to further their own interests. Legalisation has offered nothing for women caught up in this system of exploitation. Legitimising prostitution as work has simply worked to normalise the violence and sexual abuse that they experience on a daily basis. Victoria must not be seen as a model for other countries attempting to deal with the escalating trade in women and children for sex. Legalised prostitution is government-sanctioned abuse of women and violates their right to equality and safety.

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